

**In the Supreme Court of the United States**



CITY OF GRANTS PASS, OREGON,

*Petitioner,*

v.

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

*Respondents.*

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

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**BRIEF OF AMICI CURIAE  
TEN CALIFORNIA CITIES AND THE COUNTY OF ORANGE**

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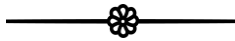
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## INTEREST OF THE AMICI CURIAE<sup>1</sup>

Amici are ten cities and one county within the State of California: the cities of Chino, Fillmore, Garden Grove, Glendora, Huntington Beach, Murrieta, Newport Beach, Orange, Roseville, San Clemente, and the County of Orange.

All Amici are interested in enforcing various public health and safety laws while addressing the significant social problems associated with homelessness.



## SUMMARY OF ARGUMENT

The Amici urge this Court to grant the City of Grants Pass’ Petition for Writ of Certiorari for three reasons. First, in *Grants Pass*, the Ninth Circuit expanded its decision in *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019) (“*Martin*”) which prohibits ***criminal*** enforcement of anti-camping laws against the homeless when there is no shelter space available, by creating a “class,” arguably eliminating an inquiry into whether a person experiencing homelessness actually has access to shelter. *Johnson v. City of Grants Pass*, 72 F.4th 868, 896 (9th Cir. 2023) (“*Grants Pass*”).

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<sup>1</sup> Pursuant to Rule 37.2(a), counsel for all parties received timely notice of the cities and county’s intent to file this brief. No counsel for any party authored this brief in any part, and no person or entity other than amici, amici’s members, or amici’s counsel made a monetary contribution to fund its preparation and submission. All parties’ counsel of record received timely notice regarding the filing of this brief.

By doing so, the Court failed to clarify the ambiguities in *Martin* and provide clear guidance on *how* jurisdictions are to comply with this holding, given the social and fiscal complexities of addressing homelessness, without the fear of endless and costly litigation claiming violations of the Eighth Amendment.

Second, the *Martin* decision has significantly impacted the Amici's ability to perform their duty to protect public health and safety and weakened their ability to persuade persons experiencing homelessness to accept shelter beds and services that have been developed to address the root causes of homelessness.

Third, *Grants Pass*' prohibition on criminal and civil enforcement of important public health and safety laws against those that fall within its definition of "involuntary homeless" has enabled, in part, the establishment of semi-permanent encampments that foster dangerous conditions, criminal activity and disorderly conduct that threatens the safety of persons experiencing homelessness and the general public. *Grants Pass* at 895.

The Amici desperately need clear guidance from this Court on *where* and *when* they are permitted to enforce anti-camping regulations to protect public health and safety while balancing the importance of assisting those experiencing homelessness with the end goal in mind—finding safe and permanent housing.

Absent this guidance, Amici fear that despite their best efforts to comply with *Martin*, and *Grants Pass*, the encampments will continue to proliferate, further threatening the life and health of the encampment's inhabitants and the general public. Additionally, the Amici fear the expense of mitigating the encampment's

dangerous conditions will continue to escalate to unaffordable levels. Contrary to the Ninth Circuit’s opinion, “*Martin* has generated ‘dire’ consequences for the [Amici].” *Grants Pass* at 812 n.35.

Therefore, it is imperative this Court grant the City of Grants Pass’ Petition for Writ of Certiorari.



## ARGUMENT

### **I. Allowing the Creation of a “Class” May Be Read as Requiring Local Government to Establish It Has Sufficient Shelter Beds for All the Persons Experiencing Homelessness Within a “Jurisdiction” Prior to Enforcing Anti-Camping Ordinances.**

One of the primary responsibilities of cities and counties is to keep their public spaces safe and accessible to all of their residents while also respecting the constitutional liberty of those rightfully in those public spaces. *Schneider v. State*, 308 U.S. 147, 160-61 (1939). Given the acknowledged complexities of addressing homelessness and its impacts on those experiencing homelessness and the public, cities and counties need clear guidance in balancing their responsibilities. In the context of applying the Fourth Amendment, this Court in *New York v. Belton* 453 U.S. 454, 459 (1981) stressed the importance of straightforward rules that are easily applied and predictably enforced. The Ninth Circuit’s holding in *Martin* is anything but straightforward and easily applied.

