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Hon. Jeff Landry
Governor of Louisiana
P.O. Box 94004
Baton Rouge, LA 70804

Re: Constitutional and Policy Concerns Regarding HB 211, the "Streets to Success Act"

Dear Governor Landry:

As a nonprofit civil liberties organization that has defended constitutional rights against government overreach for more than 40 years, The Rutherford Institute writes to express serious concerns about HB 211, the "Streets to Success Act."

HB 211 is presented as a way to reduce homelessness, substance abuse, untreated mental illness, and recidivism. Those are urgent concerns. However, the bill's central mechanism is not prevention, housing, or voluntary services. Rather, it creates a new crime of unauthorized camping on public property and routes unhoused people into a criminal-court system in which access to treatment and assistance is conditioned on arrest, prosecution, a guilty plea, waiver of trial rights, supervision, payment obligations, and the threat of incarceration for noncompliance.

The result is a system that risks punishing people for the unavoidable realities of poverty and homelessness while making it harder for them to secure the housing, employment, medical stability, and community support needed to leave homelessness behind.

This concern extends beyond those already sleeping outside. In an economy where more families, workers, seniors, veterans, and people with disabilities are living one missed paycheck, medical emergency, rent increase, job loss, or disaster away from homelessness, laws like HB 211 set a dangerous precedent. When poverty becomes visible in public spaces, the state's response should not be arrest, court control, debt, or jail.

HB 211 criminalizes survival conduct rather than addressing homelessness at its source.

The enrolled bill creates the crime of "unauthorized camping on public property," defined as the intentional use of any tent, shelter, or bedding arranged to permit overnight use on public property that is not a designated campground. A violation is punishable by a fine of not more than $500, imprisonment for not more than six months, or both.

Although the final enrolled version appears to have removed earlier repeat-offense language that would have imposed harsher penalties, the remaining penalty is still severe when applied to conduct that may be inseparable from the condition of being unhoused. For a person with nowhere lawful to sleep, the bill effectively transforms the need for rest and shelter into a criminal offense.

The Supreme Court's decision in *City of Grants Pass v. Johnson*[1] may give governments leeway under the Eighth Amendment's Cruel and Unusual Punishments Clause to enforce certain anti-camping laws, but it does not require states to criminalize homelessness, nor does it immunize such laws from constitutional challenge. The decision left unresolved significant questions under the Fourth Amendment, the Fourteenth Amendment, due process, equal protection, excessive fines principles, state constitutional protections, and federal civil rights law.

In other words, *Grants Pass* may have narrowed one constitutional argument, but it did not give states a blank check to make homelessness a pathway into jail, debt, probation, or compelled treatment.

The Homelessness Court program conditions help on prosecution, a guilty plea, and waiver of trial rights.

HB 211's Homelessness Court program[2] offers services—if a district court chooses to establish such a program—that many unhoused people plainly need: health care, housing assistance, job training, disability-compensation counseling, mental-health treatment, substance-use treatment, and other rehabilitative supports.[3] But under the bill, those services are embedded in the criminal justice system and made available only after a person is arrested or issued a summons for a misdemeanor or felony, is determined to be experiencing homelessness, pleads guilty, and waives a right to trial:[4]

> *(10)(a) The judge shall make the final determination of eligibility. If, based on the examiner's report and the recommendations of the district attorney and the defense counsel, the judge determines that the defendant should be enrolled in the Homelessness Court program, the court shall accept the defendant's guilty plea, suspend or defer the imposition of sentence, and place the defendant on probation under the terms and conditions of the Homelessness Court program. The court may also impose and suspend the execution of sentence and place the defendant on probation under the terms and conditions of the Homelessness Court program.*

[1] *City of Grants Pass v. Johnson*, 144 S. Ct. 2202 (2024).
[2] Section 1. Chapter 33-D of Title 13, Louis. R.S. 13:5381-5383.
[3] Proposed R.S. 13:5384, 13:5385.
[4] Proposed R.S. 13:5385(B)(10)(a).

Considering the significant power imbalance between a prosecutor and an indigent defendant, this creates a strong incentive for a defendant to plead guilty and waive his right to trial—even if he is innocent—to avoid the risk of a wrongful conviction and more severe penalty. Therefore, any Homelessness Court program should not be contingent on a guilty plea, but rather should be an option available for judges to still consider at sentencing even if the defendant elected to try the case.

Participation in the program lasts at least twelve months. During that time, the defendant may be confined in a treatment facility or supervised in the community, may be required to participate in testing at personal expense unless found indigent, and may face revocation and incarceration if the program is not completed successfully.

A program that should be designed to stabilize people before they are arrested instead turns arrest and a guilty plea into the gateway to help. That approach risks entrenching the very recidivism the bill claims to reduce. Criminal records, probation obligations, court debt, missed hearings, and incarceration all create barriers to housing and employment.

The bill risks imposing debt on those least able to bear it.

