

Nos. 20-35752, 20-35881

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

GLORIA JOHNSON, JOHN LOGAN, individuals, on behalf of
themselves and all others similarly situated,
Plaintiffs-Appellees,

v.

CITY OF GRANTS PASS,
Defendant-Appellant.

Appeal from the United States District Court, for the District of Oregon
Case No. 1:18-cv-01823, Magistrate Judge Mark D. Clarke

**BRIEF OF LEAGUE OF OREGON CITIES, CITY OF PORTLAND,
ASSOCIATION OF IDAHO CITIES, INTERNATIONAL
MUNICIPAL LAWYERS ASSOCIATION, SPECIAL DISTRICTS
ASSOCIATION OF OREGON, LEAGUE OF ARIZONA CITIES AND
TOWNS, AND WASHINGTON STATE ASSOCIATION OF
MUNICIPAL ATTORNEYS AS AMICI CURIAE IN SUPPORT OF
DEFENDANT-APPELLANT CITY OF GRANTS PASS'S PETITION
FOR REHEARING EN BANC**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, amici curiae hereby submit the following corporate disclosure statement:

Amici curiae have no parent corporations, do not issue stock, and no publicly held corporation owns any portion of them.

CONSENT OF THE PARTIES

Pursuant to Circuit Rule 29-2, all parties have consented to the filing of this brief.

INTEREST OF *AMICI CURIAE*¹

Founded in 1925, the League of Oregon Cities is an intergovernmental entity consisting of Oregon's 241 incorporated cities. Oregon cities formed the League to be, among other things, the effective and collective voice of Oregon's cities before the courts.

The City of Portland is the largest city in Oregon with a population of more than 650,000 people.

¹ *Amici* state as follows: (1) neither party's counsel authored the brief in whole or in part; (2) neither party nor their counsel contributed money that was intended to fund preparing or submitting the brief; and (3) no person other than *amici*, their members, their members, or their counsel contributed money that was intended to fund preparing or submitting the brief.

The Special Districts Association of Oregon formed in 1979 to represent special districts in the Oregon Legislature. There are currently thirty-four different types of special districts in the Association, including parks and recreation districts and utility districts.²

The Association of Idaho Cities formed in 1947 to advocate on behalf of Idaho's 199 cities and to provide education, training, and assistance to strengthen the ability of city elected officials and staff to serve their communities.

The League of Arizona Cities and Towns is a voluntary membership organization of the incorporated municipalities in Arizona that exists to promote local self-government, municipal independence, and provide professional and high-quality assistance to its members.

The Washington State Association of Municipal Attorneys is a non-profit corporation comprised of attorneys who represent Washington's 281 cities and towns. The Association's members frequently advise their clients on common municipal challenges and interpretations of the law, and reflect the collective voices of Washington's cities and towns.

² Special Districts Association of Oregon, *What Is A Special District?*, <https://www.sdao.com/files/a3473de8b/what-is-special-district.pdf> (last visited Nov. 22, 2022).

The International Municipal Lawyers Association was founded in 1935 to serve as an advocate and resource for local government attorneys, and it provides services as an international clearinghouse of legal information and cooperation on municipal legal matters.

INTRODUCTION

Local governments are on the front lines of confronting homelessness in America. Unfortunately, this Court’s decisions in *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018) and *Johnson v. City of Grants Pass*, 50 F.4th 787 (9th Cir. 2022) have limited their options to protect the health and safety of their communities—both housed and unhoused. With fewer tools to tackle this difficult and troubling human issue, communities throughout the Ninth Circuit are facing growing homeless populations and more unhealthy, dangerous, and sometimes deadly encampments.

Writing in dissent to this Court’s decision in *Johnson*, Judge Collins noted that “it is hard to deny that *Martin* has ‘generated dire practical consequences for the hundreds of local governments within our jurisdiction, and for the millions of people that reside therein.’” *Johnson*, 50 F.4th at 831 (Collins, J. dissenting) (quoting *Martin v. City of Boise*, 920 F.3d 584, 594 (9th Cir. 2019) (M. Smith, J. dissenting from denial of rehearing en banc) (alterations omitted)). “Those harms,” Judge Collins continued, “will be greatly

magnified by the egregiously flawed reconceptualization and extension of *Martin*'s holding in [*Johnson*]." *Id.* Amici—the City of Portland and organizations representing many of the “local governments within [the Ninth Circuit’s] jurisdiction”—strongly agree with Judge Collins’ concerns. This Court should grant the City of Grants Pass’s petition of rehearing en banc and overturn *Martin*.

