

In the Supreme Court of the United States

CITY OF GRANTS PASS, OREGON,

Petitioner,

v.

GLORIA JOHNSON, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

**BRIEF OF NEIGHBORS FOR A BETTER SAN
FRANCISCO, SAN FRANCISCO CHAMBER
OF COMMERCE, CALIFORNIA BUSINESS
ROUNDTABLE, CALIFORNIA RETAILERS
ASSOCIATION, AND MORE THAN 300 SAN
FRANCISCO-BASED COMPANIES, BUSI-
NESS OWNERS AND EXECUTIVES, CIVIC
ORGANIZATIONS, PROFESSIONALS, AND
NEIGHBORHOOD LEADERS AS *AMICI
CURIAE* IN SUPPORT OF PETITIONER**

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QUESTION PRESENTED

Whether a municipal government's enforcement of generally applicable laws regulating sleeping and camping on public property constitutes cruel and unusual punishment in violation of the Eighth Amendment.

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INTEREST OF *AMICI CURIAE**

Amici curiae are a broad range of civic, community, and business organizations in San Francisco, as well as San Francisco-based companies, business owners and executives, other professionals, and neighborhood leaders. A full list of *amici* appears as Appendix A to this brief.

The civic and community association *amici* include Neighbors for a Better San Francisco, a group of San Franciscans committed to improving public safety, public education, and quality of life for the City; numerous neighborhood associations, including the Castro Community Benefit District, Dolores Heights Improvement Club, and Inner Mission Neighborhood Association; and the Chinese American Democratic Club and Edwin M. Lee Asian Pacific Democratic Club.

The business advocacy *amici* include the California Business Roundtable, California Retailers Association, San Francisco Chamber of Commerce and San Francisco Filipino American Chamber of Commerce, San Francisco Apartment Association, BOMA (Building Owners and Management Association) San Francisco, Small Property Owners of San Francisco Institute, San Francisco Council of District Merchants Associations, and many district merchant associations.

* Pursuant to Supreme Court Rule 37, *amici* affirm that no counsel for a party authored this brief in whole or in part, and no one other than *amici* or its counsel made a monetary contribution intended to fund the preparation or submission of the brief. Counsel of record for all parties received notice at least 10 days prior to the due date of the intention of *amici* to file this brief.

The company *amici* include businesses in many sectors and parts of the City, including Abanico Coffee Roasters, Anresco Laboratories, Banks & Sugarman, the Castro Room, Cliff's Variety, The Edge, Lucy Junus Interior Design, MicroTracers, Inc., Midnight Sun, San Francisco Office Lofts, Sign Me Up! Photography, Smile SF, SV Angel, and Zingari Ristorante.

The individual *amici* include prominent business executives, such as the co-founder of Door Dash, Chairman and Chief Executive Officer (CEO) of Prologis, former Chairman of Gap, Inc., CEO of Kilroy Realty, President of Paramount Hotels, and senior members of leading foundations and investment firms. The individual *amici* also include dozens of small business owners and employees; former law-enforcement officials, including a former San Francisco Chief of Police and a former Assistant United States Attorney; doctors; educators; authors and artists; restaurateurs; philanthropists; public policy advocates; and many other community leaders and stakeholders.

Amici hold widely varying views on many policy issues. But they agree on the key aspects of this case: San Francisco is facing a growing homelessness crisis that endangers the City's residents, businesses, visitors, and homeless people themselves. A critical tool in addressing that crisis is the enforcement of common sense public safety laws that prevent homeless encampments from taking over the City's streets. By holding that enforcement of such laws violates the Eighth Amendment, the Ninth Circuit committed a serious legal error that will have devastating consequences for cities on the frontlines of the homelessness crisis. *Amici* urge the Court to grant review in this case and reverse the flawed decision below.

INTRODUCTION AND SUMMARY OF ARGUMENT

San Francisco is one of the world's great cities. It combines spectacular natural beauty, vibrant culture and arts, and a spirit of innovation that has endured from the Gold Rush to the Tech Boom. Those features have attracted generations of residents, entrepreneurs, and visitors. And the City has long prided itself on its openness and tolerance, welcoming diverse ways of life and points of view.

Unfortunately, San Francisco now faces a dire crisis arising from homelessness. In many parts of the City, it is impossible to walk down the sidewalk or enter buildings because of homeless encampments—collections of tents and other personal belongings where homeless people congregate to live and sleep. Encampments are frequently sites of drug use and violence, endangering both passersby and homeless people themselves. And encampments create other health and safety risks, ranging from fire to disease.

For too long, San Francisco's leaders ignored—or even encouraged—the homelessness crisis. While the City's policies may have reflected good intentions, they were badly misconceived. There is nothing compassionate about abandoning homeless people to the nightmare of encampments. It is not a hallmark of progress to let addicts use drugs in public or defecate on the streets. It is an abdication of the first duty of government: to enforce the law and protect the people.

Spurred by business and civic groups, including many of the amici joining this brief, San Francisco's leaders have finally started to grapple with the homelessness crisis. The City has devoted vast amounts of

resources to expanding shelter capacity, while beginning to enforce laws to reclaim public spaces for all members of the community. But just as that belated response has begun, a new obstacle has emerged.

In *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019), the Ninth Circuit held that a city’s enforcement of laws prohibiting public sleeping and camping against “involuntarily” homeless people violates the Eighth Amendment. *Id.* at 617. Suits followed against many cities throughout the West, including this suit against Grants Pass, Oregon, and one against San Francisco. The Ninth Circuit panel in this case reiterated and expanded *Martin*’s holding. Pet. App. 42a–55a. Then, relying on *Martin* and the panel decision in this case, a district court enjoined San Francisco from enforcing laws prohibiting similar practices, including two that were adopted by city voters through referenda in 2010 and 2016.¹

As a result, San Francisco has been disabled from enforcing critical public safety laws, effectively requiring it “to surrender [its] sidewalks and other public places to homeless encampments.” Pet. App. 128a (statement of O’Scannlain, J., respecting the denial of rehearing en banc). The consequences have been tragically predictable: a rise in crime, an exodus of downtown residents and businesses, a decline in tourism, and—worst of all—even more miserable conditions for the homeless.

¹ *Coalition on Homelessness v. City & Cnty. of S.F.*, 22-cv-05502, 2022 WL 17905114 (N.D. Cal. Dec. 23, 2022) (“*Coalition*”). This brief cites the appellate excerpts of record (“ER”) in the *Coalition* case, which is now on appeal to the Ninth Circuit (No. 23-15087).

