

No. 19-247

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IN THE  
**Supreme Court of the United States**

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CITY OF BOISE,

*Petitioner,*

v.

ROBERT MARTIN, LAWRENCE LEE SMITH,  
ROBERT ANDERSON, JANET F. BELL,  
PAMELA S. HAWKES, AND BASIL E. HUMPHREY,  
*Respondents.*

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**On Petition for a Writ of Certiorari to  
the United States Court of Appeals  
for the Ninth Circuit**

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**BRIEF OF *AMICI CURIAE* LOS ANGELES AREA  
CHAMBER OF COMMERCE AND CENTRAL CITY  
ASSOCIATION IN SUPPORT OF PETITIONER**

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## INTEREST OF AMICI CURIAE<sup>1</sup>

The Los Angeles Area Chamber of Commerce (“LA Chamber”) represents more than 1,600 business in the Los Angeles region, which represents more than 650,000 employees. It serves a diverse membership, and its mission is to promote economic prosperity and quality of life across the region. As the leading business organization in the area, the LA Chamber is a critical partner with the City of Los Angeles, Los Angeles County, and scores of service providers in addressing the homelessness crisis that impacts our region and cities nationwide.

For more than ten years, the LA Chamber has been an integral partner with the United Way of Greater Los Angeles in launching Home For Good, a community-driven initiative to end homelessness in Los Angeles County.<sup>2</sup> The LA Chamber also has supported local Measures H and HHH, which provided significant funding for housing and other services for the homeless to aid the transition to permanent housing. The LA Chamber believes such measures are critical tools in the fight against homelessness. The Chamber is committed to remaining engaged in local efforts to end chronic

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<sup>1</sup> Counsel for *Amici Curiae* states that no counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No other person or entity made a monetary contribution to the preparation or submission of this brief. Timely notice was provided to all parties, and all parties consent to the filing of this brief.

<sup>2</sup> See <http://homeforgoodla.org/> (last visited Sept. 24, 2019).

homelessness, and to improving coordination among all levels of local government to achieve that common goal.

Central City Association (CCA) is the premier advocacy organization in the Los Angeles region and a leading visionary on the future of Downtown Los Angeles. Founded in 1924, CCA represents the interests of 400 businesses, trade associations, and nonprofit organizations from a broad range of industries that collectively employ more than 350,000 people in Los Angeles County. CCA's mission is to enhance the vibrancy of Downtown Los Angeles and increase investment in the region through advocacy and community engagement. CCA is deeply involved in local policy deliberations concerning homelessness and was part of a broad coalition that supported Proposition HHH, Measure H, A Bridge Home project, the No Place Like Home initiative, and many affordable housing projects in the area, such as The Weingart Center.

*Amici* are gravely concerned that the Ninth Circuit's decision will worsen an already crisis-level situation in our communities and thereby harm the very people it was intended to protect.

The current encampment crisis poses serious threats to the safety and health of those living in and near them. And the cascading socioeconomic impacts of this humanitarian crisis are palpable and will only become more severe if local authorities are prevented from taking sensible measures to ensure public health and safety. Many smaller and family-owned businesses in afflicted neighborhoods are facing rising costs due to the scarcity of employees willing to work in these

neighborhoods and the difficulty in obtaining adequate insurance, in particular fire insurance, due to the increased fire risk posed by encampments. And *Amici* have observed a marked decrease in the willingness of foreign and domestic investors to commit capital in the Los Angeles area because of the encampment crisis and its concomitant threats to public health and safety.

*Amici* believe that the current state of affairs will deteriorate further if the Ninth Circuit's decision remains in place, preventing local governments in California and elsewhere from enacting and enforcing reasonable regulations to protect the public health and safety—a role that falls within the core of their traditional police power.

### **SUMMARY OF ARGUMENT**

The Ninth Circuit's rule is neither workable nor compassionate. States and localities must be able to enforce reasonable public health and safety laws of general application, which protect all members of the public, including those grappling with homelessness. Communities need the flexibility to develop solutions that work to protect all of their residents and ultimately decrease the number of individuals living on the streets. The Ninth Circuit's rigid constitutional rule furthers neither of those interests.

This Court's intervention is needed now, because this is a dangerous precedent that threatens the health and safety of the men, women, and children who reside within and near encampments. If left in place, the decision below will utterly hamstring the efforts of states and localities to forge sensible and compassionate

solutions that balance the dignity of our homeless neighbors with the safety of the public at large.

## **ARGUMENT**

### **I. The Ninth Circuit's Decision Is Wrong**

Notwithstanding the undoubtedly good intentions of the Ninth Circuit, its decision is both legally wrong and terribly misguided as a practical matter. For purposes of Eighth Amendment analysis, this Court has correctly drawn a line between conduct and status. The former is punishable by a law of general application; the latter is not. *See Powell v. Texas*, 392 U.S. 514 (1968). As the Petition correctly explains, the Ninth Circuit's holding that "the Eighth Amendment prohibits the state from punishing an involuntary act or condition if it is the unavoidable consequence of one's status or being," finds no support in this Court's Eighth Amendment cases, and conflicts with the decisions of other appellate courts. Pet. 14-26.

