

No. 23-175

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.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

**BRIEF OF *AMICUS CURIAE*
CICERO INSTITUTE
IN SUPPORT OF PETITIONER**

Ryan Vassar
CICERO INSTITUTE
2112 Rio Grande St.
Austin, TX 78705
(512) 815-2028

Jeffrey M. Harris
Counsel of Record
Tiffany H. Bates
CONSOVOY MCCARTHY PLLC
1600 Wilson Boulevard
Suite 700
Arlington, VA 22209
(703) 243-9423
jeff@consovoymccarthy.com

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Counsel for Amicus Curiae

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INTEREST OF *AMICUS CURIAE*¹

The Cicero Institute is a nonpartisan public policy organization with deep experience in government, legislation and the law, technology, and entrepreneurship. It promotes innovative public policies that harness the strengths of free-market competition and government accountability. And it helps elected leaders fix urgent issues in public systems—fostering prosperity, competent government, and safeguarding American liberty for future generations.

The Institute has been at the forefront of homelessness reform, helping twenty states craft and pass legislation to compassionately and effectively address homelessness. The Institute’s model legislation has been enacted in Missouri, Tennessee, Texas and Utah, among others. *See* Joe Lonsdale, Cicero Institute July 2022 Update (July 12, 2022), perma.cc/888X-BC8A. The Institute thus has an important interest in this case.

¹ Pursuant to this Court’s Rule 37.6, counsel for *amicus curiae* certify that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than *amicus curiae* or its counsel has made a monetary contribution to the preparation or submission of this brief.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Like many other cities, Grants Pass seeks to protect its citizens' health, welfare, and safety by regulating homeless individuals' ability to camp or sleep overnight on its sidewalks or in its parks. *See* Grants Pass Municipal Code §§5.61.020(A), 5.61.010(B), 5.61.030, 6.46.090. It enforces these regulations through civil citations. But for the second time in five years, the Ninth Circuit has allowed federal judges to serve as the nation's "homelessness policy czars" and invalidate these common-sense policies as "cruel and unusual punishment" within the meaning of the Eighth Amendment. App. 156a (opinion of M. Smith, J.). If upheld, that decision will have "dire practical consequences" for thousands of local governments and millions of people across the country. *Martin v. City of Boise*, 920 F.3d 584, 594 (9th Cir. 2019) (M. Smith, J., dissenting from denial of rehearing en banc).

Amicus agrees with Petitioner that the Ninth Circuit's decision has "no basis in the Eighth Amendment's text, history, or tradition." Pet'n Br. at 4. And regulating public health and safety falls within the heartland of state police power. *See Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 756 (1985) ("The States traditionally have had great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons.") (cleaned up). *Amicus* writes separately, however, to highlight the scope of the homelessness problem and explain why states need the flexibility to craft tailored and workable solutions to it.

Not only does enforcing laws regulating camping on public property not constitute “cruel and unusual punishment” under the Eighth Amendment, but doing so is imperative to addressing the homelessness crisis. Homelessness is worse today than at any point in recent history. It is a complex issue that stems from a “mix of economic, mental-health, and substance-abuse factors.” App. 140a-143a (opinion of M. Smith, J.). And it has no one-size-fits-all solution. As a result of the lack of temporary shelter, American cities have seen a “dramatic increase” in homeless street encampments. *Sanctioned Camping: A Safer Solution*, Cicero Inst. (Dec. 28, 2023), perma.cc/4GGY-DSED.

But public street camps only exacerbate the problem, and judicial decisions barring state and local governments from addressing these camps are profoundly counterproductive. Crime, mental illness, and substance abuse plague these camps. And they “surround[] the homeless in criminality and predation, not to mention fires, filth, disease, and [fentanyl and meth.]” Sam Quinones, *Skid Row Nation: How L.A.’s Homelessness Crisis Response Spread Across the Country*, L.A. Mag. 131 (Oct. 6, 2022), bit.ly/48FoAfO. Because homelessness “resist[s] any easy solution,” App. 140a (M. Smith, J.), states and localities need the flexibility to address its root causes, offer creative solutions, and focus on accountability and outcomes.

