

In the Supreme Court of the United States

CITY OF GRANTS PASS, OREGON,

Petitioner,

v.

GLORIA JOHNSON, ET AL.,
ON BEHALF OF THEMSELVES AND
ALL OTHERS SIMILARLY SITUATED,

Respondents.

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

**BRIEF OF AMICI CURIAE
LEAGUE OF OREGON CITIES, CITY OF PORTLAND,
ASSOCIATION OF IDAHO CITIES,
SPECIAL DISTRICTS ASSOCIATION OF OREGON, AND THE
WASHINGTON STATE ASSOCIATION OF MUNICIPAL
ATTORNEYS IN SUPPORT OF PETITIONER**

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INTEREST OF THE AMICUS CURIAE¹

Founded in 1925, the League of Oregon Cities is an intergovernmental entity consisting of Oregon's 241 incorporated cities. Oregon cities formed the League to be, among other things, the effective and collective voice of Oregon's cities before the courts.

The City of Portland is the largest city in Oregon with a population of more than 650,000 people.

The Special Districts Association of Oregon formed in 1979 to represent special districts in the Oregon Legislature. There are currently thirty-four different types of special districts in the association, including parks and recreation districts and utility districts.²

The Association of Idaho Cities formed in 1947 to advocate on behalf of Idaho's 199 cities and to provide education, training, and assistance to strengthen the ability of city elected officials and staff to serve their communities.

The Washington State Association of Municipal Attorneys is a non-profit corporation comprised of

¹ Amici state as follows: (1) neither party's counsel authored the brief in whole or in part; (2) neither party nor their counsel contributed money that was intended to fund preparing or submitting the brief; and (3) no person other than amici, their members, or their counsel contributed money that was intended to fund preparing or submitting the brief. Counsel of record for all parties received timely notice of Amici's intention to file this amicus brief.

² Special Districts Association of Oregon, *What Is a Special District?*, <https://www.sdao.com/files/a3473de8b/what-is-special-district.pdf> (last visited September 14, 2023).

attorneys who represent Washington’s 281 cities and towns. The association’s members frequently advise their clients on common municipal challenges and interpretations of the law, and reflect the collective voices of Washington’s cities and towns.



INTRODUCTION

Local governments are on the front lines of confronting homelessness in America. Unfortunately, the Ninth Circuit’s decisions in *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018) and *Johnson v. City of Grants Pass*, 50 F.4th 787 (9th Cir. 2022) have limited local governments’ options to protect the health and safety of their communities—both housed and unhoused. Communities throughout the Ninth Circuit are facing growing homeless populations. Individuals experiencing homelessness face a very real and significant struggle every day, which Amici acknowledge. However, Amici, and the municipal governments that they represent, are responsible for also addressing unhealthy, dangerous, and sometimes deadly consequences of homeless encampments. The *Johnson* and *Martin* decisions limit the tools available to local governments for tackling this complex and troubling human issue.

Writing in dissent in *Johnson*, Judge Collins noted that “it is hard to deny that *Martin* has generated dire practical consequences for the hundreds of local governments within our jurisdiction, and for the millions of people that reside therein.” *Johnson*, 50 F.4th at 831 (Collins, J. dissenting) (internal quotation marks,

citation, and alterations omitted). “Those harms,” Judge Collins continued, “will be greatly magnified by the egregiously flawed reconceptualization and extension of *Martin*’s holding in [*Johnson*].” *Id.* The City of Portland and organizations representing many of the “local governments within [the Ninth Circuit’s] jurisdiction”—strongly agree with Judge Collins’ concerns. This Court should grant the City of Grants Pass’s petition for certiorari and overturn *Martin* and *Johnson*.



ARGUMENT

The Ninth Circuit’s interpretation of the Eighth Amendment imposes unworkable restraints on local governments and has allowed unchecked encampments to overwhelm public spaces and threaten the health and safety of both housed and unhoused communities. This Court should grant the City of Grants Pass’s Petition and correct the Ninth Circuit’s errors in this increasingly important area of the law.

