

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 THEM-
SELVES 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 LOS ANGELES
AREA CHAMBER OF COMMERCE AND CEN-
TRAL CITY ASSOCIATION OF LOS ANGE-
LES IN SUPPORT OF PETITIONER**

— ◆ —
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INTEREST OF AMICI CURIAE¹

The Los Angeles Area Chamber of Commerce (LA Chamber) represents more than 1,400 businesses in the Los Angeles region. Its diverse members hail from the private, nonprofit, academic, and public sectors, employing more than 650,000 people. Since 1888, the LA Chamber has championed economic prosperity and quality of life.

As the oldest and largest business association in California, the LA Chamber has been a critical partner of the City of Los Angeles, Los Angeles County, other governmental entities in Greater Los Angeles, and scores of service providers in addressing the region's homelessness crisis. For more than ten years, the LA Chamber has also partnered with the United Way of Greater Los Angeles in launching Home For Good, a community-driven initiative to end homelessness in Los Angeles County. The LA Chamber has supported local ballot initiatives such as Measure H and Proposition HHH, which provided significant funding for housing and other services for homeless individuals transitioning to permanent housing. The LA Chamber believes these measures are vital tools in the fight to house every Californian. The LA Chamber supports local efforts to end chronic homelessness and to improve coordination among all levels of local government to realize this common goal.

¹ No party's counsel authored this amicus brief in whole or in part. No one other than amici or their counsel contributed money to prepare or submit this brief. *See* Sup. Ct. R. 37.6.

Central City Association of Los Angeles (CCA) represents over 300 businesses, trade associations, and nonprofits in Downtown Los Angeles. CCA has promoted the safety, prosperity, and welfare of Downtown entities and communities for nearly a century. One pillar of its mission is advancing comprehensive solutions to the homelessness crisis. To address the ongoing crisis, CCA has convened local leaders for a summit, drafted many policy papers to propose concrete solutions, lobbied local leaders, and maintained a drumbeat of attention to the homelessness issues.

The LA Chamber and CCA are gravely concerned that if the decisions in *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019) and *Johnson v. City of Grants Pass*, 72 F.4th 868 (9th Cir. 2023) remain in place, they will continue to interfere with the continuous efforts of local governments to enact and enforce reasonable regulations to protect public health and safety. Amici share an interest in stopping the homelessness crisis from deteriorating further.



SUMMARY OF THE ARGUMENT

Commonsense health and safety measures that ameliorate the homelessness crisis are not “cruel and unusual punishments” prohibited by the Eighth Amendment. *Martin* and *Johnson* therefore depart from the limits imposed by the Constitution and this Court’s precedent, compromise community safety and well-being, and hinder the ability of state and local governments to enact meaningful and compassionate solutions to homelessness.

There is an unprecedented homelessness crisis in Los Angeles that impacts the daily lives of millions of people—both unhoused and housed—along with the businesses served by the LA Chamber and CCA. Businesses are suffering because of their proximity to homeless encampments, which often bring health and safety risks, crime, and general deterioration of the surrounding areas. Customers must navigate an environment marred by crime, violence, unsanitary conditions, decaying infrastructure, and reduced access to public spaces, deterring them from frequenting local businesses. Workers are afraid to take public transportation or park their vehicles on certain streets near their jobs.

The unhoused are suffering too. Social isolation becomes an inescapable reality as they navigate a perpetuating cycle of instability. There is a need for more permanent housing, more temporary shelters, and more transition services to ameliorate the crisis. Fortunately, an army of local governments, philanthropic nonprofits, businesses, and private citizens are working to pursue these solutions. While they do so, local governments need the latitude to implement health and safety measures that keep cities safe, peaceful, and sanitary so all residents can thrive.

For the cities and municipalities within the Ninth Circuit, critical public policy decisions that should be made by local leaders, with input from all community stakeholders, have instead been usurped by judicial fiat with a one-size-fits-all constitutional invention that has only made the crisis worse. *Martin* and *Johnson* apply a novel constitutional theory unmoored from text or history that limits the ability of

local governments to address the homelessness crisis by restricting them from enacting and enforcing the type of health and safety rules that have long helped foster a functional society. This Court should overturn *Martin* and *Johnson*, making clear that the Eighth Amendment does not apply here.



ARGUMENT

I. The exceptional burdens imposed by the homelessness crisis demand new and creative solutions.

A. Los Angeles faces an unprecedented homelessness crisis.

Homelessness is a nationwide human rights crisis. See Alvin Powell, *Why it's So Hard to End Homelessness in America*, Harv. Gazette (Jan. 24, 2024), <http://tinyurl.com/harvardgazette-homelessness>; see also Mark Murray, *California Poll: Homelessness Is Most Urgent Issue in the State*, NBC News (Mar. 1, 2023, 12:50 PM), <http://tinyurl.com/CalHPoll>.