ARGUMENT

When this Court declined to rehear *Martin* en banc, Judge Smith, writing for himself and five other judges, predicted that “the panel’s decision will prohibit local governments from fulfilling their duty to enforce an array of public health and safety laws. Halting enforcement of such laws will potentially wreak havoc on our communities.” *Martin*, 920 F.3d at 596 (m. Smith, J., dissenting from the denial of rehearing en banc). Judge Smith’s prediction has proved correct. *Martin* and *Johnson* impose unworkable restraints on local governments and have allowed unchecked encampments to overwhelm public spaces and threaten the health and safety of both housed and unhoused communities. The Court should grant Appellant-Defendant City of Grants Pass’s Petition and overturn *Martin*.

What’s more, local governments have relied on *Martin*’s footnote 8, which appeared to allow local governments to regulate the time, place, and

manner of encampments. *See Martin*, 902 F.3d at 1048 n.8 (“Even where shelter is unavailable, an ordinance prohibiting sitting, lying, or sleeping outside at particular times or in particular locations might well be constitutionally permissible.”). Now, with the panel’s decision in *Johnson*, it is no longer clear if even this modest tool is available. Must local governments allow encampments throughout their limits regardless of the location of the encampment and the danger it poses if they do not have adequate shelter beds available?

The answer from *Johnson*: “Because the City has not established any realistically available place within the jurisdiction for involuntarily homeless individuals to sleep we need not decide whether alternate outdoor space would be sufficient under *Martin*.” *Johnson*, 50 F.4th at 812 n.33. Given the stakes in this case, local governments require clarity regarding their ability to regulate for the health and safety of their constituents, including whether reasonable time, place, and manner restrictions alluded are available. The Court should, at a minimum, grant the petition to provide this clarity.

I. *Johnson* and *Martin* are unworkable and force local governments to abandon enforcement of camping and sleeping regulations.

Martin and *Johnson* are unworkable because there is no practical way for law enforcement officers to determine whether an individual has “access to adequate temporary shelter” under *Martin* and *Johnson*. *See Martin*, 902 F.3d

at 1048 n.8 (“[O]ur holding does not cover individuals who *do* have access to adequate temporary shelter, whether because they have the means to pay for it or because it is realistically available to them for free, but who choose not to use it.” (Emphasis in original)). As such, local governments have no choice but to forego most enforcement of prohibitions on camping on public property.

Law enforcement face numerous barriers to determining whether an individual has access to adequate temporary shelter. For example, does an individual lack a long-term residence, but have access to family or friends on any given night? Does an individual live in the municipality or are they merely passing through? Are there available beds at a local shelter or at a shelter in a neighboring community? How is a law enforcement officer to know which, if any, of these scenarios apply when deciding whether to enforce a sleeping or camping regulation? It is rarely possible for law enforcement to accurately determine whether to enforce regulations given this level of ambiguity.

Even if cities could build enough shelters to house the entire homeless population—a budgetary impossibility for most cities—it is not clear even that would be enough. What if shelters, even if not religious, have rules that would preclude some people from using their services, like restrictions on pets, single people, drug and alcohol use, and time of entry? Law enforcement are unlikely to know the regulations of every shelter in their community or whether a

particular individual meets those regulations. Further, many unsheltered homeless people will not go to a shelter, regardless of the availability of beds. Law enforcement in cities across the Ninth Circuit have already reported that homeless individuals are refusing to answer questions necessary to determine whether they qualify for an available shelter bed, making it impossible to determine whether *Martin* and *Johnson* apply.

With all the hurdles, costs, and risk to enforcing no-camping ordinances, local governments face challenges to protecting the health and safety of their communities.