The Ninth Circuit’s decisions in this case and *Martin* are an indefensible overreach. They have no basis in the text or original meaning of the Eighth Amendment, which cannot plausibly be read to bar enforcement of public safety laws that impose modest penalties for defined conduct—not a person’s status. They violate principles of federalism and judicial restraint by allowing federal courts to displace the policy judgments of local leaders and voters who are closest to the problems. They conflict with the decisions of other appellate courts—including the California Supreme Court—upholding similar laws. And they do not promote values of compassion or tolerance; they make it more dangerous to live, work, and travel in our nation’s largest cities, and they ultimately worsen life for the homeless themselves.

When a federal appellate court has enjoined state and local laws on federal constitutional grounds, local residents and businesses have nowhere to turn but this Court. This Court’s review is fully warranted and desperately needed. Amici urge the Court to grant review and reverse the egregious errors committed by the Ninth Circuit.

ARGUMENT

I. San Francisco’s Experiences Demonstrate The Critical Need For This Court’s Review

Frank Lloyd Wright once called San Francisco “the only city I can think of that can survive all the things [that] people are doing to it and still look beautiful.”² The homelessness crisis, exacerbated by the Ninth

² Kevin Fisher-Paulson, *SF Retains Beauty Despite All Our Decorating*, S.F. CHRON. (Jan. 29, 2018), <https://bit.ly/3ZpWeDp>.

Circuit's decisions, is testing that description. And diminishing the City's appearance is only the beginning of the problem. The constraints imposed by the Ninth Circuit are creating intolerable safety risks and inflicting other profound costs on residents, businesses, tourists, and homeless people themselves.

A. San Francisco Faces An Increasingly Dire Homelessness Crisis

Homelessness is not a new challenge in San Francisco. Amid the City's vast cultural and economic prosperity, some people have always lacked housing for a complex range of reasons. Public and private entities in the City have responded in different ways at different times, producing what can fairly be described as mixed results. But while the problem has long persisted, it has generally been manageable.

That has changed. Over the past few years, homelessness in San Francisco has escalated into a crisis. The problems of earlier eras—struggling people sleeping on park benches or outside shelters—have given way to the new phenomenon of homeless encampments, where large numbers of people congregate for extended periods, often with a substantial volume of belongings. As a result, sidewalks, streets, and other public spaces in many parts of the City are littered with an array of tents, tarps, boxes, shopping carts, cooking gear, trash heaps, spoiled food, suitcases, and other paraphernalia. The image below (drawn from the record in the *Coalition* suit against San Francisco) is from the Embarcadero near Washington Street, one of the tourism and commercial centers of the City.



Embarcadero near Washington Street³

In some places, encampments create even more serious problems, obstructing walkways and blocking entrances to schools, businesses, residences, health clinics or pharmacies, grocery stores, public transportation, and other critical destinations.⁴ The result is to make those places more difficult and dangerous—and in some cases impossible—to access, posing severe challenges for daily living. The obstructions also force more pedestrians (including those with strollers or wheelchairs) into the streets, where they face

³ *Coalition*, 2-ER-120.

⁴ Lezla Gooden, *SF Apartment Building Seeks Help as Homeless Encampment Grows Underneath*, CBS NEWS BAY AREA (July 19, 2023), bit.ly/3Ez7t2V.

greater danger from vehicles.⁵ One of many examples is depicted below.



Erie Street between SOMA and the Mission⁶

In effect, a significant number of San Francisco's public spaces have been converted into unofficial open-air public housing facilities. That transformation has far-reaching negative effects. For one, illegal drug use and attendant crime thrive within homeless encampments, fueling the deadly fentanyl epidemic and creating new health risks through discarded needles and drugs—some of which end up in playgrounds or other areas accessible to children.⁷

⁵ *SF Neighborhood Group Installs Planters Along Sidewalk Once Taken Over by Homeless Encampment*, CBS NEWS BAY AREA (June 13, 2023), <https://cbsn.ws/3Riwyqg>.

⁶ *Coalition*, 2-ER-179.

⁷ Dion Lim, *Drug Dealing, Defecation, Debris: SF Street Causing 'Chaos' for Homeowners, Businesses*, ABC 7 NEWS (June 23, 2023), <https://abc7ne.ws/48gxXDG>; Mallory Moench, *Dad Reveals Horrific Details of Baby's Reported Fentanyl Overdose at S.F. Playground*, S.F. CHRON. (Nov. 30, 2022), <https://bit.ly/3LooT6a>; Andrea Cavallier, *Inside San Francisco's*

Homeless encampments also lack most elements of modern sanitation. A recent filing by the City described its collection from an encampment of “items (including bedding and clothing) soiled by infectious or hazardous materials, including human waste, body fluids, mold and mildew, as well as items infested by rodents and insects, such as rats, mice, fleas, lice and bed bugs.”⁸ Such conditions require homeless people to endure unthinkable hardships, repel residents and visitors from approaching, and contribute to the spread of communicable diseases like tuberculosis.⁹

Encampments create other physical risks as well. They are frequently sites of violence and harassment, both for passersby and those in the encampments.¹⁰ And the use of open flames in encampments—for

Open Air Drug Market, DAILY MAIL (Jan. 25, 2022), <https://bit.ly/3Rs05Oa>; Erin McCormick, *The Daily Battle to Keep People Alive as Fentanyl Ravages San Francisco’s Tenderloin*, THE GUARDIAN (Apr. 23, 2022), <https://bit.ly/48rtlen>.

⁸ *Coalition*, 5-ER-1047.

⁹ Caroline J. Waddell et al., *Possible Undetected Mpox Infection Among Persons Accessing Homeless Services and Staying in Encampments — San Francisco, California, October–November 2022*, CTRS. FOR DISEASE CONTROL & PREVENTION: MORBIDITY AND MORTALITY WKLY. REP. (Mar. 3, 2023), <https://bit.ly/3rbtq50>; C.Y. Liu et al., *Communicable Disease Among People Experiencing Homelessness in California*, 148 EPIDEMIOLOGY & INFECTION e85 (2020), <https://bit.ly/3Rk1Cpu>.

