

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 *AMICI CURIAE* MEMBERS OF
CONGRESS IN SUPPORT OF PETITIONER**

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March 4, 2024

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INTRODUCTION AND INTEREST OF AMICI CURIAE¹

All *amici curiae* are members of the United States House of Representatives who represent districts located within the jurisdiction of the United States Court of Appeals for the Ninth Circuit. Their constituents include individuals and leaders within local municipalities who are vested with the duty to combat crime and keep their public areas safe and enjoyable. The congressional district of one of the Representatives—that of Rep. Cliff Bentz—includes the City of Grants Pass itself. The Ninth Circuit’s opinion below directly interferes with their constituents’ ability to accomplish these goals by stripping them of their police power to combat the adverse effects of homeless encampments. The Ninth Circuit wrongly characterized ordinances that outlaw encampments on public property as criminalizing homelessness. These laws do no such thing. The prohibition of camping on public property reflects a recognition—supported by statistics and research—that encampments on public property inevitably lead to an increase in crime.

The members of Congress who have signed on to this amicus brief include the following:

- Rep. Clifford Bentz of Oregon’s Second Congressional District, which includes within it the City of Grant’s Pass;
- Rep. Kevin Kiley of California’s Third Congressional District;

¹ No counsel for a party has authored this brief in whole or in part. No person aside from *amici curiae* has made a monetary contribution to fund this brief’s preparation or submission.

- Rep. Doug LaMalfa of California's First Congressional District;
- Rep. Tom McClintock of California's Fifth Congressional District;
- Rep. Jay Obernolte of California's 23rd Congressional District; and
- Rep. Darrell Issa of California's 48th Congressional District.

SUMMARY OF THE ARGUMENT

Local municipalities are vested with the responsibility of keeping their public spaces safe, clean, and free from crime. Statistics demonstrate that homeless encampments and crime go hand-in-hand with each other. Yet the Ninth Circuit discarded all of this below and issued an opinion that makes it practically impossible for such municipalities to combat crime within their public spaces. Even worse, the Ninth Circuit has effectively usurped the policymaking authority of local municipalities and state legislatures on this issue, substituting its own policy conclusions for those of elected representatives. This Court should reverse the Ninth Circuit to ensure local municipalities are full able to combat the crime that inevitably results from unrestricted homeless encampments.

ARGUMENT

I. Statistics demonstrate that a failure to enforce laws prohibiting homeless encampments inevitably leads to a rise in crime.

The Ninth Circuit's ruling below as well as its opinion in *Martin* makes it practically impossible for any local municipality to combat the crime that inevitably results from homeless encampments if such encampments are allowed to run unchecked. Ironically, until the last few years, there was nothing particularly controversial about municipalities using their police powers to clean out homeless encampments from public areas as a means of keeping the community safe. A police initiative targeting crime in the Skid Row area of Los Angeles, for example, resulted in a significant reduction in violent crime, crimes against property, and similar wrongdoing. See Richard Berk and John MacDonald, *Policing the Homeless*, *Criminology & Public Policy*, 1-2 (2010), available at bit.ly/42XY3cl. But the landscape has changed drastically in the last several years, with the rise of the notion that *any* attempt to link homeless encampments with a rise in crime is itself unjustified. The Ninth Circuit's opinion below and its opinion in *Martin* is only the latest example of this tendency to downplay the link between such encampments and an increase in criminal activity. As the below data demonstrates, a strong connection exists between a rise in crime and a failure to enforce laws prohibiting homeless encampments. Just as one of the dissenting judges predicted in *Martin*, the Ninth Circuit's precedents have "begun wreaking havoc on local governments, residents, and businesses throughout

[that] circuit.” *Martin v. City of Boise*, 920 F.3d 584, 590 (9th Cir. 2019) (M. Smith, J., dissenting from the denial of rehearing en banc).

According to one study, homeless individuals are 175 times more likely to commit robbery than non-homeless individuals. They are 183 times more likely to commit burglary, 130 times more likely to commit assault, 514 times more likely to commit arson, and 222 times more likely to commit vandalism. Homeless individuals are also far more likely to be *victims* of crimes than are members of the general population. Homeless individuals are 19 times more likely to be victims of murder, 27 times more likely to be victims of attempted murder, 15 times more likely to be victims of robbery, 15 times more likely to be victims of domestic violence, 12 times more likely to be victims of aggravated assault, 10 times more likely to be victims of elder abuse, and 9 times more likely to be victims of sexual assault. *Report of the San Diego District Attorney on the Intersection of Homelessness and Crime*, March 21, 2022, available at bit.ly/3SXm8vj. In other words, homeless encampments pose not only a grave risk to the public at large, but also to homeless individuals themselves.