Put simply, judicial decisions invalidating prohibitions on public camping have failed those in the homeless encampments as well as residents of surrounding areas. And those decisions have “paralyz[ed] local communities from addressing the pressing issue of homelessness” in their communities. App. 117a

(O’Scannlain, J., respecting the denial of rehearing en banc). The Court should reverse the decision below.

ARGUMENT

I. Homelessness is worse today than at any point in recent history and public street camps only exacerbate the problem.

Homelessness in America is at an all-time high. *See Public Camping Bans: Guiding the Homeless into Shelter*, Cicero Inst. (Dec. 28, 2023), perma.cc/8TLF-C76A; *see also* Steff Danielle Thomas, *Homelessness in US Surges to Highest-Recorded Level*, The Hill (Dec. 12, 2023), perma.cc/6MA2-DA4Q. In 2023, roughly 20 out of every 10,000 people experienced homelessness. *See* Tanya de Sousa et al., *The 2023 Annual Homelessness Assessment Report (AHAR) to Congress*, U.S. Dept. of Hous. & Urban Dev. 2 (Dec. 2023), perma.cc/L7D7-X5Y8. And four in ten individuals identified as homeless experienced “unsheltered homelessness”—i.e., residing in places “not meant for human habitation such as sidewalks, abandoned buildings, bus stations, and vehicles parked for long periods.” *Id.* at 2, 24.

According to the Department of Housing and Urban Development, 256,610 individuals experienced unsheltered homelessness in 2023, up from 176,357 in 2016. *Compare id.* at 13 with Meghan Henry, et al., *The 2016 Annual Homeless Assessment Report (AHAR) to Congress*, Dept. of Hous. & Urban Dev. 8-9 (Nov. 2016), perma.cc/Y8HU-B2VX. Those numbers represent a “30 percent [increase] in less than ten years.” *Addressing Homelessness in the States*, Cicero Inst. Fact Sheet. This crisis “has left America’s once

great urban centers dangerous shells of what they once were.” *Id.*

Federal, state, and local governments and their non-profit partners often “insist[] that homelessness can be solved by simply building and giving away enough free housing for every homeless individual.” *Id.* But those conventional “housing first” approaches to homelessness do not address the root causes of the crisis. “Most of the homeless are not simply without homes, as many of their advocates would have us believe.” Robert B. Hawkins, Jr., Foreword, in Richard W. White, Jr., *Rude Awakenings: What the Homeless Crisis Tells Us* ix (1992). In fact, “[t]he majority suffer from severe problems that are difficult to treat under optimal conditions—problems such as substance abuse, serious mental illness, and family breakdowns.” *Id.*; see Paul J. Larkin, *Camping and the Constitution*, *Georgetown J. of L. & Pol’y*, at 15-16 (forthcoming; last visited Feb. 22, 2024) (collecting sources), perma.cc/88JC-6UL5.

The largest representative study of American homelessness reported that “more than 80 percent of homeless individuals suffered from mental illness, and only four percent cited housing costs as the primary reason they became homeless.” *Addressing Homelessness in the States*, *supra*; see Margot Kushel, MD, et al., *Toward a New Understanding: The California Statewide Study of People Experiencing Homelessness*, UCSF Benioff Homelessness & Housing Initiative (June 2023), perma.cc/B7VF-2PE2. The study also found that “two-thirds of homeless people admitted to regularly using hard narcotics like

methamphetamine, crack cocaine, and opiates, with less than half reporting ever receiving treatment.” *Id.*

Because most federal resources “prioritize[] longer-term permanent housing programs” at the expense of temporary shelter, shelter resources across the country are “misaligned.” *Sanctioned Camping, supra*. While the number of unsheltered homeless individuals has increased, “there has not been a significant increase in the number of temporary shelter beds to accommodate these people.” *Id.* Indeed, “[t]en times more federal funding is available for permanent housing options than for temporary shelters.” *Id.* But temporary shelter options are an important tool to help connect the unsheltered population to critical resources and to move them off the streets. Yet there are often “zero empty beds” for these individuals in major U.S. cities. *Id.*