¹⁰ Da Lin, ‘*Coming to the City, I’m Sorry, It’s Scary*’; *Safety Fears Linger in Wake of a Violent Week in San Francisco*, CBS NEWS BAY AREA, (Apr. 8, 2023), <bit.ly/48jBpgX>; Maureen Kelly, *San Francisco Business Owner Considering Closing Shop After Being Bitten by Homeless Person Twice*, KRON4 (Sept. 10, 2019), <https://bit.ly/3RIHrYo>.

cooking, warmth, and drug use—creates fire hazards.¹¹ In recent months, several fires started in encampments have spread to other parts of the community, destroying property and endangering lives.¹²

The proliferation of encampments has been devastating to San Francisco’s business and working communities. The ever-expanding roster of companies reducing operations or fleeing the City includes commercial leaders like T-Mobile, AT&T, Banana Republic, Old Navy, Whole Foods, and Nordstrom.¹³ In the iconic Union Square neighborhood alone, “[a]t least 22 big-name businesses have closed or announced plans to flee the area since January 2022.”¹⁴ And things are

¹¹ Betty Yu, *Homeless Encampment Fires Plague Residents of San Francisco Tenderloin District Building*, CBS NEWS BAY AREA (June 27, 2023), <https://cbsn.ws/3EEDpmy>; Dan Thorn, *Homeless Encampment Fire Destroys Woman’s Car in San Francisco*, KRON4 (July 28, 2023), <https://bit.ly/3EANQrd>.

¹² Michael Thomas et al., *Residents: We Warned SF City Leaders Before Massive Fire*, KRON4 (Aug. 2, 2023), <https://bit.ly/3LIRUzp>.

¹³ Joshua Rhett Miller, *Old Navy to Nordstrom: Half of Retailers Fleeing Downtown San Francisco*, NY POST (June 21, 2023), <https://tinyurl.com/9jjj29us>; Henry O’Loughlin, *Every Business Leaving San Francisco*, BUILD REMOTE (2020–2023) (Sept. 3, 2023), <https://tinyurl.com/3sruvfpk>; Miles Dilworth, *San Francisco Exodus Gather Pace: T-Mobile Shuttters Flagship Store After Nordstrom And Saks Off Fifth Shut-Up Shop*, DAILY MAIL (May 8, 2023), <https://tinyurl.com/3p47r82e>; James Gordon, *San Francisco Whole Foods Made More Than 560 Emergency Calls Over 13 Months After Rampant Drug Use In Restrooms, People Defecating On The Floor, Violence Towards Staff*, DAILY MAIL (May 1, 2023), <https://tinyurl.com/mr3y6b5p>.

¹⁴ Miller, *supra* note 13.

only getting worse; the City has already lost two major 2024 conferences, and it risks losing Dreamforce—Salesforce’s 40,000 person conference that generated almost \$90 million in spending in 2023.¹⁵

Small businesses have been especially hard hit. A neighborhood bike shop recently announced that it made the “tough decision to close” after “repeated break-in attempts over the last year, and more broken windows than we can count.”¹⁶ The owners of a dog daycare center are facing the same choice because “homeless people are leaving needles and feces on their front door” and “threatening people as they walk in.”¹⁷ Countless other closures have deprived communities of needed commerce and workers of their livelihoods. One retailer spoke for many when it recently took out a full-page newspaper ad admonishing the City for “allowing the homeless to occupy our sidewalks, to openly distribute and use illegal drugs, to harass the public[,] and to defile the city’s streets.”¹⁸

¹⁵ Amy Graff, *San Francisco Loses 2 Big Conferences*, SFGATE (July 6, 2023), <https://bit.ly/3sYuGsH>; Roland Li & Kevin Fagan, *Marc Benioff: Next Month’s Dreamforce Could Be Last in S.F. if It’s Affected by Homelessness, Drug Use*, S.F. CHRON. (Aug. 29, 2023), <https://bit.ly/3EMdZmS>.

¹⁶ Katy Grimes, *San Francisco Collapse: More Store Closures, Lawlessness, Drugs, Homeless*, CAL. GLOBE (May 11, 2023), <https://tinyurl.com/2z7v5fn8>.

¹⁷ Justine Waldman, *SF Business Owners Concerned About Homeless Near Store*, KRON4 (May 23, 2023), <https://bit.ly/3EAvjvd>.

¹⁸ Isabel Keane, *Luxury San Francisco store may close after 166 years due to ‘litany of destructive’ policies making the city*

B. San Francisco’s Attempts To Address Its Homelessness Crisis Have Been Undermined By The Ninth Circuit

As the homelessness crisis has escalated, San Francisco residents have responded. They have supported massive public expenditures—\$672 million last year alone—to expand shelter capacity, fund new public housing, and provide direct financial assistance to the homeless.¹⁹ They have provided common-sense legal tools for City officials to use in addressing homelessness, such as a public ordinance adopted by referendum in 2016 that makes it “unlawful to place an [e]ncampment upon a public sidewalk.”²⁰ They have urged City officials to enforce that and other laws to reclaim public spaces for the whole community. And when officials have refused, residents have replaced them at the ballot box.²¹

After delaying for far too long, San Francisco’s leaders started to address the problem. Using the 2016 encampment ordinance and other public safety laws that prohibit camping or sleeping in public places, the City began cleaning up several homeless encampments per week.²² Before cleaning up any encampment, City personnel provide extensive outreach to those affected, including offering a range of services

‘unlivable’, NY POST (Aug. 16, 2023), <https://tinyurl.com/5n7ctk5v>.

¹⁹ *Coalition*, 5-ER-1040–1042.

²⁰ S.F., Cal., Police Code § 169(c).

²¹ See, e.g., *San Francisco District Attorney Chesa Boudin Recalled*, 136 HARV. L. REV. 1740, 1741–43 & n.12 (2023).

²² *Coalition*, 5-ER-1052.

and assisting homeless people in finding shelter.²³ After encampments are cleared and public access restored, the City retains any belongings collected for return to homeless people who left them behind.²⁴

Just as those efforts started to yield progress, however, the Ninth Circuit’s decisions in *Martin* and *Grants Pass* have emerged as a new obstacle. In *Martin*, the Ninth Circuit held that a city’s enforcement of laws prohibiting public sleeping and camping against “involuntarily” homeless people—a term that the decision does not define—violates the Eighth Amendment. 920 F.3d at 617. The court expanded that holding in the decision below, allowing a class action and permitting an injunction based on even civil enforcement. *See* Pet. App. 135a–136a (statement of Graber, J., respecting the denial of rehearing en banc).