In *Martin*, the Court stated that, “so long as there is a greater number of homeless individuals [in a jurisdiction] than the number of available beds [in shelters], the jurisdiction cannot prosecute homeless individuals for involuntarily sitting, lying, and sleeping in public.” *Martin* at 617. While at first blush this rule appears to be clear, the Court in *Martin* arguably limited its holding by stating, “[t]hat is, as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.” *Ibid.* And by further stating in footnote 8 that:

“[n]aturally, our 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.”

*Id.* at n.8. Both of these points arguably allow for an inquiry into whether shelter beds are available for the particular person experiencing homelessness.

Thus, by attempting to clarify its holding, the Court created uncertainty. For instance, the Court appears to have added additional requirements by stating the shelter must be “adequate” and “realistically available” without defining these terms in the context of sheltering persons experiencing homelessness. *Grants Pass* at 877. This created a layer of uncertainty and unclear guidance for cities and counties seeking to understand their responsibilities to provide shelter beds to persons experiencing homelessness.



In *Grants Pass*, the Ninth Circuit extended its holding in *Martin* to encompass civil enforcement and held that “sleeping” in the context of *Martin* includes “sleeping with rudimentary forms of protection from the elements.” *Id.* at 896. However, the Court left four points unanswered:

- (1) *how* to perform the exercise of comparing the number of persons experiencing homelessness with the number of “available” and “adequate” shelter beds;
- (2) *when* this exercise must be performed before commencement of anti-camping enforcement activities; and
- (3) *what* qualifies as an “adequate” and “realistically available” shelter bed?
- (4) *what* “within a jurisdiction” means when considering a government’s boundaries?

By failing to answer these questions the Ninth Circuit has created a rule “literally impossible of application by the officer [and other city and county officials] in the field.” *New York v. Belton*, 453 U.S. 454, 458 (1981) quoting *Dunaway v. New York*, 442 U.S. 200, 213-214 (1979).

Because cities and counties want to comply with *Martin* and avoid litigation, a conservative interpretation of *Martin* could require that before enforcing any anti-camping type ordinance against a person experiencing homelessness, jurisdictions confirm there are enough realistically available and adequate shelter beds within their jurisdictions for every person experiencing homelessness to avoid a potential Eighth Amendment violation.

However, an alternative interpretation of *Martin* stems from the additional language in *Martin*, which appears to only require an assessment of whether a bed is available for a particular person. Specifically, *Martin* focuses on whether a person has an “option of sleeping indoors.” *Martin* at 611 n.8. Also, the footnote states, in pertinent part, that the *Martin* holding does not apply to those “who do have access to adequate temporary shelter . . . because it is realistically available to them for free, but who choose not to use it.” *Id.*

In short, the interpretation appears to create an exemption when a person who is offered shelter and rejects it, implying said person has no Eighth Amendment claim and cannot preclude the “jurisdiction” from enforcing its anti-camping ordinances.

The City and County of San Francisco put forward this interpretation in opposition to a Motion for Preliminary Injunction in the federal district court case of *Coal. on Homelessness v. City & County of Los Angeles*, No. 22-cv-05502-DMR, 2022 WL 17905114, at \*1 (N.D. Cal. Dec. 23, 2022).

In presenting this interpretation, San Francisco noted that the district court in the case of *Fund for Empowerment, et al. v. City of Phoenix* appeared to adopt this interpretation in *Fund for Empowerment, et al. v. City of Phoenix, et al.*, 22-2041-PHX-GMS (D. Ariz. Dec. 16, 2022), slip op. However, the district court declined to consider this interpretation because the City and County of San Francisco’s position “lacks factual support.” *Id.* at 24.

While acknowledging that the *Martin* decision may be interpreted to provide more flexibility to comply with its requirements, for the reasons set forth below,

the Amici are very concerned that the *Martin* holding, if strictly interpreted and applied by the Courts may require a one-to-one person to shelter bed standard that is entirely infeasible. This would have the dire effect of precluding Amici from enforcing important public health and safety laws against those that fall within *Martin's* definition of "involuntary homeless."