I. *MARTIN* AND *JOHNSON* ARE UNWORKABLE AND FORCE LOCAL GOVERNMENTS TO ABANDON ENFORCEMENT OF CAMPING AND SLEEPING REGULATIONS.

Martin and *Johnson* are unworkable because there is no practical way for law enforcement officers to determine whether an individual has “access to adequate temporary shelter” under *Martin* and *Johnson*. See *Martin*, 902 F.3d at 1048 n.8 (“[O]ur holding does not cover individuals who *do* have access to adequate temporary shelter, whether because they have the

means to pay for it or because it is realistically available to them for free, but who choose not to use it.” (emphasis in original)). As such, local governments have no choice but to forego most enforcement of prohibitions on camping on public property.³

Law enforcement officials face numerous barriers to determining whether an individual has access to adequate temporary shelter. For example, does an individual lack a long-term residence, but have access to family or friends on any given night? Does an individual live in the municipality or are they merely passing through? Are there available beds at a local shelter or at a shelter in a neighboring community? How is a law enforcement officer to know which, if any, of these scenarios apply when deciding whether to enforce a sleeping or camping regulation? The ambiguity and informational barriers make it challenging for law enforcement to accurately determine whether to enforce regulations.

Even if cities could build enough shelters to house the entire homeless population—a budgetary impossibility for most cities—it is not clear even that would be enough. The Ninth Circuit does not include shelter beds provided by religious institutions as available to homeless individuals. *Martin*, 902 F.3d at 1041. Regardless, what if shelters, even if not religious, have rules that would preclude some people from using their services, like restrictions on pets, single people, drug and alcohol use, and time of entry? Law enforcement

³ Shawn Hubler, *California Democrats Want Courts to Let Cities Clear Homeless Camps*, *THE NEW YORK TIMES* (September 6, 2023), <https://www.nytimes.com/2023/09/06/us/california-democrats-courts-homeless-camps.html?smid=url-share>.

officials may lack information about the regulations at every shelter in their community, or may not know whether such regulations impact their legal enforcement. Further, many unsheltered homeless people will not go to a shelter, regardless of availability. Between May 2022 and July 2023, Portland, Oregon officials report that they made 3,399 offers of shelter beds to homeless individuals and were declined 2,560 times.

II. *MARTIN* AND *JOHNSON* PROVIDE NO GUIDANCE ON WHAT CONSTITUTES A PERMISSIBLE RESTRICTION ON THE TIME, PLACE, OR MANNER OF CAMPING ON PUBLIC PROPERTY.

Similarly, *Martin* and *Johnson* provide local governments little clarity regarding what laws are permissible. Local governments have relied on *Martin*'s footnote 8, which suggested that local governments could regulate the time, place, and manner of encampments. *See Martin*, 902 F.3d at 1048 n.8 (“Even where shelter is unavailable, an ordinance prohibiting sitting, lying, or sleeping outside at particular times or in particular locations might well be constitutionally permissible.”). But in *Martin* and *Johnson* the Ninth Circuit did not explain what constitutes a “permissible” time, place, and manner restriction. *See Johnson*, 50 F.4th at 812 n.33 (“Because the City has not established any realistically available place within the jurisdiction for involuntarily homeless individuals to sleep we need not decide whether alternate outdoor space would be sufficient under *Martin*.”). Thus, even where a city allows camping on public property, it still faces the threat of federal litigation and class-wide injunctive relief for not allowing unfettered camping at all times in all circumstances.

For instance, Portland, Oregon recently enacted a law that allows camping at night on public property, but requires that any campsite be dismantled during the day (*i.e.*, between 8 a.m. and 8 p.m.).⁴ Portland's law also prohibits camping near certain sensitive areas (*e.g.*, preschools, constructions sites).⁵ Bend, Oregon recently enacted a law that permits homeless individuals to camp on public rights-of-way but requires that encampments move to a different block every 24 hours.⁶ Plaintiffs groups have asserted that these laws are inconsistent with the Eighth Amendment as interpreted by *Martin* and *Johnson*.⁷ The Ninth Circuit's precedent is limiting the tools available to local governments as they attempt to respond to homeless encampments in their communities.