This misalignment of resources has only exacerbated the homelessness problem. *Id.* Indeed, “[m]any U.S. cities have seen a spike in unsheltered homeless without an increase in temporary housing.” *Id.* Take three major American cities that fall within the Ninth Circuit—Seattle, San Francisco, and Portland. Since 2007, Seattle has faced a 246 percent increase in the number of unsheltered homeless individuals. *Id.*; SOH: State and CoC Dashboard (Washington), Nat’l All. to End Homelessness (last accessed Feb. 28, 2024), bit.ly/3IgDYEL. Only 44 percent of those individuals “have a shelter bed available to them.” *Sanctioned Camping, supra*. San Francisco’s unsheltered homeless population increased by 58 percent during that same timeframe. *Id.*; SOH: State and CoC Dashboard (California), Nat’l All. to End Homelessness (last

accessed Feb. 28, 2024), bit.ly/3Iht7uk. Yet only 24 percent of those individuals have a bed available to them. *Sanctioned Camping, supra*. And in Portland, the number of unsheltered homeless individuals grew by 20 percent. *Id.*; SOH: State and CoC Dashboard (Oregon), Nat'l All. to End Homelessness (last accessed Feb. 28, 2024), bit.ly/3IdZPN4. Yet only 57 percent have a bed available to them. *Sanctioned Camping, supra*.

Cities that lack temporary shelter beds have other options available to them that do not require allowing *unregulated* street camping. *See id.* For example, regulated camp sites typically offer potable water, health and recovery services, and security. They also serve as a way to introduce unsheltered homeless individuals to other types of shelter and services. Such camps exist in Austin, Texas, Denver, Colorado, and Madison, Wisconsin. *Id.*

Even in cities that have sufficient temporary shelter for the unsheltered homeless population, street camping is a higher-risk alternative. The limited enforcement of prohibitions on street camping has caused a “dramatic increase” in homeless street encampments. *Id.* Mental illness and substance abuse plague these camps. According to one study, two-thirds of homeless individuals reported “regularly using hard narcotics like methamphetamine, crack cocaine, and opiates,” and less than half of those individuals reported having ever received treatment. *Id.*; Kushel, et al., *supra*. More than 80 percent of homelessness individuals reported severe mental health conditions. *Sanctioned Camping, supra*. And nearly a quarter had been hospitalized for those issues. *Id.*

These public camps are hotbeds of crime too. According to the San Diego County District Attorney’s crime data, homeless individuals were “514 times more likely to commit crimes” than the average citizen. Andrew Noh, *New Data Reveals Link Between Homelessness and Crime Wave in California*, 600 KOGO (Mar. 29, 2022), perma.cc/G257-29W4. Homeless offenders also reoffended in 98 percent of cases. *Id.* And “[r]oughly half” of homeless individuals in shelters have served time in prison, “with one in five having been released within the preceding three years.” *Public Camping Bans, supra*; see also Kushel, et al., *supra* (finding that nearly one in three homeless people in California had been to prison or a long-term jail stay in the six months prior to their becoming homeless).

Homeless individuals are also primary *victims* of these crimes. Last year in Los Angeles, nearly 25 percent of homicides and 15 percent of all violent crimes “involved homeless individuals as either perpetrators or victims, or both.” *Public Camping Bans, supra*.

