

In the Supreme Court of the United States



CITY OF GRANTS PASS, OREGON,

Petitioner,

v.

GLORIA JOHNSON AND JOHN LOGAN, ON BEHALF OF
THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,

Respondents.

**On 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,
SPECIAL DISTRICTS ASSOCIATION OF OREGON,
WASHINGTON STATE ASSOCIATION OF MUNICIPAL
ATTORNEYS, AND ASSOCIATION OF IDAHO CITIES
IN SUPPORT OF PETITIONER**

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INTEREST OF THE AMICI 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 600,000 people.

The Special Districts Association of Oregon formed in 1979 to represent special districts in the Oregon Legislature. There are currently 34 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 attorneys who represent Washington's 281 cities and

¹ Amici state as follows: (1) no party's counsel authored the brief in whole or in part; (2) no party or 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.

² Special Districts Association of Oregon, *What Is A Special District?*, <https://www.sdao.com/files/a3473de8b/what-is-special-district.pdf> (last visited Feb. 21, 2024).

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*, 920 F.3d 584 (9th Cir. 2019), and *Johnson v. City of Grants Pass*, 72 F.4th 868 (9th Cir. 2023), have limited local governments’ options to protect the health and safety of their communities—both housed and unhoused. Cities throughout the Ninth Circuit are facing growing homeless populations. Individuals experiencing homelessness face significant struggles every day. Amici, and the municipal governments they represent, are responsible for addressing the unhealthy, dangerous, and sometimes deadly consequences of homeless encampments. The Ninth Circuit’s precedent limits the tools available to local governments for tackling this complex and difficult 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*, 72 F.4th at 914 (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.* Amici representing many of the "local governments within [the Ninth Circuit's] jurisdiction" strongly agree with Judge Collins' concerns. This Court should 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 correct the Ninth Circuit's errors in this increasingly important area of the law.

I. The Ninth Circuit's Precedent Is Unworkable.

A. Cities Are Often Unable to Determine If Shelter Is "Realistically Available" to Unsheltered Homeless Individuals.

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," as those cases require. *See Martin*, 920 F.3d at 617 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 a result, local governments

must often forego enforcement of generally-applicable ordinances that prohibit camping on public property.

Law enforcement officials face numerous barriers to determining whether an individual has access to adequate temporary shelter. For example, does an individual who lacks a long-term residence, but has access to family or friends on any given night, “have access to adequate temporary shelter” under *Martin* and *Johnson*? Can a city enforce a camping ordinance against an individual who does not live in the municipality and is merely passing through? Does an individual have access to adequate shelter if there are 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 about the availability of adequate temporary shelter make it challenging, if not impossible, for law enforcement to accurately determine whether they can enforce a regulation under *Martin* and *Johnson*.

Even if a city could build enough shelters to house its entire homeless population—a budgetary impossibility for most cities—it is not clear even that would be enough. The Ninth Circuit does not recognize shelter beds provided by religious institutions as “available” to people experiencing homelessness. *Martin*, 920 F.3d at 610. 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 officials may lack information about the rules at every shelter in their community or may

not know how such rules impact a particular person camping on public property.

Further, many unsheltered homeless refuse to go to a shelter, regardless of availability. Between April 2022 and January 2024, Portland, Oregon officials report that they made approximately 3,500 offers of shelter beds to people experiencing homelessness and were declined 2,795 times, *i.e.*, over 70% of the time.³ Multnomah County's average daily shelter utilization rate only reached 100 percent during November and December 2023 in adult shelters, and the average daily utilization rate across all other shelter types (alternative shelters, COVID-related shelters, and family and youth shelters) ranged from 70.3 percent to 97 percent in 2023.⁴

Small cities are no exception. Officials in Sweet Home, Oregon report that many of the residents living in the city's designated camping area were unwilling to comply with the rules for Sweet Home's low-barrier

³ Street Services Coordination Center, City of Portland, Shelter Data (Jan. 2024) (on file with author); *see also* City of Portland, *Weekly Street Services Report: February 19-25, 2024*, Homelessness and Urban Camping Impact Reduction Program (Feb. 27, 2024), <https://www.portland.gov/homelessnessimpactreduction/news/2024/2/27/weekly-street-services-report-february-19-25-2024> (describing total shelter offers between April 11, 2022 and February 25, 2024).

