

In The
Supreme Court of the United States

CITY OF GRANT'S PASS, OREGON,

Petitioner,

v.

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

Respondents.

**On Writ Of Certiorari To The
United States Court Of Appeals
For The Ninth Circuit**

**BRIEF OF *AMICI CURIAE*
CALIFORNIA STATE SHERIFFS' ASSOCIATION,
CALIFORNIA POLICE CHIEFS ASSOCIATION,
WASHINGTON ASSOCIATION OF SHERIFFS &
POLICE CHIEFS, CALIFORNIA CITIES OF
ENCINITAS, LA HABRA, PLACENTIA, SAN JUAN
CAPISTRANO, WHITTIER, WEST COVINA AND
WESTMINSTER IN SUPPORT OF PETITIONER**

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STATEMENT OF INTEREST OF AMICI CURIAE

Amici Curiae are the California State Sheriffs' Association ("CSSA"), the California Police Chiefs Association ("CPCA"), the cities of Encinitas, La Habra, Placentia, San Juan Capistrano, Westminster, West Covina and Whittier and the Washington Association of Sheriffs & Police Chiefs ("WASPC").¹ CSSA is a non-profit professional organization that represents each of the 58 California Sheriffs. CPCA represents virtually all of the more than 350 municipal chiefs of police in California. La Habra, Placentia, San Juan Capistrano, and Westminster are cities in Orange County, California. West Covina and Whittier are cities in Los Angeles County, California. Encinitas is a city in San Diego County, California. WASPC's membership includes Washington State sheriffs, police chiefs, the Washington State Patrol, the Washington Department of Corrections, and representatives of a number of federal agencies.

Amici have identified this matter as one in which their expertise may be of assistance to the Court and wish to draw attention to the potentially sweeping operational and practical impact of the Court's decision on local cities and law enforcement agencies throughout the Nation especially in those States with ever-increasing homeless populations. Amici urge the Court to reverse the decision of the Court of Appeals because

¹ Pursuant to SUP. CT. R. 37.6, counsel for amici 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 amici curiae, its members, or its counsel has made a monetary contribution intended to fund the preparation or submission of this brief.

the issues presented have had and will continue to have a profound impact on all cities and law enforcement agencies.



SUMMARY OF ARGUMENT

Amici are familiar with the briefs filed by Petitioner and do not seek to duplicate Petitioner's arguments. Rather, Amici wish to discuss the practical implications the Ninth Circuit's decision is having and will continue to have on law enforcement throughout the Nation. Amici also wish to emphasize the exceptional public importance of the questions presented by this matter from the perspective of those whose profession brings them in contact with the homeless population every single day.

Local municipalities have the legal authority to pass ordinances that regulate the health, safety and welfare of their citizens and the expertise of how to best address the difficult and sensitive issues raised by increasing homeless individuals on the streets of those municipalities. Indeed, the States' core police powers have always included authority to enact and enforce laws to protect the health, safety, and welfare of their citizens. *Brecht v. Abrahamson*, 507 U.S. 619, 635, 123 L. Ed. 2d 353, 113 S. Ct. 1710 (1993). The problems presented by an increasing homeless population and the proliferation of homeless encampments is a crisis of epic proportions raging on the streets of cities across the United States. On a single night in 2022, 233,000

people were experiencing homelessness and unsheltered in the United States.² With 155,491 unsheltered homeless — the highest in the Nation — no state has felt the impact of this crisis more than the State of California.³ California accounts for half of all unsheltered people in the country.⁴ This is more than nine times the number of unsheltered people in the state with the next highest number, Washington.⁵ Relevant here, over 42 percent of the Nation’s homeless population are located in States within the Ninth Circuit.⁶

As first responders, no profession faces this crisis in a more direct way on a daily basis than that of law enforcement. Police officers “are the guardians of the peace and security of the community, and the efficiency of our whole system, designed for the purpose of maintaining law and order, depends upon the extent to which such officers perform their duties . . .” *Christal v. Police Com. of San Francisco*, 33 Cal. App. 2d 564, 567 (Cal. App. 1939). The most basic function of a police department is to protect the safety of the public.

In order to carry out these duties, society has granted police officers enormous power, including the

² U.S. Dept. of Housing and Urban Development, *2022 Annual Homelessness Assessment Report (AHAR) to Congress – December 2022* at pg. 2 available at <chrome-extension://efaidnbmnmnibpcjppcgldcfindmkaj/https://www.huduser.gov/portal/sites/default/files/pdf/2022-ahar-part-1.pdf>.

³ *Id.* at p. 16.

⁴ *Id.* at p. 16.

⁵ *Id.*

⁶ *Id.*

power to cite and arrest persons for violating the law. This enormous power provided to police officers, however, is not without strict limitations designed to ensure that the power is not abused. Courts are constantly called upon to balance the immeasurable value of effective law enforcement – to the individual citizen and to society in general – against precious individual constitutional rights.

Prior to the Ninth Circuit’s decision in *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018), amended on denial of reh’g, 920 F.3d 584 (9th Cir. 2019) and now *Johnson v. City of Grants Pass*, 50 F.4th 787 (9th Cir. 2022), amended on denial of reh’g, 72 F.4th 868 (9th Cir. 2023), enforcement of generally applicable criminal laws was the province of local law enforcement agencies regardless of the alleged “involuntariness” of the conduct at issue. The expansive interpretation given to the Eighth Amendment by the Ninth Circuit, first in *Martin*, and now in *Grants Pass*, impermissibly intrudes on core police functions, impairs law enforcement’s ability to protect public safety and fails to provide law enforcement with sufficient direction or flexibility to make critical decisions regarding citing individuals for violations of basic health and safety laws.

As discussed in more detail below, the *Martin* decision has had disastrous ramifications. Most notably, it has led to the widespread proliferation of homeless encampments across the Ninth Circuit which, in turn, has led to higher call volumes to police agencies, higher

crime, higher rates of drug use and marked decrease in the livability of numerous cities.

Worse, the *Martin* decision made it all but impossible for law enforcement agencies to curb the dangers associated with those encampments despite the enormous risk to public health and safety the encampments pose. While *Martin* may have expanded the rights of those suffering from homelessness, the rights of business owners, taxpayers, children and other housed citizens to clean, safe, drug-free streets and public areas have been completely ignored. Undeterred by this calamity, the Ninth Circuit doubled down in *Grants Pass*, expanding *Martin* and binding the hands of local law enforcement even tighter by further stripping law enforcement agencies of tools they need to protect the health and safety of the public at large.