Public street camps have wreaked havoc on American cities from coast to coast. Just four months ago, one Vermont city cleared a homeless encampment and confiscated eight guns after someone in the encampment shot out the windshield of a school bus full of children. Cassandra Hemenway, *Confirmed: School Bus Gunshot Came from Encampment Country Club Road Shelter Opens Nov. 15*, *The Bridge* (Nov. 1, 2023), perma.cc/PF4E-SWGL. Nearby residents and business owners had noticed that “incidents were escalating” at the encampment, and noted that

occupants had been breaking windows and yelling at passersby. *Id.*

Across the country, Phoenix recently cleared a 1,000-person encampment called “The Zone” after a “humanitarian crisis” forced the area to be shut down. Laurie Roberts, *It’s Time for Phoenix to Clean Up the Humanitarian Disaster Area Known as ‘The Zone’*, *The Arizona Republic* (Mar. 28, 2023), perma.cc/6E3B-TTDH. The area was riddled with drug crimes, violence, and disease. *Public Camping Bans, supra*; Steve Twist & Seth Leibsohn, *Phoenix Neglects the Homeless, Ignores Rampant Crime in Drug-Riddled ‘Zone’*, *The Arizona Republic* (Nov. 17, 2022), perma.cc/658B-55LT. Last year, a “burned, deceased newborn baby” was tragically found “lying in the street.” Roberts, *supra*.

Street camps also pose innumerable health risks to the individuals who are living there. Homeless individuals are already at a “higher risk of communicable diseases due to the circumstances of their living conditions.” *Public Camping Bans, supra*. Their “increased exposure[]” to disease, unchecked drug and alcohol use, and mental illness all make them more vulnerable. C. Y. Liu, et al., *Communicable Disease Among People Experiencing Homelessness in California*, *Epidemiology & Infection* 148 (Mar. 20, 2020), perma.cc/LW4Q-FHRX. As does their “lack of access to hygiene and healthcare facilities.” *Id.*

The consequences can be deadly for homeless individuals. The National Institute of Health found that “unsheltered homeless have a nearly three-fold increase in mortality compared to sheltered homeless.” *Public Camping Bans, supra*. That is in large part due

to factors like “drug-induced poisonings and infections.” *Id.* Tuberculosis, for example, has run rampant in homeless camps. The NIH reported that “the prevalence of tuberculosis among homeless individuals is 20 times higher than that of the general population.” *Id.* In 2013, Los Angeles faced “a wave of tuberculosis” on “Skid Row.” *Id.* Health workers verified sixty cases among the homeless individuals and identified an additional 5,000 individuals “who were likely exposed.” *Id.* Over a two-year period starting in 2016, the San Diego homeless suffered one of the largest outbreaks of Hepatitis A ever, resulting in 465 hospitalizations and 21 deaths. *Id.* “Of those who contracted Hepatitis A,” 72%” had “also reported using drugs.” *Id.* More recently, King County, Washington, faced a shigella outbreak—an intestinal infection spread by fecal matter. *Id.* Seventy-seven percent of cases were homeless individuals. *Id.*

Despite these serious and well-documented problems, localities have not done enough “to push unsheltered homeless individuals out of dangerous street encampments and into available shelter space and other services.” *Id.* For western states, that is in no small part due to the Ninth Circuit’s ruling in *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018). That decision held that “the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter.” *Id.* at 1048.

In practice, *Martin* meant that cities across the western United States that lacked sufficient shelter or shelter alternatives could not “enforce their rules against street camping.” *Sanctioned Camping, supra.*

And ones that tried were promptly sued. *See* Pet. 8 (noting that “[t]hree days after the Ninth Circuit’s initial September 2018 ruling, a plaintiff filed a follow-on suit against Portland” and “[o]ver the ensuing months, more plaintiffs pursued *Martin* theories”).

At bottom, the “status quo” under *Martin* has profoundly failed both those in the homeless encampments and the residents of surrounding communities. *See* App. 139a (M. Smith, J.). Indeed, it has “paralyz[ed] local communities from addressing the pressing issue of homelessness.” App. 117a (O’Scannlain, J.). Purportedly brought “in the name of compassion and decriminalizing homelessness[,]” these lawsuits “had the effect of surrounding the homeless in criminality and predation, not to mention fires, filth, disease, and the two most dangerous drugs we’ve known”—fentanyl and meth. Quinones, *supra*.

