

No. 19-247

---

---

IN THE  
*Supreme Court of the United States*

---

CITY OF BOISE,

*Petitioner,*

v.

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

*Respondents.*

---

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

---

**BRIEF OF *AMICI CURIAE*  
INTERNATIONAL DOWNTOWN  
ASSOCIATION,  
CALIFORNIA DOWNTOWN ASSOCIATION,  
CENTRAL CITY EAST ASSOCIATION OF LOS  
ANGELES, HOLLYWOOD PROPERTY  
OWNERS' ALLIANCE, HISTORIC CORE  
BUSINESS IMPROVEMENT DISTRICT  
PROPERTY OWNERS ASSOCIATION, AND  
DOWNTOWN PROPERTY OWNERS  
ASSOCIATION IN SUPPORT OF PETITIONER**

---

MATTHEW D. UMHOFER  
ELIZABETH A. MITCHELL

*Counsel of Record*

SPERTUS, LANDES, & UMHOFER LLP  
617 W. 7TH STREET, SUITE 200  
LOS ANGELES, CA 90017  
(213) 205-6520  
emitchell@spertuslaw.com

---

---

*Counsel for Amici Curia*

**TABLE OF CONTENTS**

	<b>PAGE</b>
INTEREST OF AMICI CURIAE.....	1
INTRODUCTION AND SUMMARY OF ARGUMENT .....	2
ARGUMENT .....	6
I.    The Consequences of the Ninth Circuit’s Decision Have Been Devastating to its Cities .....	6
A. Los Angeles California .....	7
B. Seattle, Washington .....	11
C. Sacramento, California .....	14
D. Hollywood, California.....	17
II.   Outside the Ninth Circuit, the Ambiguous Language and Circuit Split is Wreaking Havoc.....	19
A. Austin, Texas.....	20
B. Chicago, Illinois .....	22
C. Indianapolis, Indiana .....	24
D. Baltimore, Maryland.....	25
CONCLUSION.....	27

## TABLE OF AUTHORITIES

<b>Cases</b>	<b>Page(s)</b>
<i>Martin v. City of Boise</i> 920 F.3d 584 (9th Cir. (2019) .....	<i>passim</i>
<b>Court Documents</b>	
Declarations in Support of Motion to Intervene at Docket No. 120-3, <i>Mitchell v. City of Los Angeles, et al.</i> , (C.D. Cal. June 24, 2019) (No. 16:cv-01750-SJO-JPRx).....	9
<b>Other Authorities</b>	
Mitchell Armentrout, <i>Massive Tent City cleanup biggest in recent memory, residents say</i> , Chicago Sun Times (Mar. 29, 2019), <a href="https://chicago.suntimes.com/2019/3/29/18458338/massive-">https://chicago.suntimes.com/2019/3/29/18458338/massive-</a> .....	23
Hayleigh Colombo, <i>Indianapolis grappling with increase in deaths among homeless population</i> , Indianapolis Business Journal (Jan. 24, 2019), <a href="https://www.ibj.com/articles/72185-indianapolis-grappling-with-increase-in-deaths-among-homeless-population">https://www.ibj.com/articles/72185-indianapolis-grappling-with-increase-in-deaths-among-homeless-population</a> .....	24
Castellow, J., Kloos, B., Townley, G., <i>Previous homelessness as a risk factor for recovery from serious mental illnesses</i> . Community Mental Health Journal, vol. 51, pp. 674-84 (Aug. 2015)...	14
Mayor Eric Garcetti, <i>LA Homeless Growing Faster than Homeless Housing</i> , CityWatch (June 13, 2019) .....	7

- Martin Gould, *California's homeless crisis engulfs its capital as Sacramento's business owners tell how they confront naked junkies and streets covered in feces, urine, and syringes—with no solution in sight*, Daily Mail (Aug. 28, 2019, 12:19 PM), <https://www.dailymail.co.uk/news/article-7396585/Californias-homeless-crisis-engulfs-capital-Sacramentos-people-confront-naked-junkies.html>..... 16
- Joel Grover and Amy Corral, *LA's Rat Problem Grows Even After City Cleans Up Trash Heaps Revealed by NBC4 I-Team*, NBC Los Angeles (June 10, 2019, 10:24 PM), <https://www.nbclosangeles.com/news/local/LA-Crawling-With-Rodents-511112152.html>..... 8
- Joel Grover and Amy Corral, *Your Insurance is Canceled Because of Homeless Tent Fires*, NBC Los Angeles (Sept. 23, 2019, 10:54 PM), <https://www.nbclosangeles.com/news/local/LA-Homeless-Encampment-Fires-Insurance-Rates-Tents-Homelessness-561145811.html>..... 10
- Theo Hayes, *Crews working to offer resources to homeless during bitter cold*, WBAL TV 11, show transcript (Jan. 30, 2019, 5:17 PM), <https://www.wbaltv.com/article/baltimore-homeless-bitter-cold-conditions/26090995>..... 27
- Matthew Hendrickson, *Woman sexually assaulted at homeless encampment after man promised to find her shelter*, Chicago Sun Times (July 11, 2019, 4:48 PM), <https://chicago.suntimes.com/2019/7/11/20690686/tent-city-homeless-camp-chicago-sexual-assault-crime-kenneth-horner> ..... 24

