No. 20-55522

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JANET GARCIA, ET AL.,

Plaintiffs-Appellees,

v.

CITY OF LOS ANGELES,

Defendant-Appellant.

On Appeal From the United States District Court
for the Central District of California
Case No. 2:19-cv-06182-DSF-PLA
The Honorable Dale S. Fischer

BRIEF OF *AMICUS CURIAE* LEAGUE OF CALIFORNIA CITIES IN SUPPORT OF APPELLANT AND REVERSAL

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Pursuant to Rules 26.1(a) and 29(a)(4)(A) of the Federal Rules of Appellate Procedure, counsel for *amicus curiae* hereby states that it is a nonprofit corporation that does not issue stock and is not a subsidiary or affiliate of any publicly owned corporation.

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Pursuant to Rule 29(a)(2), counsel for *amicus curiae* represents that all parties have consented to the filing of this amicus brief.

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IDENTITY AND INTEREST OF *AMICUS CURIAE*

The League of California Cities is an association of 476 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. The League is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

INTRODUCTION AND SUMMARY OF ARGUMENT

The district court's preliminary injunction constitutionalizes an area of municipal law that has—until now—been considered a core function of local government, and places the routine management of city streets and other public areas under the oversight of a federal court. By facially invalidating an ordinance that regulates the amount of personal property that individuals may store on public land, the district court's order robs the people of Los Angeles of the ability to balance the needs of all of its residents and decide issues of local governance and policy through their elected representatives.

The district court's opinion is the latest in a misguided line of recent cases that have erroneously interpreted the U.S. Constitution to stifle the ability of cities

to manage their own affairs and tailor solutions to local public policy issues, and that have resulted in an unprecedented expansion of the power of federal courts to regulate the operation of local government. *See, e.g.*, *Martin v. City of Boise*, 920 F.3d 584, 617 (9th Cir. 2019) (holding that the Eighth Amendment's Cruel and Unusual Punishment Clause forbids enforcement of public-camping ordinances where the there is a greater number of homeless individuals in a jurisdiction than the number of beds available in shelters); *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1031 (9th Cir. 2012) (holding that the Fourth and Fourteenth Amendments forbid the warrantless seizure of personal property left unattended on public land); *Blake v. City of Grants Pass*, No. 1:18-CV-01823-CL, 2020 WL 4209227, at *8–*9 (D. Or. July 22, 2020) (holding that the Eighth Amendment's Cruel and Unusual Punishment Clause forbids imposing civil citations for violation of public-camping ordinances).

In this case, the district court held that the Fourth and Fourteenth Amendments require municipal governments to obtain a warrant and to provide pre-deprivation notice before seizing "Bulky Items"—defined as any item besides tents, operational bicycles, operational walkers, crutches, and wheelchairs that cannot fit within a 60-gallon container—that are stored on public streets, roads, and other thoroughfares. The district court's novel and unprecedented ruling cannot be squared with bedrock doctrines of constitutional law, which have never

before been used to stymie the ability of cities to remove property stored or abandoned in public areas.

The Fourth Amendment's prohibition on warrantless searches and seizures does not prevent municipal governments from seizing large "Bulky Items" stored on streets, roads, and in other public areas. To the contrary, the "community caretaking" exception to the Fourth Amendment's warrant requirement permits municipal governments to seize such items when the seizure is *not* done to further the investigation of violations of a criminal statute. Nor does the Fourteenth Amendment's Due Process Clause require facial invalidation of the "Bulky Items" ordinance. The ordinance itself, along with posted signage and direct communication from City officials, provides all the pre-deprivation notice that is constitutionally required, thus refuting the district court's conclusion that the ordinance violates the Due Process Clause under all circumstances.

Because there is no constitutional justification for the district court's assumption of the power to regulate the proper uses of streets and public areas in Los Angeles, this Court should reverse the district court's order granting a preliminary injunction.