Under *Grants Pass*, administrative enforcement of ordinances that could result in criminal penalties violates the Eighth Amendment, local agencies must treat “rudimentary protection against the elements” equivalent to “sleeping,” for purposes of *Martin* (though what constitutes “rudimentary protection” is not defined), anti-camping ordinances violate the Eighth Amendment to the extent they prohibit homeless persons from “taking necessary minimal measures to keep themselves warm and dry while sleeping” (though “necessary minimal measures” are not defined) and individuals are involuntarily homeless when they do not have adequate access to reasonably available shelters (though the parameters of what is “reasonably

available” are not defined beyond being non-religious in nature). See *Grants Pass*, supra 72 F.4th at 891.

In short, the *Martin* and *Grants Pass* decisions leave law enforcement in an untenable position without sufficient tools necessary to combat homelessness. Continued non-enforcement of these municipal laws imposes significant costs, such as loss of intended uses of public parks and other areas, increased need to respond to uncontained fires, contaminated needles, bio-hazardous waste conditions, damage to critical infrastructure and nature areas, reduced urban livability and desirability and loss of tax revenue.

For law enforcement, the Ninth Circuit’s lack of clarity on the legal standard and failure to explain what is meant by basic terms within the decision such as “rudimentary protection,” “necessary minimal measures,” “shelter,” “availability” and “involuntary” present more than an interesting cerebral exercise. Instead, for the officers on the street who are making thousands of contacts each month with the homeless population on their city’s streets, the underdeveloped and confusing decision leaves law enforcement agencies with little or no direction as to the scope of their authority in those day-to-day policing contacts.

Worse than imposing amorphous standards that are impossible for officers or courts to apply in a fair and consistent way, the *Grants Pass* decision, and the *Martin* decision upon which it rests, badly misconstrue multiple areas of binding Supreme Court precedent while forcing law enforcement agencies to suspend

enforcement of core public safety ordinances or face litigation and liability. These ordinances are crucial to law enforcement's ability to address the public health crisis presented by burgeoning homeless encampments.

Amici's members urge this Court to overturn *Grants Pass* and its bedrock, the *Martin* decision, and allow cities to enforce generally applicable laws designed to protect the health and safety of **all** the citizens in a community – both housed and unhoused. At a minimum, Amici require this Court's guidance on a clear, consistent interpretation of the liability standard with respect to law enforcement interactions with the homeless population, the constitutional basis for those duties, and the scope of laws either permitted or not permitted to be enforced against the growing homeless population.

Amici believe the resolution of the questions raised by this case are extremely important and submit this Brief out of concern that the health and safety of the homeless population, and the public at large, should not be compromised by vague and impracticable "constitutional" rules. Amici and their members further have an interest in ensuring that law enforcement agencies and officers have appropriate flexibility to make critical decisions regarding citations and arrests pursuant to basic health and safety laws without facing the specter of money damages and attorneys' fees awards, staggering defense costs, and the distractions of civil lawsuits.

Unfortunately, there is no easy answer to the problem of homelessness and there is no single tool that will solve this crisis. Amici wish to make it very clear that they, by no means, argue for the criminalization of the homeless. Law enforcement agencies across California remain steadfast in their commitment to improving the outcomes for persons experiencing homelessness, teaming up with various partners such as social service agencies and other governmental departments and building support in communities to address homelessness all while keeping cities safe, clean and accessible to all. To successfully reduce homelessness and homeless encampments, California law enforcement must continue to be creative and must be able to employ each and every tool at their disposal. Enforcement of the type of ordinances at issue in *Martin* and *Grants Pass* is simply one tool, a vital one, that should be available to law enforcement. Accordingly, Amici respectfully support the City of Grants Pass.

◆

ARGUMENT

I. Homelessness is a Critical Issue in California/Washington Policing Made Exponentially Worse by *Martin*

The disparate practical impact on California and Washington of the *Martin* decision, arising out of Boise, Idaho, and of the *Grants Pass* decision, arising out of Grants Pass, Oregon, is staggering. Indeed, after the *Martin* decision, it was noted that the mid-size city of Boise, Idaho “with its relatively manageable

homeless population, is setting the enforcement standards for its much larger counterparts in the West.”⁷ More specifically, in 2018 when *Martin* was decided, Boise and the county in which it sits, had 117 unsheltered homeless individuals.⁸ That same year, Los Angeles and the county in which it sits, had 36,461 unsheltered individuals – over 300 times more than Boise.⁹

The impracticality of *Martin* as applied to cities with large homeless populations has now grown exponentially under *Grants Pass*. A small town in Oregon with “a population of approximately 38,000” and with a homeless population between 50 and 600¹⁰ is now setting the enforcement standards for the entire Ninth Circuit – a population of approximately 67 million

⁷ Maria L. La Ganga, *This City in Idaho Is Why L.A. Can't Legally Clear its Streets of Homeless Encampments*, L.A. TIMES (Oct. 15, 2019) available at <https://www.latimes.com/california/story/2019-10-15/homeless-boise-martin-supreme-court>.

⁸ U.S. Dept. of Housing and Urban Development, *2018 Continuum of Care Homeless Assistance Programs Homeless Populations and Subpopulations – Boise/Ada County January 31, 2018* available at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://files.hudexchange.info/reports/published/CoC_PopSub_CoC_ID-500-2018_ID_2018.pdf.

⁹ U.S. Dept. of Housing and Urban Development, *2018 Continuum of Care Homeless Assistance Programs, Homeless Populations and Subpopulations – Los Angeles City & County January 24, 2018* available at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://files.hudexchange.info/reports/published/CoC_PopSub_CoC_CA-600-2018_CA_2018.pdf.

¹⁰ *Grants Pass*, supra 72 F.4th at 874.

people with a homeless population of approximately 250,000.¹¹

The City of Los Angeles alone has a homeless population of an estimated 46,260 people¹² – between 77 to 924 times as many homeless persons as reside in Grants Pass. *See Grants Pass*, supra 72 F.4th at 874. In fact, in 2022, the entire State of Oregon had a homeless population of 14,586 homeless persons.¹³ Whereas, during that same time period, Los Angeles County alone – one of 58 Counties in the State of California – had a homeless population of nearly five times the size at 69,144 persons.¹⁴

¹¹ Congressional Research Service, *Recommendation for New U.S. Circuit and District Court Judgeships by the Judicial Conference of the United States (118th Congress)*, April 5, 2023; U.S. Dept. of Housing and Urban Development, *2022 Annual Homelessness Assessment Report (AHAR) to Congress – December 2022* at pg. 16 available at <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.huduser.gov/portal/sites/default/files/pdf/2022-ahar-part-1.pdf>.