California leads the nation in homelessness, being the “home” of nearly one third of the nation’s homeless population. Ethan Varian, *Despite Billions Spent, New Data Shows Almost a Third of the Nation’s Homeless Now Live in California*, Mercury News (Jan. 5, 2024, 10:26 AM), <http://tinyurl.com/CalCrisis>. A total of \$20.6 billion has been allocated through 2024 to combat homelessness, but the crisis has only gotten worse, with the state’s homeless population surpassing 181,000 people in 2023. See Nick Watt, *California Has Spent Billions*

to *Fight Homelessness. The Problem Has Gotten Worse*, CNN (July 11, 2023, 11:41 PM), <http://tinyurl.com/cnn-cahomelessness2023>; see also Sam Levin, *California's Homelessness Crisis Is the Worst in the US. But Who Is Struggling the Most?*, The Guardian (Dec. 19, 2023, 10:00 AM), <http://tinyurl.com/CalHomelessnessCrisis>.

Los Angeles has one of the largest homeless populations in the United States. See Oluwatoni Olujinmi, *The Cities with the Most Homeless Worldwide in 2023*, World Excellence (Nov. 30, 2023), <http://tinyurl.com/CitiesWithMostHomeless>. In 2023, there was a nine percent increase in homelessness in the County of Los Angeles, and a ten percent rise in the city. John Cádiz Klemack & Jonathan Lloyd, *What to Know About the 2024 Greater Los Angeles Homeless Count*, NBC Los Angeles, <http://tinyurl.com/2024HomelessCount> (Jan. 24, 2024, 3:14 PM). Homelessness data for 2023 shows that 75,518 people are homeless in Los Angeles County, and 46,260 in the City of Los Angeles, a significant increase from 69,144 in the county and 41,980 in the city in 2022. *Id.* Of this number, at least twenty-five percent suffer from serious mental illnesses, and twenty-seven percent suffer from substance use disorders. Elinore Mccance Katz et al., *L.A. County Commits to Mental Health Services for Unsheltered Homeless*, L.A. Daily News (Jan. 8, 2024, 1:32 PM), <http://tinyurl.com/LACountyHomeless>. On average, for every 207 individuals who exit homelessness daily, 227 more enter. Grace Widyatmadja & Jennifer Ludden, *'Frustration All Across The Board.'* *A Day with Homelessness Outreach Workers in LA*, NPR (Nov. 11,

2023, 7:01 AM), <http://tinyurl.com/npr-homelessness2023>.

As a result of the proliferation of encampments, homeless people—and those who serve the communities in which they reside—are routinely exposed to increased risks of crime, disease, fire, environmental hazards, and premature death. See Sam Quinones, *Skid Row Nation: How L.A.'s Homelessness Crisis Response Spread Across the Country*, L.A. Mag. (Oct. 6, 2022), <http://tinyurl.com/SRNation>; Doug Smith et al., *24 Fires a Day: Surge in Flames at L.A. Homeless Encampments a Growing Crisis*, L.A. Times (May 12, 2021, 5:00 AM), <http://tinyurl.com/LAdailyfires>; Associated Press, *Recent Killings in Los Angeles and New York Spark Anger, Raise Risk for Homeless People*, KTLA (Jan. 28, 2022, 5:52 AM), <http://tinyurl.com/LAcrimrisk>.

More than five unhoused people die daily in Los Angeles County. Katz et al., *supra*. Between 2015 and 2020, the homeless population in Los Angeles County grew by 50% while the homeless deaths grew by 200% during the same period, reaching a shocking number of nearly 2,000 deaths in 2021. Thomas Fuller, *A Rising Tally of Lonely Deaths on the Streets*, N.Y. Times, <http://tinyurl.com/LAhomelessdeaths> (June 22, 2023). According to county coroner records, 287 homeless people died on the sidewalk, 24 in alleys, and 72 on the pavement. *Id.* Homeless people are thirty-five times more likely than the general public to die from drug or alcohol overdose. *Id.* They are also four times more likely to die from heart diseases, sixteen times more likely to die in a vehicle accident,

fourteen times more likely to be murdered, and eight times more likely to die of suicide. *Id.*

These devastating data offer a sense of status quo on the streets of Los Angeles. No wonder that 95% of voters call homelessness the biggest problem confronting Los Angeles. Benjamin Oreskes et al., *95% of Voters Say Homelessness Is L.A.'s Biggest Problem, Times Poll Finds. 'You Can't Escape it'*, L.A. Times (Nov. 14, 2019, 6:41 AM), <https://tinyurl.com/95pctofvoters>.