⁴ Multnomah County, Or. Joint Office of Homeless Services, *Shelter Utilization in Multnomah County* (Dec. 2023), <https://public.tableau.com/app/profile/johs/viz/ShelterUtilizationReport/Report>. During the remainder of 2023, the average daily adult shelter bed utilization rate ranged from 90.2 percent to 93.7 percent. *Id.*

shelter facility, which include limitations on drug use, property destruction, and inappropriate sexual activity.

Complying with the Ninth Circuit's precedent presents a practical impossibility because cities often lack the information necessary to apply *Martin* and *Johnson* to the facts on the ground.

B. The Ninth Circuit's Precedent Provides 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 suggests that local governments can regulate the time, place, and manner of encampments even when shelter beds are unavailable. *See Martin*, 920 F.3d at 617 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 the Ninth Circuit has not explained what constitutes a “constitutionally permissible” time, place, and manner restriction. *See Johnson*, 72 F.4th at 894 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 camping at all times and in all circumstances.⁵

A few examples highlight the issue. Portland, Oregon recently enacted a law that allows camping at night on public property but requires that campsites be dismantled during the day (*i.e.*, between 8 a.m. and 8 p.m.).⁶ Portland's law also prohibits camping near certain sensitive areas (*e.g.*, preschools, construction sites).⁷ Other cities have enacted similar restrictions on daytime camping and camping in certain areas.⁸ 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 twenty-four hours.⁹ Although Amici believe that these ordinances are constitutional, the Ninth

⁵ Austen Macalus, *'No Place To Go': How Kitsap Is Responding To A Federal Court Ruling On Homeless Camping Laws*, KITSAP SUN (Dec. 8, 2019), <https://www.kitsapsun.com/story/news/2019/12/08/no-place-go-how-kitsap-responding-federal-court-ruling-homeless-camping-laws/2624812001/>.

⁶ Portland, Or., Portland City Code 14A.50.020(C)(1) (2023), <https://www.portland.gov/code/14/a50/020>.

⁷ Portland, Or., Portland City Code 14A.50.020(C)(2) (2023), <https://www.portland.gov/code/14/a50/020>.

⁸ *See, e.g.*, Vancouver, Wash. Municipal Code 8.22.040 (2023), <https://vancouver.municipal.codes/VMC/8.22.040> (restricting daytime camping and camping in certain areas); Sandy, Or. Municipal Code 8.35.020 (2022), https://library.municode.com/or/sandy/codes/code_of_ordinances?nodeId=TIT8HESA_CH8.35CAPRCEPL_S8.35.020PRCA (same); Cornelius, Or. Municipal Code 9.10.250 (2022) <https://www.codepublishing.com/OR/Cornelius#!/Cornelius09/Cornelius0910.html#9.10.250> (same).

⁹ Bend, Or. Municipal Code 4.20.30 (2023), <https://bend.municipal.codes/BC/4.20.030>.

Circuit’s precedent subjects cities to the constant threat of litigation about any regulation of camping on public property as applied to individuals experiencing homelessness.

II. Responding to Homeless Encampments Is One of the Most Pressing and Complex Problems for Local Governments.

A. Unsheltered Populations Have Increased Dramatically in Recent Years.

Local governments in the Ninth Circuit are on the front lines of responding to homeless encampments. According to the U.S. Department of Housing and Urban Development, western states report the highest percentage of unsheltered homeless individuals.¹⁰ In 2023, all of the top five states with the highest percentage of people experiencing unsheltered homelessness—California, Oregon, Hawaii, Arizona, and Nevada—were in the Ninth Circuit.¹¹

Oregon far exceeds the national rate of homelessness and ranks third in the nation in the percentage

¹⁰ U.S. Department of Housing and Urban Development (“HUD”), *The 2023 Annual Homeless Assessment Report (AHAR) to Congress*, at 16 (Dec. 2023), <https://www.huduser.gov/portal/sites/default/files/pdf/2023-AHAR-Part-1.pdf>. “Unsheltered homelessness refers to people whose primary nighttime location is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for people (for example, the streets, vehicles, or parks).” *Id.* at 5. “Experiencing Homelessness describes a person who lacks a fixed, regular, and adequate nighttime residence.” *Id.*