Predictably, a wave of similar suits has followed against cities throughout the West. *See* Appendix B, *infra* (compiling list of suits). One of those suits was filed by the Coalition on Homelessness, seeking to enjoin San Francisco from enforcing similar laws. It succeeded. Relying on *Martin* and the panel decision in this case, a district court granted a sweeping preliminary injunction that prohibits San Francisco from enforcing or threatening to enforce against anyone deemed “involuntarily” homeless a host of provisions, including the 2016 encampment ordinance, a 2010 ordinance enacted by referendum that prohibits sitting or lying on public sidewalks during the daytime, and

²³ *Id.*

²⁴ *Id.* at 1066.

three sections of the California Penal Code that prohibit occupying or obstructing public property.²⁵

As a result, San Francisco's efforts to address homeless encampments have been sharply curtailed. Predictably, the constraints imposed by the injunction have reversed the progress that the City was making and fueled the crisis described above. To take just one recent example, City officials were unable to remove a homeless encampment in the Tenderloin neighborhood even after a fire that started in the encampment burned down a community laundromat and endangered a large apartment building full of tenants.²⁶ Residents sought police help given that the "fires started right underneath [their] house," but lamented that "[t]he police do nothing because they say the injunction prevents them from clearing that camp."²⁷ The injunction exacerbates the problem in other ways too; it allows criminals to turn encampments into safe havens for drug dealing, prostitution, and other forms of illicit conduct under the guise of being "involuntarily homeless."

San Francisco has appealed the injunction, arguing principally that it adopts too broad a reading of "involuntary" homelessness.²⁸ But because the Ninth Circuit is bound by *Martin* and the decision in this

²⁵ *Coalition*, 2022 WL 17905114 at *7.

²⁶ Wilson Walker, *Homeless Encampment Sweeps Are Just One Aspect of a System Not Working for SF Residents*, CBS NEWS BAY AREA (Aug. 23, 2023), [cbsn.ws/3RoYGrM](https://www.cbsn.ws/3RoYGrM).

²⁷ *Id.*

²⁸ *Coalition*, ECF 11, 51, 54, 57, 68.

case, the best possible result for the City is a narrowing of the injunction around the margins. Under *Martin* and *Grants Pass*, San Francisco and other cities will remain barred by federal courts from enforcing state and local laws to address “the defining public health and safety crisis in the Western United States.” Pet. App. 138a (M. Smith, J., dissenting from the denial of rehearing en banc). The results will be felt “not merely by cities, but block by block, building by building, doorway by doorway,” where residents and businesses are having their lives endangered and livelihoods destroyed. *Id.* at 161a (Bress, J., dissenting from the denial of rehearing en banc).

II. The Ninth Circuit’s Decision Is Wrong

It would be one thing if the burdens imposed by the Ninth Circuit were required by the Constitution; *amici* cherish the protections of the Bill of Rights and recognize that enforcing those safeguards sometimes has costs. But as petitioner and the dissenting judges in this case and *Martin* explain in detail, the Ninth Circuit’s decisions have no basis in the Eighth Amendment as written, originally understood, or interpreted by this Court.

A. The Eighth Amendment Does Not Prohibit State Or Local Governments From Punishing Proscribed Conduct

The Eighth Amendment prohibits the infliction of “cruel and unusual punishments.” By its terms, that Clause “expresses a substantive constraint on the kinds of punishments governments may ‘inflict.’” *Jones v. Hendrix*, 599 U.S. 465, 488 (2023) (alteration

omitted). It does not address the scope of what governments may define as criminally or civilly proscribed.

That reading of the Eighth Amendment’s text reflects its history and original understanding. The Cruel and Unusual Punishments Clause “has always been considered, and properly so, to be directed at the *method or kind of punishment imposed* for the violation of criminal statutes.” *Ingraham v. Wright*, 430 U.S. 651, 667 (1977) (emphasis added). “There is simply no indication in the history of the Eighth Amendment that [it] was intended to reach the substantive authority of Congress” or state and local governments to determine the scope of criminal or civil prohibitions. *Martin*, 920 F.3d at 602 (Bennett, J., dissenting from the denial of rehearing en banc).

This Court has applied the Eighth Amendment to the substantive scope of criminal prohibitions in just one narrow context. In *Robinson v. California*, 370 U.S. 660 (1962), the Court held that the Cruel and Unusual Punishments Clause barred enforcement of a state statute that made it a misdemeanor for a person “to be addicted to the use of narcotics.” *Id.* at 660 n.1, 666–67. The Court emphasized that a neighboring provision of the same statute that prohibited the “use” of narcotics was permissible. *Id.* at 664. In short, the Court held that the Eighth Amendment prohibits criminalizing *status* but permits criminalizing *conduct*. *Id.* at 666–68.

That distinction was reiterated in *Powell v. Texas*, 392 U.S. 514 (1968), which involved a state law prohibiting public intoxication. The plurality opinion ex-

plained that the statute did “not fall within th[e] holding” of *Robinson*, because the defendant “was convicted, not for being a chronic alcoholic, but for being in public while drunk on a particular occasion.” *Id.* at 532. Accordingly, Texas had “not sought to punish a mere status, as California did in *Robinson*.” *Id.* Rather, it had “imposed upon [the defendant] a criminal sanction for public behavior which may create substantial health and safety hazards, both for [him] and for members of the general public, and which offends the moral and esthetic sensibilities of a large segment of the community.” *Id.* That was “a far cry from convicting one for being an addict.” *Id.* at 532.

In the ensuing decades, this Court has “never wavered from the decision in *Robinson* and the status-act distinction that it articulated.” *Manning v. Caldwell*, 930 F.3d 264, 288 (4th Cir. 2019) (en banc) (Wilkinson, J., dissenting). That does not mean that voluntariness has no place in determining liability. The “centuries-long” criminal-law requirement of a voluntary act, along with familiar defenses like necessity and duress, protect against the misapplication of responsibility for conduct that a person cannot avoid. *Powell*, 392 U.S. at 535–36 (plurality opinion). Critically, however, definition of those requirements and defenses is “the province of the States” and Congress, not federal courts. *Id.* at 536; *see, e.g.*, William J. Stuntz & Joseph L. Hoffman, *DEFINING CRIMES* 53 (2011) (“[I]nsofar as the principle of voluntariness is respected, it is respected by the terms of state and federal criminal statutes, not federal constitutional law.”).

B. The Ninth Circuit Badly Misinterpreted the Eighth Amendment

The Ninth Circuit’s holdings in this case and *Martin* defy those well-established constitutional principles. The decisions do not even attempt to establish that the text or original meaning of the Eighth Amendment forecloses the enforcement of laws against sleeping in, camping in, or otherwise obstructing access to public spaces. Nor do the decisions suggest that the state and local laws at issue expressly criminalize status in the way that the law in *Robinson* did; to the contrary, the panel here recognized that the laws “prohibit [respondents] from engaging in *activity*.” Pet. App. 46a (emphasis added).