B. Many burdens of the homelessness crisis fall on nearby businesses and their stakeholders.

1. The homelessness crisis hurts business operations.

Business owners are bearing the brunt of the homelessness crisis. Homelessness and public disorder impose severe costs on running a business, beyond the loss of customers and the difficulties of retaining workers. Homeless encampments can lead to public health hazards—including pollution, disease, and human waste—and local businesses are often forced to assume the costs of cleanup. *See, e.g.,* Rafael Peña, *Homeless Man Throws Feces at Business Owner in LA*, Travel Noire (Sept. 22, 2022), <http://tinyurl.com/LAHomelessCosts> (“Every single morning, I’m wiping [human feces] off my property before I have to do business’ . . .”). A fed up tuxedo retail shop owner in Northridge reported that those “walking [by] his business or any businesses nearby see nothing but out in the open drug use, trash pile up and illegal parking, which are all contributing to a drop in tuxedo

rentals and income.” KCAL-News Staff, *Northridge Business Owner Says Homelessness Hurting Sales*, CBS News (July 29, 2022, 10:42 PM), <http://tinyurl.com/homelessnesshurtsales>.

During a 2021 clean-up of homeless tents in Echo Park, 35 tons of solid waste was removed, including 723 pounds of biological and hazardous waste, comprising of 180 pounds of excrement, 544 pounds of urine, 30 pounds of needles, corrosives, ignitables, and drug paraphernalia. *Hundreds of Pounds of Human Waste, Needles Cleaned From Former Homeless Encampment at Echo Park*, CBS News (May 6, 2021, 9:30 AM), <http://tinyurl.com/cbsnews-echopark-cleanup>. In homeless encampments, a resurgence of medieval diseases, such as typhus, has been documented and tent parks are infested with rats and fleas, threatening nearby businesses. See Soumya Karlamangla, *L.A. Typhus Outbreak Adds Fuel to the Debates Over Homelessness and Housing*, L.A. Times (Oct. 11, 2018, 3:50 PM), <http://tinyurl.com/LATyphusoutbreak>. The establishment of these sites has led to the contamination of public pathways with human waste, discarded syringes, and other biohazards, creating an unsightly and unhygienic environment.

As the homelessness crisis persists, business owners are left to navigate a challenging landscape fraught with safety concerns and logistical obstacles. One Downtown business association has had to raise millions of dollars each year to maintain the neighborhood and protect its residents. The association has hired three dump trucks, a seven-person private security force, and fifteen formerly homeless street workers to clean up feces, urine, blood, and vomit.

R.W. Dellinger, *Facing LA's 'Human Catastrophe' on Skid Row with Faith*, Angelus News (May 24, 2019), <https://tinyurl.com/FacingSkidRow>.

In some parts of Downtown, tents are so numerous as to block trucks conducting business deliveries. *See id.* Tents now cover entire city blocks in Los Angeles's Skid Row. With barbeque grills and rows of bikes stationed next to them, these temporary shelters for the city's homeless have become an unavoidable sight in the landscape. Maeve Reston, *Los Angeles' Homeless Crisis: Too Many Tents, Too Few Beds*, CNN (June 18, 2019, 7:03 AM), <http://tinyurl.com/cnn-skidrow>.

Homeless encampments in commercial areas disproportionately harm the most vulnerable members of the business community. The vast majority of businesses in the Los Angeles region are lean and are minority-owned. Press Release, U.S. Census Bureau, Los Angeles County a Microcosm of Nation's Diverse Collection of Business Owners, Census Bureau Reports (Dec. 15, 2015), <https://tinyurl.com/LAMicrocosm>.

Growing homelessness in commercial areas leads to growing obligations for already-struggling members of the business community. Out of compassion, civic duty, or sheer necessity, business leaders step up and offer help—at great personal expense.

- A coffee shop in Long Beach offers lounging space and job training for individuals experiencing homelessness in the area. Susan Valot, *Homelessness Solutions Are Brewing at This*

Long Beach Coffee Shop, KCRW (May 23, 2022), <https://tinyurl.com/KCRWwrigley>.

- An upbeat entrepreneur self-funds a beauty and snack service that has helped thousands of unhoused people of Skid Row. See Kiara Alfonso, *How One Woman Brought Makeovers, Food and Love to Los Angeles' Homeless Community*, ABC News (Sept. 13, 2021, 5:48 AM), <https://tinyurl.com/RainesDTLA>.
- A renowned taco shop hands out hundreds of tacos to feed unhoused persons in Skid Row. Lexis-Olivier Ray, *A Taco Shop Gave Away 800 Tacos to Feed Homeless in Skid Row*, L.A. Taco (May 7, 2020, 1:42 PM), <https://tinyurl.com/800tacos>.
- A jewelry company has offered employment opportunities to hundreds of people transitioning out of homelessness. Nicole Hayden, *How Southern California Businesses Are Helping to Address Homelessness in Creative, Innovative Ways*, Desert Sun (Aug. 30, 2019, 3:14 PM), <http://tinyurl.com/SoCalHelp>.