- Evelyn Holmes, *Propane tank explodes at South Loop tent city, 80 homeless people forced to move*, ABC Chicago (Jan. 30, 2019), <https://abc7chicago.com/propane-tank-explodes-at-south-loop-tent-city-80-homeless-people-moved/5113652/> ..... 23
- Eric Johnson, *Seattle is Dying*, KOMO News (Mar. 14 2019), <https://komonews.com/news/local/komo-news-special-seattle-is-dying> ..... 11, 13
- Eric Leonard, *Crime Amongst LA’s Homeless Population Rises Again*, NBC Los Angeles (Feb. 13, 2019, 3:06 AM), <https://www.nbclosangeles.com/news/local/Crime-Amongst-LAs-Homeless-Population-Rises-Again-505807741.html>) ..... 8
- Scott P. Lindsay, *System Failure: Report on Prolific Offenders in Seattle’s Criminal Justice System* (Feb. 2019), <https://downtownseattle.org/files/advocacy/system-failure-prolific-offender-report-feb-2019.pdf> ..... 12
- Steve Lopez, *Column: He died Sunday on a West L.A. sidewalk. He was homeless. He is part of an epidemic*, L.A. Times (Sept. 4, 2019, 10 AM), <https://www.latimes.com/california/story/2019-09-04/homeless-deaths-los-angeles-coroner-record> ..... 9
- Tom Schuba, *Homeless man shot to death at “Tent City” in South Loop: state police*, Chicago Sun Times (Feb. 19, 2019), <https://chicago.suntimes.com/2019/2/19/18355088/homeless-man-shot-to-death-at-tent-city-in-south-loop-state-police> ..... 23
- Nicholas Slayton, *Crime Rises Again in Downtown*, Los Angeles Downtown News (Jan. 15, 2019),

- [http://www.ladowntownnews.com/news/crime-rises-again-in-downtown/article\\_19c44618-1834-11e9-8cc9-0b48238c2c95.html](http://www.ladowntownnews.com/news/crime-rises-again-in-downtown/article_19c44618-1834-11e9-8cc9-0b48238c2c95.html)..... 8
- Treffert, DA, *Dying With Their Rights On*, American Journal of Psychiatry, 130(9), p. 1041 (Sept. 1973) ..... 14
- Odette Yousef, *Where can homeless people pitch tents in Chicago?*, Chicago Coalition for the Homeless (Oct. 23, 2017), <https://www.chicagohomeless.org/wbez-can-homeless-people-pitch-tents-chicago/> ..... 22
- Homeless woman sexually assaulted in “Tent City” in Chicago*, Fox Chicago (Apr. 3, 2019), <https://www.fox32chicago.com/news/homeless-woman-sexually-assaulted-in-tent-city-in-chicago> ..... 23
- Sacramento County Department of Health Services, *Sacramento County 2018 Homeless Deaths Report: 1/1/2017-12/31/2017* (Nov. 16, 2018), <https://dhs.saccounty.net/PRI/Documents/Health%20Care%20for%20the%20Homeless/Meeting%20Materials/2018/20181116/Homeless%20Deaths%20Report%202017%20-%20PowerPoint%20Presentation.pdf> ..... 14

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

The Ninth Circuit’s decision in *Martin* has inflamed the homelessness crisis by fomenting uncertainty among local governments struggling to balance their need for clean and safe streets, and the civil rights of those who live on them. And as governments’ hands are being tied, the private sector is left little choice but to intervene for the public good or risk ruin.

The inter-circuit inconsistencies fostered by *Martin* and the ambiguous language used by the Ninth Circuit has flummoxed local governments throughout the country—which in turn has had a profoundly troubling impact on homeless and housed alike. As cities withdraw services, public safety, health, and welfare declines rapidly. When citizens are left in chaos, compassion and empathy begin to erode. This Court’s intervention is necessary to resolve the conflict among circuits and clarify the role local government is permitted to take to ensure the safety of all its citizens.

The International Downtown Association (“IDA”) is a trade association with voluntary membership aimed at urban place management organizations, not-for-profit quasi-government entities managing city or town centers. IDA is a world leader and champion for vital and livable urban centers. Its members include

---

<sup>1</sup> Rule 37 statement: All parties received timely notice of *amici*’s intent to file this brief; their consent letters have been lodged with the Clerk. No counsel for any party authored this brief in whole or in part and no person or entity other than *amici* and its members funded its preparation or submission.

business improvement districts, community benefit districts, downtown development authorities, town center managers, and city agencies that oversee the development of the municipalities' city centers. California Downtown Association, like IDA, is a representative membership association with the primary purpose of exchanging information pertinent to business districts and formulating solutions to mutually shared problems, including helping public-private partnerships manage the increasingly difficult issues surrounding those experiencing homelessness.

Central City East Association is the principal advocate for property owners, businesses, employees, and residents of the area known as "Skid Row" in Los Angeles. Skid Row has become known as the epicenter for homelessness in this country, with the highest concentration of homeless, both sheltered and unsheltered, in its 50-square blocks. Hollywood Property Owners' Alliance manages business improvement districts in Hollywood, California. Historic Core Business Improvement District Property Owners Association, and Downtown Property Owner Association manage business improvement districts in their areas: the "Historic Core" section of Downtown Los Angeles, and the "Fashion District" section of Downtown Los Angeles respectively.

## **INTRODUCTION AND SUMMARY OF ARGUMENT**

With *Martin* handcuffing local governments' ability to actively address homeless issues, the private sector has been forced to fill that void, conducting



outreach, cleaning up streets, and connecting homeless with services at significant cost. But without traditional police powers, local management entities are unable to protect themselves or their member-businesses from the effects of government abandonment. The Ninth Circuit's decision thus erodes local communities not only on a basic humanitarian level, but also undermines the very economic engine that powers most of these cities.