## **II. A Conservative Interpretation of *Martin* Appears to Require a City or County to Perform a Comprehensive and Accurate Count of Persons Experiencing Homelessness Within Its Jurisdiction Immediately Before It Commences Enforcement of Anti-Camping Laws and Ordinances Against the Homeless.**

Under a conservative interpretation of *Martin*, cities and counties would have to conduct comprehensive homeless population counts before commencing enforcement of anti-camping ordinances for persons experiencing homelessness. Such a requirement is unrealistic for at least three reasons.

First, smaller cities do not have the financial resources and staffing to regularly conduct such city-wide homeless counts.

Second, cities and counties generally rely upon what is referred to as a point-in-time count ("PTC") to obtain a general estimate of their homeless populations. The PTC is an annual or biannual one-day count of persons experiencing homelessness spearheaded by each California county and conducted in large part by volunteers. It is recognized that the PTC probably understates the homeless population as it includes persons at known places where homeless persons

congregate. It generally fails to include persons in secluded areas persons or who are sleeping on couches and in vehicles.<sup>2</sup>

Because of these deficiencies, the actual population of persons experiencing homelessness may exceed the PTC by between 50 and 150 percent.<sup>3</sup> Consequently, it may not provide an accurate accounting of a jurisdiction's population of persons experiencing homelessness for purposes of complying with *Martin*.

Third, the Amici are unaware of an alternate counting method that is reliable enough to comply with *Martin*.

Additionally, *Martin* at footnote 8 states its holding does not apply to individuals who *do* have access to “adequate temporary shelter” but who choose not to use it. *Martin* at 617 n.8.

As such, it would seem reasonable to not include these persons in the population of “involuntary homeless.” However, the Ninth Circuit has failed to clarify if such persons may be excluded from the homeless count and still comply with *Martin*. This clarification is necessary as the Amici find that many persons experiencing homelessness reject offers of shelter beds.

For example, Murrieta generally experiences a rejection rate as high as seventy-five percent.<sup>4</sup> Similarly, Fillmore experiences a rejection rate of 98

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<sup>2</sup> Declaration of Brian Ambrose ¶ 5, <https://www.awattorneys.com/declarations/>

<sup>3</sup> *Ibid.*

<sup>4</sup> Ambrose Dec at ¶ 22. <https://www.awattorneys.com/declarations/>

percent.<sup>5</sup> Accordingly, the Amici need guidance from this Court as to the parameters of a legally compliant homeless count.

### **III. A Conservative Interpretation of *Martin* Impractically Requires a City or County to Determine the Number of “Realistically Available” and “Adequate” Shelter Beds Available Immediately Before Enforcement of Anti-Camping Ordinances Against the Homeless.**

In *Martin* and in *Grants Pass*, the Ninth Circuit failed to provide clarity on what “reasonably available” and “adequate” mean. The Amici seek this Court’s guidance as to whether a shelter bed must be within their boundaries to qualify as “realistically available” —or if beds at shelters in neighboring communities to which the Amici cities provide financial support and free transportation for persons accepting a shelter bed qualify as “realistically available.” Allowing shelter beds in neighboring communities to qualify as “realistically available” fosters collaboration between jurisdictions and an efficient use of fiscal resources.

For example, though Fillmore does not have a shelter facility within its boundaries, for the last two years it has provided funding to a shelter operated by Spirit of Santa Paula located in the nearby city of Santa Paula and transports to the shelter any person who accepts Fillmore’s offer of a shelter bed.<sup>6</sup> Under

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<sup>5</sup> Declaration of Eduardo Malagon ¶ 4-6, <https://www.awattorneys.com/declarations/>

<sup>6</sup> Decl. Malagon at ¶ 11, <https://www.awattorneys.com/declarations/>

these circumstances are the shelter beds in Santa Paula “realistically available” to the homeless in Fillmore?

In addition, Murrieta funds one shelter facility within its boundaries that can house 16 to 22 persons while also funding additional shelter beds in nearby Temecula.<sup>7</sup> Does *Martin* allow for Murrieta to rely, in part, on shelter beds it funds in Temecula? On this point, the analysis of *Martin* and *Grants Pass* is focused on shelter beds within the respective jurisdictions. The opinions are silent on whether available shelter beds in neighboring jurisdictions may qualify as “realistically available”. *Martin* at 617 n.8, *Grants Pass* at 878-879.