These private citizens serve the most vulnerable members of our community, often at great personal sacrifice. But not every small business can do so. All told, the costs to local businesses are *undercounted* and studies cannot assess the costs associated with homelessness. Some businesses that cannot afford to wait for nearby homeless encampments to disperse close or move instead. See *Shoppers Express Concern, but Also Hope, Over Homelessness*

Downtown, Santa Monica Daily Press (July 3, 2023), <https://tinyurl.com/homelessSM> (reporting that the famous Santa Monica’s Third Street Promenade has been dubbed “Skid Row” and tenants are leaving); see also Jen Rush, *Businesses Plead for Help Amid Homelessness Crisis*, Santa Monica Daily Press (June 8, 2023), <https://tinyurl.com/SMDPplead> (“I have heard many rumblings of business owners fed up and wanting to leave Santa Monica to safer communities.”); Olga Grigoryants, *‘Santa Monica Is Not Safe’ Sign on Third Street Promenade Tells a Complex Story*, L.A. Daily News (Dec. 29, 2022, 8:45 AM), <http://tinyurl.com/SMbusinessexodus> (noting an “exodus” of brand stores from Santa Monica’s Third Street Promenade). As one local business leader emphasized, “when more people come to live on the streets of Skid Row, more of our businesses shut down.” Howard Fine, *Out of Place?*, L.A. Bus. J. (Jan. 20, 2013), <https://tinyurl.com/businesscomplaints>.

2. The homelessness crisis deters customers.

When encampments are set up in commercial areas, problems mount for local businesses and their customers. In every corner of the county, business owners routinely complain that homeless people idling near their storefronts and loitering in the surrounding areas ward off customers. See *id.*; Phil Shuman, *Homeless Encampments in Beverly Grove Impacting Business for Some*, FOX 11 (Apr. 13, 2023), <https://tinyurl.com/beverlygrove2023>; Carlos Granda, *Sherman Oaks Small Business Owners Contend with Homeless Issue; Advocates Call for Cooperation*, ABC 7 (July 2, 2022), <https://tinyurl.com/SObizresponse>;

Angie Crouch, *Santa Monica's Third Street Promenade Battling Homeless Problem, Along with Economy*, NBC 4 (Feb. 16, 2021), <http://tinyurl.com/SMneedshelp>; Doug Smith, *Pomona Leaders Wrestle with a Homelessness Dilemma: Enforce or Assist?*, L.A. Times (Mar. 27, 2017, 4:00 AM), <http://tinyurl.com/PomonaHomelessnessDilemma>. Business owners “fume[]” and “customers fe[el] unsafe.” Marisa Kendall, *L.A.'s New Homeless Solution Clears Camps but Struggles to House People*, CalMatters, <http://tinyurl.com/HomelessSols> (July 24, 2023) (describing perceptions of a “squalid encampment” crowding both sides of a road in Hollywood). Unsheltered individuals sleep where they can—vehicles, sheds, sidewalks, doorways, parking garages, stairwells, elevators, overpasses—blocking public rights of way and impeding entry. *See Crouch, supra*.

The homelessness problem is especially troubling for restaurants with outdoor seating, where unhoused persons can harass customers or steal food from unguarded tables. *See Fine, supra*. Other types of business owners also report how homeless encampments nearby repel customers:

- An auto shop owner in Los Angeles reported that “customers come to me,” but “[o]nce they come over here to my place for my service, and they see the area, they just leave.” Carlos Granda, *Business Owners Struggle to Deal with Homeless Encampments They Say Bring Crime, Hurt Bottom Line*, ABC 7 (Mar. 22, 2023), <https://tinyurl.com/autoshopstruggles>.

- A shop owner on Santa Monica Third Street Promenade echoed the same frustration: “If you can’t walk by a nice looking place and you’re confronted with homeless and elevators are full of homeless and pools of urine, you’re not going to come back again.” Crouch, *supra*.
- A machine shop owner in Canoga Park was closing his store when someone from a nearby homeless encampment threw a bottle that shattered at his feet. The owner was unhurt, but his business has suffered. “[Y]ou’ve got the street looking like hell,” he said, “and I’m seeing less business because customers don’t want to come to this area.” David Wharton, *Why Can’t L.A. Create Homeless Camps in Vacant Lots? I Found Out the Hard Way*, L.A. Times (July 13, 2023, 5:00 AM), <https://tinyurl.com/campsinemptylots>.

