

No. 23-175

In The
Supreme Court of the United States

— ◆ —
CITY OF GRANTS PASS,
Petitioner,

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

— ◆ —
**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

— ◆ —
**BRIEF OF AMICI CURIAE LOS ANGELES
AREA CHAMBER OF COMMERCE AND CEN-
TRAL CITY ASSOCIATION OF LOS ANGE-
LES IN SUPPORT OF PETITIONER**

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INTEREST OF AMICI CURIAE¹

The Los Angeles Area Chamber of Commerce (LA Chamber) represents more than 1,400 businesses in the Los Angeles region. Its diverse members hail from the private, nonprofit, academic, and public sectors, employing more than 650,000 people. Since 1888, the LA Chamber has championed economic prosperity and quality of life.

As the oldest and largest business association in California, the LA Chamber has been a critical partner of the City of Los Angeles, Los Angeles County, other governmental entities in Greater Los Angeles, and scores of service providers in addressing the region's homelessness crisis. For more than ten years, the LA Chamber has also partnered with the United Way of Greater Los Angeles in launching Home For Good, a community-driven initiative to end homelessness in Los Angeles County. The LA Chamber has supported local ballot initiatives Measure H and Proposition HHH, which provided significant funding for housing and other services for homeless individuals transitioning to permanent housing. The LA Chamber believes these measures are vital tools in the fight to house every Californian. The LA Chamber supports local efforts to end chronic homelessness and to improve coordination among all levels of local government to realize this common goal.

¹ No party's counsel authored this amicus brief in whole or in part. No one other than amici or their counsel contributed money to prepare or submit this brief. *See* Sup. Ct. R. 37.6. Counsel of record for the parties received timely notice of amici's intent to file this brief. *See* Sup. Ct. R. 37.2.

Central City Association of Los Angeles (CCA) represents over 300 businesses, trade associations, and nonprofits in Downtown Los Angeles. CCA has promoted the safety, prosperity, and welfare of downtown entities and communities for nearly a century. One pillar of its mission is the advancement of comprehensive solutions to homelessness. To address the ongoing crisis, CCA has convened local leaders for a summit, drafted numerous policy papers to propose concrete solutions, lobbied local leaders, and maintained a drumbeat of attention to homelessness issues.

The LA Chamber and CCA are gravely concerned that if the 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) remain in place, they will continue to interfere with the efforts of local governments to enact and enforce reasonable regulations to protect public health and safety. Amici share an interest in stopping the homelessness crisis from deteriorating further.



SUMMARY OF THE ARGUMENT

There is a homelessness crisis in Los Angeles that impacts the daily lives of millions of people—both unhoused and housed—along with the businesses served by the LA Chamber and CCA. Businesses are losing customers and hurting because of their proximity to homeless encampments and the crime and general deterioration of the surrounding area that often accompanies them. Workers are afraid to take public transportation or to park their cars on certain streets near their jobs. Cities are no longer enforcing basic public health laws, making it difficult to walk in many parts of our cities.

The unhoused are suffering too. There is a need for more permanent housing, more temporary shelters, and more transition services to ameliorate the crisis. Fortunately, an army of local governments, philanthropic nonprofits, businesses, and private citizens are working to pursue these solutions. While they do so, problem solvers in local government need the latitude to implement local health and safety measures that keep cities safe, peaceful, and sanitary so all residents can thrive.

But for all of the cities and municipalities located within the Ninth Circuit, critical public policy decisions that should be made by local leaders with input from all community stakeholders have instead been usurped by judicial fiat with a one-size-fits-all constitutional invention that has only made the crisis worse. The decisions in *Martin* and *Johnson* apply a novel constitutional theory that limits the ability of local governments to adequately address the

homelessness crisis by restricting governments from enacting and enforcing the type of health and safety rules that have long helped encourage a functional society. This Court should grant certiorari to overturn *Martin* and *Johnson*, making clear that the Eighth Amendment does not apply in these circumstances. Indeed, the worsening homelessness crisis is the most important issue of public policy facing many parts of the country today, and the ability of local governments to respond quickly and effectively is exceptionally important. *See* Sup. Ct. R. 10.