II. Unsheltered homelessness has increased dramatically in the Ninth Circuit since *Martin*.

In the year after *Martin*, three states in the Ninth Circuit—California, Washington, and Arizona—all ranked in the top five states for highest increases in homelessness in the country.³ Arizona’s homelessness population is growing more rapidly than anywhere else in the United States. Between 2019 and 2020, it grew nearly 10 percent—the largest percentage increase in the country.⁴ Between 2019 and 2020, Idaho’s population of homeless families grew by 25

³ The U.S. Department of Housing and Urban Development, *The 2020 Annual Homeless Assessment Report (AHAR) to Congress* at 11 (January 2021), <https://www.huduser.gov/portal/sites/default/files/pdf/2020-AHAR-Part-1.pdf>.

⁴ *Id.* at 11.

percent.⁵ Washington has one of the highest rates of chronic homelessness in the country, and that population grew by one third between 2019 and 2020.⁶

Oregon far exceeds the national rate of homelessness and ranks second in the nation in unsheltered homeless.⁷ And between 2019 and 2022, the number of homeless persons in Multnomah County, where the City of Portland is located, rose by 30 percent.^{8, 9} This increase occurred despite the fact that

⁵ *Id.* at 35.

⁶ *Id.* at 67.

⁷ See Rebecca Ellis, *Federal Analysis Shows Oregon's Homeless Population in Decline Prior to Pandemic*, OPB.com (Mar. 19, 2021), <https://www.opb.org/article/2021/03/19/federal-analysis-shows-oregons-homeless-population-in-decline-prior-to-pandemic/#:~:text=Oregon%20also%20had%20one%20of,California%20had%20a%20higher%20rate> (“Oregon also had one of the highest rates of unhoused people who were living unsheltered, tied for second place with Nevada. Both states saw 61% of their homeless population living outdoors.”).

⁸ *NEWS RELEASE: Tri-County Point in Time Count Numbers, Shared Regionally for the First Time, Show Shifts in Homelessness*, Multnomah County Joint Office of Homeless Services (May 4, 2022), <https://www.multco.us/johs/news/news-release-tri-county-point-time-count-numbers-shared-regionally-first-time-show-shifts>; *2019 Point-in-Time Count of Homelessness in Portland / Gresham / Multnomah County, Oregon*, Multi-agency report, at 5, http://opb-imgserve-production.s3-website-us-west-2.amazonaws.com/original/2019_pit_report_final_1564694245156.pdf.

⁹ Alex Hasenstab, *Multnomah County Releases First Homeless “Point-in-Time” Count in Two Years*, OPB.org (May 5, 2022), <https://www.opb.org/article/2022/05/05/multnomah-county-oregon-releases-first-homeless-count-point-in-time-two-years/>.

Multnomah County significantly increased the number of shelter beds during this period.¹⁰

Arizona's Maricopa County—home to the City of Phoenix—saw a similar, dramatic rise during the pandemic. A 2022 homelessness count showed that the homeless population in the Phoenix metro area grew by 35 percent since 2020.¹¹

In King County, Washington—the City of Seattle metro area—homelessness is up almost 14 percent in the past two years.¹²

¹⁰ *With More Shelter Beds Now Than Before COVID-19, Joint Office Announces Ongoing Work to Continue Adding Capacity*, Multnomah County (Mar. 14, 2022), <https://www.multco.us/multnomah-county/news/more-shelter-beds-now-covid-19-joint-office-announces-ongoing-work-continue>.

¹¹ Anita Snow, *Homelessness Jumps 35 percent in Two Years in Biggest Arizona County*, Associated Press (Mar. 14, 2022), <https://www.usnews.com/news/best-states/arizona/articles/2022-03-14/homelessness-jumps-35-in-2-years-in-biggest-arizona-county>.

¹² Frank Sumrall, *Number of King County Homeless Up Nearly 14% Since 2020, 57% Remain Unsheltered*, mynorthwest.com (May 23, 2022), <https://mynorthwest.com/3483956/kcrha-point-in-time-homeless-count-2022/>.