¹² *2023 Greater Los Angeles Homeless Count Deck*, Los Angeles Homeless Services Authority (Jan. 24-26, 2023) available at <https://www.lahsa.org/documents?id=7232-2023-greater-los-angeles-homeless-count-deck.pdf>.

¹³ U.S. Dept. of Housing and Urban Development, *2022 Annual Homelessness Assessment Report (AHAR) to Congress – December 2022* at pg. 104 available at <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.huduser.gov/portal/sites/default/files/pdf/2022-AHAR-Part-1.pdf>.

¹⁴ *2022 Greater Los Angeles Homeless Count Deck*, Los Angeles Homeless Services Authority (Jan. 24-26, 2023) available at <https://www.lahsa.org/documents?id=6545-2022-greater-los-angeles-homeless-count-deck.pdf>.

In short, the gravity of the issues surrounding homelessness and the possible solutions for addressing those issues in cities like Boise or Grants Pass do not, in any way, practically equate to the entirety of the Ninth Circuit. Simply put, the homelessness problems in different cities require different approaches, strategies and tools, and preventing use of a tool by the Boise or Grants Pass Police Departments simply does not have the same effect as preventing the use of the same tool by far larger agencies. Additionally, while the open questions raised by *Martin* and *Grants Pass* may prove difficult to answer in small towns – such as how to calculate the total homeless population day-to-day – those questions become impossible to answer in cities such as Los Angeles, San Francisco, and San Diego whose homeless populations are so large that counts take days to complete and are admittedly still not 100 percent accurate.

To say that *Grants Pass* and the further restrictions the decision imposes upon law enforcement therein could not have come at a worse time would be a gross understatement. The practical implications of *Martin* have resulted in local governments having little or no enforcement power over their unhoused populations, leading to an explosion of encampments throughout the State of California. As a result, many unhoused people live in unnecessarily dangerous situations due to crime, trash, human waste and rampant substance abuse. *Grants Pass*, affirming and expanding upon *Martin*, will make a difficult situation even more dire.

In December of 2022, just over three years after *Martin*, the mayor of Los Angeles declared a state of emergency on homelessness.¹⁵ That Declaration contains a number of shocking statistics that demonstrate the extent to which homelessness, particularly in Los Angeles, is a problem of truly epic proportions. The City of Los Angeles represents 9.6 percent of the State of California’s population but 25 percent of the State’s unsheltered population.¹⁶ The number of unsheltered people in the City of Los Angeles is approximately 18 times higher than the number in New York City and 14 times higher than the number in Chicago.¹⁷

The Los Angeles County Department of Public Health has reported an average of over 5 deaths per day of unhoused persons as of March 2021, a 200 percent increase in the death rate of persons experiencing homelessness over the past decade and a **56 percent increase** over just one year prior.¹⁸ Los Angeles recognized that one of the “key performance indicators in addressing the emergency” includes decreasing the number and size of encampments¹⁹ – a goal now made nearly impossible under *Grants Pass*.

¹⁵ Declaration of Local Emergency (Los Angeles), December 12, 2022 available at <https://mayor.lacity.gov/news/mayor-karen-bass-declares-state-emergency-homelessness>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* [emphasis added]

¹⁹ *Id.*

The financial impact on Los Angeles is equally staggering. In 2021, Los Angeles responded to the rapid increase in its homeless population with unprecedented investments into homeless solutions budgeting \$791 million for initiatives to help homeless residents with an additional \$160 million in roll over funds.²⁰ That spending plan was a nearly **sevenfold increase** from the mayor’s budget five years prior.²¹ By 2023, that figure had increased to \$1.3 billion.²²

Sacramento County, in which California’s capitol city is found, saw an astonishing 67 percent increase in nightly homelessness between 2019 and 2022.²³ Significantly smaller cities have also been substantially impacted by the *Martin* decision with the Police Chief of the City of San Bernardino, a member of Amici CPCA here, finding that the decision “has contributed to the city experiencing a 40 percent increase in the

²⁰ Benjamin Oreskes and David Zahniser, Doug Smith, *L.A. plans nearly \$1 billion in spending to address homelessness under Garcetti plan*, LOS ANGELES TIMES, April 19, 2021 available at <https://www.latimes.com/homeless-housing/story/2021-04-19/los-angeles-will-increase-budget-for-addressing-homelessness>.

²¹ *Id.* [emphasis added]

²² Press Release: *Mayor Bass Signs Los Angeles County Budget*, May 26, 2023 available at <https://mayor.lacity.gov/news/mayor-bass-signs-los-angeles-city-budget>.

²³ Division of Social Work and the Center for Health Practice, Policy & Research at the California State University, Sacramento, *Homelessness in Sacramento County (Results from the 2022 Point in Time Count)*, July 2022 at p. 1 available at <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://sacramentostepsforward.org/wp-content/uploads/2022/06/PIT-Report-2022.pdf>.

homeless population since 2019.”²⁴ In that same vein, the NorCal CoC region of California, which encompasses some of the least populous and most rural counties of California including Del Norte, Lassen, Modoc, Plumas, Shasta, Sierra and Siskiyou, saw just under a 36 percent increase in unsheltered homeless from 2019 to 2022.²⁵ In mid-size Madera County, with a population of 160,256 people in 2022, the number of unsheltered homeless rose **154.5 percent** from 2022 to 2023 while the number of unsheltered homeless in the City of Madera rose **180.8 percent**.²⁶

Indeed, though the numbers are staggering in the major California cities of Los Angeles, San Francisco and San Diego as mentioned above, “[r]ural and

²⁴ Darren Goodman, Police Chief of the City of San Bernardino Police (SBPD), *The Adverse Impacts of Martin v. Boise on SB*, September 18, 2023 [Press Release] available at https://www.sbcity.org/news/whats_new/the_adverse_impacts_of_martin_vs_boise_on_s_b.

²⁵ Shasta County Community Action Agency, *NorCal Continuum of Care’s Annual Point-in-Time Count Executive Summary (2019 Annual Report)* at p. 7 available at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.shastacounty.gov/sites/default/files/fileattachments/housing_amp_community_action_programs/page/3427/2019-pit-report.pdf and Shasta County Community Action Agency, *NorCal Continuum of Care’s Annual Point-in-Time Count Executive Summary (2022 Annual Report)* at p. 12 available at <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://wildrivers.lostcoastoutpost.com/media/blog/post/2253/2022-norcal-CoC-Pit-Report-Final.pdf>.