*Martin* and *Grants Pass* also provide little guidance regarding what qualifies as “adequate shelter.” In *Grants Pass* the Ninth Circuit upheld the District Court’s determination that all of the shelter facilities that Grants Pass offered were not adequate. Specifically, the District Court determined the following as inadequate:

- (1) a shelter operated by the Gospel Rescue Mission because the Mission was an “explicitly religious organization” and the residents were required to attend an approved place of worship;
- (2) a City operated sobering center consisting of twelve locked rooms with no beds, and

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<sup>7</sup> Decl. Ambrose at ¶ 16, <https://www.awattorneys.com/declarations/>

- (3) a warming center with no beds that was opened on nights the temperature dropped below 30 degrees because it reached capacity every night it was open.

*Grants Pass* at 878-879.

In making these determinations the Court failed to explain how a warm enclosed sobering room was inadequate shelter. Concerning the Gospel Rescue Mission shelter, the Court failed to state why the shelter was inadequate. Was it because it was operated by a “explicitly religious organization,” or was it because the shelter required the residents to attend an approved place of worship? *Grants Pass* at 878. The Court instead observed that Grants Pass had “no secular shelter space available to adults.” *Id.* at 893. This could be interpreted to mean that any shelters operated by religious organizations are not “adequate” under *Martin*, even if the shelters did not require their residents to participate in any religious activities. *Id.* at 894.

However, the Court did not specifically address that implication. This is significant to cities and counties that fund religious shelters that have beds available. For example, Murrieta provides financial assistance to nonprofit religious organizations operating shelters. However, the City and shelter have an agreement that prevents the shelter from requiring participation in religious activities as a condition to access a shelter bed and services.<sup>8</sup> Under these conditions, would these qualify as “adequate” shelter beds?

Finally, in *Martin*, the Ninth Circuit failed to provide guidance as to whether jurisdictions must

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<sup>8</sup> Ambrose Decl. at ¶ 16, <https://www.awattorneys.com/declarations/>

address particular needs of persons experiencing homelessness in determining if “adequate shelter” is available. The County of Orange faced this issue when it was assessing persons for placement in shelters as part of its agreement related to the cleanup of encampments in the Santa Ana Riverbed, discussed below. As part of that placement process, the person’s particular needs often centered around the three “Ps”—Partners, Pets, and Privacy.

a. Partners: Homeless persons often refuse placement unless their partner are allowed to stay with them. For example, if one person is designated (after a clinical assessment) as being Severely Persistently Mentally Ill (SPMI), that person would be entitled to specific state-funded “wrap-around services,” including housing, food, etc. Persons assessed as SPMI often claimed their partner is their caregiver and needs to be placed with them and often reject placement at a congregate shelter.

b. Pets: Homeless individuals often have pets and, quite often, multiple pets. When people experiencing homelessness have pets, they often insist on bringing their pets to their placement – or they will refuse services. This creates yet another challenge for shelter placement due to pet urine and feces, pet allergies, aggression with other animals, and just the sheer number of animals needing to be accommodated.

c. Privacy: Homeless individuals will often refuse placement based on their need for privacy because of their claimed disabilities,



including anxiety, stress, and Post Traumatic Stress Disorder (PTSD). Cities and counties do not have the financial resources to provide individual rooms of indefinite duration for all who request it. At the same time, providing private rooms to individuals experiencing homelessness also often facilitates the dangerous and addictive behaviors that contributed to their becoming homeless in the first place.<sup>9</sup>

If this type of individual assessment was required under a strict interpretation of *Martin*, the Amici would not be able to comply due to the significant resources necessary to assess each person's individual needs and to provide "adequate" shelter for these persons.

As illustrated above, a strict application of *Martin* is wholly unrealistic and unworkable and cuts against the worthy goals of reducing homelessness and protecting public health and safety.

Accordingly, the Amici respectfully request that this Court provide clear guidance as to how jurisdictions may avoid violating the Eighth Amendment when enforcing anti-camping and other public health and safety regulations against those experiencing homelessness. The need for this clear guidance is urgent as the inability of cities and counties to enforce anti-camping ordinances has resulted in real health and safety impacts as described in Section V.

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<sup>9</sup> Declaration of Frank Kim at ¶ 10, <http://www.awattorneys.com/declarations/>

#### **IV. *Martin* Has Impacted Quality of Life in Cities and Counties and Significantly Hampered Their Ability to Perform Their Responsibilities to Protect Public Health and Safety.**

The following describes the actions and challenges the Amici have faced since *Martin*.