III. Non-enforcement has wreaked havoc on local governments, which will only get worse under the holding of *Johnson*.

A. The proliferation of homeless camps poses a monumental challenge for public resources in the Ninth Circuit.¹³

The impact of the massive increase of people sleeping in public areas is deeply felt. For example, Portland, Oregon has seen a dramatic increase in fires in and around unhoused encampments.¹⁴ More than half of fires in Portland now start in or near homeless camps—at least 2,048 in 2021—putting a strain on the city’s Fire & Rescue Bureau, which responds to five or six of these fires every night.¹⁵

Flagstaff, Arizona is in the largest contiguous ponderosa pine forest in the continental United States. The city has created a “woods-watch program” through its police department to mitigate the risk of forest fires started in

¹³ While the *Johnson* decision is not binding precedent in other circuits, it is persuasive authority, especially as the homelessness crisis grows nationwide. For example, in Denver, Colorado, city workers have made nearly 3,000 site visits to homeless encampments in 2022. In those visits they have found biohazards including a 50-gallon drum of human feces, booby traps set with broken beer bottles and used syringes, and over 300 pounds of propane.

¹⁴ Natalie O’Neill, *Blazes That Begin in Homeless Camps Now Account for Nearly Half the Fires in Portland*, Willamette Week (Nov. 2, 2022), <https://www.wweek.com/news/2022/11/02/blazes-that-begin-in-homeless-camps-now-account-for-nearly-half-the-fires-in-portland/>.

¹⁵ *Id.*

unsanctioned camps, but has had two fires in the last two years that destroyed homes in near the city.

Sacramento, California has also seen a significant increase in fires started by unhoused persons. Between 2019 and 2021, the number of fires started by unhoused persons increased by 62 percent, for a total of 4,754 fires in 2021.

Unchecked public camping places additional strains on public resources. In Sacramento, the city spent thousands of dollars to repair levees designed to protect the city from flooding after homeless persons dug into them in multiple places to access water more easily—putting the entire city at risk for much more than a repair bill.¹⁶ A local district in Oregon similarly spent more than \$150,000 to repair a levee that homeless campers damaged, creating a serious flood risk. Businesses in Apache Junction, Arizona (population 35,840)¹⁷ have had water lines or irrigation lines cut on their property by campers.

¹⁶ Emily C. Dooley, *Homeless Digging into Levees Put California's Capital at Risk*, news.bloomberglaw.com (July 30, 2019), <https://news.bloomberglaw.com/environment-and-energy/homeless-digging-into-levees-put-californias-capital-at-risk>.

¹⁷ *QuickFacts: Apache Junction, Arizona*, United States Census Bureau, <https://www.census.gov/quickfacts/fact/table/apachejunctioncityarizona/POP010210>, (last visited Nov. 22, 2022).

Homeless individuals in Medford, Oregon (population 86,367)¹⁸ set up camp in the Bear Creek Greenway, a conservation and recreation area that follows a tributary of the Rogue River. In addition to limiting public access to the greenway and littering Bear Creek with toxic materials ranging from human waste to coolants to rubber tires, campers have begun illegally trapping salmon and other protected anadromous fish¹⁹ in makeshift “dams” made from tarps.



¹⁸ *QuickFacts: Medford City, Oregon*, United States Census Bureau, <https://www.census.gov/quickfacts/medfordcityoregon>, (last visited Nov. 22, 2022).

¹⁹ Anadromous fish are born in freshwater tributaries like Bear Creek, spend most of their lives in saltwater, and return to the tributaries of their birth to spawn.

Unchecked campsites leave behind debris and waste. The City of Sacramento estimates that it collects and disposes of 6.6 million pounds of garbage and debris per year from homeless camps. Seattle has



invested \$3 million into programs to clean up litter and garbage across the city, including 194 encampment trash pick-up locations. This new program collected 46,497 discarded needles and 671,169 pounds of trash in June 2022 alone.²⁰ In the City of Port Orchard, Washington (population 15,979), occupants of an encampment used an adjacent salmonid-bearing stream to dispose of feces and urine and burned a portable toilet placed to serve them.

Parks in Apache Junction have become overwhelmed by the homelessness problem, as homeless persons use restrooms to bathe, use baseball dugouts as restrooms, and leave debris throughout the park, from camping supplies, to used needles, pipes, and drug paraphernalia. Lewiston,

²⁰ *Clean City Initiative*, City of Seattle, <https://www.seattle.gov/parks/about-us/special-initiatives-and-programs/clean-city-initiative> (last visited Nov. 22, 2022).

Idaho (population 34,447)²¹ reports similar problems, with homeless campers residing in baseball dugouts and band shells in public parks and leaving behind drug paraphernalia and biohazards such as blood and feces.