ARGUMENT

I. The District Court's Preliminary Injunction Robs Municipalities of Local Control Over the Management of City Streets and Public Areas

As Chief Justice Roberts recently explained, "[o]ur Constitution principally entrusts '[t]he safety and the health of the people' to the politically accountable officials of the States 'to guard and protect.'" *S. Bay Pentecostal Church v. Newsom*, 140 S. Ct. 1613, 1613 (2020) (Roberts, C.J., concurring in the denial of application for injunctive relief) (quoting *Jacobson v. Massachusetts*, 197 U.S. 11, 38 (1905)). Indeed, "the States traditionally have had great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons." *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 475 (1996); *see also Knoxville Iron Co. v. Harbison*, 183 U.S. 13, 20 (1901) (states and local governments have a "universally acknowledged power and duty to enact and enforce all such laws . . . as may rightly be deemed necessary or expedient for the safety, health, morals, comfort, and welfare of its people"). And "[w]here those broad limits are not exceeded, they should not be subject to second-guessing by an 'unelected federal judiciary,' which lacks the background, competence, and expertise to assess public health and is not accountable to the people." *S. Bay Pentecostal Church*, 140 S. Ct. at 1613–14 (Roberts, C.J., concurring in the denial of application for injunctive relief) (citing *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 545 (1985)).

The district court's sweeping preliminary injunction runs roughshod over these bedrock principles. Through section 56.11 of its Municipal Code, the City of Los Angeles has attempted to "balance the needs of the residents and public at large to access clean and sanitary public areas consistent with the intended uses for the public areas with the needs of the individuals, who have no other alternatives for the storage of personal property, to retain access to a limited amount of personal property in public areas." L.A. Muni. Code § 56.11(1). In doing so, the Los Angeles City Council made careful and deliberate legislative determinations about the types of personal property that may be stored in public areas and the conditions under which such property may be stored there. *See, e.g.*, *id.* § 56.11(3)(e) (prohibiting the storage of personal property within ten feet of an "operational and utilizable entrance, exit, driveway or loading dock"); *id.* § 56.11(3)(f) (prohibiting the storage of personal property in a public area "that has a clearly posted closure time . . . after the posted closure time"). As relevant here, the City has determined that "Bulky Items"—"any item with the exception of a constructed Tent, operational bicycle or operational walker, crutch or wheelchair, that is too large to fit into a 60-gallon container with the lid closed"—may not be "Store[d] . . . in a Public Area." *Id.* § 56.11(2)(c), (3)(i).

Los Angeles's regulation of the use of its streets, roads, and other public areas is a quintessentially local function that falls within the ambit of its core

police powers. The California Constitution specifically assigns to municipalities the power to "make and enforce within [their] limits all local, police, sanitary, and other ordinances not in conflict with general laws." Cal. Const., art. XI, § 7. And as this Court has long recognized, "[t]he use of streets and highways is a 'traditionally local matter' left to state and local regulation under the police power." *Golden State Transit Corp. v. City of Los Angeles*, 686 F.2d 758, 760 (9th Cir. 1982) (citing *Allen-Bradley Local No. 1111 v. Wisc. Employment Relations Bd.*, 315 U.S. 740, 749 (1942)). This police power is broad: As Justice Douglas once explained, "[t]he police power of a municipality is certainly ample to deal with all traffic conditions on the streets—pedestrian as well as vehicular." *Shuttlesworth v. City of Birmingham*, 382 U.S. 87, 95 (1965) (Douglas, J., concurring); *see also Sprint PCS Assets, L.L.C. v. City of Palos Verdes Estates*, 583 F.3d 716, 722–24 & nn. 3, 5 (9th Cir. 2009) (municipal police power includes the power to consider "aesthetics" in granting or denying permits, which comports with the First Amendment as a time, place, and manner restriction).

