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 Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR CALIFORNIA GOVERNOR GAVIN NEWSOM AS AMICUS CURIAE IN SUPPORT OF NEITHER PARTY

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INTEREST OF *AMICUS CURIAE*[1]

Gavin Newsom is the Governor of California, the former Lieutenant Governor of California, and the former Mayor of San Francisco. In these roles, he has witnessed firsthand the challenges of the homelessness crisis. As Mayor of San Francisco, he partnered with local organizations to help thousands of people transition from the streets to supportive housing. And as Governor, he has worked with California's Legislature to allocate more than $15 billion towards homelessness and its root causes, and more than $30 billion towards housing. He has launched programs to reward local governments that reduce barriers to affordable housing while holding accountable those cities and counties that refuse to do their fair share to address the affordable housing crisis.

In connection with these efforts, the Governor has also addressed encampments, which foster dangerous and unhealthy conditions for those living in them and for communities around them. It is vital to these efforts that governments have the tools to help move people off the streets, to connect them with resources, and to promote safety, health, and usable public spaces.

The Governor believes strongly that helping people who are experiencing homelessness requires meeting them where they are and treating them with dignity. The homelessness crisis will never be solved without

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[1] Pursuant to Supreme Court Rule 37.6, counsel for *amicus curiae* states that no counsel for a party authored this brief in whole or in part. No counsel or party made a monetary contribution intended to fund the preparation or submission of this brief, and no person other than *amicus* or its counsel made such a contribution.

solving the housing crisis, as the two issues are inextricably linked. And both issues are highly complex, requiring multifaceted strategies to solve them.

But while states, cities, and counties work on long-term approaches to help with these crises, they need the flexibility to swiftly address threats to health and safety in public places—both to individuals living in unsafe encampments and other members of the public impacted by them. The Governor thus has a strong interest in ensuring that judicially created rules, however well-intentioned those rules may be, do not hamstring state and local governments' ability to address these problems, and do not impede common-sense measures to keep people safe.

Under the cases coming out of the Ninth Circuit, our government officials are trapped, at risk of suit for taking action but also accountable for the consequences of inaction. Our communities will suffer for it.

INTRODUCTION

The Governor agrees that people experiencing homelessness should not be criminally punished for sleeping outside when they have nowhere else to go. Regardless of whether such protection derives from the Eighth Amendment as held in *Martin* v. *City of Boise*, 920 F.3d 584, 617 (9th Cir. 2019), or through an alternative doctrine such as a necessity defense or due process, cf. Pet. Br. at 41, the Governor believes that the Constitution affords unhoused people protection from punishment simply because they are unhoused, and that policies on homelessness must always maintain a respect for humanity and individual dignity.

The problem is that courts have transformed a sensible-yet-narrow limit on criminal punishment into a basis for *ex ante*, classwide injunctions against civil ordinances and common-sense policies. In the wake of *Martin*, lower courts have blocked efforts to clear encampments while micromanaging what qualifies as a suitable offer of shelter. Such decisions have impeded not only the ability to enforce basic health and safety measures, but also the ability to move people into available shelter beds and temporary housing where they can be connected with critical services. That trend has culminated in two recent decisions by the Ninth Circuit that have only added to the confusion.

In the case under review, the Ninth Circuit expanded *Martin*'s limit on criminal penalties to enjoin a civil anti-camping ordinance on a classwide basis. It further announced a right to rudimentary forms of protection from the elements that "may or may not" include a right to use stoves, build fires, and erect structures in public spaces. *Johnson* v. *City of Grants Pass*, 72 F.4th 868, 895 (9th Cir. 2023), *cert. granted*, 2024 WL 133820 (U.S. Jan. 12, 2024).

The Ninth Circuit then expanded *Martin* and *Grants Pass* further by affirming in material part a preliminary injunction prohibiting enforcement of *any* ordinance restricting sleeping, lodging, or camping on public property by the involuntary homeless—even ordinances that are limited to specific time or place restrictions. *Coal. on Homelessness* v. *City of S.F.*, 90 F.4th 975 (9th Cir. 2024), *aff'd in part, remanded in part*, No. 23-15087, 2024 WL 125340 (9th Cir. Jan. 11, 2024). The ruling's effect is to allow people "to sleep anywhere, anytime in public in the City of San Francisco," unless and until adequate shelter is provided, *id.* at 982 (Bumatay, J., dissenting) (emphasis omitted). By leaving in place the district court's sweeping

injunction prohibiting clearances of encampments, the Ninth Circuit has effectively created an affirmative right for individuals to erect structures and camp on public property until the individual receives an offer of shelter or housing.