As Petitioners explain, “the results have been tragic, if predictable: skyrocketing rates of fatal drug overdoses; increasingly volatile behavior on the streets for those who live near encampments; a shocking rise in homicides and sexual assaults committed against the homeless; a resurgence of medieval diseases (such as typhus and tuberculosis) in encampments; a series of fires in major cities, some of which burned out of control for days; and massive amounts of debris, such as needles and excrement, polluting the environment.” Pet. 34 (cleaned up); Pet’n Br. at 46-47; *see also* Thomas Fuller, *Death on the Streets*, N.Y. Times (Apr. 25, 2022), [nyti.ms/3ThW5QW](https://www.nytimes.com/2022/04/25/us/politics/homeless-deaths-pandemic.html); Christal Hayes, *‘The World Doesn’t Care’: Homeless Deaths Spiked During Pandemic, Not from COVID. From Drugs.*, USA Today (May 28, 2022), [perma.cc/6KY4-](https://www.usatoday.com/story/news/nation/2022/05/28/homeless-deaths-pandemic-not-from-covid-from-drugs/10811170002/)

Q8HY; Michael Corkery, *Fighting for Anthony: The Struggle to Save Portland, Oregon*, N.Y. Times (July 29, 2023), [nyti.ms/49OgqDa](https://www.nytimes.com/2023/07/29/us/portland-homeless-killings.html); *Recent Killings in Los Angeles and New York Spark Anger, Raise Risk for Homeless People*, KTLA (Jan. 28, 2022), [perma.cc/2SD9-QSDL](https://www.ktla.com/story/news/local/2022/01/28/los-angeles-new-york-killings-homeless-risk/7018114002/); Eric Leonard, *LAPD Concerned About Increase in Sexual Violence Against Women Experiencing Homelessness*, NBC4 (Feb. 27, 2020), [perma.cc/GA5G-YU6G](https://www.nbc4.com/news/local-las-vegas/lapd-concerned-about-increase-in-sexual-violence-against-women-experiencing-homelessness); Anna Gorman & Kaiser Health News, *Medieval Diseases Are Infecting California's Homeless*, The Atlantic (Mar. 8, 2019), [perma.cc/AWP6-84DG](https://www.theatlantic.com/health/archive/2019/03/medieval-diseases-california-homeless/584444/); Natalie O'Neill, *Blazes That Begin in Homeless Camps Now Account for Nearly Half the Fires in Portland*, Willamette Week (Nov. 2, 2022), [perma.cc/6CJD-ACBD](https://www.willamette-week.com/2022/11/02/blazes-that-begin-in-homeless-camps-now-account-for-nearly-half-the-fires-in-portland/); Jennifer Medina, *Los Angeles Fire Started in Homeless Encampment, Officials Say*, N.Y. Times (Dec. 12, 2017), [nyti.ms/3ThWcMm](https://www.nytimes.com/2017/12/12/us/los-angeles-fire.html). The decision below doubled down on *Martin* and will only make things worse.

II. States and localities must have the flexibility to address the homelessness crisis with creative solutions that work.

For the second time in five years, the Ninth Circuit has allowed federal judges to serve as the nation's "homelessness policy czars." App. 156a (opinion of M. Smith, J.). If upheld, that decision will have "dire practical consequences" for thousands of local governments and millions of people across the country. *Martin*, 920 F.3d at 594 (M. Smith, J., dissenting from denial of rehearing en banc). As discussed, homelessness is a complex issue that stems from a "mix of economic, mental-health, and substance-abuse factors." App. 140a-143a (M. Smith, J.). And it "appears to resist any

easy solution.” *Id.* States and localities thus need the flexibility to address its root causes, offer creative solutions that will protect homeless individuals and surrounding communities alike, and focus on accountability and outcomes. And they should not face an inevitable new lawsuit each time they try to tackle these complex issues.