It is also important to note that the accumulation of items on municipal land is not an abstract or hypothetical problem. Rather, as the following images published in media outlets demonstrate, it is a concrete crisis gripping Los Angeles and other California cities that grows more acute by the day:

(Above image from *City Announces Special Task Force for Homeless Encampment Safety* (Los Angeles Sentinel, Jan. 11, 2018), https://lasentinel.net/city-announces-special-task-force-for-homeless-encampment-safety.html)

(Above image from Grace Guarnieri, *California Homeless Camp Cleanup Finds 250 Tons of Trash and 5,000 Needles* (Newsweek, Feb. 26, 2018), https://www.newsweek.com/california-homeless-camp-trash-needles-821274.)

(Above image from Miriam Hernandez, *Harbor City homeless encampment removed in effort to get them into shelters* (ABC News, Dec. 26, 2018), https://abc7.com/homeless-homelessness-los-angeles-encampments-removal-shelters/4972257/.)

(Above image from *City OKS Swifter Removal of Homeless Items from City Sidewalks & Parks* (Los Feliz Ledger, June 23, 2015), https://www.losfelizledger.com/article/city-council-votes-to-remove-homeless-possessions-quicker-from-city-sidewalks-parks/.)

(Above image from Emily C. Dooley, *Homeless Digging into Levees Put California's Capital at Risk* (Bloomberg Law, July 30, 2019) https://news.bloomberglaw.com/environment-and-energy/homeless-digging-into-levees-put-californias-capital-at-risk.)

(Above image from Hannah Fry & Ahn Do, *O.C.'s grand homelessness plan collapsing as residents balk at having shelters in their neighborhoods* (L.A. Times, Mar. 23, 2018), https://www.latimes.com/local/lanow/la-me-homeless-collapse-oc-20180322-story.html.)

In short, the district court's preliminary injunction has upset the careful balance of competing policy interests and concerns that the Los Angeles City Council struck when it enacted section 56.11. By operation of the Fourth and Fourteenth Amendments, the district court has substituted its own judgment concerning the best uses of city streets and other public areas over the considered views of Los Angeles's elected representatives. If this decision is upheld, municipalities across California will be hamstrung in their efforts to craft solutions to difficult public policy issues.

A. The Fourth Amendment's "Community Caretaking" Exception Authorizes the Warrantless Seizure of "Bulky Items" Stored in Public Areas

The principal basis for the district court's injunction is its conclusion that plaintiffs are likely to succeed on the merits of their claim that the warrantless seizure of "Bulky Items" categorically violates the Fourth Amendment. That ruling is inconsistent with the community-caretaking exception to the Fourth Amendment's warrant requirement. Under that longstanding exception, cities do not violate the Fourth Amendment when they seize property without a warrant in the service of "community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973). The removal of "Bulky Items" from public streets must fall under this exception, because courts

have held that much more significant seizures—of vehicles, of personal property from public streets, and even of persons—are all at least sometimes exempt from the warrant requirement.

The community-caretaking exception is most commonly applied to the impoundment of parked vehicles, which can pose safety hazards and impede the flow of traffic. *See South Dakota v. Opperman*, 428 U.S. 364, 368–69 (1976); *United States v. Jensen*, 425 F.3d 698, 706 (9th Cir. 2005). But the exception is not limited to that scenario. To the contrary, "the community caretaking doctrine has become a catchall for the wide range of responsibilities that police officers must discharge aside from their criminal enforcement activities." *Caniglia v. Strom*, 953 F.3d 112, 123 (1st Cir. 2020) (internal citation omitted). Thus, many courts—including this one—have relied on the exception in approving a wide range of warrantless searches and seizures undertaken in the name of public safety.

This Court has held that the community-caretaking exception may authorize warrantless entries onto private land—and even into private homes—and the seizure of property stored there. For example, this Court has held that the warrantless seizure of vehicles from a privately owned lot adjacent to a public road was lawful under the community-caretaking exception. *Schneider v. Cty. of San Diego*, 28 F.3d 89, 90–92 (9th Cir. 1994). Relying on *Schneider* in a case analogous to this one, which involved a Fourth Amendment challenge to the city of