The consequences of this judicial expansion are enormous. State and local governments, including the State of California, have dedicated unprecedented sums of public funding to address the root causes and effects of the homelessness crisis. Those governments should be held accountable for finding and funding solutions that benefit all citizens.

To address a problem as complex as the homelessness crisis, state and local officials need options. The interrelated socioeconomic, criminal, legal, public health, and public safety concerns that homelessness presents cannot be solved without a comprehensive set of tools. This means supportive services, transitional accommodations, and permanent housing. And, at times, it means rapid interventions to protect the welfare of housed and unhoused citizens alike.

Of course, solutions must start from a place of compassion and proceed at all times with respect for constitutional rights and individual dignity. Every jurisdiction's policy should center on connecting individuals experiencing homelessness with shelter beds or housing and supportive services in their jurisdiction, as part of providing notice prior to any clearance.

But there is no compassion in stepping over people in the streets, and there is no dignity in allowing people to die in dangerous, fire-prone encampments. Hindering cities' efforts to help their unhoused populations is as inhumane as it is unworkable. Accordingly, whatever constitutional rule the Court adopts, it should clarify that any constitutional limit on criminal

prosecutions is a narrow one and not the basis for the kinds of sweeping injunctions that have been issued across the Ninth Circuit that have hampered efforts to address encampments and confront the homelessness crisis.

ARGUMENT

I. *Martin*'s Narrow Holding Has Been Distorted to Justify Broad Injunctions Against Common-Sense Policies.

A. *Martin* offered a "narrow" holding: "as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property." 920 F.3d at 617. In other words, if a government cannot offer indoor shelter to someone who has nowhere else to sleep inside, it cannot enforce an all-places or all-times criminal prohibition on sleeping outdoors within its boundaries.

The Governor supports this modest check on government's use of criminal prohibitions to address the homelessness crisis. Whether as an Eighth Amendment matter or under some other constitutional or criminal-law doctrine like necessity, Californians who "do not have a single place where they can lawfully be" should not be criminally prosecuted for needing sleep. *Id.* (quoting *Pottinger* v. *City of Miami*, 810 F. Supp. 1551, 1565 (N.D. Fla. 1992)). The unhoused people in our State—from forgotten military veterans to LGBTQ+ youth fleeing abuse and rejection—may be experiencing loss, battling addiction, or coping with extreme, diagnosable mental health challenges. All of this is made more difficult when sleep itself is criminalized in all places and at all times.

Martin did not purport to prohibit—or allow courts to preemptively micromanage—every effort by state

and local governments to clear encampments or to set limits on the time, place, and manner in which an unhoused person may sleep. See *id.* at 617 n.8 ("Nor do we suggest that a jurisdiction with insufficient shelter can *never* criminalize the act of sleeping outside."). But it also expressly left open the possibility that such efforts might be unconstitutional. See *id.* ("Even where shelter is unavailable, an ordinance prohibiting sitting, lying, or sleeping outside at particular times or in particular locations *might well be* constitutionally permissible." (emphasis added)). And it declined to meaningfully articulate the outer limits of this "narrow" holding.

B. Since *Martin*, courts within the Ninth Circuit have rebranded that narrow holding into a far broader set of proscriptions on government action. The practical result is that the fate of any given effort to manage homelessness turns not on the success of a policy set by a democratically elected official, but on the views of the federal judge drawn to assess an application for a temporary restraining order.