##### **A. City of Fillmore<sup>10</sup>**

Fillmore is a rural City in Ventura County, California with a population of 16,419, in the Santa Clara River Valley. The City sits within the Fillmore basin, which is one of a series of groundwater basins located within the Santa Clara River Valley in Ventura County, California.

Ventura County's annual PTC indicates Fillmore's homeless population increased from between 0-2 in 2017 to 5 in 2023. However, this PTC diverges from the day-to-day informal count maintained by the Fillmore Police Department based on daily contacts with homeless persons that indicate a homeless population of upwards of 24 persons, many of which have family within the City but choose to experience homelessness. The majority chose to camp in the Santa Clara riverbed.

The City did not have any funding for homeless resources or mitigation prior to the COVID-19 American Rescue Plan Act ("ARPA") funds. ARPA provided the City with \$150,000 between 2021-23 to provide outreach, cleanup, and mitigation funds. The City uses the funds for an outreach team and to fund 49

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<sup>10</sup> These facts are contained in the Declaration of Eduardo Malagon, <https://www.awattorneys.com/declarations/>

shelter beds and transportation to a nonprofit shelter named the Spirit of Santa Paula in the neighboring City of Santa Paula. A vast majority of the homeless population refuse the shelter beds because of the shelter's no-drug-and-alcohol policies.

The lack of resources and the *Martin* decision has left the City without tools to mitigate the impacts of homeless encampments and maintain a safe and healthy riverbed. In March 2023, heavy rains resulted in a significant rise in the river water levels, trapping at least three inhabitants. As a result, the City dispatched a helicopter and rescue team to airlift them and a dog out of the riverbed at significant cost to the City, only to see them immediately return to the riverbed.

However, despite the significant health and safety risks associated with inhabiting the riverbed, because of the litigation risk post *Martin*, the City has reluctantly decided not to enforce restrictions that would require the riverbed's inhabitants to vacate the riverbed. But the lack of enforcement also requires the city to clean up the extensive trash and debris, biowaste, contaminated needles and sharps, and other human waste the encampment inhabitants leave in riverbed. A recent cleanup that yielded 80 yards of trash and debris, one drum of biowaste, and a container of used and contaminated sharps and needles cost approximately \$28,000.00. Cleanup costs are expensive, but less costly than the potential litigation risk of an Eighth Amendment claim that may result in significant damages and attorney's fees.

## B. City of Garden Grove<sup>11</sup>

Garden Grove is located in north central Orange County approximately 25 miles southeast of Los Angeles with a population of 174,812.

From 2017 to 2022 the City's PTC increased from 194 unsheltered and 94 sheltered to 278 sheltered and 113 unsheltered with over half being former City residents.

After *Martin*, the City partnered with multiple organizations to provide mental health and medical services to the City's homeless population including MindOC, Be Well OC, and CalOptima Health, CalOptima travel to unsheltered locations in the City to offer homeless services. Despite not having a shelter, in 2023, the City has partnered with the neighboring Cities and the County of Orange to develop a low-barrier transitional emergency facility to provide emergency housing. However, it is common for the services to get rejected.

As a consequence of *Martin*, the City does not have any anti-camping ordinances in an effort to prevent potential litigation. The further impacts of *Martin* include an increase in homeless individuals by 49% since 2017, an increase in petty crime and theft, and an increase in overdose calls from Fentanyl and other deadly narcotics. On multiple occasions, homes and businesses have caught fire creating lasting damage.

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<sup>11</sup> These facts are contained in the Declaration of Jeffrey Brown at <https://www.awattorneys.com/declarations/>

### C. City of Glendora & City of Chino <sup>12</sup> <sup>13</sup>

Glendora is in the San Gabriel Valley in Los Angeles County California with a population of 52,558. The PTC reflects a homeless population of 64 in 2019 to 145 in 2020 and 84 in 2022.

In response to *Martin*, the City entered into a \$250,000 contract with a private shelter to provide shelter beds to their homeless population. Even with a \$100,000 yearly budget for 2023 to provide services, cleanups and officers, the City spent its budget four months earlier than anticipated. Even still, the City funds two officers for an outreach team that provides homeless outreach and connects the persons experiencing homelessness with “wraparound” services and provides transportation to individuals willing to accept services.