²⁶ Marek Marszawski, *Fresno homeless population count provides sobering reminder there’s no easy fix*, FRESNO BEE, July 29, 2023 available at <https://www.fresnobee.com/opinion/opncolumns-blogs/marek-warszawski/article277765243.html>.

suburban parts of the state are equally impacted by this crisis – the largest percentage increases since 2007 have been in the far north (330 percent), El Dorado County (151 percent), Sonoma County (121 percent), Monterey and San Benito counties (115 percent), Yuba and Sutter counties (94 percent) and Placer and Nevada counties (74 percent).²⁷

Without question, homelessness presents one of the most significant challenges to California law enforcement today especially with the explosion of homeless encampments in cities up and down the State since *Martin*. In short, the practical consequences of the *Martin* and *Grants Pass* decisions on California law enforcement have proven, and will continue to prove, nothing short of disastrous.

A. California Law Enforcement Agencies Receive Scores of Homeless-Related Calls for Service

Homelessness often creates livability problems for other citizens, homeless individuals often act out when in crisis or suffering from mental illnesses, and encampments instill fear in our communities all of which generate calls for service to local police agencies,. Unfortunately, the reality is that when the community

²⁷ League of California Cities, *Homelessness Task Force Report: Tools and Resources for Cities and Counties February 2018* p. 2 available at <https://www.cacities.org/Resources-Documents/Policy-Advocacy-Section/Hot-Issues/Homeless-Resources/League-CSAC-Task-Force/HTF-Homeless-2018-Web.aspx>.

has fears, is uninformed about who to contact, what resources are available, or how to channel their willingness to help, they call the police.

California police and fire agencies are inundated by calls and/or complaints about the homeless. Between 2017 and 2022, the San Francisco Police Department received an astonishing 174,176 homeless-related calls for service.²⁸ In 2018, the Santa Monica Police Department reported that roughly 30 percent of the Department's calls for service were homeless-related.²⁹

In a survey of the 58 California Sheriffs comprising Amici CSSA, the San Bernardino County Sheriff's Office reported that San Bernardino County Fire emergency calls related to homeless subjects increased from 2,127 incidents in 2020 to 3,783 incidents in 2022 with an overwhelming 5,484 incidents from January to September of 2023. Again, large Counties are by no means the only counties affected by this crisis. Mid-size Placer County reported a 6 percent increase in homeless population between 2021 and 2022 with a 14 percent increase in homeless-related calls for service. In 2022, Placer County Sheriff's Office received 421 homeless-

²⁸ Press Release: *SFPD Responds to Media Report on Use of Force*, August 24, 2023 available at <https://www.sanfranciscopolice.org/news/sfpd-responds-media-report-use-force#:~:text=SFPD%20officers%20received%20174%2C176%20homeless,using%20a%20physical%20control%20hold>.

²⁹ Madeleine Parker, *Serious Crime in Santa Monica Rises 8.8 Percent*, SANTA MONICA DAILY PRESS, January 30, 2019 available at <https://www.smdp.com/serious-crime-in-santa-monica-rises-8-8-percent/172447>.

related calls for assaults, disturbances and agency assists.

The Sheriff's Office of Placer County also reports that there are substantially more law enforcement incidents (crimes, calls for service, and self-initiated incidents) today as compared to 2018, i.e., prior to the *Martin* decision. Specifically, 557 homeless-related law enforcement incidents in 2018 and, from January to September in 2023, there have already been 734. In relatively small Humboldt County, there were 220 incidents tracked by the Sheriff's Office containing the words "transient" or "homeless" in 2018. By 2022, that number had ballooned to 912.

Law enforcement agencies are not the only safety agencies impacted. In Los Angeles, occurrences of fires related to homelessness nearly tripled between 2018 and 2021, averaging 24 fires a day in the first quarter of 2021.³⁰ By December 2021, fires related to homelessness constituted the majority of all fires to which the Los Angeles Fire Department responded.³¹ Similarly, in San Bernardino, since 2020, there have been 1,093 fires related to transients including everything from encampment fires to trash fires to vacant building fires.³² Further, the Fresno Fire Department responded to roughly 6,000 fires in 2023.³³ Over 43 percent of

³⁰ Declaration of Local Emergency (Los Angeles), *supra*.

³¹ *Id.*

³² SBPD Chief Goodman, September 18 Press Release, *supra*.

³³ Esteban Reynoso, *Homeless-related fires make up more than 40% of citywide fires, Fresno fire says*, Your Central Valley News.com, November 14, 2023 available at <https://www.your>

those fires can be linked to the homeless with over 200 of those homeless-linked fires being in buildings.³⁴

CSSA member, the Sheriff's Office of Madera County reported that Cal-Fire, who contracts for fire services in Madera County, reported that there were 157 fires attributed to the homeless population in 2022. So far in 2024, there have been 61 fires attributed to the homeless population. In total, Cal-Fire estimates that between 20 and 25 percent of fires in Madera County are started by the homeless population. In May of 2022, a fire started by homeless individuals in a dry creek bed in the City of Madera got out of control, burning down two homes and damaging several others. In July of 2023, a vacant residence in the County of Madera was burned down by individuals who were unlawfully squatting there. Prior to that, other squatters had burned down the carport and caused thousands of dollars in damage to the vacant residence.

In sum, it is no exaggeration to say that California law enforcement officers now spend a substantial portion of their day-to-day policing efforts dealing with homeless-related issues. In that same vein, California fire agencies are seeing unprecedented increases in fires directly caused by the constantly growing homeless population.

[centralvalley.com/news/local-news/homeless-related-fires-make-up-more-than-40-of-citywide-fires-fresno-fire-says/](https://www.centralvalley.com/news/local-news/homeless-related-fires-make-up-more-than-40-of-citywide-fires-fresno-fire-says/).

³⁴ *Id.*

B. Homelessness Has A Significant Impact on Crime Rates

In addition to simply dealing with an overwhelming volume of calls for service, the homelessness problem in California impacts the very heart of law enforcement – crime rates. Homelessness-related crime rates are significant both in terms of crimes against the homeless and also crimes committed by the homeless.

Persons experiencing homelessness are amongst the most vulnerable persons in society. In the City of San Bernardino, “15% of the transient population are victims of crime and almost 50% of vehicle versus pedestrian collisions involve transients.”³⁵ In 2017, in Los Angeles, 1,762 persons experiencing homelessness were reported to be victims of a violent or property crime while in 2018 there were 2,965 such victims reflecting a stunning 68 percent increase in crimes against homeless victims.³⁶ The most significant changes in crimes with a homeless victim from 2017 to 2018 were robbery, with an 89 percent increase, larceny, with an 86 percent increase and rape, with a 71 percent increase.³⁷ In Los Angeles, the murder rate for

³⁵ SBPD Chief Goodman, September 18 Press Release, *supra*.