Courts are enjoining time-place-and-manner restrictions. While *Martin* involved an all-times, all-places ban on sleeping in public within the City of Boise, courts in the Ninth Circuit have expanded *Martin* to enjoin more limited time-place-and-manner regulations as well. For example, when Santa Barbara sought to impose a geographically and time-limited ban against sleeping only in the downtown area, a district court still held that the plaintiffs stated a plausible *Martin* claim. See *Boring* v. *Murillo*, No. LA CV 21-07305-DOC (KES), 2022 WL 14740244, at *6 (C.D. Cal. Aug. 11, 2022). And a district court extended a temporary restraining order that relied on *Martin* to block the City of San Rafael from enforcing an ordi-

nance that limits locations and density for encampments but does not purport to prohibit sleeping in public within the City's limits. See Order, *Boyd* v. *City of San Rafael*, No. 3:23-cv-04085-EMC (N.D. Cal. Sept. 8, 2023), Dkt. 67; Order, *Boyd* v. *City of San Rafael*, No. 3:23-cv-04085-EMC (N.D. Cal. Aug. 16, 2023), Dkt. 19.

Courts are scrutinizing the adequacy of shelter offers, even when beds are available. While *Martin* emphasized that its holding did "not cover individuals who do have access to adequate temporary shelter," *Martin*, 920 F.3d at 617 n.8 (emphasis omitted), lower courts have assumed the responsibility for deciding when and whether available shelters are "adequate." Thus, in Los Angeles, a district court held that only if shelters meet a long list of requirements—from nursing staff, to testing for communicable diseases, to on-site security—may the City enforce common-sense anti-camping laws. See *L.A. All. for Hum. Rts.* v. *City of L.A.*, No. LA CV 20-02291-DOC-KES, 2020 WL 2512811, at *3–4 (C.D. Cal. May 15, 2020) (opining that *Martin* "gave constitutional significance to the availability of shelter").

***Grants Pass* expands *Martin* in troubling and uncertain ways.** Against this backdrop, the Ninth Circuit issued the decision below, which expanded *Martin* to apply not only to the "act of 'sleeping' in public," but also to having "articles necessary to facilitate sleep." *Grants Pass*, 72 F.4th at 891. While the Court emphasized that the constitutional right only extends to "rudimentary precautions," it declined to resolve whether the right encompasses "the use of stoves or fires, as well as the erection of any structures." *Id.* at 891, 895. The court's failure to resolve those questions is startling in light of the proliferation of large and dangerous encampment structures and escalating number of encampment fires. See *infra* § II.

Equally alarming is the Ninth Circuit's decision to affirm a broad classwide injunction rather than treat the Eighth Amendment protection as a case-specific, individualized defense. *Grants Pass*, 72 F.4th at 892. It did so even though a key underlying issue—whether the individual truly has nowhere else to go—necessarily depends on individualized assessments that were not (and apparently need not be) made individually.

To illustrate the practical effects of this decision: An Arizona district court has since applied *Grants Pass* to enjoin ordinances preventing camping and sleeping on public rights-of-way—even when Phoenix had adopted a policy that "officers must investigate the individual's circumstances and determine if there is shelter space available" before charging the person. *Fund for Empowerment* v. *City of Phx.*, 646 F. Supp. 3d 1117, 1125 (D. Ariz. 2022). The district court dismissed the City's position as a mere "statement of administrative policy," effectively treating the ordinances as presumptively unconstitutional because it was "not contested that there are more unsheltered individuals than shelter beds in Phoenix." *Id.*

The Ninth Circuit has since expanded *Martin* and *Grants Pass* even further. This trend of expanding *Martin* has continued with a recent decision involving San Francisco. Following *Martin*, San Francisco implemented a collaborative policy under which officers and other local officials worked together to clear and clean the most dangerous encampments only after posting a notice in the encampment that clearing will occur on a particular day, performing outreach at the encampment the weekend prior to the clearing, and issuing reminders about the clearing 24 to 72 hours in advance. See *Coal. on Homelessness* v. *City of S.F.*, 647 F. Supp. 3d 806, 815 (N.D. Cal. 2022), *aff'd*

in part, 90 F.4th 975 (9th Cir. 2024). Under the policy, an officer cannot arrest a person experiencing homelessness for particular offenses unless the officer first "secure[s] appropriate shelter" for that person. *Id.* at 813 (citation omitted).

While the evidence of the City's compliance with this policy is disputed, a district court reviewing the policy focused not on the facts of individual encampments or plaintiffs but on a single question: was there a deficit in the number of shelter beds? *Id.* at 836–37. Answering that question in the affirmative, the court issued a broad injunction preventing the City from enforcing "any ordinance that punishes sleeping, lodging, or camping on public property." *Id.* at 840.