Seattle's impoundment of merchandise stored on a public sidewalk, the Court held: The plaintiff's "contention that the warrantless seizure of … merchandise violated due process fails because a warrant is not required to seize property from the public sidewalk." *Mark v. Trokey*, 55 F. App'x 817, 817 (9th Cir. 2003); *see also Wyss v. City of Hoquiam*, 111 F. App'x 449, 451 (9th Cir. 2004) (rejecting argument that city unlawfully seized plaintiff's home by ordering him to vacate, reasoning that "to the extent [plaintiff's] home was arguably seized, it was a reasonable exercise of the City's police power based on the unsafe condition of the building"). The Court has held that the community-caretaking exception authorizes even entries into homes and the seizure of dangerous property stored there. In *Rodriguez v. City of San Jose*, for example, the Court held that officers reasonably seized guns from the home of a man possibly suffering from an acute mental-health episode. 930 F.3d 1123, 1137–41 (9th Cir. 2019), petition for cert. filed, No. 19-1057 (U.S. Feb. 25, 2020); *accord Caniglia*, 953 F.3d at 120–26 (similar).

Many other circuits have also held that the community-caretaking exception authorizes municipal governments to seize *persons* in the interest of public safety. *See, e.g.*, *Vargas v. City of Phila.*, 783 F.3d 962, 971–72 (3d Cir. 2015) (collecting authorities from other circuits and holding that "the community caretaking doctrine can apply in situations when . . . a person outside of a home has been seized for a

non-investigatory purpose and to protect that individual or the community at large"). Cities may, for example, seize intoxicated and disoriented persons "in an environment that pose[s] significant risks," including being struck by a car or injured by local gang members. *United States v. Gilmore*, 776 F.3d 765, 769, 769–72 (10th Cir. 2015); *accord Samuelson v. City of New Ulm*, 455 F.3d 871, 877–78 (8th Cir. 2006).

If, in the reasonable exercise of their community-caretaking functions, local governments may enter homes and seize a wide range of personal property, and if they may seize even persons, they must also be able to seize "Bulky Items" stored in public areas such as streets and sidewalks. Just as vehicles can block a public road, impeding the flow of traffic and making accidents likelier, "Bulky Items" can block a public sidewalk, slowing pedestrian traffic or even forcing it into the street. To avoid the injuries that might result from such obstructions of public thoroughfares, municipalities should be able to remove them, at least under some circumstances. The district court's categorical prohibition of such removal is therefore fundamentally inconsistent with cities' wide-ranging community-caretaking responsibilities.

B. The Fourteenth Amendment Does Not Prevent the Seizure of "Bulky Items" from Public Areas

Nor does the Fourteenth Amendment's Due Process clause bar the seizure of "Bulky Items" from public areas. Rather than applying the familiar *Mathews v.*

Eldridge factors to balance the private interest affected, the risk of erroneous deprivation of that interest, and the government's interest, *see* 424 U.S. 319, 335 (1976), the district court started from the premise that "[t]he challenged provision provides no process at all," and therefore concluded—circularly—that "whatever process is due, the 'Bulky Items' Provision does not provide it." 1ER24. The district court's analysis does not support its sweeping conclusion that plaintiffs are likely to succeed on their facial Fourteenth Amendment challenge.

The familiar example of the impoundment of parked vehicles is again instructive. Although "due process protections apply to the detention of private automobiles," *Stypmann v. City & Cty. of S.F.*, 557 F.2d 1338, 1342–43 (9th Cir. 1977), courts have held that due process does not necessarily require individualized pre-deprivation notice to the owner of an illegally parked car, much less a pre-deprivation hearing, when city officials are exercising their community-caretaking function. *See, e.g.*, *City of Los Angeles v. David*, 538 U.S. 715, 719 (2003); *Soffer v. City of Costa Mesa*, 798 F.2d 361, 363 (9th Cir. 1986); *Scofield v. City of Hillsborough*, 862 F.2d 759, 762–764 (9th Cir. 1988). This Court has held, for instance, that enacting an ordinance providing for the towing of cars was sufficient pre-deprivation notice under the Fourteenth Amendment. *Lone Star Sec. & Video, Inc. v. City of Los Angeles*, 584 F.3d 1232, 1237 (9th Cir. 2009).