⁴ Portland, Or., Portland City Code 14A.50.020(C)(1) (2023), <https://www.portland.gov/code/14/a50/020>.

⁵ Portland, Or., Portland City Code 14A.50.020(C)(2) (2023), <https://www.portland.gov/code/14/a50/020>.

⁶ Bend, Or., Bend City Code 4.20.30 (2023), <https://bend.municipal.codes/BC/4.20.030>.

⁷ Lisa Balick, *Portland Camping Ban to Face Legal Challenge from Oregon Law Center*, koin.com (July 11, 2023), <https://www.koin.com/news/homeless/portland-camping-ban-to-face-legal-challenge-from-oregon-law-center/>; Barney Lerten, *Attorneys for Bend Homeless Notify City of Planned Lawsuit Challenging Legality of Camping Code*, KTVZ.com (July 17, 2023), <https://ktvz.com/news/bend/2023/07/17/attorneys-for-bend-homeless-notify-city-of-planned-lawsuit-challenging-legality-of-camping-code/>.

III. UNSHELTERED HOMELESSNESS HAS INCREASED DRAMATICALLY IN THE NINTH CIRCUIT SINCE *MARTIN*.

Local governments in the Ninth Circuit are on the front lines of responding to homeless encampments. According to Department of Housing and Urban Development, western states report the highest percentage of unsheltered homeless individuals.⁸ In the year after *Martin*, three states in the Ninth Circuit—California, Washington, and Arizona—all ranked in the top five states for highest increases in homelessness in the country.⁹ Between 2020 and 2022, Arizona’s homeless population grew 23.4 percent.¹⁰ In that same period, Oregon and Washington’s homeless populations grew by 22.5 percent and 10.0 percent, respectively.¹¹

Oregon far exceeds the national rate of homelessness and ranks second in the nation in unsheltered homeless.¹² And between 2019 and 2022, the number

⁸ The U.S. Department of Housing and Urban Development (“HUD”), *The 2022 Annual Homeless Assessment Report (AHAR) to Congress* at 16 (December 2022), <https://www.huduser.gov/portal/sites/default/files/pdf/2022-AHAR-Part-1.pdf>.

⁹ HUD, *The 2020 Annual Homeless Assessment Report (AHAR) to Congress* at 11 (January 2021), <https://www.huduser.gov/portal/sites/default/files/pdf/2020-AHAR-Part-1.pdf>.

¹⁰ HUD, *supra* note 9, at 17.

¹¹ *Id.* at 17, 107.

¹² Rebecca Ellis, *Federal Analysis Shows Oregon’s Homeless Population in Decline Prior to Pandemic*, OPB.com (March 19, 2021), <https://www.opb.org/article/2021/03/19/federal-analysis-shows-oregons-homeless-population-in-decline-prior-to-pandemic/> (“Oregon also had one of the highest rates of unhoused people who

of homeless persons in Multnomah County, where the City of Portland is located, rose by 30 percent.¹³ This increase occurred despite the fact that Multnomah County significantly increased the number of shelter beds during this period.¹⁴

Arizona’s Maricopa County—home to the City of Phoenix—saw a similar, dramatic rise during the pandemic. A 2022 homelessness count showed that the homeless population in the Phoenix metro area grew by 35 percent since 2020.¹⁵

were living unsheltered, tied for second place with Nevada. Both states saw 61% of their homeless population living outdoors.”).

¹³ Alex Hasenstab, *Multnomah County Releases First Homeless “Point-in-Time” Count in Two Years*, OPB.org (May 5, 2022), <https://www.opb.org/article/2022/05/05/multnomah-county-oregon-releases-first-homeless-count-point-in-time-two-years/>.

¹⁴ Multnomah County, Or. Joint Office of Homeless Services, *With More Shelter Beds Now Than Before COVID-19, Joint Office Announces Ongoing Work to Continue Adding Capacity* (March 14, 2022), <https://www.multco.us/multnomah-county/news/more-shelter-beds-now-covid-19-joint-office-announces-ongoing-work-continue>.

