

**IN THE SUPREME COURT OF OHIO**

Homeless Charity, et al.	*	Case No.: 2022-0790
	*	
Appellants,	*	Appeal from the Court of Appeals
	*	Ninth Appellate District
vs.	*	Case No. 30075
	*	
Akron Board of Zoning Appeals,	*	
	*	
Appellee.	*	

---

**MEMORANDUM OF AMICI CURIAE GREATER CINCINNATI HOMELESS COALITION, METANOIA PROJECT, NORTHEAST OHIO COALITION FOR THE HOMELESS, NATIONAL COALITION FOR THE HOMELESS, AND NATIONAL HOMELESSNESS LAW CENTER IN SUPPORT OF JURISDICTION**

---

CITY OF AKRON  
John R. York  
161 South High Street, Suite 202  
Akron, OH 44308  
Tel.: (330) 375-2030  
JYork@akronohio.gov

SREMACK LAW FIRM LLC  
Rebecca J. Sremack (#0092313)  
2745 South Arlington Road  
Akron, OH 44312  
Tel: (330) 644-0061  
rebecca@sremacklaw.com

ROETZEL & ANDRESS  
Brian D. Bremer  
222 South Main Street, Suite 400  
Akron, OH 44308  
Tel.: (330) 376-2700  
bbremer@ralaw.com

INSTITUTE FOR JUSTICE  
Jeffrey Rowes (Ohio PHV-20636-2022)  
816 Congress Avenue, Suite 960  
Austin, TX 78701  
Tel: (512) 480-5936  
jrowes@ij.org

PAUL W. FLOWERS CO ., L.P.A.  
Paul W. Flowers  
Louis E. Grube  
50 Public Square  
Cleveland, OH 44113  
Tel: (216) 344-9393  
pwf@pwfco.com  
leg@pwfco.com

Diana K. Simpson (Ohio PHV-20635-2022)  
901 North Glebe Road, Suite 900  
Arlington, VA 22203  
Tel: (703) 682-9320  
diana.simpson@ij.org

*Attorneys for Appellants*

*Attorneys for Appellee*

*Additional Counsel Listed on Following Page*

GEORGETOWN UNIVERSITY LAW  
CENTER  
INSTITUTE FOR CONSTITUTIONAL  
ADVOCACY AND PROTECTION  
Joseph W. Mead (#0091903)  
600 New Jersey Avenue NW  
Washington, DC 20001  
Tel: (202) 662-9765  
jm3468@georgetown.edu

*Attorney for Amici Curiae*

**TABLE OF CONTENTS**

EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION..... 1

STATEMENT OF THE CASE AND FACTS..... 2

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW..... 2

Proposition of Law No. 1: Appellee Violates the Right to Offer and Receive Life-Saving Aid ..... 2

    A. This Court Should Recognize a Right to Provide Life-Saving Assistance..... 2

        1. Helping Others Is a Foundational Part of American Liberty ..... 3

        2. There is a Right to Assist Unsheltered Neighbors in Peril..... 5

    B. Indoor Shelter Is Frequently Unavailable ..... 7

    C. Unsheltered Residents Face Serious Dangers..... 11

        1. Tents Provide Lifesaving Shelter from Elements ..... 11

        2. Dispersed Camping Puts Individuals at Heightened Risk of Violence ..... 12

    D. No Identified Government Interest Trumps the Right to Exist..... 13

CONCLUSION..... 14

Certificate of Service ..... 15

## **EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION**

Facing a cold February night, a desperate man was crushed to death after apparently seeking refuge in a dumpster just outside of Akron. Adam Ferrise, *Hear Fairlawn Garbage Man Describe Discovering Body in His Truck*, CLEVELAND.COM (Feb. 22, 2016, 5:46 PM), <https://perma.cc/95G9-4GJ3>.

Appellants believe no human deserves this fate, and they seek to make their own property available for emergency tent shelter to unhoused neighbors facing serious danger. Even this modest request was spurned by the City, which took the position that its zoning code automatically and always trumps the lives and safety of unsheltered residents. It is undisputed that tents are not the ideal place for human habitation. But the unequivocal and uncontradicted evidence is that a safe place to sleep inside a tent in a secure location is much better than the available alternative of dispersed sleeping on the streets.