³⁶ Los Angeles Police Department (LAPD), 2018 4th Quarter Report on Homelessness, January 29, 2019 at p. 2 available at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.lapdpolicecom.lacity.org/031219/BPC_19-0073.pdf.

³⁷ *Id.*

people experiencing homelessness increased by an alarming 47 percent in 2021 alone.³⁸

Statewide, the National Coalition for the Homeless found that in 2016 and 2017, there were 26 lethal attacks against the homeless.³⁹ The problem of crime against the homeless was severe enough to be addressed by the California Legislature. In enacting California Penal Code section 13519.64 requiring the Commission on Peace Officer Standards and Training to develop training to be made available to all law enforcement agencies on crimes against homeless persons and on how to deal effectively and humanely with homeless persons, the California Legislature found “that California has had serious and unaddressed problems of crime against homeless persons, including homeless persons with disabilities.” CAL. PENAL CODE § 13519.64(a).

However, crimes *against* the homeless are not the only homeless-related crime statistics of concern to law enforcement in California. In Los Angeles, in 2017, there were 3,166 violent or property crimes in which a homeless person was the suspect.⁴⁰ In 2018, that figure increased to 4,849 violent or property crimes, reflecting a 53 percent increase in crimes in which a homeless

³⁸ Declaration of Local Emergency (Los Angeles), *supra*.

³⁹ National Coalition for the Homeless, *Vulnerable to Hate: A Survey of Bias-Motivated Violence Against People Experiencing Homelessness in 2016-2017* p. 41 available at https://nationalhomeless.org/wp-content/uploads/2019/01/hate-crimes-2016-17-final_for-web2.pdf.

⁴⁰ LAPD, *4th Quarter Report*, *supra*.

person was the suspect. In the City of San Bernardino, the crime committed by homeless individuals is grossly disproportionate to the rest of the city's population. "While the transient population is slightly less than 1% of the city's population, transients account for 15.88% of misdemeanor arrests and 14.33% of felony arrests."⁴¹ Indeed, "statistics in San Bernardino indicate 34% of the transient population has been arrested for various crimes."⁴² In 2017, the Orange County Sheriff's Department conducted 1,118 consensual contacts in the Santa Ana Riverbed – the County's largest homeless encampment and found that 85 percent of all those contacted had a prior criminal history.⁴³

The exponential increase in the homeless population and encampments in recent years has resulted in an increase in crimes both against the homeless and by the homeless. Law enforcement officers are charged with the safety and security of the public, and it is the duty of an officer to investigate crimes and to confront dangerous situations. This often times unenviable job is becoming increasingly more difficult and dangerous due to the epidemic of homelessness and the growing restrictions on police action such as those set forth in

⁴¹ SBPD Chief Goodman, September 18 Press Release, *supra*.

⁴² *Id.*

⁴³ Capt. [fmr. Lt.] Jeffery Puckett, *Orange County Sheriff's Department Internal Memo re Santa Ana Riverbed*, October 26, 2017 p. 12 available at https://1ccaxf2hhhh1jcwiktlicz7-wpengine.netdna-ssl.com/wp-content/uploads/2017/10/OCSD_Internal_Memo_SAR_Update.pdf.

Martin and *Grants Pass*, which fail to take into account the reality of the nature of the situation facing officers.

C. Traditional Police Safety Concerns Are Accompanied by Concerns of Disease and Infection

Homeless encampments also raise a number of public health concerns related to waste, sanitation and disease transmission. Homeless people, like all other people obviously, generate solid waste during their daily activities of food preparation and consumption, shelter building and maintenance and storing their possessions. Though without any place or method of proper storage or disposal, the resulting piles of trash become food sources for rodents, breeding grounds for pathogens, fuel for fires, and unattractive nuisances to the public. Further, the opportunity for the spread of communicable diseases is increased in homeless encampments lacking basic sanitation services and waste collection, with some diseases such as hepatitis A, tuberculosis and typhus more likely to occur in homeless populations.

Unfortunately, the law enforcement officers charged with policing in and near these encampments are feeling the full brunt of these dangers. While still contending with the traditional dangers associated with police work, officers are now faced with exposure to diseases previously almost rendered extinct. In

California, there were 76 cases of Typhus in 2014.⁴⁴ In 2022, that number had tripled to 229 cases.⁴⁵ In 2019, several Los Angeles Police Officers working near the same homeless encampment either contracted typhoid fever and/or showed typhus-like symptoms.⁴⁶

Analogously, the incidence of tuberculosis nationally among people experiencing homeless was estimated from 36 to 47 cases per 100,000 population in 2006–2010,⁴⁷ compared to 2.8 per 100,000 population in the general population in 2017.⁴⁸ Additionally, “hepatitis A incidence increased 850% from 2014 to 2018. The increase in 2018 was primarily due to unprecedented person-to-person outbreaks reported in 24 states among people who use drugs and people

⁴⁴ California Dep’t of Health, *Human Flea-Borne Typhus Cases in California Vector-Borne Disease Section (2001-2019)* available at <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/Flea-borneTyphusCaseCounts.pdf>.

⁴⁵ *Id.*

⁴⁶ See Emily Zanotti, *LAPD Officers Treated for Typhoid Fever, ‘Typhus-Like’ Symptoms After Working Near Homeless Encampments*, DAILY WIRE, June 2, 2019 available at <https://www.dailywire.com/news/47935/lapd-officers-treated-typhoid-fever-typhus-emily-zanotti>; see also Anthony Rivas, *LAPD Officers Being Treated for Typhoid Fever*, CBS NEWS, May 30, 2019 available at <https://abcnews.go.com/Health/lapd-officers-treated-typhoid-fever-typhus-symptoms/story?id=63371616>.

⁴⁷ Bamrah, S., et al., *Tuberculosis among the homeless, United States, 1994–2010*, INTERNATIONAL JOURNAL OF TUBERCULOSIS AND LUNG DISEASE 17, 1414–1419 (2013).