¹¹ *Id.* at 16.

of people experiencing homelessness who are unsheltered.¹² Between 2022 and 2023, the number of people experiencing homelessness in Multnomah County, where the City of Portland is located, rose by 29 percent.¹³ In Oregon, homelessness increased by 8.5 percent overall between 2022 and 2023, while the number of unsheltered people experiencing homelessness increased by 17.2 percent.¹⁴

From 2022 to 2023, the Idaho and Washington homeless populations grew by 15 percent and 11 percent, respectively.¹⁵ Homeless encampments are an increasingly urgent issue for local governments in the Ninth Circuit.

B. The Proliferation of Homeless Camps Poses a Monumental Challenge for Public Resources.

The impact of the massive increase of people sleeping in public areas is deeply felt. Portland, Oregon receives thousands of citizen complaints each week alleging that persons experiencing homelessness are using drugs, engaging in domestic violence, and leaving unsanitary waste (*e.g.*, used tampons, feces) on the ground.¹⁶ One clean-up effort exposed more

¹² *Id.* at 30-31.

¹³ *2023 Oregon Statewide Homelessness Estimates*, Portland State University, at 23 (Jan. 2024), <https://drive.google.com/file/d/1Gf7GkHDSTZzYdWT0eDAgfHdmhPkhW6xQ/view>.

¹⁴ *Id.* at 3.

¹⁵ HUD, *supra* at 102, 113.

¹⁶ Blair Best, ‘*We’re Done With Portland*’: *Some Residents Move Away Over What They Say Is The City’s Lack Of Response To*

than 150 stolen cars in a single Portland camp.¹⁷ Spokane, Washington, received 2,453 complaints about unsanctioned encampments between 2022 and 2023, a 54-percent increase over the prior year.¹⁸

A significant number of fires in Portland are started in or near encampments—1,959 in 2022 and 1,457 in 2023¹⁹—putting a strain on the city’s Fire & Rescue Bureau, which responds to 5 or 6 of these fires every night.²⁰ In March 2023, a portion of Portland’s Steel Bridge was closed for several days after a fire broke

Homeless Camps, KGW (Aug. 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>.

¹⁷ Angelica Thornton, *Officials Break Up Homeless Camp, Pull Out 150 Stolen Cars, Tons of Trash, Live Pigs*, KATU (Oct. 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>.

¹⁸ Nate Sanford, *Complaints About Unsanctioned Homeless Camps in Spokane Skyrocketed This Year*, INLANDER (Sept. 21, 2023), <https://www.inlander.com/news/complaints-about-unsanctioned-homeless-camps-in-spokane-skyrocketed-this-year-26673343>.

¹⁹ Portland Fire & Rescue, *Fire Marshal’s Office – Fire Locations*, https://public.tableau.com/app/profile/roy.lawson1690/viz/FlexdatestatisticsReportv9_16109949016810/Story1?publish=yes (updated Feb. 23, 2024); see also Lucas Manfield, *Data Shows Fires at Homeless Camps Remained a Large Portion of Portland Blazes Last Year*, WILLAMETTE WEEK (Mar. 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/>.

²⁰ Portland Fire & Rescue, *supra*.

out in an encampment that residents had tunneled into the cement structure under the bridge.²¹

Deschutes County, which encompasses the city of Bend, Oregon, has assigned a full-time sheriff's deputy to patrol a road where a large encampment has developed to prevent wildfires.²² Sweet Home, Oregon (population 10,090²³), fought five human-caused fires in six weeks in an area occupied by unauthorized campsites.²⁴

The City of Vancouver, Washington has declared a civil state of emergency due to unsheltered homelessness. City officials report an increase in weapons, firearms, careless storage of drugs, violence, and drug overdoses at homeless encampments.²⁵ These issues

²¹ Gemma DiCarlo, *Steel Bridge Reopens After Last Week's Fire Inside Onramp*, OPB (Mar. 13, 2023), <https://www.opb.org/article/2023/03/13/portland-steel-bridge-camp-fire-onramp-oregon-housing-homelessness/>.