Throughout the Ninth Circuit, ordinary people—small business owners, shop clerks, students—find themselves unable to secure basic government assistance in matters of safety and sanitation. Los Angeles' Skid Row is a prime example. Skid Row, a 50-square-block area in the heart of Downtown L.A., has long been a locus of human hardship. But in large part because of the Ninth Circuit's decision in *Martin v. City of Boise*, the hardship has become inhumanity.

According to the Los Angeles Homeless Services Authority, almost 5,000 homeless individuals live in the one-square-mile of Skid Row, and approximately 60 percent are unsheltered and living on the sidewalks. The build-up of property makes it impossible to determine what items are a health or safety risk. The mountains of garbage, food waste, human waste, and contaminated items are breeding grounds for rats, which in turn breeds disease. The anonymity afforded by tents permits criminals to peddle their illicit wares—weapons, narcotics, even humans—undisturbed. In one of the most prosperous cities in the country, innocent people—small children

whose parents lost their jobs, residents who are trying desperately to claw their way out of the cycle of homelessness and poverty, small business owners trying to make a living—now face conditions worse than those found in developing countries. The uncertainty unleashed by *Martin* has unquestionably inhibited the ability of local government to address this human tragedy, and as a result, the problem has multiplied.

Other cities and towns throughout the Ninth Circuit are experiencing similar crises. In Seattle, narcotics possession of up to 3 grams is tolerated, which—combined with the explosion of persons living in public—has led to an open-air drug market where heroin is injected in front of children and people wander through the streets in a drug-induced stupor. Long-standing businesses are closing their doors due to crime. In one district in Sacramento, tent encampments have increased 466% since *Martin* was decided; crime both by and on homeless individuals has risen. And in Hollywood, where the community has historically embraced its homeless residents, the systems and services have been overwhelmed. As much as the community fights to lift those experiencing homelessness out of poverty, without incentive to stay clean and off the streets, many—if not most—revert to old habits. Throughout the Ninth Circuit, our cities have lost one of their most important tools to ensure safety and sanitation while

connecting homeless persons with services: enforcement of the law.

The legal conflict between the circuits forces cities nationwide to choose between their respective obligations to maintain safe and clean cities and fear of violating the constitution. The private sector, through business management associations, has made every effort to fill the shoes of local governments to find solutions, but without constitutional authority to regulate conduct, that effort is overwhelmed by the depth of the crisis.

Just three months ago in Austin, Texas the city council repealed or significantly amended several ordinances due to the increasing confusion about government's authority in regulating its own streets. The number of people sleeping on sidewalks in downtown Austin has since increased by 135%, causing pandemonium in the community. In cities like Baltimore, Indianapolis, and Chicago, local governments remain in flux, unsure about how to address these issues in ways that are both humane and constitutionally permissible. This has resulted in tragedy on the deepest levels: people dying subject to the elements, violent attacks on and by homeless individuals, sexual assaults on homeless women, the mentally ill and drug-addicted left to languish without the means to help themselves or mental acuity to accept help from others.

With the lack of clarity in the law, local governments have delegated by abnegation to the private sector which is limited in its capabilities.

Allowing our homeless neighbors to reside on the streets is no good for anyone. For the businesses this means a struggle. For the homeless, this may mean death. For all of us it means a loss of humanity.

## **ARGUMENT**

### **I. The Consequences of the Ninth Circuit's Decision Have Been Devastating to its Cities**

Today's homeless crisis has been building for years. Simultaneously, urban centers, the traditional powerhouse of the local economy, have experienced a resurgence in development, with intentional efforts to encourage community at all levels. Due to various policy decisions and legal challenges, city governments have become increasingly ineffective at managing this crisis. And so the private sector has embraced this responsibility: Centro San Antonio invested \$140,000 in homeless outreach and street clean-up programs; Downtown Seattle Association formed a Human Services Committee to identify roles for the business community in each of the city's most prominent homeless issues; Washington D.C.'s Downtown Business Improvement District manages and coordinates services at the Downtown Service Center; Hollywood's Entertainment Business Improvement District helped established Hollywood 4WRD ("Four Walls, a Roof, and a Door"), a broad coalition coming together to coordinate homeless outreach, expand housing alternatives, connect homeless person with existing services, and develop new services as needs are identified. But without the constitutional authority to regulate behavior and

enforce order, the crisis grown larger than the private sector can manage. With the lower court's order in *Martin v. City of Boise*, cracks emerge in the dam. The practical result has been nothing short of disastrous for the housed and the homeless alike.

### **A. Los Angeles, California**

Los Angeles current ability to house all homeless within the city,<sup>2</sup> and will not for at least a decade, if ever. Thus, as accurately predicted, is has simply “abandon[ed] enforcement of a host of laws regulating public health and safety.” *Martin v. City of Boise*, 920 F.3d 584, 594 (9th Cir. 2019) (Smith, J., dissenting).

Citing *Martin*, the City of Los Angeles entered into a settlement agreement earlier this year permitting homeless individuals to live and maintain a nearly unlimited amount of property on the sidewalks in Skid Row, a 50-square block area in the heart of downtown L.A. The Los Angeles City Attorney has explained that after *Martin*, the city had no choice but to abandon enforcement of both its anti-camping and property restriction laws. Now that policy has extended city-wide and unincorporated areas of Los Angeles County have followed suit.