⁴⁸ Talwar, A., et al., Centers for Disease Control, *Tuberculosis – United States, 2018*, Vol. 68, MORBIDITY AND MORTALITY WEEKLY REPORT, March 22, 2019 available at <https://www.cdc.gov/mmwr/volumes/68/wr/mm6811a2.htm>.

experiencing homelessness.”⁴⁹ California, in particular, “experienced a large hepatitis A outbreak in 2016-2018, primarily among persons experiencing homelessness and/or using drugs in settings of limited sanitation.”⁵⁰ In California in 2014, there were 142 cases of hepatitis A statewide⁵¹ whereas in 2017 that number was almost seven times higher at 947 cases.⁵²

Some areas of California were hit particularly hard. On September 1, 2017, San Diego County declared a state of emergency due to that County’s hepatitis A outbreak.⁵³ As of January 9, 2018, there were more than 577 confirmed hepatitis A cases, 20 deaths, and 396 hospitalizations in San Diego County.⁵⁴ The City of Santa Cruz saw a similar outbreak beginning

⁴⁹ Centers for Disease Control, *Viral Hepatitis Surveillance United States, 2018*, July 28, 2020 available at <https://www.cdc.gov/hepatitis/statistics/2018surveillance/HepA.htm>.

⁵⁰ <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/Hepatitis-A.aspx>.

⁵¹ Centers for Disease Control, *Viral Hepatitis Surveillance United States, 2015* at p. 16 available at <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.cdc.gov/hepatitis/statistics/2015surveillance/pdfs/2015HepSurveillanceRpt.pdf>.

⁵² Centers for Disease Control, *Viral Hepatitis Surveillance United States, 2018*, *supra* at Table 1.1.

⁵³ Tom Christensen, *Local Public Health Emergency for Hepatitis A Outbreak Ratified by Board of Supervisors*, COUNTY NEWS CENTER, September 6, 2017 available at <https://www.countynewscenter.com/local-public-health-emergency-for-hepatitis-a-outbreak-ratified-by-board-of-supervisors/>; *see also* San Diego County Health and Human Services Agency, *Hepatitis A Outbreak*, available at https://www.sandiegocounty.gov/content/sdc/hhsa/programs/phs/community_epidemiology/dc/Hepatitis_A/outbreak.html.

⁵⁴ *Id.*

in April 2017 with 76 confirmed cases of hepatitis A.⁵⁵ Monterey County followed with a hepatitis A outbreak among its homeless population in February 2018.⁵⁶

Whether it is a pedestrian investigation on a busy street, taking the report of a crime or placing a person in custody, police officers have physical contact with people throughout their busy work day. With that contact, comes the risk of being exposed to various infections such as hepatitis A. This risk is particularly high in Skid Row areas and encampments where officers are placed in direct contact with at-risk populations within their living environments which have very poor sanitary conditions. In 2017, the Los Angeles Police Protective League recognized this risk identifying approximately 1,600 LAPD officers at high risk of exposure and urging the Los Angeles County Department of Public Health to immediately provide vaccine doses for those officers.⁵⁷

These diseases spread quickly and widely among people living on the streets, helped along by sidewalks

⁵⁵ County of Santa Cruz, *Hepatitis A Virus (HAV)* available at <https://www.santacruzhealth.org/HSAHome/HSADivisions/PublicHealth/CommunicableDiseaseControl/HepatitisA.aspx>.

⁵⁶ Erika Mahoney, *Monterey County Declares Hepatitis A Outbreak Among Homeless*, KQED NEWS, February 7, 2018 available at <https://www.kqed.org/news/11648643/monterey-county-declares-hepatitis-a-outbreak-among-homeless>.

⁵⁷ Brenda Gazzar, *LAPD union calls for ‘urgent action’ on Hepatitis A vaccines after officer contracts virus*, DAILY NEWS, November 2, 2017 available at <https://www.dailynews.com/2017/11/02/lapd-union-calls-for-urgent-action-on-hepatitis-a-vaccines-after-officer-contracts-virus/>.

contaminated with human feces, crowded living conditions, weakened immune systems, and limited access to health care. Unfortunately, the abundance of calls for service along with the necessity to investigate the litany of homeless-related crimes discussed above, bring law enforcement in constant contact with these dangerous conditions.

The homeless encampments have other consequences that may not be as obvious. For example, encampments have been springing up in parks and in conservation areas for protected species. Park and wetland habitats are now being compromised by the homeless who make shelters there and use the natural water for bathing and toilet needs. One example is popular Tiscornia Beach on the American River in Sacramento, which is downstream from homeless encampments that aren't served by restrooms, and which in 2019 had "alarmingly high levels of *E. coli* found in water tests."⁵⁸

Ironically, the magnitude of danger posed by these encampments becomes most evident when the encampments are cleared and cleaned. The Santa Ana Riverbed encampment, mentioned above, was the largest in Orange County with somewhere between 700 to

⁵⁸ Daniel Kim, 'When You Gotta Go, What Do You Do?' *Popular Beach Near Homeless Camps Tests High for E. Coli*, SACRAMENTO BEE, September 11, 2019 available at <https://www.sacbee.com/news/local/sacramento-tipping-point/article234979472.html#storylink=cpy>.

1,000 homeless persons residing there.⁵⁹ During the cleanup of that encampment, incredibly dangerous fire hazards were observed.⁶⁰ Additionally, and nearly beyond belief, 404 tons of debris and 5,279 pounds of waste deemed hazardous such as human waste, propane, pesticides and other materials, were removed from the site.⁶¹ During the cleanup of an encampment in Echo Park in the heart of the City of Los Angeles, 35 tons of solid waste was removed which included more than 723 pounds of biological waste consisting of 180 pounds of feces and 544 pounds of urine.⁶²

Prior to the Riverbed cleanup, the Orange County Sheriff's Department routinely policed inside the encampment both for outreach and enforcement purposes. Prior to the clean-up of Echo Park, LAPD officers

⁵⁹ Capt. [fmr Lt.] Jeffery Puckett, *Orange County Sheriff's Department Internal Memo re Santa Ana Riverbed*, October 26, 2017 p. 12 available at https://1ccaxf2hhhhbh1jcwiktlicz7-wpengine.netdna-ssl.com/wp-content/uploads/2017/10/OCSD_Internal_Memo_SAR_Update.pdf and Theresa Walker, *Thousands of Pounds of Human Waste, Close to 14,000 Hypodermic Needles Cleaned Out from Santa Ana River Homeless Encampments*, ORANGE COUNTY REGISTER March 8, 2018 available at <https://www.ocregister.com/2018/03/08/thousands-of-pounds-of-human-waste-close-to-14000-hypodermic-needles-cleaned-out-from-santa-ana-river-homeless-encampments/>.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶¹ *Id.*

⁶² *Hundreds Of Pounds Of Human Waste, Needles Cleaned From Former Homeless Encampment At Echo Park*, KCAL CBS NEWS, May 6, 2021 available at <https://www.cbsnews.com/los-angeles/news/hundreds-of-pounds-human-waste-needles-cleaned-from-former-homeless-encampment-echo-park/>.

did the same. Policing inside an encampment, whether for outreach or enforcement, routinely puts those officers inside a breeding ground for disease and in close proximity to tens of thousands of hypodermic needles and thousands of pounds of human waste.