ARGUMENT

- I. **Homelessness is an exceptionally important problem and many of its burdens fall on local businesses.**
 - A. **The Los Angeles community is confronting an unprecedented homelessness crisis.**

The situation in Los Angeles is dire. Over 75,000 people in Los Angeles County are unhoused, a 9 percent increase from the year before. Jill Cowan, *The Number of Homeless People in Los Angeles Increases by 9%*, N.Y. Times (June 29, 2023), <https://tinyurl.com/9pctincrease>.

As a result of the proliferation of encampments, homeless individuals—and those who serve the communities in which they reside—are routinely exposed to an increased and intolerable risk of violence, disease, fire, environmental hazards, victimization from crime, and premature death. *See* Sam Quinones, *Skid*

Row Nation: How L.A.'s Homelessness Crisis Response Spread Across the Country, L.A. Mag. (Oct. 6, 2022), <https://tinyurl.com/skidrownation>; Doug Smith et al., *24 Fires a Day: Surge in Flames at L.A. Homeless Encampments a Growing Crisis*, L.A. Times (May 12, 2021), <https://tinyurl.com/24firesaday>; Associated Press, *Recent Killings in Los Angeles and New York Spark Anger, Raise Risk for Homeless People*, KTLA (Jan. 28, 2022), <https://tinyurl.com/recentkillings>; Anna Gorman & Kaiser Health News, *Medieval Diseases Are Infecting California's Homeless*, Atl. (Mar. 8, 2019), <https://tinyurl.com/medievaldiseases>.

Between 2016 and 2020, the number of annual deaths among unhoused Angelenos nearly doubled. See Erin McCormick, *'Homelessness Is Lethal': US Deaths Among Those Without Housing Are Surging*, Guardian (Feb. 7, 2022), <https://tinyurl.com/homelessnessislethal>. According to a recent report, about six unhoused individuals die every day in Los Angeles County, with the most common cause being drug overdose. *New Public Health Report Shows Sharp Rise in Mortality Among People Experiencing Homelessness*, L.A. Cnty. (May 12, 2023), <https://tinyurl.com/newpublichealthreport>.

These devastating data offer a sense of status quo on the streets of Los Angeles. No wonder that 95 percent of voters call homelessness the biggest problem confronting Los Angeles. Benjamin Oreskes et al., *95% of Voters Say Homelessness Is L.A.'s Biggest Problem, Times Poll Finds*, L.A. Times (Nov. 14, 2019), <https://tinyurl.com/95pctofvoters>.

Local leaders recognize the importance of addressing the homelessness crisis. Mayor Karen Bass has declared a state of emergency on homelessness. Michael R. Blood & Christopher Weber, *New LA Mayor Bass Declares Homeless Emergency as Term Begins*, Associated Press (Dec. 12, 2022), <https://tinyurl.com/bassdeclaration>. Mayor Bass has recognized that ending homelessness will allow residents and businesses to “reclaim” their local streets. David Zahniser, *L.A. to Keep Downtown Hotel Open as Homeless Housing for Another Year*, L.A. Times (Jan. 14, 2023), <https://tinyurl.com/LAtempotel>. Following Mayor Bass’s lead, the Los Angeles County Board of Supervisors has also proclaimed a local emergency on homelessness. See City News Service, *LA County Supervisors Declare Homeless Emergency, Mirroring City of LA*, L.A. Daily News (Jan. 10, 2023), <https://tinyurl.com/emergencyLAco>.

Amid this emergency, local communities and businesses have shown an appetite for bold experimentation. For instance, the LA Chamber, CCA and larger business community have championed Proposition HHH, a \$1.2 billion bond measure approved by City of Los Angeles voters in 2016 to develop housing for homeless individuals and for those in danger of becoming homeless. The LA Chamber and CCA supported Measure H, a measure approved by County of Los Angeles voters in 2017 that generates over \$350 million per year to fund services for homeless individuals. The LA Chamber supported the Homeless Hiring Tax Credit, which allows qualified businesses to claim a tax credit for each homeless person hired. (Assemb. 150, 2021 Leg., Reg. Sess. (Cal. 2021).) The LA Chamber and CCA supported the Community

Assistance, Recovery, and Empowerment (CARE) Court Program, which aims to provide individuals with severe mental health and substance use disorders the care and services they need to get healthy. (S. 1338, 2021 Leg., Reg. Sess. (Cal. 2022).) The LA Chamber and CCA work to identify job opportunities for homeless individuals and to support additional public and private efforts to address the homelessness crisis.