(Homeless campsite in Apache Junction after campers vacated)

²¹ *QuickFacts: Lewiston, Idaho*, United States Census Bureau, <https://www.census.gov/quickfacts/fact/table/lewistoncityidaho/PST045221>, (last visited Nov. 22, 2022).



(Homeless campsite in Eugene after campers vacated)²²

²² Tiffany Eckert, *Eugene's Camp 99 Officially Closes, Homeless Campers Disperse*, KLCC (Jan. 16, 2019), <https://www.klcc.org/post/eugenes-camp-99-officially-closes-homeless-campers-disperse>.



(Homeless campsite in Warrenton (population 6,393) after campers vacated)²³

In Bozeman, Montana, city officials report that unhoused individuals have begun parking campers and trailers in public rights-of-way. Recently, routine street sweeping to address storm water concerns turned into a five-week process that required temporarily relocating trailers and related debris (including human feces) prior to sweeping.

And the inability to manage homeless encampments also exposes cities to legal liability from other groups. For example, the City of Portland is facing a lawsuit that alleges tent encampments and accompanying debris on sidewalks

²³ *QuickFacts: Warrenton, Oregon*, United States Census Bureau, <https://www.census.gov/quickfacts/fact/table/warrentoncityoregon/RTN131217>, (last visited Nov. 23, 2022).

violate the Americans with Disabilities Act.²⁴ Los Angeles County agreed to a multi-million dollar settlement to resolve a lawsuit brought by a coalition of business, residents, homeless persons, and others, who alleged the county's and the City of Los Angeles's inaction had created a dangerous problem for the community.²⁵ And in Phoenix, 15 people whose properties are adjacent to a homeless encampment have sued the city to do something about the camp.²⁶ Local governments' hands are tied by *Martin* and now *Johnson*, leaving them unable to meet other legal requirements and serve other, also-vulnerable populations.

Special districts have a particularly hard time addressing the homelessness crisis. Some special districts maintain public property that is particularly ill-suited to public camping (e.g., utility infrastructure) but often

²⁴ Sophie Peel, *Federal Lawsuit Alleges City of Portland Fails to Uphold Americans With Disabilities Act by Allowing Tents on Sidewalks*, Willamette Week (Sept. 7, 2022), <https://www.wweek.com/news/city/2022/09/07/federal-lawsuit-alleges-city-of-portland-fails-to-uphold-americans-with-disabilities-act-by-allowing-tents-on-sidewalks/>.

²⁵ Christopher Weber, *Los Angeles County to Settle Lawsuit Over Homeless Crisis*, Associated Press (Sept. 12, 2022), <https://apnews.com/article/lawsuits-los-angeles-eb569af45027d8730b2b30bcdd8b91ca>.

²⁶ Katya Schwenk, *Phoenix's Largest Homeless Encampment Has Sparked a Lawsuit. What Now?*, Phoenix New Times (Aug. 17, 2022), <https://www.phoenixnewtimes.com/news/phoenixs-largest-homeless-encampment-sparks-lawsuit-14213947>.

have no involvement in providing shelter or other services to individuals experiencing homelessness.

Some cities face the same difficulty. The City of Portland, for example, is not the primary provider of social services in Portland—those services are primarily administered through Multnomah County and a network of nonprofits. But the City is responsible for law enforcement, clean-up services, emergency responses—*i.e.*, mitigating the problems arising out of homeless camps, despite having little control over the social resources available to combat homelessness.

B. Local governments are struggling with the recent increase in crimes and complaints arising out of unsheltered homeless populations.

The consequences extend beyond the debris and damage that encampments leave behind—cities also report an increase in crime both by and against the unsheltered homeless. The City of Portland receives thousands of citizen complaints each week alleging that persons are using drugs, engaging in domestic violence, and leaving used tampons and feces on the ground.²⁷

²⁷ Blair Best, *'We're Done With Portland': Some Residents Move Away Over What They Say Is The City's Lack Of Response To Homeless Camps*, KGW.com (Aug. 29, 2022), <https://www.kgw.com/article/news/local/homeless/portland-residents-move-washington-over-lack-response-homeless-camps/283-6eea7e53-4a56-4296-97cc-f8fe106818c7>.