The City's position here is startling. It claims that there is no right to give or receive life-saving assistance and that governments thus have unlimited power to interfere with—and outright prohibit—people from using their own private property to help others facing mortal danger, while not causing any material harm to anyone else. The Court of Appeals uncritically accepted the premise of unfettered government control of private charitable activities, an extraordinary decision that warrants review by this Court. This case also warrants review because of its widespread impact, as it has consequences for the more than 10,000 Ohioans who are homeless on any particular night, and the countless individuals, charities, and houses of worship who seek to assist them.

Amici are organizations that directly work with and advocate for people who are experiencing homelessness. Greater Cincinnati Homeless Coalition is a unified social action

agency, fully committed to its ultimate goal: the eradication of homelessness with respect for the dignity and diversity of its membership, people experiencing homelessness and the community. <https://cincihomeless.org/>. Metanoia Project provides resources, connections, and opportunities for growth and change to our most vulnerable men and women through our hospitality care in Cleveland. <https://metanoiaproject.org/>. Northeast Ohio Coalition for the Homeless exists to eliminate the root causes of homelessness, and advocates to ensure the rights of unhoused members are protected. <https://www.neoch.org/>. National Homelessness Law Center is a national legal advocacy organization dedicated solely to ending and preventing homelessness. <https://homelesslaw.org/>. The National Coalition for the Homeless is a national network of people working to end and prevent homelessness while ensuring the immediate needs of those experiencing homelessness are met and their civil rights are respected and protected. <https://nationalhomeless.org/>. Amici submit this brief to highlight the realities faced by unhoused people in Akron, and to underscore that people without shelter have a right to exist and be safe.

## **STATEMENT OF THE CASE AND FACTS**

Amici adopt Appellants' statement of the case and facts.

## **ARGUMENT IN SUPPORT OF PROPOSITION OF LAW**

### **Proposition of Law No. 1: Appellee Violates the Right to Offer and Receive Life-Saving Aid**

#### **A. This Court Should Recognize a Right to Provide Life-Saving Assistance**

When one's pursuit of happiness "takes the innocent and admirable form of effort to better the lot of the poor and oppressed . . . it lies not within the ordained powers of our government, national, state, or municipal, to say that such a vocation shall not be followed, such a life shall not be led." *Ex parte Dart*, 172 Cal. 47, 54-55, 155 P. 63, 66 (1916). Amici are unaware of any controlling precedent directly answering whether the government may, consistent with due

process, prohibit a private citizen from using his private property to provide life-saving charitable assistance to persons in need. But the underlying premises that there is a right to exist and a corollary right to help others avoid mortal danger are foundational to our constitutional order. Indeed, Article I, Section 1 of the Ohio Constitution recognizes “inalienable rights, among which are those of enjoying and defending life and liberty . . . and seeking and obtaining happiness and safety.”

*1. Helping Others Is a Foundational Part of American Liberty*

Throughout our nation’s history, when government cannot or will not help our neighbors in peril, Americans are there to lend their efforts through charitable giving and direct acts of service. For example, Benjamin Franklin organized volunteer firefighters and celebrated their effort: “how pleasing must it be to a thinking Man to observe, that not a Fire happens in this Town, but soon after it is seen and cry'd out, the Place is crowded by active Men of different Ages, Professions and Titles; who, as of one Mind and Rank, apply themselves with all Vigilance and Resolution, according to their Abilities, to the hard Work of conquering the increasing Fire.” *In re Lower Merion Twp. Fire Dep't Lab. Standards Litig.*, 972 F.Supp. 315, 320 (E.D.Pa.1997) (quotation omitted). In his famous study of early America, Alexis de Tocqueville celebrated that “Americans of all ages, all conditions, and all minds” are “constantly” coming together to improve the lives of others. Alexis de Tocqueville, *Democracy in America* 595 (Arthur Goldhammer trans., 2004). Writing that “the heart expands, and the human spirit develops only through the reciprocal action of human beings on one another,” Tocqueville argued that the willingness of Americans to help one another was not only a virtue worth celebrating, but also a necessary part of our constitutional fabric. *Id.* at 598.