*Martin* has precluded the enforcement of anti-camping laws in the unincorporated areas immediately adjacent to the City with at least 6 different encampments in which inhabitants refuse services and shelter.

The City of Chino has experienced similar challenges with its homeless population. Chino is located at the western end of San Bernardino County, bordering Los Angeles County and Orange County with a population of 92,975. The City is small and does not have the resources to fund and operate a shelter within City boundaries. Instead, the City funds six “Quality of Life” team members to provide outreach and connect

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<sup>12</sup> These facts are contained in the Declaration of Christopher Stabio <https://www.awattorneys.com/declarations/>

<sup>13</sup> These facts are contained in the Declaration of Robert Franks at <https://www.awattorneys.com/declarations/>

and transport willing individuals to shelters nearby in the City of Pomona or Upland.

Like Glendora, Chino is concerned that because of the lack of clarity in complying with the varying interpretations of *Martin* any enforcement may result in potential costly litigation and attorneys' fees forcing the City to abandon any enforcement of its anti-camping ordinances.

#### **D. City of Murrieta <sup>14</sup>**

Murrieta is a desert community in southwestern Riverside County, California, with a population of approximately 118,734. Murrieta's PTC reveals a quadrupling in the homeless population from 7 in 2017 to over 33 in 2023. However, City staff's contacts with individuals yield almost double the PT Count.

Murrieta's homeless population is transient and not native to the City. Instead, individuals transport themselves from other cities and counties, including Los Angeles and Orange counties. Before *Martin*, the City provided homeless services even without a budget.

The unclear guidelines in *Martin* and the increase in the homeless population compelled the City to budget approximately \$1 million to pay for shelter beds, programs, and services. The City also contracts with CityNet for homeless services and funds a full-time outreach team that connects individuals with shelter beds available and transports them to those shelters.

Additionally, the City funds a religiously affiliated nonprofit named Project Touch to provide shelter beds

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<sup>14</sup> These facts are contained in the Declaration of Brian Ambrose, <https://www.awattorneys.com/declarations/>

within the City and in the neighboring City of Temecula. However, an agreement precludes Project Touch from requiring shelter residents to participate religious activities in exchange for shelter beds or services.

Approximately 75 percent of Murrieta's offers of shelter beds to persons experiencing homelessness are rejected. Recently, at an outreach event, the City offered shelter beds to 148 persons experiencing homelessness, and only 44 were accepted.

Since *Martin*, the City experienced a tenfold increase in encampments from 3 in 2019 to 30 in 2022. Common challenges at encampment sites include accumulated hazardous waste, bio-waste and environmental issues, trash, fires, and drug overdoses. In 2019, the Fire Department tackled three encampment fires within three months in the Murrieta Creek area, a vast, overgrown riverbed where fighting fires is dangerous. One month later, another large fire occurred at a storm drain encampment, costing the City over \$5,000 in cleanup costs.

*Martin* left the City without recourse because of the potential Eighth Amendment litigation exposure if the City attempted to enact or enforce any anti-camping regulations.

### **E. City of Newport Beach & Huntington Beach<sup>15</sup>**

Newport Beach is a coastal city with a population of approximately 85,000 in Orange County. Based on the PTC, the City's homeless population has increased

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<sup>15</sup> These facts are contained in the Declaration of Natalie Basmaciyani <https://www.awattorneys.com/declarations/>

from 64 to 96 in 2022. Since 2018 and in response to *Martin*, the City has partnered with the City of Costa Mesa to spend over \$15 million to contract for social, mental, and shelter services through the Costa Mesa Bridge shelter and the return-to-work program. Additionally, the City funds two full-time employees, including a homeless service manager and a homeless liaison police officer, to assist in providing outreach and services to the homeless population in the City.

To comply with *Martin's* unclear standards, the City contracted for homeless outreach and engagement services that offer shelter and beds. However, many people experiencing homelessness refuse services and shelter and instead prefer to remain on public property. Since the decision, homeless encampments have spread throughout the public and private areas of the City, such as bridges, riverbeds, roadways, sidewalks, and beaches. Various City departments are left to clean encampment areas, dispose of garbage and hazardous materials, and repair damaged infrastructure. The encampments generate excessive trash, large amounts of human waste, some deposited in buckets, "soiled" tents and clothing, and significant amounts of drug and alcohol paraphernalia.