Much like an ordinance informing the public that an illegally parked car may be towed provides sufficient notice under the Due Process Clause, so too does an ordinance providing notice to the public that "Bulky Items" may not be stored in public areas. Moreover, the plain language of the ordinance is not the only form of notice provided to the public that the storage of "Bulky Items" in public areas is prohibited. In addition to the ordinance itself putting citizens on notice of what size and type of items are subject to removal when stored on public property, other types of notice are often provided prior to removal of "Bulky Items," such as the placement of permanent or temporary signage in public areas where such items are frequently stored, or direct communications from City of Los Angeles employees prior to enforcing the ordinance. *See, e.g.*, 3ER213, 250, 266, 306, 378, 379, 461; 4ER487. Accordingly, it cannot be said that the "Bulky Items" provision of Los Angeles Municipal Code section 56.11 provides "no process" under *any* circumstances such that it facially violates the Fourteenth Amendment.

By ignoring the pre-deprivation process already provided, and by conflating the *removal* of "Bulky Items" with their ultimate *destruction*, the district court gave short shrift to the significant countervailing governmental interests at issue. Cities throughout California, like Los Angeles, have long been engaged in an effort to ensure that public areas are clean, safe, and accessible for all. LA. Mun. Code § 56.11(1); S.F. Police Code § 168(a). Section 56.11's prohibition on "Bulky

Items" is merely one tool in the City's toolkit that will allow it to achieve this goal. The rationale for a prohibition on "Bulky Items" is no mystery: As the City of Los Angeles explains, "[l]arge things left in public areas tend to obstruct passage through those areas, or to monopolize space that is meant to be shared by the public as a whole." AOB at 36. Yet, by stripping the ability of municipalities to remove "Bulky Items" from such public spaces, the district court has ensured that vast swaths of the city will become inaccessible to the broader public. The district court's decision also potentially creates severe public health issues like the recent Hepatitis A outbreak that Los Angeles and other cities in California experienced in 2017. LAC DPH Health Alert: Outbreak of Hepatitis A in Los Angeles County among the Homeless and People who use Illicit Drugs, Los Angeles County Health Alert Network (Sept. 19, 2017), http://publichealth.lacounty.gov/eprp/Health%20Alerts/DPH%20HAN%20Hep%20A%20Outbreak%20091917.pdf

Under the *Mathews* test, this significant government interest should militate against a finding that city ordinances providing for the removal of "Bulky Items" on public property *on their face* violate the Fourteenth Amendment, especially when such ordinances do, in fact, provide notice to potentially affected individuals that such items may be removed from public spaces, either by public pronouncement or by more specific forms of notice. The upshot of the district

court's injunction is that the seizure provision of the ordinance cannot be enforced, *even* when specific pre-deprivation notice is given, and *even* when the City does not intend to destroy the seized items. Such a sweeping order upsets the careful allocation of local responsibilities provided for by our system of federalism and the community-caretaking doctrine.

II. Ordinances Regulating the Use of City Streets and Other Public Areas Are Innumerable, Commonplace, and Longstanding in Cities Throughout California

Municipalities throughout California, large and small, have enacted ordinances regulating the public's use of streets, roads, sidewalks, and other public areas. These ordinances are commonplace, longstanding, and represent a varied patchwork of localized, community-based decisions about the appropriate uses of city land.

Many cities throughout California forbid the use of public property as storage space, deeming such uses to be nuisances to the public. For example:

- Sacramento City Code § 12.52.040: "It is unlawful and a public nuisance for any person to store personal property, including camp paraphernalia" on "[a]ny public property."

- Napa Muni. Code § 12.65.040: "It is unlawful for any person to store personal property, including camp facilities and camp paraphernalia," on "[a]ny street,

sidewalk or park, or any right-of-way, shoulder or other publicly owned or controlled area under, near, or adjacent to any street, sidewalk, or park."

