

No. 23-175

In the
Supreme Court of the United States

CITY OF GRANTS PASS, OREGON,
Petitioner,

v.

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

On Writ of Certiorari
To the United States Court of Appeals
For the Ninth Circuit

**BRIEF FOR THE CHAMBER OF COMMERCE
OF THE UNITED STATES OF AMERICA,
ARIZONA CHAMBER OF COMMERCE AND
INDUSTRY, CALIFORNIA CHAMBER OF
COMMERCE, MONTANA CHAMBER OF
COMMERCE, AND OREGON BUSINESS AND
INDUSTRY AS AMICI CURIAE IN SUPPORT
OF REVERSAL**

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STATEMENT OF INTEREST¹

The Chamber of Commerce of the United States of America (the “Chamber”) is the world’s largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation’s business community.

The Arizona Chamber of Commerce and Industry (“Arizona Chamber”) is committed to ensuring economic growth and prosperity for all Arizonans. It advocates for free-market policies and works to advance Arizona as a leading player in the global economy. It further serves as the collective voice for Arizona businesses at the state legislature and on important economic issues, such as this matter, before the courts. The Arizona Chamber represents the interests of commerce and industry in an effort to further grow the state economy.

California Chamber of Commerce (“CalChamber”) is the largest broad-based business advocate to government in California. CalChamber represents more than 13,000 members that employ one quarter

¹ Pursuant to Supreme Court Rule 37.6, amici curiae state that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from amici curiae, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

of the private sector workforce in California. CalChamber works at both the state and federal levels to advocate for its members. Like the U.S. Chamber, CalChamber regularly participates in cases that raise issues of vital concern to California's business community.

Established in 1931, the Montana Chamber of Commerce's mission is to advocate on behalf of Montana businesses and be the driving force in promoting a favorable business climate in the State of Montana. The Montana Chamber of Commerce represents more than 2,000 businesses large and small across the State. The Montana Chamber serves business members by working to create and to sustain an optimal business climate, business prosperity, and a strong Montana economy. Through advocacy, education, and collaboration, the Montana Chamber works to provide an empowered and educated workforce, reduce business growth obstacles, and advance positions that promote success for Montana businesses.

Oregon Business & Industry (OBI) is a non-profit mutual benefit corporation with members organized under the laws of the state of Oregon. OBI has approximately 1,600 members and, as a general business association, is recognized as the state chamber of commerce, OBI's members come from a variety of industries and all parts of the state geographically. OBI is the state affiliate of both the National Association of Manufacturers and the National Retail Federation. OBI exists to strengthen Oregon's economy to achieve a healthy, prosperous, and competitive Oregon for the benefit of present and future generations.

Amici and their members have a strong interest in

ensuring that local governments have the tools and discretion necessary to address public health and safety concerns associated with the homelessness crisis. Countless businesses across the country provide needed services to assist the homeless. But businesses cannot shoulder the burdens of the homelessness crisis by themselves; this complex challenge requires a multifaceted approach. State and local governments play a critical role in developing and implementing solutions, and they must have the discretion to enforce public health measures and ensure public safety for the benefit of all citizens. If federal courts strip state and local governments of this discretion, local communities will suffer—including small businesses, employees, and the customers they serve. Amici are concerned that the Ninth Circuit’s decision in *Johnson v. City of Grants Pass*, 72 F.4th 868 (9th Cir. 2023), will hamstring the ability of local governments to provide for public health and safety and the economic viability of businesses within their communities.

INTRODUCTION AND SUMMARY

In 2019, the Ninth Circuit held that the enforcement of criminal restrictions on public camping violates the Eighth Amendment’s Cruel and Unusual Punishment Clause unless the target of the enforcement has access to adequate temporary shelter. *Martin v. City of Boise*, 920 F.3d 584, 617 (9th Cir. 2019). In response, Judge Milan Smith warned of the “havoc on . . . businesses” that would be wrought from “shack[ling] the hands of public officials trying to redress the serious societal concern of homelessness.” *Id.* at 590 (M. Smith, J., dissenting

from the denial of rehearing en banc).

Judge Smith's warning has proved prescient. In cities throughout the Ninth Circuit, local governments find themselves handcuffed when attempting to ameliorate the homelessness crisis. Despite business owners' efforts to improve the lives and wellbeing of their unhoused neighbors, businesses throughout the circuit bear the brunt of local governments' inability to respond effectively to the public-health issues and criminal activity that invariably follow in the wake of burgeoning homeless encampments.