Unsurprisingly, studies repeatedly show that visible homelessness near businesses reduces foot-traffic and commerce. *See, e.g.*, John Records, *The Business Impact of Increased Homelessness*, N. Bay Bus. J. (Dec. 31, 2012), <https://tinyurl.com/nbbjstudy>. In Santa Monica, for example, roughly half of visitors surveyed on the famous Third Street Promenade said homelessness there would deter them from returning. *Shoppers Express Concern, but Also Hope, Over Homelessness Downtown, supra*.

The homelessness crisis has harmed Los Angeles’ reputation nationwide and worldwide, turning away visitors and undermining the city’s vital tour-

ism industry. See *Homeless Badly Hurting Los Angeles' Tourism Industry, Experts Say*, NBC 4 (July 27, 2020, 11:23 PM), <https://tinyurl.com/LAtourismhomeless>; see also Rush, *supra* (“[T]ourists are not wanting to come to downtown SM due to the appalling conditions we see on a daily basis and it is hugely effecting our businesses.”).

3. The homelessness crisis harms workers.

The homelessness crisis takes a huge toll on workers and substandard conditions make it harder for businesses to attract and retain their employees. See Gina Silva, *‘We’re Losing Money’: Sherman Oaks Small Business Owners Plagued by Homeless Crisis*, FOX 11 L.A., <https://tinyurl.com/SObizmoneyloss> (Sept. 29, 2022) (reporting on restaurant employees allegedly being attacked by an unhoused woman multiple times).

For instance, workers and their vehicles can be harmed by dangerous behavior at homeless encampments near their place of employment. A tavern owner in Sherman Oaks made headlines after he recorded a video of an unhoused man defecating openly on the sidewalk of the central business district and throwing the bag of feces onto his SUV. Peña, *supra*. A carpenter in East Los Angeles relayed the fears of his colleagues about parking near the business. “We worry about our cars. We can’t leave them, and we come back and things are missing. Vandalism and broken windows. And we’re in constant fear of leaving our own belongings around.” Granda, *Business*

Owners Struggle to Deal With Homeless Encampments They Say Bring Crime, Hurt Bottom Line, supra.

Taking public transportation poses its own problems. Many workers who do not drive fear to take public transit, which is often occupied by unhoused individuals using public transportation for temporary shelter. See Mekahlo Medina, *More Than 500 Homeless People Kicked Off Trains Each Night in LA County, New Metro Study Shows*, NBC 4 (May 2, 2023), <https://tinyurl.com/endofflineLA> (reporting on local residents and business employees who “feel unsafe” and want “more security on the trains”); *Shoppers Express Concern, but Also Hope, Over Homelessness Downtown, supra* (reporting on fears of taking the train to Santa Monica from Downtown LA). Some have begun calling the Metro a “Skid Row on wheels.” KCAL-News Staff, *Metro Study Shows Over 550 Homeless Riders Are Kicked Off at “End-of-Line” Nightly*, KCAL News (May 1, 2023, 10:11 PM), <http://tinyurl.com/LAendoffline>.

Workers also may lack the training and resources to deal with issues related to homelessness. In areas near homeless encampments, workers are now expected to master skills in violence prevention and de-escalation, and those who may have to interact with homeless individuals as a new aspect of their job fear for their safety. See Christian Letourneau, *What Does it Take to Keep a Food Business Open in Skid Row? A Day in the Life of Five Entrepreneurs*, L.A. Taco (Nov. 21, 2019, 2:20 PM), <https://tinyurl.com/skidrowfood>; Hannah Towey, *Los Angeles Hospitality Workers React to Proposal That Would Require Hotels*

to Offer Up Vacant Rooms to Homeless People, Bus. Insider (Aug. 7, 2022, 1:04 PM), <https://tinyurl.com/hotelroomshomeless>.

C. Local governments must be able to pursue creative solutions to address the homelessness crisis, free of judicial interference.

Local leaders recognize the urge of addressing the homelessness crisis. For example, Mayor Karen Bass has declared a state of emergency on homelessness. Michael R. Blood & Christopher Weber, *New LA Mayor Bass Declares Homeless Emergency as Term Begins*, Associated Press (Dec. 12, 2022, 3:15 PM), <https://tinyurl.com/bassdeclaration>. Mayor Bass has recognized that ending homelessness will allow residents and businesses to “reclaim” their local streets. David Zahniser, *L.A. to Keep Downtown Hotel Open as Homeless Housing for Another Year*, L.A. Times (Jan. 14, 2023, 5:00 AM), <https://tinyurl.com/LAtempotel>. Following Mayor Bass’s lead, the Los Angeles County Board of Supervisors has also proclaimed a local emergency on homelessness. *See City News Service, LA County Supervisors Declare Homeless Emergency, Mirroring City of LA*, L.A. Daily News (Jan. 10, 2023, 8:18 AM), <http://tinyurl.com/LAemergency>.