B. Many burdens of homelessness fall on nearby businesses and their stakeholders.

1. The homelessness crisis deters customers.

When encampments are set up in commercial areas, problems mount for local businesses and their customers. In every corner of the county, business owners routinely complain that unhoused individuals idling near their storefronts ward off customers. See Howard Fine, *Out of Place?*, L.A. Bus. J. (Jan. 20, 2013), <https://tinyurl.com/businesscomplaints>; Phil Shuman, *Homeless Encampments in Beverly Grove Impacting Business for Some*, FOX 11 (Apr. 13, 2023), <https://tinyurl.com/beverlygrove2023>; Carlos Granda, *Sherman Oaks Small Business Owners Contend with Homeless Issue; Advocates Call for Cooperation*, ABC 7 (July 2, 2022), <https://tinyurl.com/SObizresponse>; Angie Crouch, *Santa Monica's Third Street Promenade Battling Homeless Problem, Along with Economy*, NBC 4 (Feb. 16, 2021), <https://tinyurl.com/SMneedhelp>; Doug Smith, *Pomona Leaders Wrestle with a Homelessness Dilemma: Enforce or Assist?*, L.A. Times (Mar. 27, 2017),

<https://tinyurl.com/pomonahomeless>. Business owners “fume[]” and “customers fe[el] unsafe.” Marisa Kendall, *L.A.’s New Homeless Solution Clears Camps But Struggles to House People*, CalMatters (July 13, 2023), <https://tinyurl.com/homelessssolns> (describing perceptions of a “squalid encampment” crowding both sides of a road in Hollywood).

Unsheltered people experiencing homelessness sleep where they can—sidewalks, doorways, parking garages, stairwells, elevators, overpasses—blocking public rights of way and impeding entry. See Gina Silva, *‘We’re Losing Money’: Sherman Oaks Small Business Owners Plagued by Homeless Crisis*, FOX 11 L.A. (Sept. 29, 2022), <https://tinyurl.com/SObizmon-eyloss>; Crouch, *supra*.

The homelessness problem is especially troubling for restaurants with outdoor seating, where unhoused persons can harass customers or steal food from unguarded tables. See Fine, *supra*.

Other types of business owners also report how homeless individuals camping nearby repel customers:

- An auto shop in East Los Angeles located near a homeless encampment has suffered from rampant theft of catalytic converters and batteries. The shop owner said that “customers come to me,” but “once they come over here to my place for my service, and they see the area, they just leave.” Carlos Granda, *Business Owners Struggle to Deal with Homeless Encampments They Say Bring Crime, Hurt*

Bottom Line, ABC 7 (Mar. 22, 2023), <https://tinyurl.com/autosshopstruggles>.

- A shop owner on the Santa Monica Promenade echoed the same frustration: “If you can’t walk by a nice looking place and you’re confronted with homeless and elevators are full of homeless and pools of urine, you’re not going to come back again.” Crouch, *supra*.

- A machine shop owner in the Canoga Park neighborhood was closing his store recently when someone from a nearby homeless encampment threw a bottle that shattered at his feet. The owner was unhurt, but his business has suffered. “You’ve got the street looking like hell,” he said, “and I’m seeing less business because customers don’t want to come to this area.” David Wharton, *Why Can’t L.A. Create Homeless Camps in Vacant Lots? I Found Out the Hard Way*, L.A. Times (July 13, 2023), <https://tinyurl.com/campsinemptylots>.

Unsurprisingly, studies repeatedly show that visible homelessness near businesses reduces foot-traffic and commerce. See, e.g., John Records, *The Business Impact of Increased Homelessness*, N. Bay Bus. J. (Dec. 31, 2012), <https://tinyurl.com/nbbjstudy>.

The homelessness crisis has harmed LA’s reputation worldwide, turning away visitors and undermining the region’s vital tourism industry. See *Homeless Badly Hurting Los Angeles’ Tourism Industry, Experts Say*, NBC 4 (July 27, 2020), <https://tinyurl.com/LAtourismhomeless>; Jen Rush, *Businesses Plead for Help Amid Homelessness Crisis*, Santa

Monica Daily Press (June 8, 2023), <https://tinyurl.com/SMDPplead> (“[T]ourists are not wanting to come to downtown SM due to the appalling conditions we see on a daily basis and it is hugely effecting our businesses.”). In Santa Monica, for example, roughly half of visitors surveyed on the famous Third Street Promenade said homelessness there would deter them from returning. *Shoppers Express Concern, But Also Hope, Over Homelessness Downtown*, Santa Monica Daily Press (July 3, 2023), <https://tinyurl.com/homelessSM>.