¹⁵ Anita Snow, *Homelessness Jumps 35 percent in Two Years in Biggest Arizona County*, ASSOCIATED PRESS (March 14, 2022), <https://www.usnews.com/news/best-states/arizona/articles/2022-03-14/homelessness-jumps-35-in-2-years-in-biggest-arizona-county>.

IV. RESPONDING TO HOMELESS ENCAMPMENTS IS ONE OF THE MOST PRESSING AND COMPLEX PROBLEMS FOR LOCAL GOVERNMENTS.

A. The Proliferation of Homeless Camps Poses a Monumental Challenge for Public Resources in the Ninth Circuit.

The impact of the massive increase of people sleeping in public areas is deeply felt. For example, Portland, Oregon has seen a dramatic increase in fires in and around unhoused encampments.¹⁶ A significant number of fires in Portland are started in or near homeless camps—2,048 in 2021 and 1,959 in 2022—putting a strain on the city’s Fire & Rescue Bureau, which responds to 5 or 6 of these fires every night.¹⁷ In March 2023, a portion of Portland’s Steel Bridge was closed for several days after a fire broke out in an encampment that homeless individuals had tunneled into the cement structure under the bridge.¹⁸

Flagstaff, Arizona has the largest contiguous ponderosa pine forest in the continental United States. The city has created a “woods-watch program” through its police department to mitigate the risk of forest fires

¹⁶ Lucas Manfield, *Data Shows Fires at Homeless Camps Remained a Large Portion of Portland Blazes Last Year*, WILLAMETTE WEEK (March 15, 2023), <https://www.wweek.com/news/2023/03/15/data-shows-fires-at-homeless-camps-remained-a-large-portion-of-portland-blazes-last-year/>.

¹⁷ *Id.*

¹⁸ Gemma DiCarlo, *Steel Bridge Reopens After Last Week’s Fire Inside Onramp*, OPB.com (March 13, 2023), <https://www.opb.org/article/2023/03/13/portland-steel-bridge-camp-fire-onramp-oregon-housing-homelessness/>.

started in unsanctioned camps, but had two fires in 2021 and 2022 that destroyed homes near the city.

Unchecked public camping places additional strains on public resources. In Sacramento, California the city spent thousands of dollars to repair levees that were designed to protect the city from flooding, after homeless persons dug into them in multiple places to access water more easily—putting the entire city at risk for much more than a repair bill.¹⁹ A local district in Oregon similarly spent more than \$150,000 to repair a levee that homeless campers damaged, creating a serious flood risk. Businesses in Apache Junction, Arizona (population 40,173)²⁰ have had water lines or irrigation lines cut on their property by campers.

Homeless individuals in Medford, Oregon (population 85,556)²¹ set up camp in the Bear Creek Greenway, a conservation and recreation area that follows a tributary of the Rogue River. In addition to limiting public access to the greenway and littering Bear Creek with toxic materials ranging from human waste to coolants to rubber tires, campers illegally trapped

¹⁹ 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>.

²⁰ *QuickFacts: Apache Junction, Arizona*, United States Census Bureau, <https://www.census.gov/quickfacts/fact/table/apachejunctioncityarizona/POP010210>, (last visited September 13, 2023).

²¹ *QuickFacts: Medford City, Oregon*, United States Census Bureau, <https://www.census.gov/quickfacts/medfordcityoregon>, (last visited September 13, 2023).

salmon and other protected anadromous fish²² in makeshift “dams” made from tarps.²³



(Illegal dam found in homeless campsite
in Jackson County, Oregon)

Unchecked campsites leave behind debris and waste. Seattle, Washington has invested \$3 million into programs to clean up litter and garbage across the city, including 194 encampment trash pick-up locations. This new program collected 46,497 discarded needles and 671,169 pounds of trash in June 2022 alone.²⁴ In the City of Port Orchard, Washington

²² Anadromous fish are born in freshwater tributaries like Bear Creek, spend most of their lives in saltwater, and return to the tributaries of their birth to spawn.

²³ Nick Morgan, *Illegal fish dams along Greenway net 1 arrest*, MAIL TRIBUNE (October 21, 2022), <https://news.yahoo.com/illegal-fish-dams-along-greenway-035900800.html>.