California, as the largest state within the Ninth Circuit, has been hit particularly hard by the homeless crisis and the crime resulting from homeless encampments. In 2022, approximately half of all unsheltered homeless people in the country were in California. That State also has the highest rate of homelessness—every 44 people out of 10,000. *The 2022 Annual Homelessness Report (AHAR)*, U.S. Dept’t of Housing and Urban Development, 16,

available at bit.ly/49LE5Vb. From 2020 to 2022, California had the largest absolute increase in homelessness in the country. *Id.* at 18. This increase in homelessness, in turn, has been accompanied by an increase in crime. As of 2022, California's crime rate was 31% higher than that of the rest of the United States. Magnus Lofstrom, *California's Violent Crime Rate is Diverging from the National Trend*, Nov. 1, 2023, *available at* bit.ly/3wvngPw. From 2021 to 2022, California's robbery rate increased by 10.2%, and its larceny rate increased by 7.7%. From 2017 to 2022, in turn, California's aggravated assault rate increased by 24%, and its homicide rate increased by 23.9%. California Department of Justice, *2022 Crime in California*, 1, *available at* bit.ly/3uTibjp.

A visitor to San Francisco twenty years ago would have been amazed at the city's cleanliness and beauty. But homeless encampments have become so pervasive that their adverse effects have severely affected the city's businesses. In August of 2022, the Castro Merchant Association, representing 125 businesses, sent a letter to city officials describing "the rising problem of people with behavioral health/substance use disorders taking up residence on our sidewalks, dramatically impacting the quality of life in our neighborhood and the ability to run a successful business." In 2018, a major medical group relocated its \$40 million convention out of San Francisco in 2018 due to the open drug use and safety issues caused by the homeless encampments within the city. Brock Keeling, *Major Medical Group cancels San Francisco convention due to safety concerns*, *Curbed SF*, July 3, 2018, *available at* bit.ly/3wAaT4J.

While the above data analysis concerns the State of California, the difficulties inherent in both *Martin* and the decision below are equally applicable throughout local communities located in that circuit. The City of Portland, Oregon, for example, has seen an unprecedented rise in crime as a result of the explosion of homeless encampments within its city limits. See Katia Riddle, *Portland finds it's hard to disentangle the rise in crime from the housing crisis*, NPR (Dec. 12, 2022), available at [n.pr/49RheqF](https://www.npr.org/2022/12/12/1130494949/portland-crime-housing). In response, its mayor implemented a series of “sweeps”—that is, removals—of homeless encampments in an effort to reduce the resulting crime. As a result of these sweeps, drug offenses decreased by 51% and property crimes decreased by 93%. *Id.*

Similar problems have arisen in Seattle. In 2022, more than 42% of shootings in that City took place within homeless encampments. Between 2020 and 2021, shootings within homeless encampments increased by 122%. This has prompted Seattle’s mayor to begin removing homeless encampments in an attempt to reduce the resulting crime. *Stating the obvious: Homeless camps cause crime*, April 20, 2022, available at bit.ly/42UBHZo. Matters have become so bad in Seattle that they have caused one progressive member of the city council to shift his views on the correlation between camps and crime. “It is blatantly evident that a significant amount of the city’s crime and disorder is attributable to conditions in homeless encampments.” *‘Magnets for crime’: How one Seattle politician’s views shifted on homeless encampments*,

Seattle Times, April 9, 2022, *available at* bit.ly/3SVHcT1.

In short, there currently exists throughout the Ninth Circuit pervasive crime and threats to public safety as a direct result of homeless encampments. The Ninth Circuit's decisions below and in *Martin* are a major and unnecessary obstacle to local municipalities taking steps to combat this crime.

II. The problems associated with homeless encampments are matters for local municipalities and state legislatures to resolve, not the courts.

In raising the above link between homelessness and crime, *amici* are not in any way denying the necessity of also combatting the underlying reasons for homelessness and homeless encampments outside of the criminal justice system. But this is a matter for local and state legislatures to resolve, not a matter on which the federal judiciary should impose its personal policy preferences. *See Tobe v. City of San Francisco*, 892 P.2d 1145, 1157 n.12 (Cal. 1995) (Noting that many of the issues related to homelessness “are the result of legislative policy decisions,” and as such should be addressed by the local and state legislature, not the judiciary). By holding the ordinances at issue to be unconstitutional, the Ninth Circuit has in effect substituted its own personal policy preferences for that of local communities on the issue of how best to deal with the homeless crisis.

CONCLUSION

This Court should reverse the Ninth Circuit.

Respectfully submitted,

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