2. The homelessness crisis hurts workers.

Substandard conditions make it harder for businesses to attract and retain workers. *See* Silva, *supra* (reporting on restaurant employees in Sherman Oaks who were allegedly attacked by an unhoused woman multiple times).

For instance, workers and their vehicles can be harmed by dangerous behavior at homeless encampments near work. *Id.* A tavern owner in Sherman Oaks made headlines after he recorded a video of an unhoused man defecating openly on the sidewalk of the central business district and throwing the bag of feces onto his SUV. Rafael Peña, *Homeless Man Throws Feces at Business Owner in LA*, Travel Noire (Sept. 22, 2022), <https://tinyurl.com/fecesthrown>. A carpenter in East Los Angeles relayed the fears of his colleagues about parking near the business. “We worry about our cars,” the worker said. “We can’t leave them, and we come back and things are missing. Vandalism and broken windows. And we’re in constant fear of leaving our own belongings around.”

Granda, *Business Owners Struggle to Deal with Homeless Encampments They Say Bring Crime, Hurt Bottom Line*, *supra*.

Taking public transportation poses its own problems for workers. Many workers who do not drive fear taking public transit, which is often full of unhoused people using public transportation for temporary shelter. See Mekahlo Medina, *More Than 500 Homeless People Kicked Off Trains Each Night in LA County, New Metro Study Shows*, NBC 4 (May 2, 2023), <https://tinyurl.com/endofflineLA> (reporting on local residents and business employees who “feel unsafe” and want “more security on the trains”); *Shoppers Express Concern, But Also Hope, Over Homelessness Downtown*, *supra* (reporting on fears of taking the train to Santa Monica from Downtown LA). Some riders have begun calling the Metro a “Skid Row on wheels.” *Metro Study Shows Over 550 Homeless Riders Are Kicked Off at “End-of-Line” Nightly*, KCAL News (May 1, 2023), <https://tinyurl.com/endofflineLA2>.

Workers also may lack the training and resources to deal with issues related to homelessness. In areas near homeless encampments, workers are now expected to master skills in violence prevention and de-escalation. See Christian Letourneau, *What Does It Take to Keep a Food Business Open in Skid Row? A Day in the Life of Five Entrepreneurs*, L.A. Taco (Nov. 21, 2019), <https://tinyurl.com/skidrowfood>. Workers who may have to interact with homeless individuals as a new aspect of their job wonder about their safety. Hannah Towey, *Los Angeles Hospitality Workers React to Proposal That Would Require Hotels*

to Offer Up Vacant Rooms to Homeless People, Insider (Aug. 7, 2022), <https://tinyurl.com/hotelroomshomeless>.

3. The homelessness crisis hurts business operations.

Homelessness and public disorder impose costs on running a business beyond the loss of customers and the difficulties of retaining workers. Homeless encampments can lead to public health hazards—including pollution, disease, and human waste—and local businesses often must bear the costs of clean-up. *See, e.g.*, Peña, *supra* (“Every single morning, I’m wiping that [human feces] off my property before I have to do business.”). One Downtown business association has had to raise millions of dollars each year to maintain the neighborhood. The association has hired three dump trucks, a seven-person private security force adorned with bulletproof vests, and fifteen formerly homeless street workers who clean up feces, urine, blood, and vomit. R.W. Dellinger, *Facing LA’s ‘Human Catastrophe’ on Skid Row with Faith*, Angelus News (May 24, 2019), <https://tinyurl.com/FacingSkidRow>.

In some parts of Downtown, tents are so numerous as to block trucks conducting business deliveries. *See id.*

Homeless encampments in commercial areas disproportionately harm the most vulnerable members of the business community. The vast majority of businesses in Los Angeles employ fewer than twenty people, and a majority are minority-owned. Press Release, U.S. Census Bureau, Los Angeles County a

Microcosm of Nation’s Diverse Collection of Business Owners, Census Bureau Reports (Dec. 15, 2015), <https://tinyurl.com/LAmicrocosm>. Most businesses in Los Angeles County are lean, lacking the resources to deal with disruptions and offer noncore services.