According to Los Angeles Housing Services Authority, the homeless count in Los Angeles has

---

<sup>2</sup> Los Angeles' homeless population is growing at a rate that far-outpaces its housing provision, with no plan even being discussed that would meet *Martin's* high standard. Mayor Eric Garcetti, *LA Homeless Growing Faster than Homeless Housing*, CityWatch (June 13, 2019).

nearly doubled in the last three years; Los Angeles County has nearly 60,000 homeless persons, approximately 75% of whom are unsheltered. By far the highest concentration of those unsheltered is found in Skid Row. With increased population density, unlimited property accumulation has become a hotbed for flea-infested rats and other vermin, which are largely responsible for the recent outbreaks of medieval disease.<sup>3</sup> Large items also obstruct the free passage and use of the streets and sidewalks. With increased homeless encampments has come rampant drug sales and use which in turn provides a platform for violent assaults and property crimes.<sup>4</sup> The structures, garbage, human waste, and other detritus allowed to flourish creates an ongoing situation throughout Skid Row that is crippling for local

---

<sup>3</sup> See e.g., Joel Grover and Amy Corral, *LA's Rat Problem Grows Even After City Cleans Up Trash Heaps Revealed by NBC4 I-Team*, NBC Los Angeles (June 10, 2019, 10:24 PM), <https://www.nbclosangeles.com/news/local/LA-Crawling-With-Rodents-511112152.html>

<sup>4</sup> Eric Leonard, *Crime Amongst LA's Homeless Population Rises Again*, NBC Los Angeles (Feb. 13, 2019, 3:06 AM), <https://www.nbclosangeles.com/news/local/Crime-Amongst-LAs-Homeless-Population-Rises-Again-505807741.html>); Nicholas Slayton, *Crime Rises Again in Downtown*, Los Angeles Downtown News (Jan. 15, 2019), [http://www.ladowntownnews.com/news/crime-rises-again-in-downtown/article\\_19c44618-1834-11e9-8cc9-0b48238c2c95.html](http://www.ladowntownnews.com/news/crime-rises-again-in-downtown/article_19c44618-1834-11e9-8cc9-0b48238c2c95.html) (“The 2018 figures were higher than 2016 levels in almost every category.”)

businesses, unlivable for residents, and often deadly for those on the street.<sup>5</sup>

The massive build-up of property and tents has made the sidewalks unpassable: Charles Van Scoy, who is restricted to a wheelchair is trapped in his own home; Karyn Pinsky must walk with her young son in a stroller in the middle of traffic.<sup>6</sup> The Inner-City Arts Center had to hire security to walk with students and staff to and from campus. *Id.* Business owners in the area have suffered: customers cannot access their businesses or are declining to hire them due to conditions on the street, they are spending hundreds of thousands of dollars on increased sanitation and security measures and cannot maintain employees. *Id.* Joseph Burke has lost tenants and hundreds of thousands of dollars in client accounts. *Id.* Residents and workers throughout the area are confronted daily by disease, illicit drug sales and use, prostitution, and general filth and squalor. *Id.* A single mother living in the heart of skid row with her child regularly has to disinfect her home because of the fleas that ride on their pant legs as they walk past homeless encampments surrounding their building. People are

---

<sup>5</sup> Steve Lopez, *Column: He died Sunday on a West L.A. sidewalk. He was homeless. He is part of an epidemic*, L.A. Times (Sept. 4, 2019, 10 AM), <https://www.latimes.com/california/story/2019-09-04/homeless-deaths-los-angeles-coroner-record>

<sup>6</sup> *See* Declarations in Support of Motion to Intervene at Docket No. 120-3, *Mitchell v. City of Los Angeles, et al.*, (C.D. Cal. June 24, 2019) (No. 16:cv-01750-SJO-JPRx).

openly using drugs, urinating and defecating in public. *Id.*

This travesty is not limited to the Skid Row area: in the nearby Fashion District, approximately 400 people sleep on the streets every night without basic services: trash pickup, toilets, showers, sinks, kitchen, or laundry. At the flower markets, customer cars are broken into and tents prevent patrons from loading their vehicles. The industrial buildings have endured fires from homeless camps, where heaters are set up to keep people warm, open air fires are used to cook food, utility wiring is tampered with to provide electricity, and arson is committed due to some drug or property dispute. In the first six months of 2019, there were 65 fires just in this one small area. Businesses are being dropped by insurance companies because of the fire risks due to the homeless living on their sidewalks.<sup>7</sup> Buildings have had to drastically increase security. The Fashion District Business Improvement District purchased hazmat suits and special cleaning mats for their maintenance workers who clean the sidewalks.

Local businesses have had to close public restrooms to *all* guests due to pathogenic remnants and misuse of such spaces for drug dealing, sleeping, exposure, and assaults. The frequency of criminal

---

<sup>7</sup> Joel Grover and Amy Corral, *Your Insurance is Canceled Because of Homeless Tent Fires*, NBC Los Angeles (Sept. 23, 2019, 10:54 PM), <https://www.nbclosangeles.com/news/local/LA-Homeless-Encampment-Fires-Insurance-Rates-Tents-Homelessness-561145811.html>



conduct has expanded to the point where even determined law enforcement officials can respond only to the most violent conduct—and typically only after serious injury has occurred. Recidivism is rampant as even the few arrested quickly return to the streets.

A significant investment has been made in downtown Los Angeles to build large-scale housing developments to accommodate a larger population. Yet now with the very real threats of exposure to disease, hazardous waste, violence and crime on their doorsteps, that population growth is beginning to reverse; taking with it the economic engine driving the local economy and those providing a significant source of the much-needed homeless support.