Despite the City's efforts to provide outreach services and offer shelter at the nearby Costa Mesa Bridge Center, many people experiencing homelessness refuse to accept services and move from the encampments.

Similarly, the neighboring City of Huntington Beach faces the challenge of a high homeless population, increased homeless funding, and existing litigation as a result of *Martin*. The City has a population of 198,711 and has 9.1 miles of sandy beach. Huntington's PTC



shows a flux in population that has stayed in the mid-300s from 2019-23. As a result, the City has increased its budget since *Martin* from \$78,000 in 2018-19 to \$4.5 million in 2022-23. The funds help fund the Huntington Beach Navigation Center and outreach services. The Center can house up to 174 adults and couples with ties to Huntington Beach.

As a consequence of *Martin*, the City is limited in how it can enforce its anti-camping ordinances to maintain clean, safe, and accessible beaches, parks, wetlands and marshlands. However, like Newport Beach, many individuals in Huntington Beach refuse services and instead, remain in their encampments resulting in continued pollution and litter to areas like the Bolsa Chica Wetlands and Magnolia Marshlands that damage those ecosystems.

#### **F. County of Orange** <sup>16</sup>

The County of Orange has faced the challenge of balancing its obligation to protect public health and protect the Santa Ana Riverbed (“SA Riverbed”) from damage and pollution while also providing assistance and services to their population of persons experiencing homelessness. In 2017, the SA Riverbed became a constant homeless encampment area where the County’s Flood Control District determined the biological and physical waste generated by the encampments significantly impacted the SA Riverbed environment. By 2018, 400 to 500 persons camped on the SA Riverbed.

As a result, in January 2018, the County proceeded to close public access and clean up the Riverbed.

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<sup>16</sup> These facts are contained in the Declaration of Frank Kim, <https://www.awattorneys.com/declarations/>

Before clearing the SA Riverbed, the County provided multiple notices to the encampment population and worked with nonprofits and outreach services, to provide shelter bed referrals, storage for personal items and even boarding for the pets of the inhabitants.

Nevertheless, the cleanup prompted two lawsuits, which were assigned to the Honorable David O. Carter, U.S. District Judge. At plaintiffs' request Judge Carter issued a temporary restraining order ("TRO") against arresting homeless individuals for trespassing or illegal camping in the SA Riverbed. Thereafter, the parties reached agreement to end the TRO whereby the County would provide temporary housing for the inhabitants of the SA Riverbed and the cleanup could proceed under strict rules and processes established and actively enforced by Judge Carter. Disputes between the County and the inhabitants were resolved at the cleanup site with impromptu proceedings conducted by Judge Carter with counsel present.

The cleanup of the encampments and relocation of the individuals took two weeks to complete. During that time, the County successfully relocated 700 riverbed inhabitants and removed 404 tons of debris, approximately 5,300 pounds of hazardous waste and approximately 13,950 syringe needles.

During the litigation, *Martin* was issued and caused the Plaintiffs to amended their complaint to add cities as defendants. The litigation exposure arising from *Martin* caused the County to settle quickly with Plaintiffs. During the settlement discussions, Judge Carter stated on numerous occasions that *Martin* could be read to require one bed for each person experiencing homelessness, but agreed to allow the County to enforce its anti-camping ordinances so long as the

County had sufficient shelter beds to shelter at least 60 percent of its homeless population. In sum, the settlement cost the County over \$2 million in Attorney's fees, damages, and costs an additional \$100,000 a year to continue to pay Plaintiff's counsel to monitor the settlement agreement until it expires in July 2025.

The County is concerned that once the settlement agreement expires, a stricter interpretation of *Martin* may require an impractical shelter bed requirement of one shelter bed for each homeless person in the County. Such a requirement would be financially unsustainable and would result in many empty shelter beds due to the number of persons experiencing homelessness who reject offers of shelter beds.

### **G. City of Roseville<sup>17</sup>**

Roseville is located about 20 miles east of Sacramento in Placer County and was ranked 8th Best Place to Live in America in 2021 with a population of 150,000. Roseville is a "full-service city" that provides its utilities, public safety, and parks with an operative budget of approximately \$800 million annually.