Employers have difficulty attracting and retaining employees at locations near encampments, citing health and safety concerns. Customers forgo patronizing businesses, preferring not to face a heightened risk of crime or to brave open-air drug markets. Once-vibrant commercial districts degrade, and business owners face the difficult choice of either operating in increasingly dangerous conditions or shutting down. As businesses reduce operations or close, employment opportunities diminish, and residents eventually relocate. Local economies suffer.

Since *Martin*, the Ninth Circuit has only made things worse by preventing enforcement of even generally applicable camping ordinances. *Johnson v. Grants Pass*, 72 F.4th 868, 890 (9th Cir. 2023). That decision will further prevent local leaders from addressing the needs of the unhoused while preserving public spaces for all to enjoy. The business community in the Ninth Circuit thus turns to this Court for relief. To ensure that local governments have the necessary leeway to apply sensible policies to address the homelessness crisis and its collateral effects, this Court should reverse the decision below.

ARGUMENT

I. THE HOMELESSNESS CRISIS ACUTELY IMPACTS LOCAL BUSINESSES

A. Businesses in the Ninth Circuit are committed to providing solutions, but cannot do it alone.

The number of Americans experiencing homelessness is at an all-time high. April Rubin, *Homelessness in the U.S. jumped to record level in 2023, government says*, Axios (Dec. 15, 2023) <http://tinyurl.com/s4zkv48n>. The Department of Housing and Urban Development reported that homelessness increased 12% between 2022 and 2023, with about 653,100 people—about 20 of every 10,000 people in the United States—experiencing homelessness on a single night in 2023. U.S. Dep’t of Hous. and Urban Dev., *The 2023 Annual Homelessness Assessment Report (AHAR) to Congress 2* (Dec. 2023) (“HUD 2023 Homelessness Report”), <http://tinyurl.com/5cubmzev>. The effects of homelessness are dire for the unhoused population. Homelessness drops average life expectancy by about 28 years, and unhoused persons are “more likely than others to experience injury and interpersonal violence.” Nat’l All. to End Homelessness, *Not One More: Honoring Those Who Died Homeless* (Dec. 20, 2021), <http://tinyurl.com/2thxa6pz>.

States within the Ninth Circuit have particularly high numbers of individuals experiencing homelessness, with California alone accounting for 28% of all unhoused individuals in the United States

and 49% of all unsheltered people in the country.² HUD 2023 Homelessness Report at 16. All five of the states with the highest percentages of people experiencing unsheltered homelessness are in the Ninth Circuit, *id.* at 17, and all five major American cities in which more than 70% of people experiencing homelessness are unsheltered are in California, *id.* at 19.

As stewards of their communities, business owners are attempting to care for their unhoused neighbors as best as they can. In Palm Springs, an energy company provides cell phone solar chargers to unhoused individuals to ensure they can power their phones and “reach public safety, caseworkers, family members, doctors and friends.” Nicole Hayden, *How Southern California businesses are helping to address homelessness in creative, innovative ways*, Palm Springs Desert Sun (Aug. 30, 2019), <http://tinyurl.com/22dzhycn>. The company’s CEO explained that “companies should give back to the community they do business in, using their specialized skills to meet a community need.” *Id.*

In Seattle, a technology company provides hundreds of millions of dollars in loans for affordable housing. *Id.* A Los Angeles jewelry company has provided more than 70 jobs and 163,678 hours of work to individuals transitioning out of homelessness. *Id.*

² Those who are homeless can be “sheltered” or “unsheltered.” “Sheltered” refers to homeless “people who are staying in emergency shelters, transitional housing programs, or safe havens.” “Unsheltered” refers to homeless “people whose primary nighttime location is a public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for people,” such as streets or parks. HUD 2023 Homelessness Report at 5.

In Oakland, local restaurants lead teams of volunteers to serve food to unhoused individuals in encampments and in their restaurants. Ryan Curry, *Oakland small businesses open doors to feed those in need on Christmas Day*, ABC7 (Dec. 25, 2023), <http://tinyurl.com/5auy4mwz>. One restaurant owner explained: “I feel it is an obligation of every business, especially small business to support the community.” *Id.*

Barbershop owners in Sacramento lead a holiday drive to distribute coats, blankets, and scarves to the unhoused community. Chris Tomas, *Barbershops, salons collecting donations to ‘heat the streets’ this holiday season*, ABC 10 (Dec. 8, 2023), <http://tinyurl.com/4hnr6y6b>.

In Phoenix, owners of a sandwich shop opened their bathroom to the public, cashed disability checks, and hired staff from the unhoused population, including “a cleaner who slept a few blocks away on a wooden pallet and washed up in the bathroom before her shift.” Eli Saslow, *A Sandwich Shop, a Tent City and an American Crisis*, N.Y. Times (Mar. 31, 2023), <http://tinyurl.com/23c5ecuy>.