Growing homelessness in commercial areas leads to growing obligations for already-struggling members of the business community. Out of compassion, civic duty, or sheer necessity, LA’s business leaders step up and offer help—at great personal expense.

- A coffee shop in Long Beach offers lounging space and job opportunities for unhoused individuals. Susan Valot, *Homelessness Solutions Are Brewing at This Long Beach Coffee Shop*, KCRW (May 23, 2022), <https://tinyurl.com/KCRWwrigley>.
- An upbeat entrepreneur self-funds a makeup, hair-dyeing, and snack service that has beautified and fed thousands of residents of Skid Row. See Kiara Alfonseca, *How One Woman Brought Makeovers, Food and Love to Los Angeles’ Homeless Community*, ABC News (Sept. 13, 2021, 5:48 AM), <https://tinyurl.com/RainesDTLA>.
- A renowned taco shop hands out hundreds of tacos to feed unhoused persons in Skid Row. Lexis-Olivier Ray, *A Taco Shop Gave Away 800 Tacos to Feed Homeless in Skid Row*, L.A. TACO (May 7, 2020), <https://tinyurl.com/800tacos>.

These private citizens serve the most vulnerable members of our community at great personal sacrifice. But not every small business can do so. All told, the costs to local businesses are *under*-counted. See Lavena Staten, *Penny Wise But Pound Foolish: How Permanent Supportive Housing Can Prevent a World of Hurt*, Seattle Univ. Sch. of L.: Homeless Rights Advocacy Project 1, 28–29 (Sara Rankin ed., 2019), <https://tinyurl.com/businesseshurt> (“[N]o study assesses all or even most of the cost drivers associated with leaving people unsheltered,” including “lost business” and “lost economic productivity.”). Some businesses that cannot afford to wait for nearby homeless encampments to disperse instead close or move. See *Shoppers Express Concern, But Also Hope, Over Homelessness Downtown*, *supra* (reporting that Santa Monica’s Third Street Promenade has been dubbed “Skid Row” and tenants are leaving); Rush, *supra* (“I have heard many rumblings of business owners fed up and wanting to leave Santa Monica to safer communities.”); Olga Grigoryants, ‘*Santa Monica Is Not Safe*’ Sign on Third Street Promenade Tells a Complex Story, L.A. Daily News (Dec. 29, 2022, 8:45 AM), <https://tinyurl.com/SMexodus> (noting an “exodus” from Santa Monica’s Third Street Promenade of brand stores including The Gap Inc., Banana Republic, J. Crew, Guess, and Barnes & Noble). As one Downtown business leader explained, “when more people come to live on the streets of Skid Row, more of our businesses shut down.” Fine, *supra*.

- II. Local governments must be able to enact and enforce reasonable health and safety regulations to address homelessness. If certiorari is not granted, *Martin* and *Johnson* will continue to hinder that ability.**
- A. Local governments are interested in pursuing creative solutions to the homelessness crisis.**

Homelessness is a one of our nation's most complicated and intractable problems. See Julia Jacobo, *Los Angeles Mayor Eric Garcetti Takes 'Full Responsibility' After Homelessness Rises 12%*, ABC News (June 12, 2019, 9:09 AM), <https://tinyurl.com/LA-MayorResponsibility> (calling homelessness “perhaps the most complex and difficult civic challenge” in a generation); Mark Murray, *California Poll: Homelessness Is Most Urgent Issue in the State*, NBC News (Mar. 1, 2023, 12:50 PM), <https://tinyurl.com/CA-HomelessnessPoll>. This Court should grant certiorari so cities can deploy all options and every tool available to address it.

Local leaders recognize that the ability to be flexible and use all possible tools to improve their communities is an essential aspect of addressing the homelessness crisis. See Blue Ribbon Commission on Homelessness Governance Report 8 (2022), <https://tinyurl.com/brch033022> (quoting the Director of Neighborhood Services, City of Palmdale, “we need all options and the ability to address our unique situations in our community”). As put by a report from the City of Palmdale in northern Los Angeles County, “There

are many ways into homelessness, and there need to be many ways out.” *Id.* at 5.