The Ninth Circuit’s decisions instead rest on the proposition that the Eighth Amendment prohibits criminalization of “conduct that is involuntary or the product of a ‘status.’” Pet. App. 47a (quoting *Martin*, 920 F.3d at 617). But that reasoning collapses the status/conduct distinction that this Court articulated in *Robinson* and has adhered to ever since. By the Ninth Circuit’s logic, statutes prohibiting the use of narcotics would violate the Eighth Amendment if the user’s conduct was “the product of” an addiction. *Id.* But this Court rejected precisely that line of argument in *Robinson*, see 370 U.S. at 664, and has never accepted it since.

The Ninth Circuit purported to draw support for its position from Justice White’s opinion concurring in the judgment in *Powell*, along with the dissents in that case. See *Martin*, 920 F.3d at 616. But that approach represents a “startling misapplication of” this Court’s rules on interpreting its own decisions. Pet.

App. 125a (statement of O’Scannlain, J.). As noted, the result of *Powell* was to *reject* the argument that Texas’s public-intoxication statute was invalid because it punished conduct resulting from addiction. There is no valid way to get from that decision to the Ninth Circuit’s position that *Powell* supports invalidating the laws at issue here. *See id.* at 125a–128a.

With no foundation in the Eighth Amendment, the Ninth Circuit’s holding effectively amounts to recognition of an unenumerated constitutional right to sleep and camp on public property in at least some circumstances. But “[u]nder well-settled precedent,” such a right may be recognized only if it is so “rooted in the traditions and conscience of our people as to be ranked as fundamental.” *Kahler v. Kansas*, 140 S. Ct. 1021, 1027 (2020). The Ninth Circuit did not attempt to show that the right it recognized meets that standard, and no such showing is possible. After all, laws against public sleeping and camping are longstanding and—as shown by the wave of litigation in the wake of *Martin*—remain highly prevalent today.

The Ninth Circuit’s position also lacks any meaningful limiting principle. The court’s rationale in *Martin* was that constitutional protection extends to “acts or conditions [that] are universal and unavoidable consequences of being human,” on the basis that “any conduct” arising from such conditions “is involuntary and inseparable from status.” 920 F.3d at 616–17. The court has applied that principle to strike down laws prohibiting public sleeping because “human beings are biologically compelled to rest.” *Id.*; *see* Pet. App. 46a–48a. But the logic of the Ninth Circuit’s position hardly stops there. The biologically compelled consequences of being human extend beyond

sleeping to include, for example, expelling bodily waste. “By holding that the Eighth Amendment proscribes the criminalization of involuntary conduct,” the Ninth Circuit’s reasoning thus seems to “inevitably result in the striking down of laws that prohibit public defecation and urination.” *Martin*, 920 F.3d at 596 (M. Smith, J., dissenting from the denial of rehearing en banc).

The reasoning can be extended even further. If cooking food with open flames and campfires is in service of biologically compelled needs, such conduct might also fall within the Ninth Circuit’s rationale. Use of drugs in public by a person with a biologically rooted addiction might too. *See, e.g., Manning*, 930 F.3d at 292–93 (Wilkinson, J., dissenting) (discussing the “staggering” consequences of discarding the status/conduct distinction, including possible invalidation of laws prohibiting child molestation and domestic violence against offenders who have addictions).

Nor is *Martin*’s rationale logically limited to sleeping or camping in outdoor spaces such as public parks and sidewalks. The same reasoning seemingly could justify a right of involuntarily homeless individuals to sleep or camp in public buildings. Indeed, *Martin* held that Boise could not issue citations for “sleeping in a public restroom.” *Martin*, 920 F.3d at 618.

The breadth of the Ninth Circuit’s reasoning confirms its error. As Justice Marshall’s plurality opinion in *Powell* stressed, the Court’s holding in *Robinson* reaches “but a very small way into the substantive criminal law.” 392 U.S. at 533. “[U]nless *Robinson* is so viewed it is difficult to see any limiting principle that would serve to prevent this Court from becoming,

under the aegis of the Cruel and Unusual Punishment Clause, the ultimate arbiter of the standards of criminal responsibility, in diverse areas of the criminal law, throughout the country.” *Id.* The Ninth Circuit’s position leads to precisely that impermissible result.

C. The Ninth Circuit’s Decisions Undermine Core Principles of Federalism and Judicial Restraint

The Ninth Circuit not only misreads the Constitution; it does so in a way that undermines core principles of federalism and judicial restraint. “Under our federal system, state and local leaders—not distant federal judges—are primarily entrusted with the power and duty to protect the common welfare of our towns, cities, and neighborhoods, and to ensure that our streets, squares, and sidewalks remain clean and safe.” Pet. App. 133a (statement of O’Scannlain, J.). The basis for state and local “legislative responsibility over criminal law is fundamental: the criminal law exists to protect the safety of citizens, and ensuring the safety of the people is one of those things that popular government exists to do.” *Manning*, 930 F.3d at 297 (Wilkinson, J., dissenting); see *Roberts v. Louisiana*, 431 U.S. 633, 646 (1977) (Rehnquist, J., dissenting) (“[T]he State has an interest in protecting its citizens ... this surely is at the core of the Lockean ‘social contract’ idea.”).

By prohibiting cruel *and* unusual punishments, the Eighth Amendment expressly recognizes the primacy of legislative judgments and the “essential considerations of federalism.” *Powell*, 392 U.S. at 535 (plurality opinion); see *Gregg v. Georgia*, 428 U.S. 153, 175 (1976) (“[T]he constitutional test is intertwined

with an assessment of contemporary standards and the legislative judgment weighs heavily in ascertaining such standards.”); *Kennedy v. Louisiana*, 554 U.S. 407, 462 (2008) (Alito, J., dissenting) (“Our cases have cautioned against using the aegis of the Cruel and Unusual Punishment Clause to cut off the normal democratic processes.” (internal quotation omitted)). Thus, “in assessing a punishment selected by a democratically elected legislature against” an Eighth Amendment challenge, “a heavy burden rests on those who would attack the judgment of the representatives of the people.” *Gregg*, 428 U.S. at 175.

Given those constitutional principles, courts should take care to avoid “significantly limit[ing] the States in their efforts” to address “a widespread and important social problem” such as homelessness “by announcing a revolutionary doctrine of constitutional law that would also tightly restrict state power to deal with a wide variety of other harmful conduct.” *Powell*, 392 U.S. at 537 (Black, J. concurring). “Diversity ... is the very *raison d’être* of our federal system,” and the Eighth Amendment should not be understood to “disabl[e] the States from ... responding to changed social conditions.” *Harmelin v. Michigan*, 501 U.S. 957, 990 (1991) (opinion of Scalia, J.). Rather, “in the face of [] uncertainty, ... courts should pay particular deference to reasonable legislative judgments.” *Jones v. United States*, 463 U.S. 354, 365 n.13 (1983).