²⁴ Seattle, Wa. Parks & Recreation, *Clean City Initiative*, <https://www.seattle.gov/parks/about-us/special-initiatives-and-programs/clean-city-initiative> (last visited September 13, 2023).

(population 15,587),²⁵ occupants of an encampment used an adjacent salmonid-bearing stream to dispose of feces and urine and burned a portable toilet placed there to serve them.

Parks in Apache Junction, Arizona have become overwhelmed by homeless encampments, as homeless persons use restrooms to bathe, use baseball dugouts as restrooms, and leave debris throughout the park, from camping supplies, to used needles, pipes, and drug paraphernalia. Lewiston, Idaho (population 34,896)²⁶ reports similar problems, with homeless campers residing in baseball dugouts and band shells in public parks and leaving behind drug paraphernalia and biohazards such as blood and feces.



(Homeless campsite in Apache Junction, Arizona after campers vacated)

²⁵ *Quick Facts: Port Orchard, Washington*, United States Census Bureau, <https://www.census.gov/quickfacts/fact/table/portorchardcitywashington,US/PST045222> (last visited Sept. 15, 2023).

²⁶ *QuickFacts: Lewiston, Idaho*, United States Census Bureau, <https://www.census.gov/quickfacts/fact/table/lewishtoncityidaho/PST045221>, (last visited September 13, 2023).



(Homeless campsite in Eugene, Oregon after campers vacated)²⁷



(Homeless campsite in Warrenton, Oregon (population 6,357) after campers vacated)²⁸

²⁷ Tiffany Eckert, *Eugene's Camp 99 Officially Closes, Homeless Campers Disperse*, KLCC (January 16, 2019), <https://www.klcc.org/post/eugenes-camp-99-officially-closes-homeless-campers-disperse>.

²⁸ *Quick Facts: Warrenton, Oregon*, United States Census Bureau, <https://www.census.gov/quickfacts/fact/table/warrentoncityoregon/RTN131217>, (last visited Sept. 13, 2023).

And the inability to manage homeless encampments also exposes cities to legal liability from other groups. For example, the City of Portland recently settled a lawsuit that alleged tent encampments and accompanying debris on sidewalks violated the Americans with Disabilities Act.²⁹ Los Angeles County agreed to a multi-million dollar settlement to resolve a lawsuit brought by a coalition of business, residents, homeless persons, and others, who alleged the county's and the City of Los Angeles's inaction had created a dangerous problem for the community.³⁰ Local governments' hands are tied by *Martin* and now *Johnson*, leaving them unable to meet other legal requirements and serve other, also-vulnerable populations.

Special districts have a particularly hard time addressing the homelessness crisis. Some special districts maintain public property that is ill-suited to public camping (e.g., utility infrastructure) but often have no involvement in providing shelter or other services to individuals experiencing homelessness.

Some cities face the same difficulty. The City of Portland, for example, is not the primary provider of social services in Portland—those services are mostly administered through Multnomah County and a network of nonprofits. But the city is responsible for law

²⁹ Claire Rush, *Portland, Oregon, to Clear Sidewalk Tents to Settle Suit with People with Disabilities*, ASSOCIATED PRESS (June 2, 2023), <https://apnews.com/article/portland-ada-lawsuit-homeless-tents-sidewalks-ae2d079440d5f9427a18d9e4771d92a>.

³⁰ Christopher Weber, *Los Angeles County to Settle Lawsuit Over Homeless Crisis*, ASSOCIATED PRESS (September 12, 2022), <https://apnews.com/article/lawsuits-los-angeles-eb569af45027d8730b2b30bcdd8b91ca>.

enforcement, clean-up services, emergency responses—*i.e.*, mitigating the problems arising out of homeless camps, despite having little control over the social resources available to combat homelessness. Similarly, small towns often do not have the resources to provide services and shelter beds to homeless individuals, although those resources may be available in neighboring communities. Under *Martin* and *Johnson* it is unclear whether shelter beds available in neighboring jurisdictions are “available” to homeless individuals in a small town. Compare *Martin*, 902 F.3d at 1048 n.8 (“[O]ur holding does not cover individuals who *do* have access to adequate temporary shelter, . . . because it is realistically available to them for free”) with *Johnson*, 72 F.4th at 894 (affirming class certification because “there is no available shelter *in Grants Pass*”) (emphasis added).