Localities on the front lines must have “the ability to make tough policy choices unobstructed by court-created mandates that lack any sound basis in law” and have “add[ed] enormous and unjustified complication to an already extremely complicated set of circumstances.” App. 163a (Bress, J., dissenting from denial of rehearing en banc). This Court should return this issue to “the people and their representatives.” Pet’n Br. at 19 (citation omitted).

Respondents contend that common-sense regulations prohibiting public encampments are “punishing people for universal biological necessities like sleeping and using a blanket to survive cold temperatures when they have no choice but to be outside.” BIO 2. But that argument is unavailing as a matter of constitutional law and harmful and counterproductive as a matter of public policy. Enforcing public camping bans is “a compassionate way to redirect unsheltered homeless to existing shelters that are safer and provide resources such as substance abuse treatment or job placement in addition to hygiene facilities and food.” *Public Camping Bans, supra*. Indeed, this “contributes to better outcomes for homeless individuals and safer communities for all.” *Id.*

Several jurisdictions have made great progress by enforcing public camping bans. Indeed, “when tied to

finer or temporary jail time for unlawful camping on public lands,” these bans have been “an effective means to addressing the growing homelessness crisis.” *Id.* And there is no reason to think that civil citations will fare worse. In July 2018, for example, Colorado Springs “banned camping within 100 feet of creeks and other waterways.” *Id.* Thirty-three percent of the city’s homeless population was unsheltered that year, but by 2022, “that number had dropped to 19 percent.” *Id.* That success is due in large part to the “ability to relocate unsheltered homeless individuals to shelters that provide various resources like vocational training, food, and hygiene necessities.” *Id.*

The unsheltered homeless population in downtown Austin fell by one-third after voters reinstated the city’s camping ban in 2021. *Id.*; see Katy McAfee & Ben Thompson, *Austin’s Homeless Population Dispersing After 2 Years of Camping Ban Enforcement*, Community Impact (May 25, 2023), perma.cc/B3XW-VD49. As a result, federal data show that “the current homeless population in Austin has declined by five percent compared to 2020, consisting of 19 percent more people seeking formal shelter and 20 percent fewer unsheltered individuals.” *Public Camping Bans, supra*. And clearing “the Zone” in Phoenix was another positive outcome. After the city cleared “the Zone,” “80% of residents ... found more stable shelter.” *Id.*

In 2023, Georgia and Utah also passed laws requiring cities and counties to enforce camping bans. See Jeff Amy, *Georgia Lawmakers: Localities Must Apply Homeless Camp Bans*, AP (Mar. 27, 2023), bit.ly/4bTwTYx; *Public Camping Bans, supra*. As for Georgia, “the state’s 5,245 unsheltered households

will be directed to the 7,302 vacant shelter beds that are currently available, as well as additional temporary options like sanctioned camping facilities.” *Public Camping Bans, supra*. And in Utah, the state’s “780 unsheltered homeless households will be directed to the approximately 2,977 available emergency shelter and transitional housing beds are currently open and available.” *Id.* Missouri and Tennessee have also recently enacted legislation prohibiting public camping, but those laws are yet to be evaluated. *Id.*

As these examples show, “[r]emoving homeless individuals from unsanctioned camps and placing them in shelters offers them the services they need while reducing crime.” *Id.* This Court should ensure that states and localities retain flexibility to address homelessness in ways that work for them. It is the responsibility and duty of elected leaders, not federal courts, to evaluate and balance the complex factors causing this crisis, and to implement the best public policies in response to each area’s unique needs and circumstances.

CONCLUSION

For these reasons, the Court should reverse the decision below.

Respectfully submitted,

Ryan Vassar
CICERO INSTITUTE
2112 Rio Grande St.
Austin, TX 78705
(512) 815-2028

Jeffrey M. Harris
Counsel of Record
Tiffany H. Bates
CONSOVOY MCCARTHY PLLC
1600 Wilson Boulevard
Suite 700
Arlington, VA 22209
(703) 243-9423
jeff@consovoymccarthy.com

March 4, 2024

Counsel for Amicus Curiae