There is no magic solution to address the homelessness crisis and no consensus on what must be done. Municipalities across the country have experimented with a range of solutions, including permanent supportive housing, emergency shelter solutions, employment opportunities, and direct services for unhoused individuals so that they can receive much needed help as fast as possible. See Margot Kushel et al., *Toward a New Understanding: The California Statewide Study of People Experiencing Homelessness*, Univ. Cal. S.F. Benioff Homelessness and Housing Initiative 83–88 (2023), <https://tinyurl.com/UCSFHomelessness>.

The various solutions pursued by local governments—alongside the statewide efforts supported by the LA Chamber and CCA, *see supra*, Part I.A.—demonstrate a willingness to invest tremendous effort and resources into addressing the homelessness crisis. Yet the crisis persists and more must be done.

What happens in Los Angeles has wider implications. As a result of its disproportionately large homeless population, Los Angeles is “a kind of large-scale test case for which solutions work and which don’t.” Cowan, *supra*. But this laboratory-of-democracy approach will predictably fail if *Martin* and *Johnson* stand. *Cf. New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) (“Denial of the right to experiment may be fraught with serious consequences to the nation.”).

B. *Martin and Johnson* impair creative efforts to address the homelessness crisis.

As put by California Governor Gavin Newsom, the Ninth Circuit’s de facto ban on enforcing reasonable health and safety regulations when homeless individuals are involved is “preposterous” and “inhumane.” Sophia Bollag, *Gavin Newsom Calls Ban on S.F. Homeless Sweeps ‘Preposterous’ and ‘Inhumane’*, S.F. Chron. (Aug. 29, 2023, 9:47 AM), <https://ti.nyurl.com/SFChronInhumane>.

This Court should grant certiorari to “preserve for our localities the ability to make tough policy choices unobstructed by court-created mandates.” *Johnson v. City of Grants Pass*, 72 F.4th 868, 945 (9th Cir. 2023) (Bress, J., dissenting from the denial of rehearing en banc). This Court has already recognized the unique capacity of local governments to meet local challenges. Today, just as with generations prior, local governments “need many innovations, numerous combinations of old and new devices, great flexibility in municipal arrangements to meet changing urban conditions.” *Sailors v. Board of Ed. of Kent Cnty.*, 387 U.S. 105, 110–11 (1967).

Local businesses generally want local government to do even *more* to solve the homelessness crisis. Business owners often find themselves pleading with local officials for help. Granda, *Sherman Oaks Small Business Owners Contend with Homeless Issue; Advocates Call for Cooperation*, *supra* (“Frustrated business owners in Sherman Oaks have been contending with the issue of homeless people camping outside

their establishments, and have reached out to their councilmember for help.”); Rush, *supra* (“We need help.”); Crouch, *supra*; Stephen M. Lepore, *LA Business Owner Begs City to Remove Naked Homeless Woman Sleeping Outside Her Business Because She is Scaring Away Customers*, Daily Mail (Apr. 15, 2023, 2:04 PM), <https://tinyurl.com/DMBHscare> (reporting that one business owner in Beverly Hills has been “begging city officials to take action to stop her from losing any further business” because of a naked unhoused person who has been “scaring” the business owner and customers). In Santa Monica, desperate business owners even erected a protest sign on a vacant storefront that read: “Santa Monica IS NOT safe.” Grigoryants, *supra*. The business community can do only so much on its own. Indeed, “efforts undertaken by the private sector are in no way a substitute for the public sector’s role or responsibility in solving homelessness.” *Homelessness in Los Angeles: A Unique Crisis Demanding New Solutions*, McKinsey & Co. (Mar. 24, 2023), <https://tinyurl.com/HomelessnessCrisisLA>.

While the public is increasingly willing to pursue new and creative solutions to address the homelessness crisis, municipalities face a judge-made barrier against doing so: the Ninth Circuit’s decisions in *Martin* and *Johnson*. These opinions excessively constrict the options available to local governments.

As initially interpreted by the panel in *Johnson*, the panel in *Martin* established a “formula” that prohibits cities and towns from enforcing certain anti-camping ordinances if the number of homeless individuals in a “jurisdiction” exceeds the number of

“adequate” shelter spaces. *Johnson v. City of Grants Pass*, 50 F.4th 787, 795, 811 n.32 (9th Cir. 2022), *amended and superseded on denial of reh’g en banc*, 72 F.4th 868 (9th Cir. 2023). While the majority amended its opinion to remove this “formula” language, “the amendment is not accompanied by any downstream changes to the majority’s application of its rule to the facts or its ultimate conclusion,” so “the approach that language forthrightly described remains embedded in the opinion.” *Johnson*, 72 F.4th at 989 (M. Smith, J., dissenting from denial of rehearing en banc).