In *Dart*, the California Supreme Court directly answered the question: “May a private charitable association, order, or organization be denied the right to fulfill the purposes of its existence saving under a ‘permit’ from the authorities?” 172 Cal. at 52. The court found that although a clause guaranteeing a person the right to devote himself to “good works” is not explicit in the United States or California Constitutions, “[t]he existence of some human rights is taken for granted in both of those august instruments.” *Id.* at 54.

This Court addressed a similar question in *American Cancer Society, Inc. v. City of Dayton*, 160 Ohio St. 114, 114 N.E.2d 219 (1953). There, Dayton enacted ordinances limiting which charities could solicit donations within the City. Citing *Dart* favorably, this Court found that under the Fourteenth Amendment’s due process provision, and Sections 1, 2, and 11 of the Ohio Constitution, “there can be no doubt that educational promotion and solicitation of funds for worthy charitable organizations by those interested in them come within the constitutional guaranties of freedom of speech, freedom of the press, and liberty of action.” *Id.* at 122. Because the ordinances allowed the municipality to act arbitrarily in making decisions denying these rights “not reasonably related to the public welfare,” this Court struck them down. *Id.* at 128.

More recently, the Washington Supreme Court invoked its state constitution to strike down an ordinance that prohibited unsheltered people from taking refuge in tents on a church’s property. *City of Woodinville v. Northshore United Church of Christ*, 166 Wash.2d 633, 642, 211 P.3d 406, 408 (2009) (en banc). The Court acknowledged that the government may take steps to “mediate . . . concerns for safety, noise, and crime but may not outright deny consideration of permitting” altogether. *Id.* at 411.

## 2. *There is a Right to Assist Unsheltered Neighbors in Peril*

As Appellants explain more fully in their memorandum, the right to help others takes on special force when physical safety is threatened. Blackstone explained that the “principal aim of society is to protect individuals in the enjoyment” of fundamental rights, such as life and safety, and that laws must give way when these are threatened: “Both the life and limbs of a man are of such high value, in the estimation of the law of England, that it pardons even homicide if committed *se defendendo*, or in order to preserve them. For whatever is done by a man, to save either life or member, is looked upon as done upon the highest necessity and compulsion.” William Blackstone, *Commentaries on the Laws of England* 124, 130 (8th ed.1778). To this day, the law recognizes that rules must defer to the preservation of human life, as when an unsheltered person has nowhere else to go. *Commonwealth v. Magadini*, 474 Mass. 593, 598, 52 N.E.3d 1041, 1048–50 (2016) (necessity defense available to unhoused person facing cold weather); *In re Eichorn*, 69 Cal.App.4th 382, 387, 81 Cal.Rptr.2d 535, 538 (1998) (necessity defense available to unhoused person who had nowhere to sleep).

The right to live is also well-recognized internationally. For example, the International Covenant on Civil and Political Rights, to which the United States is a party,<sup>1</sup> decrees that “[e]very human being has the inherent right to life. This right shall be protected by law.” Art. 6(1), ratified 1992, 999 U.N.T.S. 171, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>. “The duty to protect life [] implies that States parties should take appropriate measures to address the general conditions in society that may give

---

<sup>1</sup> S. Treaty Doc. No. 95–20; *see also* United States Constitution, Article VI (“all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”)



rise to direct threats to life or prevent individuals from enjoying their right to life with dignity” such as “extreme poverty and homelessness.” Hum. Rts. Comm., *CCPR General Comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life* ¶ 26, [https://tbinternet.ohchr.org/\\_Treaties/CCPR/Shared%20Documents/1\\_Global/CCPR\\_GC\\_36\\_8785\\_E.pdf](https://tbinternet.ohchr.org/_Treaties/CCPR/Shared%20Documents/1_Global/CCPR_GC_36_8785_E.pdf). This includes an obligation “to ensure access without delay” to “shelter.” *Id.* Where the state does not provide ample shelter for its residents, the basic human right to life demands at a minimum it cannot interfere with their right to shelter themselves or their unhoused neighbors.