²² Blake Mayfield, *35-year Bend Resident Leaving Oregon, Says China Hat Road Homeless Encampments, Issues Continue to Worsen*, KTVZ (Dec. 6, 2023), <https://ktvz.com/news/government-politics/2023/12/06/35-year-bend-resident-leaving-oregon-says-china-hat-road-homeless-encampments-issues-continue-to-worsen>.

²³ U.S. Census Bureau, *QuickFacts: Sweet Home, Oregon*, <https://www.census.gov/quickfacts/fact/table/sweethomecityoregon/PST040223> (last visited Feb. 27, 2024).

²⁴ Sweet Home Fire District, Facebook (Aug. 11, 2023), https://www.facebook.com/permalink.php?story_fbid=pfbid0hUEoxYroUbET5TH3anwYhPEL55NtStm4JXcquqCBfS4fwEHNYU56BQDpgjvQQnr7l&id=100091817258553.

²⁵ City of Vancouver, *Declaration of Civil Emergency in and for the City of Vancouver*, No. 2023-01, at 2-4 (Nov. 3, 2023), <https://>

strain the city's medical and emergency services, which creates response time delays throughout the city.²⁶

People experiencing homelessness in Medford, Oregon 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 salmon and other protected anadromous fish²⁷ in makeshift "dams" made from tarps.²⁸

City officials in Spokane, Washington report similar environmental concerns. Homeless encampments on the Spokane River create riverbank erosion issues and place garbage, human waste, and drug paraphernalia in the river.²⁹ Spokane officials also report that throughout the city they collected nearly 400 tons of garbage from homeless encampments in 2023 alone.

www.cityofvancouver.us/wp-content/uploads/2023/11/Declaration-of-Civil-Emergency_2023-01.pdf.

²⁶ *Id.* at 4.

²⁷ 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.

²⁸ Nick Morgan, *Illegal Fish Dams along Greenway Net 1 Arrest*, MAIL TRIBUNE (Oct. 21, 2022), <https://news.yahoo.com/illegal-fish-dams-along-greenway-035900800.html>.

²⁹ See, e.g., City of Spokane, *Code Enforcement Supplemental Field Report* (Dec. 9, 2021) (on file with author) (noting over 14,000 pounds of garbage collected from critical river environment during single day of clean-up).

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 program collected 46,497 discarded needles and over 335 tons of trash in June 2022 alone.³⁰ The Oregon Department of Transportation (“ODOT”) reports that it spent \$22 million on cleanup efforts on ODOT property during the years 2021 through 2023.³¹ ODOT has requested additional funding of \$20 million designated for use in cleanup efforts on ODOT property in the Portland, Oregon area, with \$4 million dedicated specifically to cleaning up campsites.³²

Salem, Oregon has created a dedicated “Outreach and Livability Services Program” that provides assistance and resources to, among others, property owners affected by trespassers, and picks up trash and other waste left behind by unsheltered residents.³³

³⁰ Seattle, Wa. Parks & Recreation, *Clean City Initiative*, <https://www.seattle.gov/parks/about-us/special-initiatives-and-programs/clean-city-initiative> (last visited Feb. 28, 2024).

³¹ Oregon Department of Transportation (“ODOT”), *2021-2023 ODOT Operational Report*, at 7-8 (Jan. 2024) (graffiti cleanup is included in this number), https://www.oregon.gov/odot/Get-Involved/OTCSupportMaterials/Agenda_E_Operational_Report_PACKET.pdf.

³² *Id.* at 9.

³³ City of Salem, *Responding to Sheltering in Public Spaces* (Feb. 26, 2024), <https://www.cityofsalem.net/government/shaping-salem-s-future/housing-shelter/learn-about-city-efforts-to-address-homelessness/responding-to-sheltering-in-public-spaces>.

Smaller communities face similar challenges. In Port Orchard, Washington (population 17,089³⁴), city officials removed over 5 tons of trash, human waste, cardboard, and abandoned tents and tarps from a single encampment.³⁵ Between May 2023 and January 2024, Pendleton, Oregon (population 17,070³⁶) spent over \$60,000 in contractor fees for camp clean-ups.³⁷

A new shelter opened in Sweet Home, Oregon in 2023.³⁸ Sweet Home reports that it has made other efforts to provide services to unhoused individuals. For example, the city provides overflow camping on public property when the shelter is full, lockers for homeless individuals to securely store belongings, lock boxes to securely charge cell phones, and has worked with local partners to increase mental health and addiction recovery services. Nonetheless, Sweet

³⁴ U.S. Census Bureau, *Quickfacts: Port Orchard, Washington*, <https://www.census.gov/quickfacts/fact/table/portorchardcitywashington,US/PST045222> (last visited Feb. 28, 2024).