CSSA member, the Sheriff's Office of Madera County, a county with a population 63 times less than Los Angeles County, reported that their Homeless Outreach Unit facilitated the removal of about 19 tons of refuse and hazardous waste attributed to homeless activity in the county between August of 2022 and August of 2023. Additionally, the Sheriff's Jail Community Service Program removed about 10 tons of refuse from homeless encampments, the Madera Water District and the Chowchilla Water District collectively removed several tons of waste from homeless activity in several waterways in the county, and private landowners removed at least 20 tons of refuse attributed to homeless encampments. In San Bernardino, as of September of 2023, the Public Works Department reported it has disposed of 828 tons of trash from encampments – averaging 23 tons per week.⁶³ The physical and fiscal negative impact of these encampments simply cannot be understated.

⁶³ SBPD Chief Goodman, September 18 Press Release, *supra*.

D. Encampments Provide Dependable Access to Illegal Drugs Leading to Disastrous Consequences

Another devastating consequence of the recent proliferation of encampments is the increase of illegal drug use and increased deaths of homeless persons from that drug use. In short, encampments provide dependable access to illegal drugs in general and opioids in particular and that increased access is leading to horrifying results.

In Sacramento, the Department of Community Response collected an unbelievable 24,500 hypodermic needles just in the first seven months of 2023.⁶⁴ During the clean-up of the Santa Ana Riverbed encampment, mentioned above, 13,950 hypodermic needles were removed from the site.⁶⁵ During the cleanup of the City of Los Angeles encampment in Echo Park, also

⁶⁴ Ashley Sharp, *Neighbors say out-of-control drug use at Sacramento park's homeless encampments is dangerous, frightening*, CBS NEWS, July 17, 2023 available at <https://www.cbsnews.com/sacramento/news/neighbors-of-sacramentos-stanford-park-say-homeless-encampment-drug-use-is-out-of-control/>.

⁶⁵ Capt. [fmr Lt.] Jeffery Puckett, *Orange County Sheriff's Department Internal Memo re Santa Ana Riverbed*, October 26, 2017 p. 12 available at https://1ccaxf2hhhbh1jcwiktlicz7-wpengine.netdna-ssl.com/wp-content/uploads/2017/10/OCSD_Internal_Memo_SAR_Update.pdf and Theresa Walker, *Thousands of Pounds of Human Waste, Close to 14,000 Hypodermic Needles Cleaned Out from Santa Ana River Homeless Encampments*, ORANGE COUNTY REGISTER March 8, 2018 available at <https://www.ocregister.com/2018/03/08/thousands-of-pounds-of-human-waste-close-to-14000-hypodermic-needles-cleaned-out-from-santa-ana-river-homeless-encampments/>.

mentioned above, 30 pounds of hypodermic needles were recovered.⁶⁶

The mortality rate among homeless people in Los Angeles County has increased by 55 percent in recent years, according to the latest county public health report.⁶⁷ Overdose is now the leading cause of mortality among the homeless and, since 2016, overdoses resulting in death among the homeless population having increased by 84 percent.⁶⁸ Overdose death is also the leading cause of death amongst the homeless populations of Orange County⁶⁹ and the City of San Francisco.⁷⁰ Similarly, in Sacramento County in 2022, substance abuse deaths remained the number one

⁶⁶ *Hundreds Of Pounds Of Human Waste, Needles Cleaned From Former Homeless Encampment At Echo Park*, KCAL CBS NEWS, May 6, 2021 available at <https://www.cbsnews.com/los-angeles/news/hundreds-of-pounds-human-waste-needles-cleaned-from-former-homeless-encampment-echo-park/>.

⁶⁷ County of Los Angeles Public Health, *Mortality Rates and Causes of Death Among People Experiencing Homelessness in Los Angeles County: 2014-2021*, May 2023 available at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/http://publichealth.lacounty.gov/chie/reports/Homeless_Mortality_Report_2023.pdf.

⁶⁸ *Id.*

⁶⁹ Jordan Graham, *For Orange County's homeless population, 2017 was the second deadliest year on record*, OC REGISTER, January 17, 2018 available at <https://www.oregister.com/2018/01/17/for-orange-countys-homeless-population-2017-was-the-second-deadliest-year-on-record/>.

⁷⁰ Cawley C. Kanzaria, et al., *Mortality Among People Experiencing Homelessness in San Francisco During the COVID-19 Pandemic*. JAMA NETW. OPEN., March 10, 2022 available at <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2789907>.

cause of death, accounting for 46.7 percent of all homeless deaths.⁷¹

The sharp increase in overdose deaths is being driven by drug overdoses involving fentanyl – a drug widely available within the encampments. In San Francisco, between March 2020 to March 2021, fentanyl overdoses accounted for a shocking 82 percent of deaths of homeless individuals.⁷² Similarly, fentanyl overdose was the leading cause of death amongst San Diego’s homeless population in 2022.⁷³ The use of intravenous drugs within encampments is a problem of epic proportions. This problem, and the number of deaths attributed to it, will only increase in size and severity the longer *Martin* and *Grants Pass* are permitted to stand.

The *Martin* decision, made it exceptionally difficult for cities to clear tent encampments and to leverage criminal and civil penalties to force homeless persons to accept drug treatment and housing. *Grants*

⁷¹ Carolina Estrada, ‘We are going to die out here’: Report finds that 2022 was deadliest year for unhoused people in Sacramento County, KCRA, December 15, 2023 available at <https://www.kcra.com/article/report-2022-deadliest-year-unhoused-people-sacramento-county/46137574#>.

⁷² *Fentanyl Overdoses Fueled Surge In 2020 San Francisco Homeless Deaths*, CBS NEWS, March 12, 2022 available at <https://www.cbsnews.com/sanfrancisco/news/fentanyl-overdoses-fueled-surge-in-2020-san-francisco-homeless-deaths/>.

⁷³ San Diego Mayor Todd Gloria Press Release: *Illicit Fentanyl-Related Arrests Up 53% in City of San Diego*, December 11, 2023 available at <https://www.sandiego.gov/insidesd/illicit-fentanyl-related-arrests-53-city-san-diego>.

Pass compounds this problem exponentially. Encampments simply cannot be permitted to exist and grow and most certainly should not be “constitutionally” protected such that law enforcement is effectively prevented from dealing with these massive threats to the health and safety of the homeless population and to the public in general.