An unsheltered person’s right to exist goes beyond freedom from mortal danger. Courts have repeatedly upheld constitutional challenges to municipal actions outlawing sleeping or camping by unhoused individuals on public property, when they have no available alternatives. *See, e.g., Phillips v. City of Cincinnati*, 479 F.Supp.3d 611, 621–22 (S.D. Ohio 2020); *Martin v. City of Boise*, 920 F.3d 584, 617 (9th Cir.2019) (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” (alterations omitted)); *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1554 (S.D. Fla. 1992) (holding as unconstitutional a policy under which citizens are arrested for performing “life-sustaining activities,” such as sleeping, lying down, and eating in public).

In *Phillips*, the United States District Court for the Southern District of Ohio allowed a challenge to Cincinnati’s prohibitions on homeless encampments to proceed on multiple constitutional claims. 479 F.Supp.3d at 621–22. In so holding, the court found that “[if] the City is requiring the homeless to vacate well-lit and high-traffic public land, or go to jail, when housing

is not available . . . then the City may be creating an unlawful state-created danger for the homeless.” *Id.* at 621.

Here, Appellants are proactively addressing the same dangers contemplated in *Phillips*, yet the City is attempting to prohibit them from doing so. This Court should find that the same conjunction of rights informs Appellants’ right to charitably use their own private property to alleviate this harm. This right, which is grounded in longstanding principles essential to our constitutional order, should be recognized by this Court. Of course, it is not absolute. It may be infringed where the government shows good reason. But, as explained below, the City’s position here is unjustifiable, and does not withstand scrutiny.

#### **B. Indoor Shelter Is Frequently Unavailable**

People seeking to camp safely on Plaintiffs’ property do not have a safe alternative option. When someone loses their housing, “their decisions about where to stay represent pragmatic choices among the best available alternatives, based on individual circumstances at a particular moment in time. Encampments form in response to the absence of other, desirable options for shelter.” Rebecca Cohen, Will Yetvin & Jill Khadduri, *Understanding Encampments of People Experiencing Homelessness and Community Responses: Emerging Evidence as of Late 2018* 4 (U.S. Dep’t of Hous. & Urb. Dev.2019), <https://perma.cc/6WVT-JBGL>. Emergency indoor shelters are often at capacity and routinely turn people away at the front door, and shelters often have admission criteria that exclude people based on gender, family composition, lack of identification documents, age, religion, and disability. *See, e.g.*, Katy Miller, U.S. Interagency Council on Homelessness, *Responding to the Growing Crisis of Unsheltered Homelessness and Encampments*, <https://perma.cc/UT38-6KTH> (May 25, 2022).

Limited indoor shelter options are a particular problem in Akron. Emergency shelters are often full and maintain waitlists of who can gain access. *E.g.*, Marisa Saenz, *Summit County Making Room for the Homeless During Freezing Cold Temps*, WKYC (Jan. 19, 2022), <https://perma.cc/D7ZQ-S8C6>. Even when limited capacity is not an issue, a person may be barred from a shelter for other reasons. They may not meet the eligibility rules, such as those around age and gender, for access. Suzanne Skinner & Sara K. Rankin, *Shut Out: How Barriers Often Prevent Meaningful Access to Emergency Shelter* 2 (2016), <https://ssrn.com/abstract=2776421>. They may be accused of breaking the shelter's rules in the past and be barred from the shelter as a result. There is an abundance of testimony in the record from people who were unable to access indoor shelter options in Akron. *E.g.*, [Exhibits 30](#), [39](#), [51](#), [54](#).<sup>2</sup>

The COVID-19 pandemic drastically cut the availability of safe, indoor shelter space. Congregate shelters often rely on large numbers of people sleeping closely together in a single room, which the deadly coronavirus makes prohibitively dangerous. To implement social distancing and other protocols necessary to prevent the spread of the virus, shelter facilities were forced to reduce capacity. Samantha Batko, *Winter Is Here. With COVID-19 Limiting Shelter Capacity, What Will It Mean for People Experiencing Homelessness?*, URB.INST.: URB.WIRE, <https://perma.cc/GW2E-HEDW> (Dec. 18, 2020).<sup>3</sup>

---

<sup>2</sup> Citations are to exhibits filed in *Homeless Charity v. Akron*, CV-2019-02-0684 (Summit County Court of Common Pleas).

<sup>3</sup> Moreover, even when shelter is theoretically available, practical barriers remain. For example, Akron's primary shelter for single men requires attendance at religious services. The City has no legitimate interest in coercing unsheltered Akron residents to attend church or receive religious instruction, on pain of life-endangering peril or potential criminal penalty. Ohio Constitution, Article I, Section 7 ("No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent.").