Local leaders also recognize that the ability to be flexible and use all possible tools and resources to improve their communities is essential to addressing the homelessness crisis. As the Director of Neighborhood Services for the City of Palmdale emphasized, “we need all options and the ability to address our unique situations in our community.” *See Board of Supervisors, County of L.A., Blue Ribbon Commission*

on Homelessness Governance Report 8 (2022), <https://tinyurl.com/brch033022>. “There are many ways into homelessness, and there need to be many ways out.” *Id.* at 5.

In the midst of this crisis, local communities and businesses have shown an appetite for bold experimentation. For instance, the LA Chamber, CCA and larger business community have championed Proposition HHH, a \$1.2 billion bond measure approved by City of Los Angeles voters in 2016 to develop housing for homeless individuals and for those in danger of becoming homeless. The LA Chamber and CCA supported Measure H, an initiative approved by County of Los Angeles voters in 2017 that generates over \$350 million per year to fund services for homeless individuals. The LA Chamber supported the Homeless Hiring Tax Credit, which allows qualified businesses to claim a tax credit for each homeless person hired. Assemb. B. 150, 2021 Leg., Reg. Sess. (Cal. 2021). The LA Chamber and CCA supported the Community Assistance, Recovery, and Empowerment (CARE) Court Program, which aims to provide individuals with severe mental health and substance use disorders the care and services they need to get healthy. S.B. 1338, 2022 Leg., Reg. Sess. (Cal. 2022). The LA Chamber and CCA continue to work to identify job opportunities for homeless individuals and to support additional public and private efforts to address the homelessness crisis.

There is no magic solution to address the homelessness crisis and no consensus on what must be done. Municipalities have experimented with a range of solutions, including permanent supportive housing,

emergency shelter solutions, employment opportunities, and direct services for unhoused individuals so that they can receive the much-needed help. See Margot Kushel et al., *Toward a New Understanding: The California Statewide Study of People Experiencing Homelessness*, Univ. Cal. S.F. Benioff Homelessness and Housing Initiative 83–88 (2023), <http://tinyurl.com/CAHomelessnessStudy>.

The solutions pursued by local governments—alongside the statewide efforts supported by the LA Chamber and CCA—demonstrate the willingness to invest tremendous effort and resources into addressing the homelessness crisis. Yet the crisis persists and more must be done.

What happens in Los Angeles has nationwide implications. As a result of its disproportionately large homeless population, Los Angeles is “a kind of large-scale test case for which solutions work and which don’t.” Jill Cowan, *The Number of Homeless People in Los Angeles Increases by 9%*, N.Y. Times (June 29, 2023), <https://tinyurl.com/9pctincrease>. But this laboratory-of-democracy approach will predictably fail if *Martin* and *Johnson* are allowed to stand. Cf. *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) (“Denial of the right to experiment may be fraught with serious consequences to the nation.”).

II. *Martin* and *Johnson*'s misapplication of the law impairs creative solutions to the homelessness crisis.

A. *Martin* and *Johnson* are far removed from the original meaning of the Cruel and Unusual Punishments Clause.

Martin and *Johnson* go beyond even the most extraordinary reading of the Cruel and Unusual Punishments Clause. The original meaning of the Eighth Amendment was to offer protection against “cruel” punishments, meaning punishments that are inhumane, “hard-hearted,” “void of pity,” “savage,” “barbarous,” or that superadded “terror, pain, or disgrace,” *and* “unusual” punishments, meaning punishments that “had long fallen out of use.” *Bucklew v. Precythe*, 139 S.Ct. 1112, 1123 (2019) (citations omitted). The laws examined in *Martin* and *Johnson* are anything but. Laws that impose minor criminal penalties for sleeping on public streets or sidewalks like those in *Martin*, or those that merely impose minor civil penalties like those in *Johnson*, can hardly be called “barbarous” or “long . . . out of use.” *Id.* (citation omitted).

Martin and *Johnson* also departed from this Court's precedent. In *Robinson v. California*, this Court held that a law that criminalizes one's “status” as a drug addict violates the Eighth Amendment. 370 U.S. 660, 666–67 (1962). A few years later, this Court held, in a fractured opinion, that a statute criminalizing public intoxication did not violate the Eighth Amendment. *Powell v. Texas*, 392 U.S. 514, 532 (1968). Members of this Court warned against a

broad reading of *Robinson* and emphasized that *Robinson* does not apply to *conduct*, even if “‘involuntary’ or ‘occasioned by compulsion.’” *Id.* at 533. This Court stressed that the “primary purpose” of the Cruel and Unusual Punishments Clause was “to be directed at the method or kind of punishment imposed.” *Id.* at 531–32. Not only did this Court expressly say that punishing prohibited conduct is allowed under the Eighth Amendment, it warned against unduly creating vague “Constitutional formulas” to restrict state criminal law. *Id.* at 537.