In Seattle, private companies and various foundations raised \$10 million in donations to alleviate homelessness downtown. Greg Kim, *Plan to reduce homelessness in downtown Seattle picks up after slow start*, Seattle Times (Feb. 28, 2023), <http://tinyurl.com/27euyk7x>.

In San Francisco, one technology company donated \$1 million to “help jump-start homeless assistance.” Sean Captain, *This tech CEO is offering a \$1 million donation to inspire tech companies to help fight homelessness*, Fast Company (Nov. 12, 2018), <https://tinyurl.com/3r87u754>. The founder of another

tech company donated \$30 million to “launch research into the root cause of homelessness and find ways to end it” in cooperation with the University of California at San Francisco. Taylor Telford, *A tech billionaire donated \$30 million to try to solve San Francisco’s homelessness problem*, Wash. Post (May 2, 2019), <http://tinyurl.com/3kmubnfs>.

The Associated Press reported a \$2.2 billion estimate of total philanthropic funding toward ending housing and homelessness in 2021 alone. Thalia Beaty, *Jeff Bezos’s fund has now given almost \$640 million to help homeless families*, Associated Press (Nov. 21, 2023), <http://tinyurl.com/439f3yt4>. And of course, many of these donations come from local businesses—large and small—and their employees.

But businesses cannot solve homelessness alone, and despite their efforts, small business owners have been “frustrated” by their inability “to make faster progress” in reducing homelessness. *Id.* Indeed, rather than progress, the situation is worsening, and the rise in the number of people experiencing unsheltered homelessness has led to a sharp increase in the number of homeless encampments, especially within the Ninth Circuit. U.S. Dep’t of Hous. and Urban Dev., *Unsheltered Homelessness and Homeless Encampments in 2019*, <http://tinyurl.com/265ku5sj>; see also Claire Rush, Janie Har & Michael Casey, *‘We’re not trash, we’re people,’ say unhoused amid encampment sweeps*, Christian Science Monitor (Nov. 28, 2023), <http://tinyurl.com/43kjwc5e> (noting growth in the number of encampments in Phoenix, Las Vegas, and Los Angeles). These encampments—and the public health and safety risks they create—are increasingly threatening local economies.

B. Local businesses struggle to attract customers and employees in affected areas.

1. Across the Ninth Circuit, business owners are losing customers because of public health and safety concerns associated with nearby homeless encampments. In Sherman Oaks, California, the owner of a bar and grill explains: “People are afraid to come out. . . . They’re afraid to come here. We’re losing money. Every single small business in Sherman Oaks is losing money.” Gina Silva, *We’re losing money: Sherman Oaks small business owners plagued by homeless crisis*, FOX 11 (Sept. 22, 2022), <http://tinyurl.com/4vp3nd2d>.

A San Francisco real estate broker noted that area “businesses keep losing customers because of people camped on sidewalks, some clearly in mental distress.” Christian Science Monitor, *supra*. The manager of a Best Western in San Francisco said doing business “has been very difficult in the last few years” in the face of guest complaints about a homeless encampment across the street from the hotel. Danielle Echeverria, *Hotel in S.F.’s Tenderloin says it will remove sprinklers near homeless encampment hot spot*, S.F. Chronicle (Oct. 6, 2023), <http://tinyurl.com/mr3y7746>.

In Chula Vista, California, a jiu-jitsu instructor explained that he has been losing customers because parents “don’t want the kids exposed” to the “broken glass, needles with blood, [and] feces” from homeless encampments near his studio. Laura Acevedo, *Chula Vista business owners concerned about homeless encampments nearby*, ABC 10 (Dec. 12, 2023), <http://tinyurl.com/uyzd7ppj>.

In the Beverly Grove neighborhood of Los Angeles,

a business owner says she is in “danger of losing her business,” which has operated for nearly 20 years, “because customers won’t come to the area” amid the “drug sales, fights, fires and even homeless people sleeping naked on the street” from a nearby encampment. Phil Shuman, *Homeless encampments in Beverly Grove impacting business for some*, FOX 11 (Apr. 13, 2023), <http://tinyurl.com/3vjrxact>.

The owner of a music store in Hollywood observed that customers are “afraid to go to the store” because of the unruliness from “fires,” “fights,” and “turf wars” in the nearby homeless encampments, and a tour operator explained that he was unable to continue doing sightseeing tours because “[t]ourists were scared to stop by.” *Businesses hope customers return as city clears out Hollywood homeless encampment*, ABC7 (June 6, 2023), <http://tinyurl.com/yvb32d4z>.