One sweep exposed more than 150 stolen cars in just one Portland camp.²⁸

The City of Sacramento responds to between 25,000 and 40,000 calls related to homelessness every year, according to its police department. The cost of RV removal in Sacramento increased 334 percent over the previous five years.

Smaller communities face similar challenges. In Newport, Oregon—a town of 10,500 people—police responded to nearly 1,000 trespass complaints in 2021, more than 80 percent of which related to homeless persons.

In one Oregon special district, a homeless encampment grew around a pumping station over the course of several months. The camp became a chop shop, processing stolen catalytic converters. District staff heard gun shots more than once while trying to access the pump station. They required a police escort to access the pumping station during a major rainstorm that created a flood risk.

Homeless encampments are not safe for anyone, including those who live in them. Portland has seen at least 82 homicides in 2022, and 18 percent of the

²⁸ Angelica Thornton, *Officials Break Up Homeless Camp, Pull Out 150 Stolen Cars, Tons of Trash, Live Pigs*, NBC Montana (Oct. 19, 2022), [https://komonews.com/news/nation-world/city-breaks-up-homeless-camp-pulls-out-150-stolen-cars-tons-of-trash-live-pigs-big-four-corners-natural-area-portland-oregon-housing-crisis-damage-neighbor-george-donnerberg-park-and-rec-environmental-impact#:~:text=\(KATU\)%20%E2%80%94%20After%20years%20of,live%20pigs%20from%20the%20area.](https://komonews.com/news/nation-world/city-breaks-up-homeless-camp-pulls-out-150-stolen-cars-tons-of-trash-live-pigs-big-four-corners-natural-area-portland-oregon-housing-crisis-damage-neighbor-george-donnerberg-park-and-rec-environmental-impact#:~:text=(KATU)%20%E2%80%94%20After%20years%20of,live%20pigs%20from%20the%20area.)

victims were unhoused.²⁹ The largest homeless encampment in downtown Phoenix has generated at least 185 incidents in 2022, and over the past three years, police have investigated six murders and 259 reports of crime in homeless camps.³⁰

C. Responding to the hazards created by public campsites distracts from local governments' direct efforts to provide shelter and services.

Local governments in the Ninth Circuit have stepped up to help address the homelessness crisis. The City of Portland allocated \$85 million for homeless housing and services in 2022-23, and the tri-county metro area passed a tax measure in 2020 that is expected to raise \$2.5 billion for homelessness services by 2030.³¹ Meanwhile, a task force of 25 Oregon mayors is calling for an investment of \$123 million annually because cities in Oregon continue to

²⁹ Nicole Hayden, *Deaths on the Streets: Homeless Homicides in Portland Eclipse 2021*, *The Oregonian* (Oct. 22, 2022), <https://www.oregonlive.com/portland/2022/10/deaths-on-the-streets-homeless-homicides-in-portland-eclipse-2021.html>.

³⁰ Justin Lum, *Crimes of 'the Zone': Theft, Assaults, Drugs, Unsanitary Conditions Plague Area of Downtown Phoenix Tent City*, *Fox10Phoenix.com* (Sept. 15, 2022), <https://www.fox10phoenix.com/news/crimes-zone-theft-assaults-drugs-unsanitary-conditions-plague-downtown-phoenix-tent-city>.

³¹ Angela Hart, *'Not Safe Anymore': Portland Confronts the Limits of its Support for Homeless Services*, *Los Angeles Times* (June 21, 2022), <https://www.latimes.com/world-nation/story/2022-06-21/portland-liberal-support-lags-homeless-services-drugs>.

lack the resources necessary to combat the statewide homelessness crisis.³²

This investment would be unprecedented.³³

The City of Boise has built a 40-unit housing complex, using federal funding to cover rent and utilities, and partners with local hospitals to provide on-site treatment for mental health, disabilities, and substance abuse.³⁴ And Boise Mayor Lauren McLean has committed to building 250 additional housing units by 2026.³⁵ The City of Phoenix spent \$1.6 million to build a 100-bed tent shelter, called *Respiro*, to provide nighttime respite to the city's homeless population, and will continue to pay for the shelter's daily operations.³⁶

³² Miranda Cyr, *Oregon Mayors Organize Homeless Outreach Plan, Ask State for Millions in Assistance*, The Register Guard (Oct. 16, 2022), <https://www.registerguard.com/story/news/2022/10/16/oregon-mayors-state-funding-aid-homeless-crisis/69566530007/>.