The Ninth Circuit’s formulaic approach is inflexible, tying the hands of local leaders. The approach discourages creative problem solving by making a shelter’s “jurisdiction” dispositive, no matter if the shelter serves the broader community. The ambiguity over a shelter’s “adequate” nature invites litigation. The result is municipal powerlessness in the face of a crisis that “cannot wait for enough such housing to be built.” Benjamin Oreskes & David Lauter, *L.A. Voters Angry, Frustrated Over Homelessness Crisis, Demand Faster Action, Poll Finds*, L.A. Times (Dec. 1, 2021), <https://tinyurl.com/LATcantwait>.

The Ninth Circuit’s approach has undermined solutions to the homelessness crisis. When the Court denied rehearing en banc in *Martin*, six dissenting judges expressed fears that the decision would “prohibit local governments from fulfilling their duty to enforce an array of public health and safety laws,” which would “potentially wreak havoc on our communities.” *Martin*, 920 F.3d at 596 (M. Smith, J., dissenting from denial of rehearing en banc).

Sadly, those fears have come to pass. The holding in *Martin* and its extension in *Johnson* have “generate[d] dire practical consequences for the hundreds of local governments” within the Ninth Circuit and its 67 million residents. *Johnson*, 72 F.4th at 914 (Collins, J., dissenting from the denial of rehearing en banc) (quoting *Martin*, 920 F.3d at 594 (M. Smith, J., dissenting from denial of rehearing en banc)). According to the representative of a group of Skid Row businesses and nonprofits, the Ninth Circuit’s approach has induced some cities not to enforce traditional health and safety regulations and to adopt the outlook: “[w]e’re going to get sued no matter what we do, so we’re just not going to do anything.” Quinones, *supra*.

Since *Martin*, the homelessness crisis in Los Angeles has only gotten worse. Between 2018 and 2023, the number of people experiencing homelessness increased 43% in the County and 48% in the City. *2023 Greater Los Angeles Homeless Count*, L.A. Homeless Servs. Auth. 8 (June 29, 2023), <https://tinyurl.com/LAHS2023count>. The number of unsheltered individuals—who reside in vehicles, tents, and other makeshift shelters—has risen 40 percent since *Martin*. Compare *id.* at 15 with *2018 Greater Los Angeles Homeless Count*, L.A. Homeless Servs. Auth. (July 27, 2018), <https://tinyurl.com/LAHS2018count>.

Los Angeles “cannot wait yet another year” to ameliorate the homelessness crisis. Press Release, Cal. State Ass’n Counties, Broad Coalition Calls on Newsom and Legislature to Pass Counties’ Homeless Accountability Plan and Funding in This Year’s State

Budget (June 12, 2023), <https://tinyurl.com/csac0623>. The County's eighty-eight cities make *Martin's* formula a mess of line-drawing (to determine jurisdiction) and court-fighting (to determine adequacy). The City of Los Angeles, LA County, and many municipalities have made heroic efforts in the last few months to curb the worst of the homelessness crisis. But LA County cannot satisfy the formula in the near future. See *Los Angeles County Homelessness & Housing Map*, L.A. Cnty. (Jan. 10, 2023), <https://tinyurl.com/lahhmap0123>; see also Cowan, *supra*.

Los Angeles businesses and workers should not be forced to bear the unsafe environments on their doorsteps while local governments' reasonable efforts to help are thwarted and no end is in sight. Under *Martin* and *Johnson*, the condition of the County holds back local governments from pursuing health and safety regulations that might help their communities ameliorate local crises while the root causes of homelessness are addressed. The Ninth Circuit's misguided efforts have enshrined its notion of perfect policy as the enemy of the good. The Court should grant certiorari to remove these "sharp limits on what local governments can do about the pressing problem of homelessness." *Johnson*, 72 F.4th at 945 (Bress, J., dissenting from the denial of rehearing en banc).



CONCLUSION

The petition for a writ of certiorari should be granted.

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