³⁵ Elisha Meyer, *Despite Cleanup, Neighbors Feel Unsafe as Trash, Homeless Remain*, PORT ORCHARD INDEPENDENT (Feb. 15, 2023), <https://www.kitsapdailynews.com/news/despite-cleanup-neighbors-feel-unsafe-as-trash-homeless-remain/>.

³⁶ U.S. Census Bureau, *QuickFacts: Pendleton, Oregon*, <https://www.census.gov/quickfacts/fact/table/pendletoncityoregon/PST045223>, (last visited Feb. 23, 2024).

³⁷ John Tillman, *Halfway Company Wins Pendleton Contract to Clean up Homeless Encampments*, EAST OREGONIAN (Feb. 10, 2023), https://www.eastoregonian.com/news/local/halfway-company-wins-pendleton-contract-to-clean-up-homeless-camps/article_9486fe02-a89c-11ed-be4d-17e098decb33.html.

³⁸ Benny Wescott, *Homeless Shelter Opens in Sweet Home*, LEBANON LOCAL (Jan. 25, 2023), <https://www.lebanonlocalnews.com/homeless-shelter-opens-in-sweet-home/>.

Home declared a state of emergency in March 2023 due to people experiencing homelessness.³⁹

Relatedly, small towns often do not have the resources to provide services and shelter beds to individuals experiencing homelessness, 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 people experiencing homelessness in a small town. *Compare Martin*, 920 F.3d at 617 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).

Homeless encampments are not safe for anyone, including those who live in them. In Portland, Oregon, 315 people died while homeless in 2022.⁴⁰ In Multnomah County, Oregon the mortality risk of unhoused individuals was nearly 6 times higher for all causes of

³⁹ Benny Wescott, *City of Sweet Home Declares Homeless State of Emergency*, LEBANON LOCAL (Mar. 10, 2023), <https://www.lebanonlocalnews.com/city-of-sweet-home-declares-homeless-state-of-emergency/>.

⁴⁰ Sophie Peel, *315 Homeless Portlanders Died in 2022, Multnomah County Says*, WILLAMETTE WEEK (Dec. 20, 2023) <https://www.wweek.com/news/city/2023/12/20/315-homeless-portlanders-died-in-2022-multnomah-county-says/>; *see also* Rebecca Ellis, *70% of Pedestrians Killed in Portland Traffic Crashes Last Year Were Homeless, Report Finds*, OPB (Feb. 3, 2022), <https://www.opb.org/article/2022/02/03/70-percent-pedestrians-hit-cars-portland-were-experiencing-homelessness/> (noting that 70% of Portland pedestrians hit by cars are homeless).

death, 37 times higher for drug overdoses, and 32 times higher for homicide, as compared to the general population.⁴¹ Also, Multnomah County is currently battling a cluster of cases of antibiotic-resistant shigellosis among people experiencing homelessness.⁴²

The inability to manage encampments also exposes cities to legal liability from other groups. For example, last year the City of Portland settled a lawsuit that alleged tents, encampments, and accompanying debris on sidewalks violated the Americans with Disabilities Act.⁴³

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, public waterways) but have no involvement in providing shelter or other services to people experiencing homelessness. For example, the Klamath Irrigation District operates on federal lands and has been tasked by the Bureau of Reclamation with enforcement of 43 C.F.R. part 423. This regulation, among other things, prohibits interference with agency operations, disorderly

⁴¹ Multnomah County, *Domicile Unknown: Review of deaths among people experiencing homelessness in Multnomah County in 2022*, at 5, (Dec. 2023), <https://multco-web7-psh-files-usw2.s3-us-west-2.amazonaws.com/s3fs-public/Domicile-Unknown-2022-v3.pdf>.

⁴² Multnomah County Health Department, *What to Know About Shigella*, (Jan. 4, 2024), <https://www.multco.us/health/news/what-know-about-shigella>.