Despite this Court’s precedent, the Ninth Circuit has created a novel rule that hinders the ability of state and local authorities to address homelessness. In *Martin*, the court ruled that two state misdemeanor ordinances imposing *criminal* sanctions for sleeping on public property is cruel and unusual punishment. *Martin*, 920 F.3d at 604. In *Johnson*, the court went even further and held that the imposition of *civil* penalties for similar conduct is also cruel and unusual punishment. *Johnson*, 72 F.4th at 891. As a result of *Martin* and *Johnson*, almost any action taken by state and local governments to address homelessness and urban decay could be considered cruel and unusual punishment, a result far divorced from the “original and historical understanding of the Eighth Amendment.” *Bucklew*, 139 S.Ct. at 1122.

But the Ninth Circuit did not stop here. More recently, the court affirmed a sweeping injunction against the City of San Francisco that allows homeless persons to sleep, lie, or sit anywhere and anytime. *Coal. on Homelessness v. City & Cnty. of San Francisco*, 90 F.4th 975 (9th Cir. 2024). The Ninth Circuit

upheld the injunction preventing the enforcement of several public laws even though the district court failed to define what it means to be “involuntarily homeless” and set a novel sunset date for the injunction lasting “as long as there are more homeless individuals in San Francisco than there are shelter beds available.” *Id.* at 983 (Bumatay, J., dissenting). By affirming the district court’s order, the Ninth Circuit “impermissibly usurp[ed] powers left to the States and crown[ed] [judges as] czars over homeless policy.” *Id.* at 989.

B. The Ninth Circuit’s judicial experiment interferes with state and local governments’ ability to manage their parks, streets, and sidewalks.

Since *Martin*, the homelessness crisis in Los Angeles has only gotten worse. The number of unsheltered individuals—who reside in vehicles, tents, and other makeshift shelters—has risen to forty percent since *Martin*. Rachel M. Cohen, *The Little-Noticed Court Decision that Changed Homelessness in America*, Vox (June 12, 2023, 7:30 AM), <http://tinyurl.com/HomelessnessAfterMartin>.

The consequence of *Martin* and *Johnson* is that cities cannot enforce the most basic health and safety ordinances when homeless individuals are involved. As Idaho Attorney General emphasized, “Western states have found themselves constrained, unable to effectively tackle the grave problems posed by public encampments in their communities. The five-year experiment of the Ninth Circuit must be halted. Federal courts should exercise restraint and avoid unnecessary interference in state-level affairs.” Attorney

General Raúl Labrador Urges Supreme Court to Empower States to Address Homelessness, Office of the Attorney General, State of Idaho (Sept. 26, 2023), <http://tinyurl.com/idahoagnews>.

This action shows the perils of judicial overreach. After *Johnson*, and as part of the ongoing battle to fight homelessness while obeying judicial boundaries, the City of Grants Pass is now unable to enforce its camping ordinances, or any ordinances pertaining to criminal trespassing during certain hours on city property, so homeless people can now camp in nearly all city parks without recourse. Jane Vaughan, *As Grants Pass Awaits Supreme Court Decision, City's Struggles with Homelessness Continue*, OBP (Dec. 26, 2023, 12:36 PM), <http://tinyurl.com/opb-homelessnessawaits>.

The Los Angeles community as a whole demands action from local authorities in addressing the homelessness crisis. Recently, Los Angeles city officials faced increased criticism for their inability to get homeless people off the street after a devastating fire erupted under a major highway where tens of thousands of homeless people continue to live. Christopher Weber, *Los Angeles Criticized for its Handling of Homelessness After 16 Unhoused People Escape Freeway Fire*, *The Press Democrat* (Nov. 16, 2023), <http://tinyurl.com/pressdemocrat-lafire>.

Business owners also plead for help. Granda, *Sherman Oaks Small Business Owners Contend With Homeless Issue; Advocates Call for Cooperation*, *supra* (“Frustrated business owners in Sherman Oaks have been contending with the issue of homeless people camping outside their establishments, and have

reached out to their councilmember for help.”); Rush, *supra* (“We need help.”); Stephen M. Lepore, *What a Cheek! LA Business Owner Begs City to Remove Naked Homeless Woman Sleeping Outside Her Business Because She Is Scaring Away Customers*, Daily Mail (Apr. 15, 2023, 2:04 PM), <https://tinyurl.com/DMBHscare> (reporting that business owner in Beverly Hills has been “begging city officials to take action to stop her from losing any further business” because of a naked homeless person who has been “scaring” the business owner and her customers).