Business owners in downtown Las Vegas likewise “say homeless camps are driving customers away.” Kelsey Thomas, *Downtown business owners say homeless camps driving customers away*, KSNV (Nov. 7, 2018), <http://tinyurl.com/485mfy93>.

In San Diego, the owner of a taco restaurant said he has “seen customers walk away or switch their order to take-out because of a large homeless encampment that had existed for months directly across the street.” Gary Warth, *Lost customers, tenants and clients. ‘I feel very empathetic with the people, but I have a business to run.’*, San Diego Union-Tribune (July 8, 2023), <http://tinyurl.com/4x68fv96>. Tenants, assaulted by unhoused individuals in the neighborhood, have moved out of a building near homeless encampments citing safety concerns. *Id.*

In San Francisco, the owners of a dog daycare

center reported that their clients “feel scared to get out of their car to bring dogs into our business” and “don’t feel safe” because of the homeless encampment directly outside their business. Justine Waldman, *SF business owners concerned about homeless near store*, KRON4 (May 31, 2023), <http://tinyurl.com/3s8jwedv>.

While in Los Angeles, a Lebanese-American immigrant who opened an automobile and body repair shop lamented the harmful effects of the homeless encampment across the street, explaining that they are “scaring away any hope of new business.” Genevieve Wong, *Shop owners across US take action as homeless camps threaten business, safety*, N.Y. Post (Apr. 24, 2023), <http://tinyurl.com/ytyjzrt7>.

2. Homeless encampments do not merely deter customers—they also impact current and potential employees, who fear for their health and safety. For example, the Los Angeles repair shop owner’s employees worry that the business’s parking lot “is no longer safe for their cars” and “dread[] the human feces and urine they often encounter outside,” leading “some to quit.” *Id.*

In Bozeman, Montana, a business owner explained that the business’s “all-female staff” had particular “safety concerns” about nearby encampments. Edgar Cedillo, *‘What do we do?’: Business owners feel stuck as encampments move closer to business*, 7 KBZK (Aug. 9, 2023), <http://tinyurl.com/5n7z54t5>.

3. As businesses lose both customers and employees because of the collateral effects of homeless encampments, some owners have no choice but to relocate or close their businesses after years of being stewards of their communities. In Bend, Oregon, the owner of a farm that boarded horses was forced to

close her business after nearby homeless encampments drove customers away. Blake Mayfield, *Horse-boarding business near Juniper Ridge homeless encampments closes down due to ongoing issues*, KTVZ NewsChannel 21 (Dec. 18, 2023), <http://tinyurl.com/222pdvhy>.

A barbershop decided to move away from downtown Spokane after 19 years, citing “crime and homelessness in the area” and “the safety of their staff and the loss of clientele.” Vanessa Perez, *Barbershop relocating out of downtown Spokane due to homeless, crime*, KXLY (Mar. 3, 2023), <http://tinyurl.com/26b569et>.

The owners of a Phoenix sandwich shop who “planned to build up the business and eventually sell it for enough money to retire” had their dreams disrupted by a nearby 1,100-person homeless encampment. German Lopez, *Chaos Up Close*, N.Y. Times (Mar. 19, 2023), <http://tinyurl.com/3f9a84z9>. Although they have tried to sell, they “can’t find anybody to buy their restaurant,” which opened 37 years ago, “even as they’ve steadily reduced the price.” *Id.*

The “unprecedented” homelessness crisis in San Francisco has led “more than 95 retailers to leave the city along with a “mass exodus” of retailers from the city’s Union Square neighborhood. Alex Hammer, *Gump’s San Francisco could close after 166 years due to dwindling foot traffic and homeless people harassing shoppers*, Daily Mail (Aug. 16, 2023), <http://tinyurl.com/3cjm457>.

The high rate of unsheltered homelessness in the Ninth Circuit, and local leaders’ inability to apply sensible policies to address the crisis, has created a perfect storm for the business community. Customers

disappear, employees leave, and businesses are forced to relocate or close their doors permanently. This Court's intervention is necessary to prevent further damage to businesses and the economic vitality of communities throughout the Ninth Circuit.

C. Violence, theft, drug use, and other crimes adversely affect businesses.

Unsurprisingly, academic literature reveals that crime is significantly higher around homeless encampments than in other city neighborhoods. See Daniel Reinhard & Mark C. Stafford, *Can police camping ticket geographies facilitate homeless outreach? Identifying harms and people in homeless encampments*, 88 *GeoJournal* 6247, 6248 (Oct. 11, 2023) (gathering sources). For example, assault is 3.6 times more concentrated within one city block of an encampment than in the city overall. *Id.* The spillover effects of crimes associated with homeless encampments, such as violence, theft, and drug use, have devastating impacts for businesses near the encampments.