B. Local Governments are Struggling With the Recent Increase in Crimes and Complaints Arising Out of Unsheltered Homeless Populations.

The consequences extend beyond the debris and damage that encampments leave behind—cities also report an increase in crime both by and against the unsheltered homeless. The City of Portland receives thousands of citizen complaints each week alleging that persons are using drugs, engaging in domestic violence, and leaving used tampons and feces on the

ground.³¹ One sweep exposed more than 150 stolen cars in just one Portland camp.³²

Smaller communities face similar challenges. In Newport, Oregon—a town of 10,500 people—police responded to nearly 1,000 trespass complaints in 2021, more than 80 percent of which related to homeless persons. In one Oregon special district, a homeless encampment grew around a pumping station over the course of several months. The camp became a chop shop, processing stolen catalytic converters. District staff heard gun shots more than once while trying to access the pump station. They required a police escort to access the pumping station during a major rainstorm that created a flood risk.

Homeless encampments are not safe for anyone, including those who live in them. Portland, Oregon saw at least 82 homicides in 2022, and 15 of the victims were unhoused.³³ The largest homeless encampment

³¹ Blair Best, *'We're Done With Portland': Some Residents Move Away Over What They Say Is The City's Lack Of Response To Homeless Camps*, KGW.com (August 29, 2022), <https://www.kgw.com/article/news/local/homeless/portland-residents-move-washington-over-lack-response-homeless-camps/283-6eea7e53-4a56-4296-97cc-f8fe106818c7>.

³² Angelica Thornton, *Officials Break Up Homeless Camp, Pull Out 150 Stolen Cars, Tons of Trash, Live Pigs*, KOMO News (October 19, 2022), <https://komonews.com/news/nation-world/city-breaks-up-homeless-camp-pulls-out-150-stolen-cars-tons-of-trash-live-pigs-big-four-corners-natural-area-portland-oregon-housing-crisis-damage-neighbor-george-donnerberg-park-and-rec-environmental-impact>.

³³ Nicole Hayden, *Deaths on the Streets: Homeless Homicides in Portland Eclipse 2021*, THE OREGONIAN (October 22, 2022),

in downtown Phoenix, Arizona generated at least 185 incidents in 2022, and over the past 3 years, police have investigated 6 murders and 259 reports of crime in homeless camps.³⁴

C. Responding to the Harms Created By Public Campsites Distracts from Local Governments' Direct Efforts to Provide Shelter and Services.

Local governments in the Ninth Circuit have stepped up to help address the homelessness crisis. Last fall, a task force of 25 Oregon mayors called for an investment of \$123 million annually because cities in Oregon continue to lack the resources necessary to combat the statewide homelessness crisis.³⁵ In March 2023, Oregon passed a \$200 million package to combat homelessness, which includes additional funding for shelter beds.³⁶ The City of Portland alone allocated

<https://www.oregonlive.com/portland/2022/10/deaths-on-the-streets-homeless-homicides-in-portland-eclipse-2021.html>.

³⁴ Justin Lum, *Crimes of 'the Zone': Theft, Assaults, Drugs, Unsanitary Conditions Plague Area of Downtown Phoenix Tent City*, FOX10 PHOENIX (September 15, 2022), <https://www.fox10phoenix.com/news/crimes-zone-theft-assaults-drugs-unsanitary-conditions-plague-downtown-phoenix-tent-city>.

³⁵ Miranda Cyr, *Oregon Mayors Organize Homeless Outreach Plan, Ask State for Millions in Assistance*, THE REGISTER GUARD (October 16, 2022), <https://www.registerguard.com/story/news/2022/10/16/oregon-mayors-state-funding-aid-homeless-crisis/69566530007/>.

³⁶ Nicole Hayden, *\$200 Million Housing, Homelessness Package clears Legislature*, OregonLive (March 22, 2023), <https://www.oregonlive.com/politics/2023/03/200-million-housing-homelessness-package-clears-legislature.html>.