While the public is increasingly willing to pursue new and creative solutions to address the homelessness crisis, municipalities face a judge-made barrier against doing so: the Ninth Circuit’s decisions in *Martin* and *Johnson*, which create legal uncertainty by leaving local governments and law enforcement agencies without clear guidance on how to navigate the complex intersection of constitutional rights and local governance responsibilities. As initially interpreted by the panel in *Johnson, Martin* established a “formula” that prohibits local officials from enforcing certain anti-camping ordinances if the number of homeless individuals in a “jurisdiction” exceeds the number of “adequate” shelter spaces. *Johnson v. City of Grants Pass*, 50 F.4th 787, 795, 811 n.32 (9th Cir. 2022), *amended and superseded on denial of reh’g en banc*, 72 F.4th 868 (9th Cir. 2023). While the majority amended its opinion to remove this “formula” language, “the amendment is not accompanied by any downstream changes to the majority’s application of its rule to the facts or its ultimate conclusion,” so “the

approach that language forthrightly described remains embedded in the opinion.” *Johnson*, 72 F.4th at 929 (M. Smith, J., dissenting from denial of rehearing en banc).

The Ninth Circuit’s formulaic approach is inflexible, tying the hands of local leaders, and discouraging creative solutions by making a shelter’s “jurisdiction” dispositive, no matter if the shelter serves the broader community. The ambiguity over a shelter’s “adequate” nature resulted in municipal powerlessness in the face of a crisis that “cannot wait for enough such housing to be built.” Benjamin Oreskes & David Lauter, *L.A. Voters Angry, Frustrated Over Homelessness Crisis, Demand Faster Action, Poll Finds*, L.A. Times (Dec. 1, 2021), <https://tinyurl.com/LATcantwait>. As put by California Governor Gavin Newsom, the Ninth Circuit’s de facto ban on enforcing reasonable health and safety regulations when homeless individuals are involved is “preposterous” and “inhumane.” Sophia Bollag, *Gavin Newsom Calls Ban on S.F. Homeless Sweeps ‘Preposterous’ and ‘Inhumane’*, S.F. Chron. (Aug. 29, 2023, 9:47 AM), <https://tinyurl.com/SFChronInhumane>.

Los Angeles “cannot wait yet another year” to address the homelessness crisis. Press Release, Cal. State Ass’n Counties, Broad Coalition Calls on Newsom and Legislature to Pass Counties’ Homeless Accountability Plan and Funding in This Year’s State Budget (June 12, 2023), <https://tinyurl.com/csac0623>. The County’s eighty-eight cities make the Ninth Circuit’s formulaic approach an impracticable mess of line-drawing (to determine jurisdiction) and court-fighting (to determine adequacy). Local governments

and business organizations have made heroic efforts to curb the homelessness crisis. But Los Angeles simply cannot satisfy *Martin*'s bed formula anytime soon. See *Los Angeles County Homelessness & Housing Map*, L.A. Cnty. (Jan. 10, 2023), <http://tinyurl.com/LAHomelessnessMap>.

When the court denied rehearing en banc in *Martin*, six dissenting judges expressed fears that the decision would “prohibit local governments from fulfilling their duty to enforce an array of public health and safety laws,” which would “potentially wreak havoc on our communities.” *Martin*, 920 F.3d at 596 (M. Smith, J., dissenting from denial of rehearing en banc). Those fears have come to pass. The holding in *Martin* and its extension in *Johnson* have “generate[d] dire practical consequences for the hundreds of local governments” within the Ninth Circuit and for its residents. *Johnson*, 72 F.4th at 914 (Collins, J., dissenting from the denial of rehearing en banc) (alteration in original) (quoting *Martin*, 920 F.3d at 594 (M. Smith, J., dissenting from denial of rehearing en banc)). According to the representative of a group of Skid Row businesses and nonprofits, the Ninth Circuit’s approach has induced some cities not to enforce traditional health and safety regulations and to adopt the outlook: “We’re going to get sued no matter what we do, so we’re just not going to do anything.” Quinones, *supra*.

Los Angeles businesses, customers, and workers should not be forced to endure the unsafe environments on their doorsteps while local governments’ reasonable efforts to help are thwarted and no end is in sight. The Ninth Circuit’s misguided efforts have

enshrined its notion of perfect policy as the enemy of the good. States, cities, communities, and local organizations from across the nation have joined the call for this Court to undo the Ninth Circuit's sweeping expansion of the Eighth Amendment.

State and local governments “need many innovations, numerous combinations of old and new devices, great flexibility in municipal arrangements to meet changing urban conditions.” *Sailors v. Board of Ed. of Kent Cnty.*, 387 U.S. 105, 110–11 (1967). This Court should overturn *Martin* and *Johnson* and remove these “sharp limits on what local governments can do about the pressing problem of homelessness.” *Johnson*, 72 F.4th at 945 (Bress, J., dissenting from the denial of rehearing en banc).



CONCLUSION

This Court should overturn the Ninth Circuit's decisions in *Martin* and *Johnson*.

Respectfully submitted,

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