- Placerville City Code § 6-19-4: "It is unlawful and a public nuisance for any person to store personal property, including camp paraphernalia" on "any public property."

- Redding Muni. Code § 13.24.010 (A): "It is declared a nuisance and is unlawful for any person to place an obstruction of any kind in a public street or alley, public parkway, sidewalk, or pedestrian mall in the city."

- Barstow Muni. Code § 9.64.030(6): "No person shall . . . store personal property, including but not limited to camp facilities and camp paraphernalia, in or on a public park or the parking lot of a public park."

As Los Angeles has done, other cities specifically prohibit certain items from being stored in public areas. The City of Dana Point, for example, forbids any person from leaving bicycles in public areas or removing shopping carts from the premises of a business establishment without prior written consent. Dana Point Muni. Code § 11.70.010(f) (prohibiting "park[ing], leav[ing], or caus[ing] the parking or leaving of any bicycle, vehicle, or other like object or thing on any public sidewalk, walkway or public place so as to interfere with the reasonable movement of any person"); *id.* § 11.95.010 ("Any person in possession of a

shopping cart outside the premises of a business establishment with the express prior written approval of its owner . . . shall be guilty of a misdemeanor").

San Francisco makes it "unlawful to place an Encampment on a public sidewalk," defining an "Encampment" as "a tent or any structure consisting of any material with a top or roof or any other upper covering or that is otherwise enclosed by sides that is of sufficient size for a person to fit underneath or inside while sitting or lying down." S.F. Police Code § 169 (b)(1), (c). And San Jose has declared it unlawful to "display, store, leave, place or expose for sale . . . upon any sidewalk, gutter, alley or street of the city any produce, merchandise, store boxes, or store substance or material, objects or implements whatsoever of any class, kind, or character." San Jose Muni. Code § 13.20.010.

Still other cities regulate the times when, or locations where, objects may be placed on city-owned property. San Francisco makes it "unlawful to sit or lie down upon a public sidewalk, or any object placed upon a public sidewalk" during "the hours between seven (7:00) a.m. and eleven (11:00) p.m." S.F. Police Code § 168(b). In Santa Barbara, "[n]o person shall sit or lie down upon a public sidewalk or public paseo, or upon a blanket, chair, stool, or any other object placed upon a public sidewalk or public paseo, during the hours between 7:00 a.m. and 2:00 a.m. of the following day in the following locations: (1) along the first 13 blocks of State Street from Cabrillo Boulevard to and including the 1300 block of

State Street; and (2) along the 00 to 100 block of E Haley Street." Santa Barbara Muni. Code § 9.97.010 (A).

These ordinances—and the innumerable others like them—are a proper exercise of a city's constitutional police power. There should be no constitutional doubt as to any of these laws because the Fourth and Fourteenth Amendments do not prohibit municipal governments from exercising their broad police powers to make legislative determinations about the manner in which local streets, roads, and other public areas may be used by the public. Therefore, this Court should reverse the ruling of the District Court in order to ensure that these proper legislative determinations are not subject to *facial* invalidation under the Fourth and Fourteenth Amendments.

CONCLUSION

The district court's preliminary injunction categorically enjoining the City of Los Angeles from seizing "Bulky Items" from public streets without first obtaining a warrant and providing pre-deprivation notice works an unprecedented and unnecessary intrusion of the federal courts into the management of municipal affairs. Because neither the Fourth nor the Fourteenth Amendment authorizes this result, the Court should reverse the district court's order.

Dated: August 7, 2020

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 29(a)(5) and Fed. R. App. P. 32(a)(7)(C), I certify that the foregoing *amicus curiae* brief is proportionately spaced, has a typeface of 14 points, and contains 4,066 words, excluding the portions exempted by , and is prepared in a format, type face, and type style that complies with Fed. R. App. P. 32(a)(4)-(6).

Dated: August 7, 2020

s/ *Theane Evangelis*
Theane Evangelis

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on August 7, 2020.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: August 7, 2020

s/ *Theane Evangelis*
Theane Evangelis