### **B. Seattle, Washington**

Over the last several years Seattle has experienced a steady withdrawal of City services involving individuals experiencing homelessness, peaking last year with the *Martin* decision. Compounding this problem is the federal consent decree Seattle Police Department has been under, largely surrounding its use of force (many involving homeless persons). While the use of police was in many instances unsuitable, no other city program has been instituted to replace police contacts.

The City of Seattle has also stopped arresting people with less than three grams of narcotics.<sup>8</sup> This

---

<sup>8</sup> Eric Johnson, *Seattle is Dying*, KOMO News (Mar. 14 2019), <https://komonews.com/news/local/komo-news-special-seattle-is-dying>.

has created an environment of open-air drug use, with people shooting heroin and smoking methamphetamine in public with impunity. *Id.* Many of these narcotics users are also suffering from mental health issues, turning to opioids and other street drugs to self-medicate. The proponents of this approach cite the same arguments as the majority opinion in *Martin*: that drug addicts are compelled to use narcotics, and if they happen to be in public that is not their fault. This drug culture is fueled by shoplifting and trading in stolen goods, which are often not prosecuted and as a result barely reported.<sup>9</sup> Shopkeepers must rotate managers and clerks to ease the psychological burden of being on the front line of this crisis.

Seattle's regional economic boom has priced out the entry and mid-level wage earners; as a result, there are a high number of people who are connected to Seattle through health care needs, jobs, and the drug market but cannot afford housing. The mental health system is broken, with very few inpatient beds available. Homeless persons suffering from severe mental illnesses are held until they are minimally stable, then released without follow-up care. Certainly

---

<sup>9</sup> Scott P. Lindsay, *System Failure: Report on Prolific Offenders in Seattle's Criminal Justice System* (Feb. 2019), <https://downtownseattle.org/files/advocacy/system-failure-prolific-offender-report-feb-2019.pdf>

not all these issues were created by the courts, but they do provide the fuel to the Ninth Circuit's match.

The issues outlined above have created a convergence zone in downtown Seattle of people living on the streets in tents or make-shift lean-tos, without bathrooms, using narcotics in the open, accumulating property and refuse *en masse*, while city officials stand by powerless to act.<sup>10</sup>

Lou Bond manages Melbourne Tower, a beautiful ten-story office building in the heart of downtown Seattle near the city's famous Pike Place Farmers Market, the Convention Center, and the waterfront. In the past year he has seen fighting, beatings, stabbings, and shootings; he watches people inject heroin all over their bodies, his staff cleans up needles and human waste multiple times a day. He witnesses people stealing and running out of stores, selling stolen merchandise on the sidewalks, and passed out on the sidewalks in front of his building. He calls police and they tell him there is nothing they can do.

Last month Tija Petrovich was attending an art walk presentation in Pioneer Square when her partner was attacked by a mentally unstable homeless man who picked her up off her feet and slammed her into the wall, then turned to attack others in the group. The month prior to that Tija's life was threatened. Before that she was attacked from behind by a homeless woman with a bag of glass bottles and metal objects. Studies have shown that

---

<sup>10</sup> Johnson, *Seattle is Dying*, *supra*.

increased time spent experiencing homelessness leads to higher levels of psychiatric distress, and lower rates of recovery from mental illnesses.<sup>11</sup> By leaving society's defenseless to remain on the streets in the name of compassion and civil rights, we are ensuring their ultimate decline. By removing crucial tools from our local governments to get people help, the lower court in *Martin* is allowing them to die "with their rights on."<sup>12</sup>

### C. Sacramento, California

Sacramento's River District has long been home to multiple social services agencies and homeless individuals. While there are more than 400 shelter beds available in the district, there is also the highest concentration of tents on sidewalks and in parks. In July 2017, the tent count was under 30; today it is over 140 just in that one district. With a population of 1.5 million, Sacramento County counted 124 homeless-related deaths in 2017.<sup>13</sup> If you are homeless in

---

<sup>11</sup> Castellow, J., Kloos, B., Townley, G., *Previous homelessness as a risk factor for recovery from serious mental illnesses*. Community Mental Health Journal, vol. 51, pp. 674-84 (Aug. 2015).

<sup>12</sup> Treffert, DA, *Dying With Their Rights On*, American Journal of Psychiatry, 130(9), p. 1041 (Sept. 1973).

<sup>13</sup> Sacramento County Department of Health Services, *Sacramento County 2018 Homeless Deaths Report: 1/1/2017-12/31/2017* (Nov. 16, 2018), <https://dhs.saccounty.net/PRI/Documents/Health%20Care%20for%20the%20Homeless/Meeting%20Materials/2018/20181116/Ho>

Sacramento, your life expectancy is reduced by 33% (30 years for homeless women, 23 for homeless men).  
*Id.*

Vaughn Medford is the general manager for Sacramento Pipeworks, a climbing and fitness gym in the River District. His building is surrounded on three sides by homeless encampments, about which the City says it can do nothing due to the *Martin* decision. Recently one of the female residents from one of the tents broke a building window and flung a feces-filled towel inside; she returned later and attempted to heave a bag filled with urine through the same window. The month prior, one of his members cancelled his membership in a letter, noting: “This morning there was a man on the sidewalk outside the open garage door. From the weight room I could see him injecting IV drugs, his pants down and his genitals fully exposed. He was in view of a number of children who were also at the gym.” Due to the building’s surroundings, the children served by the center has been reduced drastically, from 1,558 in 2015 to only 500 projected in 2019.