Over a dissent, the Ninth Circuit affirmed in significant part. *Coal. on Homelessness*, 90 F.4th 975. Although the court directed that the injunction should apply only to enforcement actions against the involuntarily homeless,[2] the enjoined ordinances were time-place-and-manner restrictions, not blanket all-times, all-places bans on sleeping in public. *Id.* at 993–96 (Bumatay, J., dissenting). The decision thus expands *Martin* and *Grants Pass* even further, such that people experiencing homelessness in San Francisco can now sleep "*anywhere*, *anytime*" in public, unless and until a specific offer of alternative shelter is made. *Id.* at 982; see also *id.* at 995–998, 999–1000. And because the injunction bars even enforcement of laws banning encampments on public sidewalks, the obstruction of

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[2] The Ninth Circuit issued an unpublished memorandum decision directing the district court to revisit aspects of the injunction on the remand, including by limiting the injunction to the "involuntary homeless." *Coal. on Homelessness* v. *City of S.F.*, No. 23-15087, 2024 WL 125340, at *1 (9th Cir. Jan. 11, 2024). That portion of the decision, however, did little to clarify or limit lower courts' asserted role in determining the adequacy of shelter.

public streets, and nuisance activity, San Francisco cannot require that individuals dismantle or move tents and structures blocking the public right-of-way without making an offer of shelter.

This most recent Ninth Circuit decision crystalizes just how far the doctrine has sprawled beyond a narrow rule that the government cannot criminalize sleep when an individual has nowhere else to go. The Ninth Circuit has transformed *Martin* into a virtually insurmountable roadblock with which district courts routinely enjoin common-sense limits on where those experiencing homelessness can sleep in public, and on the size and features of the encampments they set up in these public spaces. California's elected officials who seek in good faith to improve what often appears to be an intractable crisis have found themselves embroiled in years-long lawsuits, with shifting and unclear direction on what they can and cannot do to make the spaces occupied by unhoused people safer for those within and near them. Accordingly, if this Court affirms *Martin*'s core principle, it should qualify that holding by making clear that any constitutional limit to local government discretion is necessarily based on whether an *individual* has no place else to go, that local and state governments' time, place, and manner restrictions are permissible, and that sweeping injunctions like those entered in the decision below are improper.

II. The Ability to Address Encampments Is Critical to Protecting Public Health and Safety.

Encampments are dangerous. These semi-permanent tent cities dot the landscape of many cities and rural towns, and are surely familiar to anyone who has traveled in the Western United States. And while the residents of public encampments may have fostered an important sense of community, stability, and place in

these areas, public encampments indisputably threaten public safety and health.

Start with public safety. The number of fires related to homelessness has doubled since 2018, as residents seek to prepare food, share heat, and smoke.[3] San Francisco alone saw more than 800 fires linked to homeless encampments and unhoused people in 2023.[4] Criminals also prey on those living in public encampments, leaving residents at risk of exposure to criminal activity and controlled substances, and of subjugation to sex work or physical abuse.[5] A recent study found that homeless individuals in San Diego County are nine times more likely to be victims of sexual assault than non-homeless individuals, and 15 times more likely to be victims of domestic violence.[6]

The safety concerns for those living near and around encampments are real, too. Business owners and residents near encampments are confronted by trash, used needles, and human waste, and increased instances of

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[3] Associated Press, *Number of Damaging Fires in Los Angeles Homeless Camps Grows* (May 13, 2021), https://shorturl.at/cnOZ8.

[4] Josh Koehn & David Sjostedt, The San Francisco Standard, *Homeless Encampment Fires in San Francisco Doubled over 5 Years, Causing Millions in Damage* (Feb. 7, 2024), https://shorturl.at/sBG79.

[5] Lane Anderson, Deseret News, *Saving 'Throwaway Kids.' In Los Angeles, Sex Trafficking Doesn't Look Like It Does In The Movies* (Dec. 31, 2015), https://shorturl.at/iswSW; Lolita Lopez & Phil Drechsler, NBC, *Gangs of LA On Skid Row*, https://shorturl.at/lyDOU (updated Mar. 19, 2018).