HB 211 authorizes courts to require participants, to the extent of their financial resources, to pay part or all of the cost of treatment and supervision.[5] If the defendant lacks the resources to pay those costs, the court may arrange for a government-funded treatment program, order supervised work for the benefit of the community in lieu of payment, or waive fees.[6]

Those discretionary safety valves do not cure the basic problem. People experiencing homelessness are, by definition, in crisis. Requiring them to pay for court-ordered treatment and supervision—or to perform unpaid supervised work, which could take away their time from employment to build financial resources and savings—risks converting poverty into court debt or further punishment. A person should not have to choose between jail or court-ordered treatment and debt because he or she had no money and nowhere else to sleep.

The public-camping provisions reduce local flexibility and invite displacement.

HB 211 also prohibits political subdivisions from authorizing regular public camping on public property unless they formally designate a site and satisfy statutory conditions relating to shelter availability, location, sanitation, security, behavioral health access, and publication of procedures. Safe, sanitary, supervised outdoor alternatives may be appropriate when shelter beds are unavailable, but HB 211 makes those options administratively constrained and politically difficult while criminalizing public camping elsewhere. For example, any designated property

[5] Proposed R.S. 13:5385(C).
[6] Proposed R.S. 13:5385(C)(4)(b).

for camping must "not adversely and materially affect the property value…of other existing residential or commercial property"[7]—but almost any nearby property could claim that such designated property for camping adversely affects its property value.

A person who uses a tent, shelter, or bedding to sleep on public property that is not a designated campground may face a fine of up to $500, up to six months in jail, or both.

That is not a minor civil sanction. It is a criminal penalty carrying the threat of incarceration, court debt, a criminal record, probation consequences, and further legal entanglement for people who may have no lawful indoor alternative. When imposed on individuals who lack access to shelter, such penalties raise serious constitutional and policy concerns, including concerns under the Excessive Fines Clause, due process principles, and the constitutional prohibition against punishing people for conduct that is unavoidable because of their status.

In practice, this framework risks pushing people from visible public spaces into more hidden and dangerous places, scattering encampments beyond the reach of outreach workers and service providers, and shifting the burden to police, courts, jails, hospitals, and local governments.

Property-removal provisions raise Fourth and Fourteenth Amendment concerns.

The bill provides that personal property removed from public property in connection with enforcement must be stored for at least 30 days and returned on request, while allowing disposal of unclaimed, contaminated, perishable, or hazardous property under adopted procedures.[8] It also provides broad immunity for covered entities relating to enforcement, designation decisions, property removal, and related services, while preserving federal and constitutional claims.

These provisions do not eliminate constitutional risk. Courts have recognized that items such as identification documents, medications, blankets, tents, phones, papers, and survival gear are not contraband simply because their owners are unhoused.[9] The seizure, loss, or destruction of such property can violate the Fourth Amendment's protection against unreasonable seizures and the Fourteenth Amendment's guarantee of due process. For unhoused people, the loss of documents, medication, or survival supplies can be catastrophic and can make it harder to obtain shelter, work, benefits, medical care, or transportation.

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[7] Proposed R.S. 40:581.2(B)(1)(c).
[8] Proposed R.S. 40:581.3(E).
[9] *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1029 (9th Cir. 2012) (holding that summary seizure and destruction of homeless individuals' possessions was an unconstitutional seizure); *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1570-73, 1584 (S.D. Fla. 1992) (holding that police practice of arresting homeless individuals and destroying their belongings violated the Fourth Amendment).

Louisiana can address public health and safety without criminalizing homelessness.

We recognize the legitimate public concerns that often motivate legislation of this kind: sanitation, safety, access to public spaces, mental-health crises, substance-use disorders, and the strain on communities when homelessness is left unaddressed. But criminalizing homelessness does not solve those problems. It tends to make them more expensive, more hidden, and more difficult to treat.

A constitutional and fiscally responsible approach would prioritize voluntary services before arrest; emergency shelter and low-barrier housing; safe, sanitary temporary alternatives where shelter is unavailable; storage for personal property; mobile outreach; mental-health and substance-use care outside the criminal process; partnerships with faith-based and nonprofit organizations; and due-process protections for any encampment closures or property removal.

Nothing in *Grants Pass* requires Louisiana to choose punishment over these alternatives. The state can protect public spaces without creating a system in which economic desperation becomes a pathway into jail, probation, debt, court-ordered treatment, or compelled labor.

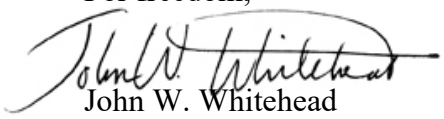
For these reasons, The Rutherford Institute respectfully urges you to return HB 211 to the Legislature with recommendations that any homelessness response be prevention-centered, service-based, constitutionally sound, and grounded in human dignity rather than criminal punishment.

Louisiana should not make it a crime to be too poor to afford shelter. Nor should access to treatment, housing assistance, and employment support depend on first entering the criminal justice system and having to plead guilty and waive a right to trial for a crime which someone might not have committed.

Public safety is not achieved by cycling vulnerable people through arrests, fines, probation, treatment mandates, unpaid labor, and jail. It is achieved by addressing the root causes of homelessness while protecting the constitutional rights and dignity of all people.

We would be pleased to discuss these concerns further and to provide additional constitutional analysis as you consider HB 211.

For freedom,



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