Various management entities in Sacramento have partnered with a group called Downtown Streets Team who employ homeless individuals in beautification projects in exchange for gift cards. The program is effective, but only for those who want to utilize its services; for those who, due to mental health issues, drug addiction, or any other reason, wish to

remain on the street without lawful employment, there is no legal recourse.

According to the Downtown Sacramento Partnership homeless count, there has been a 47% increase in homeless persons living in public spaces from 2017 to 2019. Comparing the first half of 2019 in downtown Sacramento to the first half of 2018, 'Business robbery' increased 100%, 'Robbery of Person' increased over 50%, 'Business Burglary' increased 33% and 'Motor Vehicle Theft' increased by almost 30%. These increases not only reflect a change in the ability to manage the public spaces around businesses, but also an inability to manage criminal elements.

Salon owner Liz Novak had to shut down her salon because of the encampments outside her business, with its concomitant urine, feces, garbage, and crime; glass shop owner Robert Dutra was barricaded in his business for an hour with his four-year old child until the police could come.<sup>14</sup> The City needs tools to be able to address the issues on a case-by-case basis. If assistance is unwelcome or declined, city officials must still have the means to enforce and maintain public health and safety standards for the greater good of everyone, including the homeless. *Martin* has

---

<sup>14</sup> Martin Gould, *California's homeless crisis engulfs its capital as Sacramento's business owners tell how they confront naked junkies and streets covered in feces, urine, and syringes—with no solution in sight*, Daily Mail (Aug. 28, 2019, 12:19 PM), <https://www.dailymail.co.uk/news/article-7396585/Californias-homeless-crisis-engulfs-capital-Sacramentos-people-confront-naked-junkies.html>.

created a hot seat where the most vulnerable among us is left as prey for the predators, and somehow this is celebrated as progress.

#### **D. Hollywood, California**

Hollywood—a neighborhood within Los Angeles, but sufficiently distinct to require separate discussion—is home to four business improvement districts (“BIDs”), funded by self-imposed assessments on property owners to secure public services beyond what the city provides, such as additional waste management, security and street cleaning. The community was an early adopter of supportive housing models and proactively worked to find off-street solutions for Hollywood’s chronically homeless and those who found more heartbreak there than fame. *Martin* and its predecessors have, however, eroded Hollywood’s prior success. The area has experienced an increase in street encampments and in quality of life crime, as law enforcement efforts, hamstrung as they are, have been overwhelmed. Hollywood embraced the City’s “bridge home” project, an effort to temporarily house and ultimately stabilize seventy chronic homeless locals. But those operating the facility acknowledge that a substantial number of entrants choose not to follow even their few residential rules and return to the streets—where law enforcement is, by virtue of the practical impacts of *Martin*, unable to enforce anti-camping restrictions even for those who have refused shelter. Hollywood’s experience proves that even expensive temporary

shelter is no solution in the absence of coextensive law enforcement.

Amber Mead, a Hollywood resident, watched as police officers retrieved two machetes, drug paraphernalia, and bags of human waste from a tent blocking her path to work; she no longer considers walking a viable commuting option. Jim Moushoul, a small business owner, has had rocks hurled through his windows on multiple occasions and has to clean human waste from his business frontage on a daily basis, often all from the same offenders after arrest and prompt release. Public defecation, urination, masturbation, and other forms of exposure have become commonplace. Verbal and physical attacks on women has imprisoned female residents in their own homes and vehicles. Some businesses have taken to escorting employees to lunch or, worse, insulate them within office buildings by providing meals and other amenities so they never have to venture onto Hollywood's streets.

Since the opening of the "bridge home" facility six months ago, a project supported by the Hollywood Entertainment District BID, BID employees have conducted a weekly count of homeless throughout the district and have seen a 50% increase. A survey of nearly 1000 residents, business and property owners, and local employees had startling results: 75% described Hollywood as "very dirty/dirty" and 46% characterized Hollywood as "very unsafe/unsafe," attributing these conditions most often to homelessness. The top four issues respondents



considered most important for Hollywood were “homeless services” (83%), “cleanliness” (79%), “public safety” (67%), and “disruptive street behavior” (63%), again virtually entirely related to homeless encampments. All this despite some 60 organizations in Hollywood providing homeless services and the BID’s expenditure of \$2 million for supplemental street cleaning services, removal of 15 tons of trash per week from public homeless encampments, and \$3 million for safety and security services.

The Hollywood community has been a good citizen, welcoming a shelter and coordinating services and providers for the benefit of those living on the streets who truly need and want help. But without practical street-level enforcement of quality of life protections to discourage those who don’t want help from preying on everyone else—protections as important for those on the streets as for those who live, work, and visit Hollywood—this most famous “city” in the world, built on hope and visited by ten million people yearly, is able to offer less and less.

## **II. Outside the Ninth Circuit, the Ambiguous Language and Circuit Split is Wreaking Havoc**

Between the split of authority and the ambiguity in the *Martin* order, cities are left baffled about how to balance their obligations to maintain the safety, health and welfare of its citizens with constitutional rights of its homeless. Rather than grapple with these issues and face costly litigation, cities even outside the Ninth Circuit are throwing up their hands and

refusing to act at all. And just as in the Ninth Circuit, the practical result has been disastrous.

### **A. Austin, Texas**

Austin is suffering its own homelessness crisis. In June of this year, in direct response to the *Martin* decision and threats of nationwide litigation aimed at extending *Martin* to other jurisdictions, Austin amended multiple ordinances relating to homeless activities. It is no longer a crime to “camp” or sit/lie down in a public area unless that individual is “intentionally, knowingly, or recklessly” a health or safety threat or is making the use of public property “unreasonably inconvenient or hazardous.”