Roseville's annual PTC reflects a consistent homeless population of approximately 250 individuals; however, Roseville's successful emphasis on housing homeless continues to attract a revolving door population, causing additional impacts not able to be addressed since *Martin*.

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<sup>17</sup> These facts are contained in the Declaration of Michelle Sheidenberger at <https://www.awattorneys.com/declarations/>

In response to *Martin*, Roseville has provided over \$6.2 million in rental assistance and housing vouchers to prevent homelessness before it occurs. Since *Martin*, Roseville has increased its funding to address homelessness to approximately \$17 million annually.

As a result of *Martin*, the City has experienced less collaboration between public entities in providing regional shelters (in the form of rationing shelter beds to provide for their own homeless populations), because of the uncertainty and confusion as to where a “jurisdiction ends”.

Despite Roseville’s \$17 million towards homelessness, Roseville has still found itself the subject of two (2) Placer County Grand Jury Reports (along with every other city in Placer County and Placer County itself) and a lawsuit involving *Martin*.

## **H. City of San Clemente <sup>18</sup>**

San Clemente is a Southern California coastal community located within the County of Orange with a population of 64,293 residents. The City’s homeless population has hovered between 96 in 2019 to 81 in 2022, with approximately 70-80 percent originating outside of the City.

In response to *Martin*, the City contracted with homeless outreach services and funded its own homelessness outreach program with two full-time staff that work closely with the County of Orange to provide outreach and case management services. Despite the coordination with the County, the City currently does

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<sup>18</sup> The facts are contained in the Declaration of Adam Atamian, <https://www.awattorneys.com/declarations/>

not have a shelter within the City. However, the city works with surrounding nonprofit shelters to make shelter beds available and transport the individuals who accept them. But many refuse.

The *Martin* decision and lack of shelter beds has forced the City to forgo enforcing its ordinances prohibiting camping on public areas of the City that are deemed a high fire risk. The increase in homelessness in beach areas has deterred residents and tourists from the open space areas because of the constant presence of encampments and the collateral trash and litter that costs the City approximately \$25,000 annually in cleanups.

**V. The Proliferation of Encampments Enabled, in Part, by *Martin* Has Caused Significant Public and Health Issues in the Amici Jurisdictions.<sup>19</sup>**

Despite the *Grant Pass* majority's statement that there is no evidence of dire consequences of *Martin*, the Amici demonstrate otherwise. The following provides just a glimpse of the public health and safety impacts resulting, at least in part, from *Martin*, which has severely restricted the ability of cities and counties to address the public safety hazard posed by semi-permanent encampments. As such Amici have experienced the following physical impacts:

- Significant increases in homeless encampments on public walkways and in front of storefront businesses that accumulate trash,

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<sup>19</sup> Amici Encampment Photographs, <https://www.awattorneys.com/declarations/>

debris, and hazardous materials and harm to local businesses.

- Increases of encampments along riverbeds and floodplains that leave trash, hazardous waste and contamination that harms the environment.
- Increases in emergency and rescue efforts for individuals camping near riverbeds during inclement weather.
- Increases in unintentional fires from encampment fires, stoves, and gas-powered appliances.
- Increases in intentional fires from Arsonists and transient individuals.
- Increases in first responder calls because of drug overdoses of Fentanyl infused narcotics.
- Increases in pollution and biowaste entering waterways through rivers, watersheds, marshlands, and beaches.
- Impacts on local ecology as a result of prolonged camping, fires, trash, plastics, sharps and human waste.
- An increase in tampered and damaged infrastructure affecting residents and putting persons experiencing homelessness in danger of electrocution, potential fires, and floods.
- Increased defiance of law enforcement and public areas because of the inability to enforce anti-camping ordinances.



## CONCLUSION

*Martin* and *Grants Pass* have failed to provide a realistic framework or clarity on how cities and counties can perform their obligations to protect public health and safety in the context of enforcing anti-camping ordinances without violating the Eighth Amendment. The Ninth Circuit has been provided two opportunities to provide such clarity and has failed to do so. As such, the Amici urge this Court to step in and provide the needed clarity. Amici respectfully request this Court grant the City of Grants Pass' Petition for Writ of Certiorari.

Respectfully submitted,

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