The Ninth Circuit squarely defied those admonitions in *Martin* and this case. In both cases, panels of three federal appellate judges countermanded the judgments of local officials who are entrusted by voters to make policy decisions and who experience the effects of the homelessness crisis in their communities

every day. As Judge O’Scannlain aptly observed, “[i]t is easy enough for [judges], behind marble walls and sealed doors, to dismiss the consequences of our decisions.” Pet. App. 132a. “But for those who call these communities home—who must live by the criminal violence, narcotics activity, and dangerous diseases that plague the homeless encampments buttressed by our decisions—the consequences of our judicial arrogation are harder to accept.” *Id.*

Indeed, while the Ninth Circuit’s decisions sharply constrain the ability of state and local governments to protect their communities, the *federal* government has been able to cope so far with the effects of the San Francisco crisis by spending millions of dollars on “improvements” to the area outside of the San Francisco Federal Building, including a “galvanized steel fence to keep the plaza free of drug users and the unhoused.”²⁹ The federal government has also allowed its employees stationed in downtown San Francisco to work from home.³⁰

Of course, most residents and businesses in San Francisco are not able to escape the problem so easily. For that reason, too, “[i]t is hard to imagine a jurisprudence that combines so little regard for the sacred

²⁹ Lyanna Melendez, *Some Federal Employees in SF Asked to Work From Home Amid Drug, Crime Concerns: Report*, ABC 7 NEWS (Aug. 14, 2023), <https://abc7ne.ws/3RoTUdV>.

³⁰ See Megan Cassidy, *Crime Is So Bad Near S.F. Federal Building Employees Are Told to Work From Home, Officials Said*, S.F. CHRON. (Aug. 11, 2023), <https://bit.ly/3Ll9LWT>; Jonah Lamb, *Bloody Sidewalks, Knife Attacks and a Corpse: What Workers Face Outside San Francisco Federal Building*, S.F. STANDARD (Sept. 8, 2023), <https://bit.ly/44OuRUN>.

words of the Constitution, with so much disregard for the state and local authorities that our constitutional system entrusts as the primary protectors of the health, safety, and welfare of our communities.” Pet. App. 133a (statement of O’Scannlain, J.).

III. The Ninth Circuit’s Decisions Conflict with Precedent from Other Courts, Including the California Supreme Court

Although the importance of the case and the severity of Ninth Circuit’s errors alone warrant review, the need for this Court’s intervention is especially significant because the Ninth Circuit’s position “squarely conflicts with decisions from other circuits and other courts.” Pet. App. 128a (statement of O’Scannlain, J.); *see* Pet. 16–18.

Of particular concern to *amici* here, the Ninth Circuit’s position contradicts the California Supreme Court’s holding in *Tobe v. City of Santa Ana*, 892 P.2d 1145 (1995). In *Tobe*, homeless residents of Santa Ana sought to enjoin enforcement of that city’s ordinances barring camping on public streets, arguing that it was impermissible punishment of the involuntary status of being homeless. *Id.* at 1166. The California Supreme Court expressly rejected the argument, holding that *Robinson* and *Powell* “ma[ke] clear ... that punishing the conduct of using or possessing narcotics, even by an addict, is not impermissible punishment for status” and that “the Supreme Court has not held that the Eighth Amendment prohibits punishment of acts derivative of a person’s status.” *Id.*

Cities in California thus face directly opposing interpretations of the Eighth Amendment’s application to enforcement of laws prohibiting public sleeping and

camping. The governing interpretation is dependent on whether the challenge is brought in California state court or federal district court. That dynamic creates an inescapable risk of forum shopping and “cries out for correction.” Pet. App. 130a (statement of O’Scannlain, J.). When courts disagree on such critical constitutional issues, this Court is “the only source of resolution for this conflict.” *Wright v. North Carolina*, 415 U.S. 936 (1974) (Douglas, J., dissenting from denial of certiorari). *Amici* accordingly urge the Court to address this question of profound importance to residents, businesses, workers, and others in San Francisco and similar cities throughout the West.

CONCLUSION

The Court should grant the petition for certiorari.

Respectfully submitted.

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September 25, 2023

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List of *Amici Curiae*

Associations and Foundations

BOMA San Francisco (Building Owners and
Management Association of San Francisco)
California Business Roundtable
California Retailers Association
Castro Community Benefit District
Castro Merchants
Central Mission Neighbors
Chinese American Democratic Club
D8 (District 8) Residents Task Force
Delta Chinatown Initiative
Dolores Heights Improvement Club
Edwin M. Lee Asian Pacific Democratic Club
Friends and Neighbors of Jose Coronado Playground
Gateway Tenants Association
GrowSF
Harrison St. Neighbors
Iconic D3 (District 3 Neighborhood Group)
Inner Mission Neighborhood Association
Merchants of Upper Market
Neighbors for a Better San Francisco
RecoverCA
San Francisco Apartment Association
San Francisco Briones Society
San Francisco Chamber of Commerce
San Francisco Council of District Merchants
Association
San Francisco Filipino American Chamber of
Commerce
Save the Castro
Small Property Owners of San Francisco Institute

South of Market Business Association
TogetherSF
Understanding the Unhoused

Companies

Abanico Coffee Roasters
Anresco Laboratories
Banks & Sugarman
Castro Room
Cliff's Variety
Handcrafted Horticulture
Lucy Junus Interior Design
Micro-Tracers, Inc.
Midnight Sun
Panoramic Interests
San Francisco Office Lofts (SFOL)
Second Label LLC
Shared Studios
Sign Me Up! Photography
Smile SF
SV Angel
The Edge
The Ngo House
Zingari Ristorante

Business Owners and Executives

Ana Valle (Owner, Abanico Coffee Roasters)
Ari Shp (Partner, Blok Living)
Barry Altschuler (Executive Vice President, Equity Residential)
Bill Fisher (General Partner, Manzanita Capital)
Bill Russell-Shapiro (Restaurateur)
Carlos Lopez (Director of Finance, Quiet Capital)
Carrie Chittaro (Business Owner)