\$85 million for homeless housing and services in 2022-23, and the tri-county metro area passed a tax measure in 2020 that is expected to raise \$2.5 billion for homelessness services by 2030.³⁷

The City of Boise, Idaho has built a 40-unit housing complex, using federal funding to cover rent and utilities, and the city partners with local hospitals to provide on-site treatment for mental health, disabilities, and substance abuse.³⁸ And Boise, Idaho Mayor Lauren McLean has committed to building 250 additional housing units by 2026.³⁹ In Tempe, Arizona, the city government began operating a shelter out of a local motel during the COVID-19 pandemic, expanding into a permanent shelter with staff and on-site services.⁴⁰

³⁷ Angela Hart, *'Not Safe Anymore': Portland Confronts the Limits of its Support for Homeless Services*, LOS ANGELES TIMES (June 21, 2022), <https://www.latimes.com/world-nation/story/2022-06-21/portland-liberal-support-lags-homeless-services-drug>.

³⁸ Katija Stjepovic, *Ada County Pulls Funding From Homeless Program, to Create its Own*, KTVB.com (December 7, 2021), <https://www.ktvb.com/article/news/local/growing-idaho/ada-county-boise-homeless-program-funding/277-77bab50a-26ee-4f85-90a5-5d6ce7bd82b5>.

³⁹ Kelcie Moseley-Morris, *Boise Mayor Joins Federal Initiative Aimed at Reducing Homelessness*, IDAHO CAPITAL SUN (May 31, 2022), <https://idahocapitalsun.com/2022/05/31/boise-mayor-joins-federal-initiative-aimed-at-reducing-homelessness/>.

⁴⁰ Suelen Rivera, *Tempe Buys Motel for Homeless, Gets Grant to Fund Shelter Beds*, KTAR NEWS (September 16, 2021), <https://ktar.com/story/4682643/tempe-buys-motel-for-homeless-gets-grant-to-fund-shelter-beds/>; see also Tempe, Ariz. Community Health & Human Services, *Housing and Shelter*, <https://www.tempe.gov/government/human-services/housing-services/ending-homelessness/housing-and-shelter>.

Seattle, Washington's 2022 budget included \$200 million in funding for affordable housing and homelessness programs, despite the city's \$15 million revenue shortfall.⁴¹ And in Spokane, Washington, over the past 5 years the city has tripled its spending on homelessness, with the city and Spokane County spending a combined \$30 million on homeless services in 2022.⁴²

Local governments in the Ninth Circuit have not been idle in the face of the growing crisis of homelessness. However, city budgets are stretched thin and local governments are often prohibited by state law from carrying a deficit. The *Martin* and *Johnson* decisions significantly complicate local governments' ability to respond to this crisis. Under *Martin* and *Johnson*, local governments face an impossible choice. They can, on one hand, spend more and more to build housing for growing homeless populations so that they may enforce local ordinances prohibiting sleeping and camping in public areas. But such spending limits their ability to adequately fund public health and safety and engage in other critical work to support their communities. On the other hand, local governments can forego enormous spending on building shelters, but, if so, they can no longer enforce ordinances designed to protect public spaces for all communities. The Eighth

⁴¹ Sarah Grace Taylor, *Seattle City Council Passes a 2022 Budget that Emphasizes Funding for Homelessness, Affordable Housing*, THE SEATTLE TIMES (November 22, 2021), <https://www.seattletimes.com/seattle-news/seattle-city-council-passes-a-2022-budget-that-emphasizes-funding-for-homelessness-affordable-housing/>.

⁴² Colin Tiernan, *How Much Do Spokane and Spokane County Spend on Homelessness*, THE SPOKESMAN-REVIEW (July 25, 2023), <https://www.spokesman.com/stories/2023/jul/25/how-much-do-spokane-and-spokane-county-spend-on-ho/>.

Amendment does not require such a choice and local governments in the Ninth Circuit cannot afford to make it.



CONCLUSION

For the reasons stated in the Petition for Writ of Certiorari and this amicus curiae brief, this Court should grant the Petition for Writ of Certiorari.

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