Indeed, Akron’s actions here fly in the face of public health guidance. Throughout the pandemic and to this day, the Centers for Disease Control and Prevention (CDC) directs governments to “allow people who are living unsheltered or in encampments to remain where they are” if individual housing options are unavailable. Ctrs. for Disease Control & Prevention, *Interim Guidance on People Experiencing Unsheltered Homelessness*, <https://perma.cc/2B8C-QW74> (Feb. 10, 2022). The CDC noted that “[c]learing encampments can cause people to disperse throughout the community and break connections with service providers,” which “increases the potential for infectious disease spread.” *Id.* Technical advisors at the United States Department of Housing and Urban Development (HUD) amplified CDC instructions: “Do not clear encampments during community spread of COVID-19 unless you have real-time access to individual rooms or units for ALL households in the encampment and a clear plan to safely transport those households.” U.S. Dep’t of Hous. & Urb. Dev., *Protecting Health and Well-being of People in Encampments During an Infectious Disease Outbreak*, <https://perma.cc/SFD5-HU4A> (Mar. 26, 2020).

On appeal, the City made the remarkable assertion that “the record shows that there is no need for Appellants to shelter these individuals in tents.” Appellee Br. 25. The *only* thing the City cited in support was an unsworn public comment from one person—that on a single day in 2019, he visited several tents and did not see anyone present when he visited. *Id.* (citing [Akron Board of Zoning Appeals Public Hearing transcript](#), at 40-41 (Jan. 30, 2019) (statement of Keith Stahl)). Even if taken at face value, the fact that one person, at one moment on a single day, saw some empty tents does not show that all tents were empty or that persons in Akron are not unsheltered. Such a conclusion contradicts a mountain of evidence demonstrating that unsheltered people in

Akron often have nowhere else to go, including the testimony of many people whose experiences are part of the record below.

Indeed, on that *same day* in 2019, others identified at least 87 unsheltered people sleeping outdoors that night. Summit County Continuum of Care, *Point-in-Time Count 5* (2019), <https://perma.cc/3LQC-RJWE>. Since then, the number of unsheltered people in Akron has grown dramatically. In 2021, the annual Point in Time count identified nearly 394 homeless people in Summit County on a single night, including 236 unsheltered in places such as tents. U.S. Dep’t of Hous. & Urb. Dev., *2007–2021 Point-in-Time Estimates by CoC*, <https://perma.cc/V4AD-VHQA> (“2007 – 2021 Point-in-Time Estimates by CoC” spreadsheet; “2021” tab; OH-506 line); *see also* Summit County Continuum of Care, *Point-in-Time Count* (2020), <https://perma.cc/X73P-5LY4> (587 people were homeless in Summit County, including 128 unsheltered, on January 28, 2020). These numbers significantly undercount the true number by half or more. Gen. Accountability Office, *Homelessness: Better HUD Oversight of Data Collection Could Improve Estimates of Homeless Population* (July 2020), <https://www.gao.gov/assets/gao-20-433.pdf>; Nat’l L. Ctr. on Homelessness & Poverty, *Don’t Count On It: How the HUD Point-in-Time Count Underestimates the Homelessness Crisis in America* (2017), <https://perma.cc/PR64-FX47>; Alastair Boone, *Is There a Better Way to Count the Homeless?*, BLOOMBERG: CITYLAB (Mar. 4, 2019), <https://perma.cc/K7FD-G68E>.

The City’s choice to ignore affidavits and empirical evidence in favor of a single unsworn statement—one that doesn’t even stand for the proposition it is cited for—exemplifies the City’s irrational and arbitrary decision-making here. The record unequivocally demonstrates that lack of shelter is a serious problem in Akron and one that Appellants’ efforts serve to alleviate.

### C. Unsheltered Residents Face Serious Dangers

The grim reality that the City and the courts need to face is this: Sleeping in a tent at 15 Broad Street may be the best, safest shelter available to a person. A tent is not the ideal form of shelter, but it offers greater protection against the elements than being without. And having the permission to pitch that tent in a known, secure location protects individuals from the violence they face from sheltering elsewhere.