Chris Roeder (Executive Managing Partner, JLL)
Dan Carroll (Co-Founder and Managing Partner,
Brooklands Capital Strategies)
Danny Conway (Chief Executive Officer, SuperFan
Games)
David DeWilde (Founder and Former Chief
Executive Officer, Chartwell Partners
International)
David Eisenberg (President, Anresco Laboratories
and Micro-Tracers, Inc.)
David Schulte (Healthcare Venture Capitalist,
McKesson Ventures)
Dean Cash (Chairman and Chief Executive Officer,
ATEL Capital Group)
Diane Morris (Chairman, Morris Capital
Management)
Ditka Reiner (Chief Executive Officer, Reiner
Associates, Inc.)
Douglas Biederbeck (Small Business Owner)
Douglas J. Durkin (President, Douglas Durkin
Design, Inc.)
Dwight Crow (CEO, Additive.ai)
Ed Conlon (Senior Vice President, Hathaway
Dinwiddie Construction Company)
Eduardo Sagues-Castillo (Head of Development,
March Capital)
Emerald Xu (Director of Development, March
Capital)
Farah Sefidvash (Owner, Smile SF)
George H. Rathman (Former Chief Executive
Officer, Jon Douglas Realty)
Gerardo Delgado Cabrera (Director of Product
Management, NVIDIA)

Greg Flynn (Founder, Chairman, and Chief Executive Officer, Flynn Group LP)
Greg Vilkin (Chief Executive Officer, Baylands Company)
Hamid Moghadam (Co-Founder, Chairman, and Chief Executive Officer, Prologis)
Horatio Jung (Owner, Sign Me Up! Photography)
James A. Reuben (Owner and Partner, Reuben, Junius & Rose)
James Mann (Senior Vice President, UBS Financial Services)
James Sangiacomo (Principal, Trinity Properties)
Jason Fish (President, Sebastes Capital)
Jeff Corvi (Vice President, Metro Services Group)
Jeff Weber (Managing Director, Eastdil Secured)
Jeffrey Heller, FAIA (Founding Principal, Heller Manus Architects)
Jeffrey Woods (Founder and President, Black Mountain Construction)
Jennifer Tulley (Owner, TEF Design)
Jeremy Liew (Partner, Lightspeed Venture Partners)
Jim Scopa (Venture Capitalist)
Jim Shapiro (Venture Capitalist)
John Adair (Managing Partner, Glencrest Group)
John Gall (Owner, San Francisco Office Lofts)
John Kilroy (Chief Executive Officer, Kilroy Realty Corporation)
John Pritzker (Founding Partner and Director, Geolo Capital; President, John Pritzker Family Fund)
K. Cyrus Sanadaji (Managing Principal, Presidio Bay Ventures)
Kabir Seth (Principal, Presidio Bay Ventures)

Karina Velasquez (Principal, Law Office of Karina Velasquez)
Katherine Stiggelbout (Owner, Wellthy Co.)
Kathryn Degnan (Founder, Strategic Intelligence Marketing)
Ken Callander (Managing Principal, Value Strategies)
Kristin Morse (Owner, Taglio & Co.)
Kwabena Agyeman (Business Owner)
Leslie Tse (Owner, Seattle & Bay Area Properties LLC)
Lucy Junus (Business Owner)
Mark Butler (Owner, Butler Cues)
Mark G. Conroe (Managing Partner, Presidio Development Partners LLC; Former Executive Committee Member, CityTeamSF)
Mark Lerdal (President, GlobalXDigital)
Mark Perry (Retired General Partner, New Enterprise Associates, Venture Capital)
Mark Sugarman (President, Banks & Sugarman)
Matthew Zitzmann (Chief Executive Officer, Garage AI, Inc)
Michael Bradley (Founding Shareholder, Murphy, Pearson, Bradley & Feeney)
Michael Richardson (Owner, Castro Room LLC)
Mike Mauze (General Partner, VMG Partners)
Nathaniel Weiner (Owner, "We Know San Francisco")
Neeraj Miglani (Owner, Zingari Ristorante)
Patrick Kennedy (Owner, Panoramic Interests)
Peggy Mullin-Bogart (Business Owner)
Phil Tate (Senior Vice President, Kilroy Realty Corporation)
Phil West (Owner, Second Label LLC)

Ralph Hibbs (Owner, Welcome Castro; Organizer, San Francisco Mercantile)
Rebecca Bradley (Owner, Rebecca Bradley Interior Design)
Rebecca Menne (President and Chief Executive Officer, Barron Ranches)
Renee Voss (Managing Partner, Real Estate Investments)
Richard Leider (President, Paramount Hotels, Inc.)
Richard Thieriot (Chief Executive Officer, Parrott Investment Co.)
Rob Giljum (Owner, The Edge, Midnight Sun, and Beaux)
Robert Emery (Manager, Tourmalet Capital)
Robert J. Fisher (Former Chairman of the Board, Gap Inc.)
Robert Tillman (Chief Executive Officer, RRT Partners, LLC)
Rod Diehl (Senior Vice President, BXP)
Ron Conway (Founder, SV Angel)
Ruchi Sanghvi (Partner, South Park Commons)
Russell Notides (Former Chief Financial Officer, Rapt Inc.)
Ryan Jones (Senior Vice President, Another Planet Entertainment)
Sig Anderman (President, Springboard Initiative)
Stanlee Gatti (Founder, Stanlee Gatti Designs Inc.)
Stanley Tang (Co-Founder, DoorDash)
Stephen Williamson (Founder and Chief Executive Officer, Forager Project)
Steve Fukuda (Business Owner)
Stuart Watson (Business Owner)
Tam Ngo (Chief Executive Officer, The Ngo House)

Terry Asten Bennett (President, Castro Merchants;
Owner, Cliff's Variety)
Thomas F. White (President and Chief Executive
Officer, TriAct Therapeutics)
Todd Solmson (Managing Partner, Fairwood Capital)
Tom Chavez (Founder and General Partner,
super{set})
Tommaso Trionfi (Chief Executive Officer, Shared
Studios)
Tony Price (Managing Director, Russell Associates)
Topher Conway (Managing Partner, SV Angel)
Troy Weakley (Owner, Handcrafted Horticulture)
Wendi Van der Meer (Small Business Owner)

Community Leaders

Amanda M. Hoenigman (Former Chair, Golden Gate
National Parks Conservancy Advisory Council)
Andrea Aiello (Executive Director, Castro
Community Benefit District)
Angela Neal Grove (Founder, San Francisco Tech
Roundtable)
Anne Kenner (Former Assistant U.S. Attorney,
Eastern District of New York and Northern
District of California)
Anthony Fox (Tenderloin Community Leader)
Arjun Sodhani (Fire Place Productions)
Ayman Farahat (President, Friends and Neighbors
of Jose Coronado Playground)
Barbara Marienthal (Certified Public Accountant;
Neighborhood Leader)
Barry C. Baron, MD (Physician)
Bharath Kadaba (Business Leader and Consultant)
Bonnie Elliott (Former Educator, San Francisco
State University)