[6] Off. of the Dist. Att'y Cnty. of San Diego, *DA Shares First-of-Its Kind Crime Data, Proposes Three-Point Plan to Address Intersection of Crime and Homelessness* (Mar. 21, 2022), https://shorturl.at/krEY2.

open drug use, property damage, theft, and break-ins.[7] They have seen their property values decline, their small businesses fail, and their public spaces become uninhabitable.

Encampments also pose immense public health concerns. Public encampments lacking running water present significant risks for disease transmission.[8] And the mere fact of living without true shelter is threatening to the health and safety of the individuals in encampments, who are exposed to the weather extremes that include freezing and exceptionally hot temperatures.[9]

Having the option of clearing problematic encampments is critical to addressing these public health risks. Clearing encampments gets people out of dangerous situations and into housing and restores encampments to safe, clean, and useable public spaces while addressing the conditions underlying encampments. The Governor and the California Legislature have invested more than $15 billion toward homelessness issues, including $750 million in encampment resolution grants to cities and counties across the state specifically to address unsafe encampments and move

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[7] CBS, *West Oakland Neighbors Shocked By City-Sanctioned Homeless Camp* (July 2, 2019), https://shorturl.at/dnorZ; Sam Quinones, L.A. Mag., *Skid Row Nation: How L.A.'s Homelessness Crisis Response Spread Across the Country* (Oct. 6, 2022), https://shorturl.at/cfgCZ.

[8] Anna Gorman, The Atlantic, *Medieval Diseases Are Infecting California's Homeless* (Mar. 8, 2019), https://shorturl.at/fgjyF.

[9] Sam Levin, The Guardian, *At Least 14 Unhoused People Froze to Death in LA Last Year, Records Reveal* (Oct. 4, 2022), https://shorturl.at/rsuHM.

people into housing and shelter.[10] Local governments applying for billions in available grant money under the State's Homeless Housing, Assistance, and Prevention Program must detail how funds will be used to move individuals experiencing homelessness into housing and must meet specific goals to become eligible for additional funding.[11] The California Department of Transportation, either directly or in coordination with the relevant local jurisdiction, requests outreach services for persons experiencing homelessness as part of pre-clearance assessments of encampment sites on state rights-of-way.[12] Local governments have sponsored similar programs to connect people with housing and services, including medical and behavioral health services and support groups, as part of their resolution efforts. See, e.g., Appellants' Opening Brief at 18, *Coal. On Homelessness*, No. 23-15087 (9th Cir. Feb. 21, 2023), Dkt. 11 (detailing how San Francisco's Homeless Outreach Team conducts outreach "to offer services, connections, and/or referrals").

And while services are an essential component of a comprehensive plan for addressing encampments, so is making public spaces clean and safe for everyone. Encampment clearance activities mitigate fire and

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[10] Off. of Governor Newsom, *California Has Removed 5,679 Encampments, Announces $300 Million in New Funding to Move People Out of Encampments* (Nov. 27, 2023), https://shorturl.at/jnwJO.

[11] Off. of Governor Newsom, *Governor Newsom Calls for More Aggressive Action on Homelessness, Pauses Latest Round of State Funding* (Nov. 3, 2022), https://shorturl.at/nqzFZ; *see also* Cal. Interagency Council on Homelessness, *Homeless Housing, Assistance, and Prevention (HHAP) Grant Program* (Jan. 27, 2023), https://shorturl.at/iEIS5.

[12] Cal. Dep't of Transp., *Maintenance Policy Directive 1001-R1* (effective Oct. 10, 2022).

public health hazards, remove trash and debris, and return parks, playgrounds, and sidewalks to usable public spaces for the benefit of the full community.

Misinterpretations and extensions of *Martin*—as now reaffirmed by the Ninth Circuit in the decision below—are harming these efforts. As just one example, because San Francisco remains under a sweeping injunction, the City cannot even order an individual to move a structure blocking a sidewalk, or to cease certain nuisance activities, without making an offer of shelter—which the courts may well scrutinize for its adequacy.