1. Business owners, their employees, and their customers are often targets of violent crime that spills over from nearby homeless encampments. In Seattle, “business owners and neighbors [say] they feel under siege,” contending with a stabbing, two shootings, an axe attack, and rapes that were “directly connected to encampments.” Tammy Mutasa, *Growing crime rate at Seattle's homeless camps prompts anxiety, demands for solutions*, KOMO News (May 20, 2022), <http://tinyurl.com/36x52u65>.

At a retail store in Los Angeles, a homeless man

grabbed a kitchen knife and told a 9-year-old boy that “he was going to stab him and kill him,” then “stabbed the boy in the shoulder” and attacked a woman who attempted to intervene. Stephen Hawkins, *9-year-old boy and woman stabbed by homeless man in Los Angeles*, FOX26 (Nov. 16, 2022), <https://tinyurl.com/5295yjy6>.

A woman working at a boutique furniture store in Los Angeles was stabbed to death by a homeless man; police stated that “the attack appeared to be completely random and unprovoked.” *Man charged in fatal stabbing of woman at Hancock Park store can’t act as own attorney, judge rules*, ABC7 (June 9, 2023), <http://tinyurl.com/57v3e3s5>.

In Sacramento, two owners of a thrift store attacked by homeless individuals outside their store noted that “law enforcement is limited in what they can do” to protect small businesses from such threats. Roxanne Elias, *Dollar Thrift owners attacked by two homeless people in Sacramento* (Oct. 30, 2023), <http://tinyurl.com/mwuhp6yw>.

Business owners in downtown Anchorage expressed hope that “[t]he city and the state” will “step up . . . [to get] homeless people [] the help they need,” but noted their concern about the violence confronting their employees and their customers. Lex Yelverton, *Anchorage business owners speak of impact of homeless in downtown*, Alaska’s News Source (June 12, 2023), <http://tinyurl.com/4atv3u3b>.

2. Businesses in proximity to homeless encampments are also frequently subjected to rampant theft and break-ins. A San Diego baker specializing in vegan and gluten-free baked goods described the “brazen” thefts by homeless individuals who enter the shop and “steal[] whatever is

available.” Kelvin Henry, *Ocean Beach bakery locks door during business hours after string of theft by homeless people*, NBC 7 San Diego (Aug. 14, 2023), <http://tinyurl.com/4zz72w3z>. In response to the theft, the bakery now keeps its door locked during business hours, and customers must ring a doorbell to gain entry. *Id.* The owner expressed regret that the store had to be locked down during business hours but noted that a thief with a crowbar has left “her employees shaken to the core,” and hopes that this problem “will go away” “down the road.” *Id.*

The owner of businesses in San Jose and Los Angeles near homeless encampment reported that his “employees often find their trucks with empty gas tanks or missing catalytic converters,” and explained that the increasing costs of these thefts led him to relocate out of San Jose. Jana Kadah, *San Jose businesses frustrated by homelessness*, San Jose Spotlight (Jan. 5, 2023), <https://tinyurl.com/y22ufn8z>; Carlos Granda, *Business owners struggle to deal with homeless encampments they say bring crime, hurt bottom line*, ABC7 (Mar. 22, 2023), <https://tinyurl.com/ctmetbwv>.

A police raid of a homeless camp in central Oregon recovered \$50,000 of stolen property, including a large number of tools belonging to a project-management company that said “the recovery of tools saved the jobs of seven employees.” Barney Lerten, *Redmond police, CERT raid homeless camp on BLM land east of city, recover \$50K in stolen items; two arrested*, KTVZ NewsChannel 21 (Jan. 30, 2024), <https://tinyurl.com/3b9y6xp7>.

The president of a burglarized recording studio in Hollywood warned that the “homeless problem” would “potentially put[] [the company] out of business,”

noting that recording artists are reluctant to work with the studio after being accosted. Sophie Flay, *Will the homeless crisis drive a legendary Hollywood recording studio out of business?*, ABC7 (Feb. 13, 2024), <https://tinyurl.com/mry5neaz>.

3. Rampant drug use is also a collateral effect. Hypodermic needles abound in homeless encampments, and cities across the Ninth Circuit struggle to dispose of them safely. When Orange County Public Works crews cleaned up a river trail once populated by homeless encampments, they collected about 13,950 needles. Theresa Walker, *Thousands of pounds of human waste, close to 14,000 hypodermic needles cleaned out from Santa Ana River homeless encampments*, Orange County Register (March 8, 2018), <http://tinyurl.com/evphv698>.