Brenda C. Jewett (Advocate)
Bruce McCormack (Doctor)
Caroline Newman (Business Professional)
Carolyn Kenady (Chair, Dolores Heights
Improvement Club)
Carrie Schwab Pomerantz (Business Leader)
Carroll Yandell (Non-Profit Leader)
Christopher Nalen (Local Housing Developer)
Daman Kapoor (Homeowner Association President)
Dave Zilberman (Entrepreneur)
Doug Abbey (Lecturer, Stanford University)
Elizabeth Capdevielle Dressel (Attorney; Real Estate
Investor)
Ellanor Notides (Art Advisory)
Francesca Pastine (Lead, Inner Mission
Neighborhood Association)
Fred Medick (Friends of Eureka Valley Park)
Gad Heinic (Treasurer, Castro Community Benefit
District; Business Owner)
Gary Shansby (Business Leader)
George Yandell (Business Leader)
Greg Suhr (Former Chief of Police, San Francisco
Police Department)
Guang Peng Tan (S10W Classified Paraprofessional)
Helen Raiser (Board Member, Friends of the
Children)
Henry Karnilowicz (President, South of Market
Business Association)
Herbert Elliott (Board Member, Neighborhood
Association for Presidio Planning)
Hillary Hogan (Commercial Real Estate
Professional)
Jackie Safier (President, Helen Diller Foundation)

Janan New (Board Member, San Francisco
Apartment Association)
Jay Jeffers (Business Leader)
Jennie Feldman (Organizer, The Briones Society)
Joel Goodrich (Real Estate Agent)
John Atwater (Business Leader)
Jose Pecho (Chairman, San Francisco Filipino
American Chamber of Commerce)
Joshua Siebalt (Host, Understanding the Unhoused)
Julie Purnell (Hotel Asset Manager, Flynn
Properties)
Karen Frank (Attorney)
Kate Smith (President, Saint Francis Foundation)
Kelli Armonas (Community Leader)
Kris Iversen (Author)
Kyle Olivo (Board Member, SOMA Grand)
Lily Ho (President, Delta Chinatown Initiative)
Luis Belmonte (Low Income Housing Property
Owner and Developer)
Lyn Werbach (Lead Organizer, Central Mission
Neighbors)
Madeleine Trembley (President, Gateway Tenants
Association)
Matt Pons (Fund Accountant, March Capital
Management)
Mauree Jane (Retired Oral Historian)
Michael Moritz (Chairman, TogetherSF)
Mujtaba Ali (Physician)
Nancy Montgomery (Trustee, Sarah Lawrence
College)
Noni Richen (President, Small Property Owners of
San Francisco International)
Patrick Spalding (Educator)
Paulina Fayer (Board Member, RecoverCA)

Peter Dwares (Chairman, Pathways For Kids)
Phyllis Goodman (Retired Educator)
Randi Fisher (Co-Trustee, Pisces Foundation)
Remi Tan (Architect, Urban Planner)
Richard Parina (Steering Committee, Iconic D-3)
Robert Emmons (Organizer, San Francisco
Mercantile)
Sachin Agarwal (Director, GrowSF)
Sahil Shah (Board Member, Gateway Tenants
Association)
Sal Becerra (Board Member, Castro Commons
Association)
Sharon J. Malone (Business Leader)
Stephanie Lehman (Former Delegate, California
Democratic Party)
Steve Stemerman (Civil Rights Attorney)
Steven Buss (Director, GrowSF)
Steven Merrill (President, The Merrill Family
Foundation)
Stirling Spencer (Homeowners Association
President)
Tom Dehnel (Founder, Harrison St. Neighbors)
Trevor Traina (Former U.S. Ambassador; Business
and Philanthropic Leader)
Will Andereck (Business Leader)
Will Evers (Business Leader)
William E. Oberndorf (President, Oberndorf
Foundation)
William S. Andereck, MD (Physician; Medical
Ethicist)

Neighborhood Leaders

Ana Corina Arredondo
Annabelle Charbit

April Cully
Betsy Blumenthal
Bixby Jamison
Bronwyn Brunner
Brynne Levy
Carolyn Mehran
Charles McGettigan
Chris Hockett
Chris McMahan
Connie Cox Price
Connie Tired
Deirdre Hockett
Denis F. Shanagher
Diana Helander
Drew Min
Elliot Evers
Enrique Salem
Forrest Liu
Gary Demasi
Holly Peterson
Hugh Scott
Jack Wadsworth
James Gonzales
Jeffrey Congdon
Jennifer Schoch
Jerry Weissman
Joanne Liss
John Simpson
Jonathan Root
Jonathan Wen
Josephine Zhao
Julia Baron
Kalpi Kadaba
Karen Rathman

Kate Robinson
Katherine Congdon
Kathleen White
Kevin Brunner
Krystyna Miguel
Laura Fisher
Leslie Podell
Linda Howell
Lucie Weissman
Luke Evnin
Marie Simpson
Martha Conte
Martin Quinn
Mary Pinkus
Mary Vascellaro
Matt Aljets
Max Neiman
Melis Inceer Tirpanceker
Michael Tiret
Mike Ruiz
Mithun Patel
Myra Rothfeld
Nancy Conner
Natalie Jamison
Nathan Swartley
Nina Allen
OJ Shansby
Paul Sears
Paul Simpson
Peter White
Philip Vy
Richard Barker
Roberta Baron
Roman Martinez

Ryan Tiret
Sara R. Byrne
Sean Tiret
Sherri Sugarman
Simone M. Quarre
Sohela Shah
Steele Davidoff
Susan Lowe
Susan Mackowski
Susy Wadsworth
Tobias Marienthal
Vince Dio
Wayee Chu
Wes Powell
Will Schutte
William Brega

APPENDIX B

**Lawsuits Filed Under *Martin v. City of Boise*
and *Johnson v. Grants Pass***

- Boyd v. City of San Rafael*, No. 3:23-cv-04085 (N.D. Cal. Aug 11, 2023)
- Schwab v. City of Fremont*, No. 3:23-cv-03037 (N.D. Cal. Jun 21, 2023)
- Community on Wheels v. City of Tucson*, No. 4:23-cv-00029 (D. Ariz. Jan. 17, 2023)
- Fund for Empowerment v. City of Phoenix*, No. 2:22-cv-02041, 2022 WL 18213522 (D. Ariz. Nov. 30, 2022)
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