⁴³ 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>.

conduct, fires under certain circumstances, and trespassing. *See* 43 C.F.R. §§ 423.22 (interference with agency operations and disorderly conduct), 423.24 (trespassing), 423.31 (fires). Irrigation District officials report that unpermitted public camping results in vandalism, fires, and sanitation issues among other problems, which interferes with the district's ability to comply with these requirements.

In sum, unfettered public camping wreaks havoc on local communities. The Ninth Circuit's precedent in this area limits the tools available to municipalities trying to respond to this urgent but complicated problem.

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

Local governments in the Ninth Circuit have not been idle in the face of the growing crisis of homelessness. In March 2023, Oregon passed a \$200 million package to combat homelessness, which includes additional funding for shelter beds.⁴⁴ The City of Portland alone allocated \$85 million for housing and services to address homelessness in 2022-2023, and the tri-county metropolitan area⁴⁵ passed a tax measure in 2020

⁴⁴ Nicole Hayden, *\$200 Million Housing, Homelessness Package clears Legislature*, OREGONLIVE (Mar. 21, 2023), <https://www.oregonlive.com/politics/2023/03/200-million-housing-homelessness-package-clears-legislature.html>.

⁴⁵ Comprised of Washington, Clackamas, and Multnomah counties in Oregon.

that is expected to raise \$2.5 billion for homelessness services by 2030.⁴⁶

Portland plans to add hundreds of additional village-style shelter beds in the coming months and expects to have a total of 780 village-style beds by the end of 2024.⁴⁷ Portland has also allocated \$2 million to open a new mental health treatment facility with over 70 beds this fall.⁴⁸

The City of Boise, Idaho leads a public-private partnership of over 30 agencies that provides supportive housing to residents experiencing homelessness.⁴⁹ The City of Salem, Oregon allocated over \$23 million in fiscal years 2022 and 2023 to homeless services.⁵⁰ In

⁴⁶ 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-drugs>.

⁴⁷ Courtney Vaughn, *Portland Aims to Have 780 Village-Style Shelter Beds Open by End of 2024*, PORTLAND MERCURY (Feb. 8, 2024), <https://www.portlandmercury.com/news/2024/02/08/47024179/portland-aims-to-have-780-village-style-shelter-beds-open-by-end-of-2024>.

⁴⁸ City of Portland, *City of Portland to Allocate \$2M for 70-bed Behavioral Health Treatment Center in Central City* (Jan. 4, 2024), <https://www.portland.gov/wheeler/news/2024/1/4/city-portland-allocate-2m-70-bed-behavioral-health-treatment-center-central>.

⁴⁹ City of Boise, *Ending Family Homelessness*, <https://www.cityofboise.org/departments/planning-and-development-services/housing-and-community-development/homelessness/ending-family-homelessness/> (last visited Feb. 28, 2024).

⁵⁰ Whitney Woodworth, *Salem City Council to Review Spending on Homeless Services, More at Monday Meeting*, STATESMAN JOURNAL (Sept. 10, 2022), <https://www.statesmanjournal.com/>

Oregon's Marion and Polk counties, officials and community partners added 125 shelter beds in 2023 and during that same time prevented 2,144 people from entering homelessness and rehoused 330 people.⁵¹ And in Spokane, the city and Spokane County spent a combined \$30 million on homeless services in 2022.⁵²

Local governments in the Ninth Circuit have stepped up to help address the homelessness crisis. However, city budgets are stretched thin and local governments are often prohibited by state law from carrying a deficit. 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 Amendment does not require such a choice, and local

story/news/local/2022/09/10/salem-council-review-homeless-services-spending-traffic-plan-speed-bump-update-climate-action-plan/68034871007/.

⁵¹ City of Salem, *Expanding Housing and Shelter* (Feb. 5, 2024), <https://www.cityofsalem.net/government/shaping-salem-s-future/housing-shelter/learn-about-city-efforts-to-address-homelessness/responding-to-sheltering-in-public-spaces>.

⁵² 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/>.

governments in the Ninth Circuit cannot afford to make it.



CONCLUSION

For the reasons stated in the Petitioner's Brief and this amicus curiae brief, this Court should overturn the Ninth Circuit's decisions in *Martin* and *Johnson*.