#### 1. Tents Provide Lifesaving Shelter from Elements

Tents offer protection, however rudimentary, from outdoor elements. In one recent study, most individuals living on the street considered loss of their tent shelter to be “the greatest threat to their survival.” Chris Herring, *Complaint-Oriented Policing: Regulating Homelessness in Public Space*, 84 *Am.Socio.Rev.* 769, 790 (2019). Courts similarly have found that inhibiting access to tent shelters “knowingly place[s] the homeless at increased risk of harm.” *Jeremiah v. Sutter Cnty.*, E.D.Cal. No. 2:18-cv-00522-TLN-KJN, 2018 WL 1367541, 2018 U.S. Dist. LEXIS 43663, at \*12 (Mar. 16, 2018); *accord, e.g., Phillips*, 479 F. Supp. 3d at 621 (where inadequate shelter space is available, “taking and destroying . . . tents, tarps, blankets, clothing, and other property” may create “an unlawful state-created danger for the homeless.”); *See v. City of Fort Wayne*, N.D.Ind. No. 1:16-cv-00105-JVB-SLC, 2016 U.S. Dist. LEXIS 185598, at \*28 (June 16, 2016) (“the seizure of shelter, bedding, and clothing makes it more difficult for a homeless person to survive”), *adopted by* 2017 U.S. Dist. LEXIS 49956 (2017). Because unhoused people have heightened risks of serious illness, hospitalization, and early morbidity compared with the general population, they are especially vulnerable to serious harms flowing from the loss of their shelter. Nat'l Health Care for the Homeless Council, *Homelessness & Health: What's the Connection?*, <https://perma.cc/U83U-CSCQ> (Feb. 2019).

For example, tents help people stay dry, which is critical for avoiding hypothermia. Hypothermia can set in when temperatures are as high as 70 degrees. Jane E. Brody, *Surviving the Cold, or Even the Not So Cold*, N.Y. Times (Jan. 9, 2007), <https://perma.cc/AQ5U-BTWR>. Wet clothing can significantly intensify loss of body heat loss and hypothermia risk. Rick Curtis, *Outdoor Action Guide to Hypothermia and Cold Weather Injuries*, Princeton Univ.: Outdoor Action, <https://perma.cc/5R9K-4HQ5> (last visited June 23, 2022). Given these factors, despite Los Angeles' relatively warmer climate, the city had more hypothermia deaths in 2018 than New York City. Nat'l L. Ctr. on Homelessness & Poverty, *Housing Not Handcuffs*, 69 (2019), <https://perma.cc/LM4B-SS34>. Although Akron shelters expand their indoor capacity on the very coldest nights of the year, the danger posed from hypothermia persists even at slightly warmer temperatures when indoor shelter space is limited. Tents alleviate this concern by helping a person keep themselves and their clothing and bedding dry.

## 2. *Dispersed Camping Puts Individuals at Heightened Risk of Violence*

Individuals forced to leave a secure place where they are welcome will usually be forced to go somewhere where they are not. They may end up in a more visible public park or sidewalk or end up trespassing on someone else's private property. Divorced from the safety of their former haven and the people who know where they are, they face violence. Zoe Loftus-Farren, *Tent Cities: An Interim Solution to Homelessness and Affordable Housing Shortages in the United States*, 99 Cal.L.Rev. 1037, 1056 (2011).

The National Coalition for the Homeless has documented nearly 2,000 incidents where housed people violently attacked people without shelter, killing over 500 people. Nat'l Coal. for the Homeless, *20 Years of Hate: Reporting on Bias-Motivated Violence Against People Experiencing Homelessness in 2018-2019*, 4 (2020), <https://perma.cc/X48W-232F>. Akron has

witnessed more than its share of gratuitous violence against unhoused people. For example, last year, someone walked up to a homeless man sitting on a park bench and fatally shot him in the head. Jack Shea, *Police Searching for Killer of Man Shot in Head While Sitting on Bench at Akron's Grace Park: 'That Person Is Very Brazen'*, Fox 8 (May 10, 2021), <https://perma.cc/N3W7-QFML>. One homeless man was beaten to death with a tree limb as he slept outside in a park in Akron. Adam Ferrise, *Akron Man Sentenced for Beating Homeless Man to Death at Park*, Cleveland.com (Sept. 14, 2015, 9:12 PM), <https://perma.cc/V772-2VR6>. Years earlier, a group of young adults kidnapped and tortured an unhoused Akron man. Donna J. Miller, *More Arrests in Beating of Homeless Akron Man*, Cleveland.com (Feb. 4, 2008, 1:17 PM), <https://perma.cc/2QTF-LVX3>. In the record below, there was an abundance of evidence that people seeking to stay at 15 Broad Street were trying to avoid the violence they experienced or feared elsewhere. *E.g.*, Exhibits [4](#), [25](#), [34](#), [53](#).