Moreover, for reasons also explained by the Petition (at 32-35), the rule is impossible for federal courts to administrate. How is a court to determine whether the shelter bed supply in a particular city meets demand at any given point in time? And how is a court to determine whether a particular shelter is a suitable option for a particular homeless individual? The Ninth Circuit's novel interpretation of the Eighth Amendment invites endless expensive and time-consuming litigation that would divert energy and resources away from actually helping the community and people in need.

## **II. The Ninth Circuit’s Constitutional Ruling Will Harm the Very Communities It Aims To Protect**

Absent this Court’s review, the Ninth Circuit’s decision will utterly gut the ability of state and local authorities to enforce essential public health and safety laws of general application that are necessary to protect everyone—including the men, women, and children living in encampments and the communities that surround them. Indeed, although the Ninth Circuit described its decision as “narrow,” the predictable consequences of that decision are already evident, and far-reaching.

The situation in Los Angeles is nothing short of dire. As a result of the proliferation of encampments, homeless men, women, and children—and those who serve the communities in which they reside—are routinely being exposed to an increased and intolerable risk of a variety of otherwise-rare, but life-threatening diseases.<sup>3</sup> Encampments also pose other well-known

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<sup>3</sup> Hannah Fry, LAPD officers may have been exposed to highly infectious MRSA bacteria (L.A. Times May 7, 2019), <https://www.latimes.com/local/lanow/la-me-ln-mrsa-infection-lapd-20190507-story.html>; Scott Wilson, Hepatitis A outbreak among homeless a byproduct of California’s housing crunch (Wash. Post Oct. 25, 2017), [https://www.washingtonpost.com/national/hepatitis-a-outbreak-among-homeless-a-byproduct-of-californias-housing-crunch/2017/10/25/e9038a62-acf9-11e7-be94-fab0f1effb\\_story.html?utm\\_term=.26e72d4fdd04](https://www.washingtonpost.com/national/hepatitis-a-outbreak-among-homeless-a-byproduct-of-californias-housing-crunch/2017/10/25/e9038a62-acf9-11e7-be94-fab0f1effb_story.html?utm_term=.26e72d4fdd04); Dr. Marc Siegel, Is a Dark Ages disease the new American plague threat? (The Hill Sept. 8, 2019) <https://thehill.com/opinion/healthcare/460442-is-a-dark-ages-disease-the-new-american-plag>

environmental risks that are now all too common occurrences—including the risk of widespread and devastating wild fires and the contamination of our water supply.<sup>4</sup>

The constitutional rule fashioned by the Ninth Circuit guts our local governments’ ability to address the encampment crisis, and Amici believe it will diminish the public’s confidence in, and support for, other important local measures aimed at improving the plight of the homeless.

In 2016, voters in the City of Los Angeles approved Proposition HHH, a \$1.2B bond to develop housing for homeless individuals.<sup>5</sup> In 2017, voters in the County of Los Angeles approved Measure H, which generates approximately \$350 million per year to fund services for the homeless.<sup>6</sup> Measure H will sunset in 10 years, and Proposition HHH funds have been fully obligated. These are significant efforts, but are not enough. As

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ue-threat (predicting that leprosy will re-emerge in the United States as a result of the encampment crisis).

<sup>4</sup> Alejandra Reyes Velarde, *Feces Are Contaminating the American River. Sacramento Wants to Know the Source* (L.A. Times, Sept. 13, 2019), <https://www.latimes.com/california/story/2019-09-13/feces-american-river-contamination-sacramento>.

<sup>5</sup> See <https://www.lamayor.org/HomelessnessTrackingHHH> (last visited Sept. 23, 2019).

<sup>6</sup> See <https://www.lamayor.org/HomelessnessTrackingHHH> (last visited Sept. 23, 2019).

Los Angeles County Supervisor Mark Ridley-Thomas recently put it, “for every 133 people we house every day with Measure H, 150 more people end up on the streets. Tragically, two to three of them die there every day. Incredibly, that’s double our homicide rate.”<sup>7</sup>

It is clear that the mere addition of more shelter beds is not a viable solution to the current and escalating crisis. That is especially true in Los Angeles, where the homeless population is so great that it is literally impossible to meet the Ninth Circuit’s standard in the near future. There are many aspects to this complex problem that go beyond housing—but the solutions must come from within the affected communities. The Ninth Circuit’s all-or-nothing constitutional rule derails those efforts, threatens a loss of public confidence in local government, and would significantly hinder further progress toward alleviating this crisis.

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<sup>7</sup> See <https://ridley-thomas.lacounty.gov/index.php/martin-v-boise/> (last visited Sept. 23, 2019) (statement of Supervisor Mark Ridley-Thomas regarding his support for Los Angeles County’s participation as amicus curiae in this case).

**CONCLUSION**

The petition should be granted.

Respectfully submitted,

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