II. This Court has Long Recognized the Need for Workable Constitutional Standards, Which *Martin* and *Grants Pass* Certainly do not Provide

While cities and counties tend to think about homelessness globally in terms of how to reduce the number of unsheltered homeless on their streets, law enforcement has more immediate concerns. Day in and day out, a substantial portion of law enforcement officer time is devoted to homeless issues. The restrictions placed upon officers must allow them to maintain their own safety while protecting the safety of the public but must stop short of preventing officers from effectively carrying out these duties. “We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day.” *Smith v. Freland*, 954 F.2d 343, 347 (6th Cir. 1992). The *Martin* and *Grants Pass* decisions do exactly that – strip law enforcement of critical enforcement tools without any consideration of the practical effects on everyday policing.

To many, the dreadful situation resulting from *Martin* has not come as a surprise. Dissenting to the denial of rehearing en banc in *Martin*, Judge M. Smith, joined by five other Judges, warned of “dire practical consequences for the hundreds of local governments within our jurisdiction and the millions of people living there” further stating that the panel’s holding had already begun “wreaking havoc on local governments, residents, and businesses throughout the circuit.” *Martin*, 920 F.3d at 590 and 594.

Judge M. Smith further warned in his dissent that “the panel’s reasoning would soon prevent local governments from enforcing a host of other public health and safety laws, such as those prohibiting public defecation and urination” thus shackling the hands of public officials “trying to redress the serious societal concern of homelessness.” *Id.* In petitioning this Court for Certiorari on *Martin*, the City of Boise gained the support of 7 States and dozens of cities as amici curiae each echoing the very concerns raised by Judge M. Smith.

In *Grants Pass*, the Ninth Circuit issued a splintered 155 page opinion amending the original appellate opinion and denying rehearing en banc by the slimmest of margins – 14 to 13 – over the objections of 17 active and senior judges, who explained that the Ninth Circuit should have reconsidered this ill-conceived judicial experiment. 16 of the Ninth Circuit’s 52 judges issued fiery dissents underscoring the decision’s grave practical and constitutional implications.

Judge M. Smith noted, dissenting in *Grants Pass* as he had in *Martin*, that “*Martin*, particularly now that it has been supercharged by *Grants Pass*, has proven to be a runaway train that has derailed and done substantial collateral damage to the governmental units in which it has been applied and those living therein.” *Grants Pass*, supra 72 F.4th at 943. Also noting: “*Martin* handcuffed local jurisdictions as they tried to respond to the homelessness crisis; *Grants Pass* now places them in a straitjacket. If this case does not involve a question of exceptional importance, I cannot imagine one that does.” *Grants Pass*, supra 72 F.4th at 936.

The Ninth Circuit’s decisions, in divining a constitutional right to public vagrancy, have led and will continue to lead to an abandonment of a multitude of laws regulating public health and safety due to the threat of incurring civil liability for purportedly violating the Eighth Amendment. For example, in large cities such as San Francisco or Los Angeles in which the number of homeless triple or quadruple the number of available beds, officers currently cannot cite an individual who has set up a tent on the street and who defecates on that street even if that person has been offered temporary housing. And, more to that point, many of the homeless *decline* housing and treatment for drug addictions or mental illness. *Martin* and *Grants Pass* make it nearly impossible for law enforcement to leverage criminal and civil penalties to force homeless persons to accept that treatment and housing, such as through drug diversion court programs.

The tools law enforcement are being deprived of leave them powerless to address the devastating issues presented by rising numbers of the homeless and homeless encampments. For these reasons, Amici urge this Court overturn *Grants Pass* and *Martin* upon which it is founded.

At a minimum, Amici ask for clarification. If the issues in *Martin* and *Grants Pass* are confounding to a number of U.S. Court of Appeals judges, they are infinitely more confounding from the perspective of the officer on the street trying to cope with the thousands of calls for service discussed above while receiving minimal guidance under *Martin* and *Grants Pass* as to which ordinances they can and cannot enforce and when they can and cannot enforce them. For an officer on the street trying to comply with these decisions, the practical hurdles are absurd. What beds can an officer consider when determining whether a bed is “reasonably available”? If the person the officer proposes to cite for camping is on Skid Row in downtown Los Angeles, does an open bed 10 miles away but still in Los Angeles County suffice as available? 5 miles away? 2 miles away? More importantly, once an officer determines what geographical location he must search for beds in, exactly how are they supposed to accomplish that?

Amici are not aware of any comprehensive list, in any city or county, of shelters and their various restrictions. For example, in Los Angeles County there are hundreds of shelters with thousands of beds

available of different types with different restrictions.⁷⁴ Many of the beds are only available seasonally in the winter.⁷⁵ Many shelters do not permit men, or pets, or persons with convictions for sex offenses. *Id.* How is an officer standing on the street supposed to check, not only the current occupancy rate, but also be aware of whether the person he or she is speaking to is even eligible for an empty bed if found? And what constitutes “rudimentary protection against the elements”? Is it the same in someplace like Santa Monica, with nearly year round pleasant weather, as it is in the deserts of California, where temperatures can range anywhere from the teens to well over 100 degrees?

Amici respectfully submit that the constitutional prohibition imposed by *Martin* and *Grants Pass* cannot be formulated in a manner that would be workable for the police officers on the beat. The categorical constitutional prohibition in these decisions poses insurmountable obstacles to legitimate law enforcement and the ability of cities to govern *all* their city’s residents. The vagueness of these decisions’ perimeters

⁷⁴ Doug Smith, *Q&A: Demystifying L.A.’s System of Homeless Shelters*, LOS ANGELES TIMES, September 29, 2017 available at <https://www.latimes.com/local/lanow/la-me-shelter-q-a-20170929-htmstory.html>; see also *Los Angeles Homeless Services Authority, 2017-2018 Final Report* available at <https://www.lahsa.org/dashboards?id=34-17-18-final-report>; see also *Los Angeles Homeless Services Authority, 2017 HIC Data Summary* available at <https://www.lahsa.org/documents?id=1562-2017-hic-data-summary.pdf&ref=hc>.

⁷⁵ *Id.*

and expectations placed upon local agencies and officers fails to come even remotely close to the need for clarity discussed in *New York v. Belton*, 453 U.S. 454, 101 S. Ct. 2860 (1981). In short, the decision is nearly impossible for officers to employ in practice and does nothing but create confusion and tie the hands of officers and city officials who are already facing outrageous challenges due to homelessness every day. *Martin* and *Grants Pass* have, and will continue to have, dire practical consequences upon municipalities and law enforcement should they be permitted to stand.

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CONCLUSION

For the foregoing reasons, Amici agree with Petitioner and respectfully request that the lower court's decision should be reversed.

Respectfully submitted,

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