Respectfully submitted,

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March 4, 2024

PHOTOGRAPHS TAKEN BY AMICI CURIE¹

**Trash, fire debris at a
vacated encampment in Portland, Oregon**



¹ The photographs in this appendix were taken by Amici and their members.

**Trash left behind at homeless encampment
in Pendleton, Oregon**



Encampment in Beaverton, Oregon



Campsite in Portland, Oregon



Campsite in Spokane, Washington



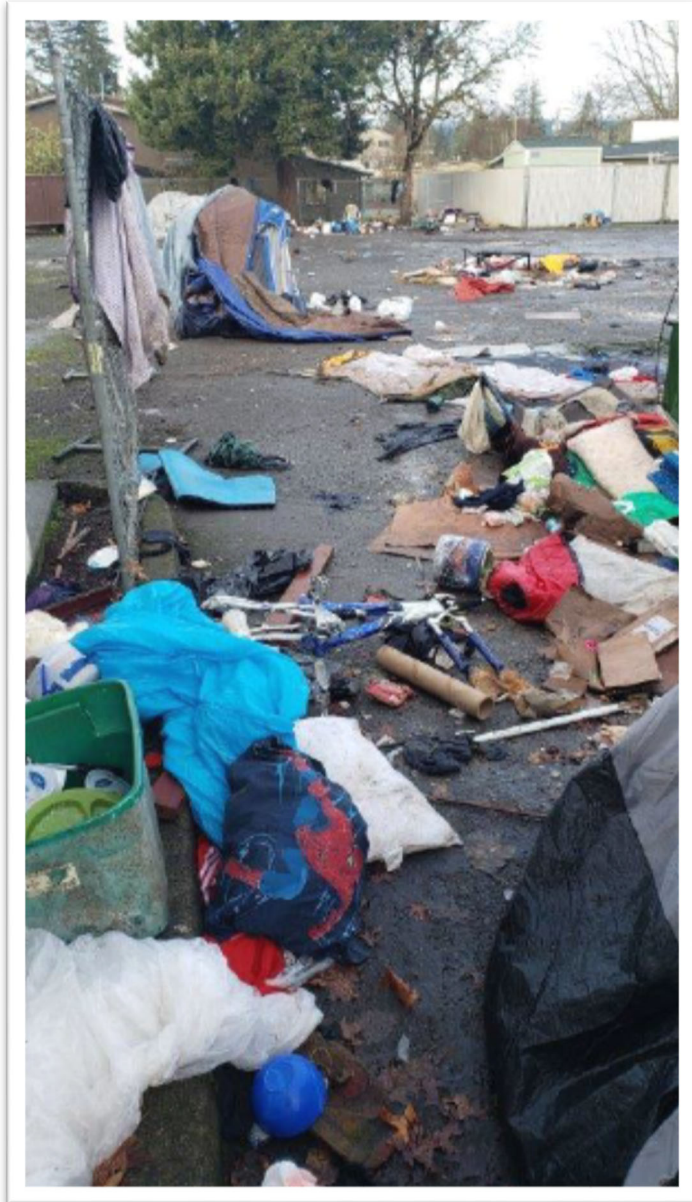
Campsite in Portland, Oregon



**Needles and trash from a campsite cleanup
in Pendleton, Oregon**



**Trash and camping equipment left behind
in Sweet Home, Oregon**



App.6a

**Recreational and other vehicles,
makeshift structures on private property
in Airway Heights, Washington**



Bridge abutment in Klamath Falls, Oregon that has been excavated and used as an encampment