#### **D. No Identified Government Interest Trumps the Right to Exist**

Given the grave harms that Appellants' charitable activities alleviate, the City must show an equally strong interest that its restriction serves. It cannot. The interests advanced by the City here do not justify trespassing Appellants' constitutional rights. Far from advancing any legitimate government interest—much less than an interest that would trump an individual's right to exist and be safe—displacing people from tent shelter at one location is counterproductive. As the United States Interagency Council on Homelessness recently wrote, “removing encampments without providing access to low-barrier shelter and a range of housing options does not work.” Katy Miller, U.S. Interagency Council on Homelessness, *Responding to the Growing Crisis of Unsheltered Homelessness and Encampments* (May 25, 2022), <https://perma.cc/UT38-6KTH>. “Evidence overwhelmingly suggests [encampment] sweeps are expensive exercises in futility.



Instead of improving homelessness, sweeps destroy property and disrupt fragile communities, often leaving unsheltered people more likely to remain homeless.” Sara K. Rankin, *Hiding Homelessness: The Transcarceration of Homelessness*, 109 Cal.L.Rev. 559, 594 (2021). “Because this exercise merely disperses, rather than reduces, homelessness, new encampments inevitably reappear.” Sara K. Rankin, *Punishing Homelessness*, 22 New Crim.L.Rev. 99, 114 (2019). And with displacement comes the disruption of social service connections, making social service providers’ work more challenging. As one social worker explained in an affidavit submitted below: “The shelter [at 15 Broad Street] provides a focal point to conduct my outreach efforts. If people are scattered throughout the community, living under bridges, it's nearly impossible to find them. If tent city closed down it would make it nearly impossible to do my work. More homeless people would be unable to access services.” [Esparza Aff. ¶ 6, Exhibit 31](#).

When a location “represents the only bulwark these homeless people have, [t]o tear that bulwark away would be a travesty of justice and compassion. Any inconvenience to the City [] and its other residents pales into insignificance when contrasted with what the occupants of the shelter would have to face if turned out into the city streets in winter weather.” *St. John's Evangelical Lutheran Church v. City of Hoboken*, 195 N.J. Super. 414, 421, 479 A.2d 935, 939 (N.J. Super. Ct. Law Div. 1983).

## CONCLUSION

Because the constitutional rights at stake in this case are significant, and because they are vital to thousands of unhoused Ohioans and the countless individuals and charities who serve them, Amici respectfully ask this Court to hear this jurisdictional appeal.

Dated: June 24, 2022

Respectfully submitted,

/s/ Joseph W. Mead

Joseph W. Mead (#0091903)  
INSTITUTE FOR CONSTITUTIONAL  
ADVOCACY AND PROTECTION  
GEORGETOWN UNIVERSITY LAW  
CENTER  
600 New Jersey Avenue, N.W.  
Washington, DC 20001  
Telephone: (202) 662-9042  
jm3468@georgetown.edu

*Counsel for Amici Curiae*

### **Certificate of Service**

I certify that, on June 24, 2022, a copy of this Memorandum was served by e-mail to the following:

#### **Counsel for Appellants**

Rebecca J. Sremack, rebecca@sremacklaw.com  
Jeffrey Rowes, jrowes@ij.org  
Diana Simpson, diana.simpson@ij.org

#### **Counsel for Appellee**

John R. York, JYork@akronohio.gov  
Brian D. Bremer, bbremer@ralaw.com  
Paul W. Flowers, pwf@pwfco.com  
Louis E. Grube, leg@pwfco.com

/s/ Joseph W. Mead

JOSEPH W. MEAD  
Counsel for Amici Curiae