³³ Alison McIntosh, *2022 Legislative Recap: \$400 Million Housing Package*, oregonhousingalliance.org (Mar. 8, 2022), <https://www.oregonhousingalliance.org/2022-legislative-recap-400-million-housing-package/>.

³⁴ Katija Stjepovic, *Ada County Pulls Funding From Homeless Program, to Create its Own*, KTVB7 (Dec. 7, 2021), <https://www.ktvb.com/article/news/local/growing-idaho/ada-county-boise-homeless-program-funding/277-77bab50a-26ee-4f85-90a5-5d6ce7bd82b5>.

³⁵ Kelcie Moseley-Morris, *Boise Mayor Joins Federal Initiative Aimed at Reducing Homelessness*, Idaho Capital Sun (May 31, 2022), <https://idahocapitalsun.com/2022/05/31/boise-mayor-joins-federal-initiative-aimed-at-reducing-homelessness/>.

³⁶ *Respiro Adds 100 Beds to Human Services Campus*, phoenix.gov (Mar. 25, 2022), <https://www.phoenix.gov/newsroom/human-services/2285>.

In Tempe, Arizona, the city government began operating a shelter out of a local motel during the COVID-19 pandemic, expanding into a permanent shelter with staff and on-site services.³⁷

Seattle's 2022 budget includes \$200 million in funding for affordable housing and homelessness programs, despite the city's \$15 million revenue shortfall.³⁸ And in Spokane, the city is considering how to use \$24.3 million to provide an alternative to the 600-person homeless encampment that has sprung up in the city.³⁹

Local governments in the Ninth Circuit have not been idle in the face of the growing crisis of homelessness. However, city budgets are stretched thin and local governments are generally prohibited by state law from carrying a

³⁷ *Housing and Shelter*, Human Services, Tempe.gov, <https://www.tempe.gov/government/human-services/housing-services/ending-homelessness/housing-and-shelter>; Suelen Rivera, *Tempe Buys Motel for Homeless, Gets Grant to Fund Shelter Beds*, ktar.com (Sept. 16, 2021), <https://ktar.com/story/4682643/tempe-buys-motel-for-homeless-gets-grant-to-fund-shelter-beds/>.

³⁸ Sarah Grace Taylor, *Seattle City Council Passes a 2022 Budget that Emphasizes Funding for Homelessness, Affordable Housing*, The Seattle Times (Nov. 22, 2021), <https://www.seattletimes.com/seattle-news/seattle-city-council-passes-a-2022-budget-that-emphasizes-funding-for-homelessness-affordable-housing/>.

³⁹ Greg Mason, *Alternative to Camp Hope: Spokane's Proposal to Spend \$24.3 Million in State Funds Focuses on Shelters on Trent, Sunset Highway*, The Spokesman-Review (July 22, 2022), <https://www.spokesman.com/stories/2022/jul/22/a-monumental-effort-inside-spokanes-proposed-plan-/>.

deficit. The *Martin* and *Johnson* decisions significantly complicate local governments' ability to respond to this crisis. Under *Martin*, local governments face an impossible choice. They can, on one hand, spend more and more to build housing for growing homeless populations so that they may enforce local ordinances prohibiting sleeping and camping in public areas. But such spending limits their ability to adequately fund public health and safety and engage in other critical work to support their communities. On the other hand, local governments can forego enormous spending on building shelters, but, if so, they can no longer enforce ordinances designed to protect public spaces for all communities. The Eighth Amendment does not require such a choice and local governments in the Ninth Circuit cannot afford to make it.

CONCLUSION

For these reasons, *Amici* respectfully request that this Court grant defendant-appellant City of Grants Pass's petition for rehearing en banc.

Dated this 25th day of November, 2022.

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CERTIFICATE OF COMPLIANCE FOR BRIEF

Pursuant to Ninth Circuit Rules 32-1(e) and 28.1-1(f), I certify that the foregoing amicus brief complies with the word limit of Cir. R. 29-2(c)(2), is proportionately spaced, has a typeface of 14 points or more, and contains 3,864 words, excluding the items exempted by Fed. R. of App. P. 32(f).

Dated this 25th day of November, 2022.

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court for the U.S. Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

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