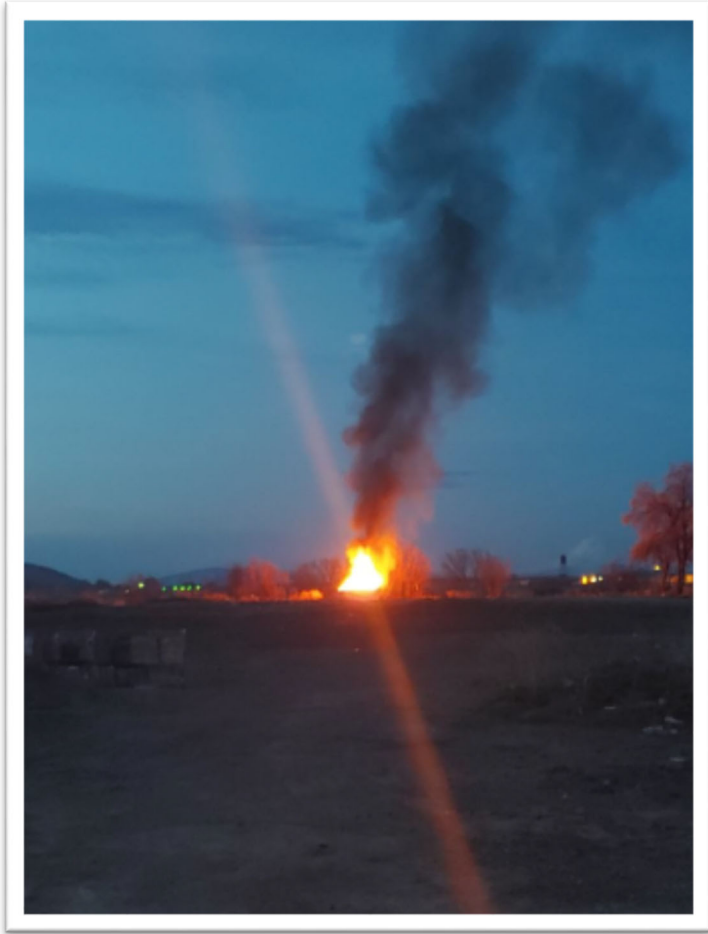


**Semi-permanent camping structure and tent on
Central Oregon Transportation District property**



App.9a

**Fire started by unpermitted campers
that damaged irrigation infrastructure at
Klamath Irrigation District**

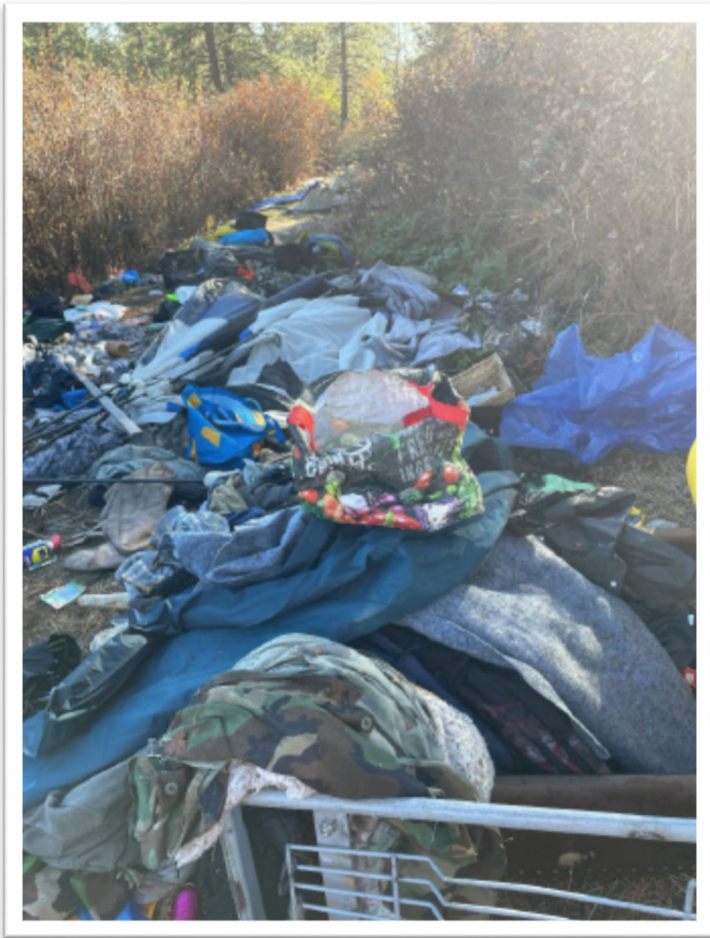


App.10a

Encampment fire left burning in multiple locations in Umatilla County Fire District No. 1



**Abandoned possessions strewn along a paved
40-mile pedestrian and non-motorized vehicle
trail in Spokane Valley, Washington**



Garbage and debris collected from homeless encampment near Spokane, Washington



Homeless encampment in Portland, Oregon