In Los Angeles, sanitation workers removed 30 pounds of needles from a cleared homeless encampment. *Hundreds of Pounds of Human Waste, Needles Cleaned From Former Homeless Encampment at Echo Park*, KCAL News (May 6, 2021), <http://tinyurl.com/2prxp7kb>.

And in Sacramento, “used needles and drug paraphernalia littering the floor and a baby’s changing table” were found in a public bathroom at a park populated with homeless encampments. Ashley Sharp, *Neighbors say out-of-control drug use at Sacramento park’s homeless encampments is dangerous, frightening*, CBS Sacramento (July 17, 2023), <http://tinyurl.com/bdzdmvtv>.

Business owners are, understandably, concerned for their customers’ safety when unhoused individuals leave discarded needles at the door of their businesses. *E.g.*, Waldman, *supra*; Acevedo, *supra*. Businesses also have to contend with drug use

in encampments that can dissuade customers from entering restaurants and shops. For example, a business owner in Seattle lamented that “nearby encampments and the drug use they bring are crushing the neighborhood.” Jeremy Harris, *Small business owners in Lake City say public drug use, encampments are out of control*, KOKO News (Aug. 30, 2023), <http://tinyurl.com/44t6t5hw>. Nearby, a restaurant owner had to induce two fentanyl users smoking outside his restaurant to leave by offering them food. *Id.*

Open-air drug markets, common in encampments, also alienate potential customers and exasperate business owners. In Oakland, open-air drug markets in encampments have created an “untenable situation” for the city’s business community. Jon Michael Raasch, *Homelessness has ‘exploded’ in this California city, making it the ‘land of milk and fentanyl,’ activist says*, N.Y. Post (Aug. 14, 2023), <http://tinyurl.com/2s45cw9x>.

The owner of a sandwich shop in San Francisco has found his neighborhood a “difficult place to run a business” amid the problems of homelessness and drug use, with “numerous small businesses” leaving the neighborhood. Matthew Kupfer, *From tech haven to has-been: San Francisco’s once-thriving SoMa neighborhood struggles to find footing*, S.F. Standard (July 3, 2023), <http://tinyurl.com/4exbmvpc>.

The cumulative effect of violent crime, theft, and drug use connected to homeless encampments is devastating to businesses, especially to small businesses still recovering from the effects of shutdowns during the pandemic. Left unchecked, homeless encampments and the public safety issues that follow in their wake will continue to wreak havoc

on businesses throughout the Ninth Circuit.

D. The cumulative effects of the homelessness crisis are forcing businesses to close or move.

As Judge Smith foretold, the cumulative effects of unchecked homeless encampments are “wreaking havoc on . . . businesses throughout [the Ninth] [C]ircuit.” *Martin*, 920 F.3d at 590 (M. Smith, J., dissenting from the denial of rehearing en banc). Faced with difficulties attracting and retaining clients and employees due to violence, theft, drug use, and a public-health crisis, increasing numbers of businesses are making the gut-wrenching decision to close their doors. The effects are devastating on the cities in which these businesses once operated.

San Francisco, one of the cities in the Ninth Circuit hit hardest by the homelessness crisis, is acutely experiencing the effects of business closures. The president of a San Francisco-based real-estate firm, discussing the homelessness crisis, noted: “Throughout almost any neighborhood in the city, you will see empty retail stores, which were once flourishing businesses.” Retailers struggle in areas that used to be commercially vibrant, from Union Square to the downtown Financial District. Cory Smith, *Business owners, cities struggling with homeless crisis*, WWMT (May 15, 2023), <http://tinyurl.com/4dt276wj>. Among the businesses open in 2019 in Union Square, once a popular retail-shopping area, only 53% were still in business in May 2023. Maryann Jones & Shelley D. Fargo, *Nearly half of Union Square’s stores have closed since 2019*, S.F. Standard (May 18, 2023),

<https://tinyurl.com/2p9s8fxx>. In the city's Financial District, the office vacancy rate as of December 2023 was at a record high of over 35% compared with a 3% to 4% vacancy rate before the COVID-19 pandemic. J.R. Stone, *San Francisco now at 35% office vacancy rate, highest ever recorded: data*, ABC7 (Dec. 1, 2023), <https://tinyurl.com/2s3var6u>.