Before the amendments, officers had a 98 percent voluntary compliance rate; that is, they wrote citations only two percent of the time they encountered persons violating these ordinances. Typically, officers and other city workers were able to use these ordinances to incentivize homeless persons to utilize social services. With the new ordinance amendments, the number of people living on downtown sidewalks just in the last couple months has increased by 135 percent and homeless persons have no incentive to utilize services...so they don't.

Austin has consistently ranked in the top five safest large cities in the United States. Now downtown office tenants are declining to renew leases. Companies recently recruited to downtown are expressing regret and failing to expand or sustain Austin operations. Employees and residents report

being assaulted, aggressively pursued, and harassed on their way to and from offices. Hotels report that post-visitor survey show that an increasing number of travelers say they will never return. Meeting and convention groups are choosing to go to other cities citing incidents of aggressive behavior and the perception of lack of public safety as reasons. Residents are making plans to move out of downtown.

For the past three months, this issue has nearly consumed city management, city council members, the Downtown Austin Alliance (DAA), and many key stakeholders and citizens. It is driving a wedge into the community at a time when it needs to be united in its efforts to address homelessness. Incidents of retribution targeting the homeless or their property have been reported.

For many years the DAA has played a leadership role in efforts to address homelessness. Since July 1, there have been five community forums about the ordinances that drew attendance of approximately 4,000 people. At most events, the audiences have remained civil, but at others, attendees have become quite heated, expressing anger, and resentment; a clear reflection of compassion-fatigue.

In its September 18-20 meetings, the Austin City Council once again considered amending the ordinances. At a special-called Council meeting held on September 18, 270 citizens testified. And, contrary to the Council's stated intention to implement restrictions as more shelter, services and housing were made available, there have been no new

emergency shelter beds, navigation centers or services, temporary or permanent housing units created or approved. Council postponed the vote, citing the contentiousness of the meetings.

Without guidance from this Court, Austin remains paralyzed and its community in crisis. Its homeless—desperately in need of help—will begin to deteriorate and soon may resemble those in California.

### **B. Chicago, Illinois**

Chicago’s homeless response is inconsistent, based on a series of vague municipal codes, an ambiguous “Homeless Bill of Rights,” and legal settlements that may or may not be binding on the city.<sup>15</sup> While the city pays lip service to addressing its homeless population, it leans heavily on the business management associations, such as Chicago Loop Alliance, for primary contact. The Chicago Loop has outreach ambassadors, street clean-up teams and protocols in place to address concerns like aggressive panhandling or tents set up that block public rights-of-way. Yet when the situation goes beyond voluntary compliance, and criminal conduct needs to be

---

<sup>15</sup> Odette Yousef, *Where can homeless people pitch tents in Chicago?*, Chicago Coalition for the Homeless (Oct. 23, 2017), <https://www.chicagohomeless.org/wbez-can-homeless-people-pitch-tents-chicago/>.

addressed, city officials are reticent to act due to the uncertain legal climate.

There is a long-standing tent encampment in an area of Chicago known as “South Loop.” In January of this year, a propane tank exploded;<sup>16</sup> in February one man shot and killed another over an argument about a heater.<sup>17</sup> City workers came in and tried to connect residents with shelters and other housing, while cleaning the area; many refused and chose to stay.<sup>18</sup> In April a woman was sexually assaulted by a fellow resident.<sup>19</sup> In July, another woman was sexually assaulted and severely beaten after one of the encampment residents promised to provide her

---

<sup>16</sup> Evelyn Holmes, *Propane tank explodes at South Loop tent city, 80 homeless people forced to move*, ABC Chicago (Jan. 30, 2019), <https://abc7chicago.com/propane-tank-explodes-at-south-loop-tent-city-80-homeless-people-moved/5113652/>.

<sup>17</sup> Tom Schuba, *Homeless man shot to death at “Tent City” in South Loop: state police*, Chicago Sun Times (Feb. 19, 2019), <https://chicago.suntimes.com/2019/2/19/18355088/homeless-man-shot-to-death-at-tent-city-in-south-loop-state-police>.

<sup>18</sup> Mitchell Armentrout, *Massive Tent City cleanup biggest in recent memory, residents say*, Chicago Sun Times (Mar. 29, 2019), <https://chicago.suntimes.com/2019/3/29/18458338/massive->

<sup>19</sup> *Homeless woman sexually assaulted in “Tent City” in Chicago*, Fox Chicago (Apr. 3, 2019), <https://www.fox32chicago.com/news/homeless-woman-sexually-assaulted-in-tent-city-in-chicago>.

shelter.<sup>20</sup> Meanwhile garbage builds and unsanitary conditions thrive. Every attempt to clear and clean the area has been met with threats of legal challenge and city officials unclear on the law governing these issues, sit on their hands. The encampment remains today.

### C. Indianapolis, Indiana

In response to a lawsuit several years ago, Indianapolis established a “Homeless Bill of Rights” modeled after Chicago’s. While the intent was honorable and noble, in practice it has become more difficult to connect homeless people with services. Since 2015, while the number of homeless persons has steadily decreased, the number of people who are dying after experiencing homelessness has been steadily increasing.<sup>21</sup> Homeless individuals are now exposed to the elements for longer periods of time, many of whom are self-medicating with alcohol and narcotics; the result is not only leading to increased

---

<sup>20</sup> Matthew Hendrickson, *Woman sexually assaulted at homeless encampment after man promised to find her shelter*, Chicago Sun Times (July 11, 2019), <https://chicago.suntimes.com/2019/7/11/20690686/tent-city-homeless-camp-chicago-sexual-assault-crime-kenneth-horner>.