Nor are the Western States the only ones affected by these issues. For example, the National Park Service (NPS) cleared homeless encampments at McPherson Square in Washington, D.C.[13] As in San Francisco, NPS staff did advance outreach to try to move unsheltered individuals into housing, but ultimately had to clear the park due to high rates of crime, illegal drug use, and unsafe conditions that "not only made it difficult to provide social services, but challenged emergency response, sanitation support, and trash removal."[14] Indeed, NPS is grappling nationwide with the "growing phenomenon" of "non-recreational long-term camping" in national forests and other public lands.[15]

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[13] Jeffrey P. Reinbold, Nat'l Park Serv., *Record Determination for Clearing the Unsheltered Encampment at McPherson Square and Temporary Park Closure for Rehabilitation* (Feb. 13, 2023), https://shorturl.at/dqvG5.

[14] *Id.*; *see also* Ashraff Khalil, Associated Press, *Park Service Clears Homeless Encampment Near White House* (Feb. 15, 2023), https://shorturl.at/bATW2.

[15] Lee K. Cerveny & Joshua W.R. Baur, *Homelessness and Non-recreational Camping on National Forests and Grasslands in the*

Whether the matter involves San Francisco's management of its streets or the federal government's management of its forests, officials need to balance the competing concerns, and they need the flexibility to do so. Yet, in the western states, distortions of *Martin* have paralyzed communities and blunted the force of even the most common-sense and good-faith laws to limit the impacts of encampments.

III. This Court Should Course-Correct Back to a Narrow Rule.

As noted above, the Governor strongly believes that the status of being homeless should not be criminalized, and no individual should face criminal penalties under an all-times, all-places prohibition on sleeping outdoors when they have not been offered shelter and have nowhere else to go within the jurisdiction.

What is clear, however, is that the Ninth Circuit's expansion of *Martin*'s narrow principle has become unsustainable. Rather than limiting *Martin* to prohibit punishing someone for sleeping in public when they have nowhere else to go, courts have created an untethered body of constitutional law in which time-place-and-manner restrictions are presumptively and preemptively enjoined, and under which homeless individuals have been granted a right to erect semi-permanent structures on public rights of way if they have not received an offer of shelter. Indeed, even as the Ninth Circuit has expanded *Martin*, it has declined (repeatedly) to clearly define any parameters—leaving still unresolved when and how localities can enforce policies to address specific encampments that are impacting the ability of the public to use specific public spaces or severely impacting public health or safety.

United States: Law Enforcement Perspectives and Regional Trends, 118 J. Forestry 139 (2020).

See *Martin*, 920 F.3d at 617 n.8; *Grants Pass*, 72 F.4th at 894 n.33; *Coal. On Homelessness*, 90 F.4th at 980. If there were any doubt that *Grants Pass* perpetuates the risk that district courts will misunderstand or misinterpret *Martin*, look no further than the district court orders that have attempted to parse it. See *Coal. on Homelessness*, 647 F. Supp. 3d at 836–37; *Fund for Empowerment*, 646 F. Supp. 3d at 1125. The Ninth Circuit's continued expansion beyond *Martin* has only made the problem worse. See *Coal. on Homelessness*, 90 F.4th at 979.

There are real-life costs to these sweeping pronouncements. Any attempt to move unhoused persons out of encampments and into shelter, or to limit the place or manner in which unhoused persons can sleep, will, at best, subject the community to litigation and, at worst, result in a broad injunction. And *Grants Pass* provides no guidance about how state and local governments can enforce policies to clean encampments or move individuals to safer locations, even when they are not attempting to enforce total bans on the presence of homeless individuals within a particular jurisdiction. It provides no answers, for example, to questions about the hours during which a city may prohibit sleeping in public, or about whether a person experiencing homelessness has a right to select one location over another, or about who bears the burden of establishing that a particular person is experiencing homelessness voluntarily.

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. They also need some room to innovate based on their experience and changing circumstances—to use these tools in good faith and consistent with the

Constitution, and to serve the health and safety interests of their housed and unhoused residents. The Ninth Circuit's failure to provide clarity on the governing legal standard, and indeed, the Ninth Circuit's pattern of expansion from *Martin* to *Grants Pass* to *Coalition on Homelessness*, have deprived policymakers of both the tools and the discretion, leaving few and fragmented options for effecting change during a growing national crisis.

CONCLUSION

For these reasons, the judgment of the Ninth Circuit should be reversed.

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