Similarly, in downtown Seattle, the office vacancy rate more than tripled from 6.6% in 2019 to 21.2% in February 2023, with analysts saying they "wouldn't be surprised" to see the vacancy rate at 30% by the end of 2024. Josh Cohen, *The post-pandemic ups and downs of Seattle's Downtown recovery*, Crosscut Cascade PBS (Dec. 19, 2023), <https://tinyurl.com/22jauwt9>. In the first quarter of 2023, downtown San Diego had the highest office vacancy rate in the country. Ray Huard, *SPECIAL REPORT: Commercial Real Estate*, S.D. Business Journal (Apr. 20, 2023), <https://tinyurl.com/4m67zzje>. While some of this decline is undoubtedly a hangover from the pandemic, the deterioration of public health and safety resulting from unchecked homeless encampments plays a significant role.

In Portland, Oregon, "more than 2,600 downtown businesses have filed changes of address with the U.S. Postal Service to leave their downtown ZIP codes." The crime effects of the homelessness crisis are particularly acute in Portland, with "several stores forced to permanently shutter due to break-ins now common due to rampant crime, making the businesses no longer financially viable." Alex Hammer, *It's a hollowed out shell*, Daily Mail (Mar. 2, 2023), <http://tinyurl.com/mz96ywst>. The numerous amicus briefs filed in support of certiorari in this case further highlight the effects of the homelessness crisis

on businesses throughout the circuit.³

As businesses close, local communities suffer. Employment opportunities dwindle, residents relocate, and crime increases. The result is a weaker economy and more dangerous living conditions for all citizens in the community.

³ See generally Br. of Amici Curiae Los Angeles Area Chamber of Commerce and Central City Association of Los Angeles; see also , e.g., Br. of Amicus Curiae Office of the San Diego County District Attorney at 6 (“The impact on small business owners having their livelihood interrupted because entry by customers is impeded by encampments also causes much hardship.”); Br. of Amicus Curiae District Attorney of Sacramento County at 20 (“Business owners struggle when homeless encampments impinge on their property or make the area around the business unsafe.” (citation omitted)); Br. of Amicus Curiae Brentwood Community Council at 16 (“[S]ome of our local businesses report to us they face ever increasing security costs in response to violent and belligerent homeless individuals who scare off patrons and damage private and public property alike [S]ome of our commercial property owners struggle to attract tenants because of an encampment immediately outside the premises that scares off potential tenants.”); Br. of Amicus Curiae Washington State Association of Sheriffs and Police Chiefs at 9 (“Disturbing, violent crime in and around Seattle’s homeless camps continues to be a growing problem with business owners and neighbors saying they feel under siege.”); Br. of Amici Curiae Ten California Cities and the County of Orange at 25–26 (“Significant increases in homeless encampments on public walkways and in front of storefront businesses that accumulate trash, debris, and hazardous materials and harm to local businesses.”); Br. of Amici Curiae Bay Area Council, et al. at 15 (“No doubt, the economy is suffering. Data suggests that the presence of homeless encampments and persons on transit and public rights of way are discouraging employees from returning to offices.”); Br. of Amici Curiae Neighbors for a Better San Francisco, et al. at 11 (“Small businesses have been especially hard hit. . . . Countless [business] closures have deprived communities of needed commerce and workers of their livelihoods.”).

Businesses are doing their part to ameliorate the homelessness crisis and provide for their unhoused neighbors. But businesses cannot solve the problem alone. State and local governments must be empowered to tackle the homelessness crisis through sensible policies that protect the economic vibrancy of their communities.

II. LOCAL GOVERNMENTS NEED LEEWAY TO APPLY SENSIBLE POLICIES TO SERVE THEIR COMMUNITIES

In his efforts to tackle the “crisis of homelessness” in California, Governor Gavin Newsom has emphasized the importance of being able to use “every tool in our toolbox.” Office of Gov. Gavin Newsom, *Governor Newsom Announces \$1 Billion in Homelessness Funding, Launches State’s Largest Mobilization of Small Homes* (Mar. 16, 2023), <http://tinyurl.com/bdfuwurv>. But the Ninth Circuit has handcuffed California—and the other states in the Ninth Circuit—by preventing states from “tak[ing] reasonable actions to address the homelessness crisis” and “t[ying] the hands of state and local governments to address the issue.” Office of Gov. Gavin Newsom, *Governor Newsom Statement on U.S. Supreme Court Agreeing to Hear Case on Homelessness* (Jan. 12, 2024), <https://tinyurl.com/42mrrrsy>.