<sup>21</sup> Hayleigh Colombo, *Indianapolis grappling with increase in deaths among homeless population*, Indianapolis Business Journal (Jan. 24, 2019), <https://www.ibj.com/articles/72185-indianapolis-grappling-with-increase-in-deaths-among-homeless-population>.

deaths by natural causes, but also drug overdoses, suicides, and homicides.

Peggy Thomas lived on the streets for over a decade when she was found in winter two years ago “basically frozen to the ground, her heart rate almost gone.” She soon was placed in permanent housing, but never fully recovered “mentally or physically” and died within two years. *Id.*

Downtown Indy is a private, nonprofit organization focusing on developing, managing, and marketing downtown Indianapolis. It is helping to coordinate multiple agencies, support building new housing units, and reach into this crisis on a ground-level; yet like other cities, its effectiveness is limited by its lack of constitutional authority bestowed exclusively on the government. And yet for reasons of legal ambiguity, the local government is not acting and people, like Peggy, are dying.

#### **D. Baltimore, Maryland**

As in other large cities, Baltimore is left in the dark on how to address its homeless issues. And like Seattle, the issue is more complicated because the city’s police department has been under a consent decree for years. With insufficient guidance from the courts on the legality of ordinances addressing the myriad of homeless issues, the city has declined to pass virtually any restrictions on public living. Even high-level nuisance laws are ignored. Aggressive car-window-washing by homeless people has become an issue: people are trapped in their cars and intimidated

into giving money for a service they did not ask for; if payment is declined, often there is retaliation. Yet the city has no restrictions against aggressive panhandling, largely due to the confusion about the constitutionality of such an ordinance.

The city now looks to the private sector, specifically the Downtown Partnership of Baltimore, for virtually all homeless support, including helping homeless persons obtain identification, connecting them with families where possible, finding temporary or permanent housing, and addressing immediate concerns like food and clothing. Baltimore Police Department is even disbanding its Homeless Outreach Team for lack of efficacy. When a homeless individual is trespassing on private property, and that property owner or store manager calls the police, *if* an officer even arrives the owner or manager is typically told that unless there was a violent assault, the officer will not address it. Even when a person is in crisis officers are rarely willing to justify a petition for emergency assistance because of the legal implications.

The City of Baltimore's unwillingness or inability to act effectively on this issue did not start with *Martin*, but *Martin* has muddied the already opaque waters surrounding a local government's legal capabilities in addressing homeless-related issues. It is easier to do nothing than to do the wrong thing and face a lengthy court battle or (perhaps worse politically) bad press. Yet that means once again the onus is placed on the private sector to try to cover



what is typically a government responsibility. And yet, once again, the private sector lacks the authority to enforce laws, thereby making its efforts minimally effective. When a person rebuffs efforts to re-connect her to civilization, and there is no incentive for her to do so, she is subject to the elements ... and in Baltimore's harsh weather, that means death.<sup>22</sup>

### CONCLUSION

Cities want to help. Private businesses and residents want to help. We as a society want to lift our poor and downtrodden up off the street and into a better life. *Martin*, though well-intentioned, does the opposite. It removes a crucial tool from local governments' toolbelts, making the connection between shelter-resistant homeless and critical services nearly impossible. As our homeless stay on the streets longer, they are irreparably psychologically and physically affected; crime increases, diseases spread, homelessness becomes entrenched, acts of violence become commonplace, and rampant drug use further compounds the challenges facing the homeless, making it nearly impossible for people to move out of homelessness and gain economic stability. And as we as citizens are forced to sit by and watch it happen, our humanity slips away. Amici urge

---

<sup>22</sup> Theo Hayes, *Crews working to offer resources to homeless during bitter cold*, WBAL TV 11, show transcript (Jan. 30, 2019, 5:17 PM), <https://www.wbaltv.com/article/baltimore-homeless-bitter-cold-conditions/26090995>.

this court to grant review and address this most pressing crisis.

Respectfully Submitted,

MATTHEW D. UMHOFFER  
ELIZABETH A. MITCHELL  
*Counsel of Record*  
SPERTUS, LANDES, & UMHOFFER LLP  
617 W. 7TH STREET, SUITE 200  
LOS ANGELES, CA 90017  
(213) 205-6520  
[emitchell@spertuslaw.com](mailto:emitchell@spertuslaw.com)

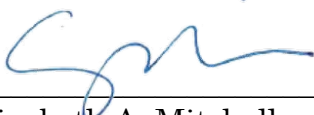
SEPTEMBER 24, 2019

CERTIFICATE OF WORD COUNT

As required by Supreme Court Rule 33.1(h), I certify that the document contains 5,985 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 24, 2019



---

Elizabeth A. Mitchell  
Spertus, Landes, & Umhofer LLC

**APPENDIX OF EXHIBITS**

**TABLE OF CONTENTS**

Exhibits A-M ..... Los Angeles, California  
Exhibits N-S ..... Seattle, Washington  
Exhibits T-X ..... Sacramento, California  
Exhibits Y-CC ..... Hollywood, California  
Exhibits DD-HH ..... Austin, Texas  
Exhibits II-MM ..... Chicago, Illinois  
Exhibits NN-PP ..... Indianapolis, Indiana  
Exhibits QQ-RR ..... Baltimore, Maryland