Mayor London Breed of San Francisco has also emphasized the importance of allowing local governments to “provide services to persons experiencing homelessness while also protecting the health, safety, and welfare of all its residents,” warning that unduly confining local governments’

ability to manage the crisis will “wreak[] practical havoc . . . in municipalities across the Ninth Circuit, including in San Francisco.” Quinn Wilson, *SF Mayor Asks Justices To Review Homelessness Case*, Law360 (Oct. 3, 2023), <http://tinyurl.com/ytuynj9y>.

Judge Milan Smith described the substantial actions many municipalities have taken to address the homelessness crisis but warned that “most of these attempts to mitigate the challenging issues of homelessness have been wholly or partially frustrated by an alleged constitutional right conjured by a panel of our court that finds no support in United States Supreme Court jurisprudence.” *Johnson*, 72 F.4th at 935 (M. Smith, dissenting from the denial of rehearing en banc); *accord id.* at 945 (Bress, J., dissenting from the denial of rehearing en banc) (“[W]e must allow local leaders—and the people who elect them—the latitude to address on the ground the distinctly local features of the present crisis of homelessness and lack of affordable housing.”)

Time and again, business owners have sought their local government’s assistance in addressing the collateral effects of homelessness and homeless encampments on their businesses. *See, e.g.*, Jaclyn Schultz, *Commercial Center businesses call for removal of nearby homeless camp*, FOX5 (Jan. 25, 2024), <http://tinyurl.com/yttrjtm> (group of business owners in Las Vegas called for a community meeting with local leaders to address the homelessness crisis); Scott Snowden, *Anger from business owners over homelessness inaction dominates Downtown meeting*, Santa Monica Daily Press (Aug. 23, 2023) <http://tinyurl.com/23xmpam9> (retailers in downtown Santa Monica met with local officials seeking action on “an ongoing crisis of homelessness in the city’s

epicenter of retail and tourism.”). Local officials are often sympathetic to business owners’ concerns but cite “limits on their ability to address some of the key complaints.” *Id.* For example, the Chief of the Santa Monica City Attorney’s Criminal Division explained: “And as much as I would like to have some more tools in my toolbox, there’s case law and there’s the constitution that make it difficult for us sometimes to be able to employ all the tools in our toolbox.” *Id.*

Most government officials recognize the devastating effects that homeless encampments pose to local businesses and the community. As one representative of an afflicted neighborhood on the San Francisco Board of Supervisors correctly predicted, “the neighborhood will bounce back if the city can better respond to its drug crisis.” Kupfer, *supra*. The mayor of Spokane acknowledged that the area around a homeless camp was “not a safe place for the community” and “not safe for the businesses who operate around it.” Esther Bower, *‘Not a safe place’: Police say crime is up 58% near Camp Hope, business owners overwhelmed with damage*, KXLY (Jan. 13, 2023), <http://tinyurl.com/2283b856>. And outreach teams from Seattle have attempted to address the “open-air drug market” in a local homeless encampment. Joel Moreno, *Seattle homeless camp returns to north Green Lake neighborhood*, KOMO News (Oct. 5, 2023), <http://tinyurl.com/3bmxjwxe>. But, as Governor Newsom stated in his cert-stage amicus brief: “[G]overnment officials are trapped, at risk of suit for taking action but also accountable for the consequences of inaction.” Br. for California Governor Gavin Newsom as Amicus Curiae at 12.

If allowed to take decisive action, local governments could respond effectively to the various

concerns raised by businesses. For example, in Portland, business owners praised an ordinance passed in 2023 addressing homeless encampments, noting that it “could attract customers currently deterred by sidewalk encampments.” Alex Zielinski, *Portland approves ban on daytime street camping and imposes other restrictions*, Oregon Public Broadcasting (June 8, 2023), <http://tinyurl.com/2cjczmwu>.

To be sure, there are no easy solutions to the homelessness crisis, which affects a wide variety of community members, from homeless individuals and small business owners to employees and patrons. But difficult problems require innovation, experimentation, and flexibility, coupled with the expertise of public officials to create policies to best serve their communities. *See* Br. for California Governor Gavin Newsom as Amicus Curiae at 12. (“To tackle the complicated issues of housing and homelessness in our State, California’s policymakers need access to the full panoply of tools in the policy toolbox.”). Businesses across the country, suffering from the collateral effects of the homelessness crisis, remain hopeful that the “straitjacket” placed on local governments will be removed to allow elected officials to do their jobs. *Martin*, 920 F.3d at 590 (M. Smith, J., dissenting from denial of rehearing en banc). Businesses—large and small—are doing their part to support their homeless neighbors and stand ready to partner with local leaders to assist with solutions that bring relief both to the homeless and to the business community.

CONCLUSION

This Court should reverse the judgment of the Ninth Circuit.

Respectfully submitted,

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