



May 10, 2024

# EXECUTIVE COMMITTEE MEETING



**NOTICE OF A REGULAR MEETING OF THE  
LEAGUE OF ARIZONA CITIES & TOWNS  
EXECUTIVE COMMITTEE**

Friday, May 10, 2024 at 10:00 a.m.  
League Office Building  
1820 West Washington, Phoenix

Notice is hereby given to the members of the Executive Committee and to the general public that the Executive Committee will hold a meeting open to the public on May 10, 2024 at 10:00 a.m. Members of the Executive Committee will attend either in person or by Zoom Audio/Video conferencing. The Executive Committee may vote to recess the meeting and move into Executive Session on any item on this agenda. Upon completion of Executive Session, the Executive Committee may resume the meeting, open to the public, to address the remaining items on the agenda. A copy of the agenda is available at the League office building in Suite 200 or on the League website at [www.azleague.org](http://www.azleague.org).

**Agenda**

*All items on this agenda are scheduled for discussion and possible action, unless otherwise noted.*

Call to Order; Pledge of Allegiance

1. Review and Adoption of Minutes
2. Legislative Policy Overview and Session Update
3. 2024 League Annual Conference Update
4. League Budget for 2024-2025
5. Legal Update
6. Executive Session pursuant to A.R.S. 38-431.03(A)(3) for the purpose of discussion and consultation for legal advice with the League's attorneys regarding a legal challenge to HCR2023.

**Property Corporation Meeting**

7. Review and Adoption of Minutes
8. Property Corporation Budget for 2024-2025
9. Annual Election of Officers

*Additional informational materials are included in the agenda packet but are not part of the agenda.*



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**EXECUTIVE COMMITTEE MEETING**  
Friday, May 10, 2024

**Item #1**                      **Review and Adoption of Minutes**

**Summary:**                      Minutes of the previous meetings are enclosed for your review and approval.

**Responsible Person:**      President Douglas Nicholls

**Attachments:**                February 2, 2024 Executive Committee Minutes

**Action Requested:**        Approval

**MINUTES**  
**LEAGUE OF ARIZONA CITIES AND TOWNS**  
**EXECUTIVE COMMITTEE MEETING**

Thursday, February 2, 2024, at 10:00 a.m.  
League of Arizona Cities and Towns  
1820 W. Washington St.  
Phoenix, Arizona

**MEMBERS**

**President**

Douglas Nicholls, Mayor, Yuma \*

**Vice President**

Kevin Hartke, Mayor, Chandler

**Treasurer**

Mila Besich, Mayor, Superior \*

Ken Budge, Mayor, Bisbee +  
Craig McFarland, Mayor, Casa Grande +  
Robyn Prud'homme-Bauer, Mayor, Clarkdale +  
Alexis Hermosillo, Mayor, El Mirage +  
Ginny Dickey, Mayor, Fountain Hills  
Brigette Peterson, Mayor, Gilbert  
Jerry Weiers, Mayor, Glendale  
Al Gameros, Mayor, Globe  
Joe Pizzillo, Mayor, Goodyear  
Cal Sheehey, Mayor, Lake Havasu City +  
Tom Schoaf, Mayor, Litchfield Park

Ed Honea, Mayor, Marana  
Nancy Smith, Mayor, Maricopa  
John Giles, Mayor, Mesa  
Jerry Bien-Willner, Mayor, Paradise Valley  
Jason Beck, Mayor, Peoria \*  
Kate Gallego, Mayor, Phoenix  
Stephanie Irwin, Mayor, Pinetop-Lakeside +  
Tom Murphy, Mayor, Sahuarita  
David Ortega, Mayor, Scottsdale +  
Corey Woods, Mayor, Tempe +  
Regina Romero, Mayor, Tucson \*

\*Not in attendance

+ Attended via Zoom

Vice President Kevin Hartke called the meeting to order at 10:00 a.m. He then led the Executive Committee in a moment of silence and the Pledge of Allegiance.

Vice President Kevin Harke welcomed and introduced Attorney General Kris Mayes to the meeting.

Attorney General Kris Mayes presented an extensive overview of behavioral health care facility fraud and the ongoing efforts by their office to combat it. Kris Mayes highlighted the critical role of local control and requested assistance from city leaders to advocate for necessary reforms and support actions to prevent fraudulent operations. The meeting addressed the significant impacts of such operations on city revenues, public services, and community safety.

The mayors thanked Attorney General Kris Mayes for addressing the Executive Committee. The Attorney General thanked the committee for their time and retired from the meeting.

## **1. REVIEW AND ADOPTION OF MINUTES**

Vice President Kevin Hartke requested a motion on the adoption of the minutes. Mayor Nancy Smith of Maricopa moved to approve the minutes of the November 9, 2023, Executive Committee Meeting; Mayor Tom Murphy of Sahuarita seconded the motion and the motion carried unanimously.

## **2. LEGISLATIVE POLICY OVERVIEW AND SESSION UPDATE**

Executive Director Tom Belshe introduced Legislative Director Tom Savage to provide a legislative policy overview and session update.

The discussion highlighted the various legislative bills impacting zoning regulations and revenue sources for cities, with specific attention to bills concerning sales tax, accessory dwelling units (ADUs), and sober living homes regulations. The committee agreed on the importance of advocating for local control and opposing bills that could detract from the ability of cities to self-regulate effectively. Action alerts and strategies to oppose harmful bills, particularly those impacting zoning autonomy, were discussed.

The committee acknowledged several bills in detail, with House Bill 2750 and its implications being discussed thoroughly. Concerns were raised about provisions in the bill that could significantly alter local zoning authority.

During the meeting, the Executive Director and members discussed the potential impacts of SB 1056 on taxation. Concern was expressed about this and other similar budgetary challenges that could affect shared revenues, prompting a need for strategic collaboration and communication with the governor's office.

## **3. REPORT FROM LEAGUE BUDGET SUBCOMMITTEE**

Vice President Kevin Hartke introduced Executive Director, Tom Belshe to review the proposed changes to the budget.

Executive Director Tom Belshe reported that the League Annual Conference continues to be an excellent showcase for the organization as well as a great revenue source, however, expenditures for the conference have also increased significantly. Executive Director Belshe reported that the League has increased expenditures for private lobbyists for the exceptional work they do with the legislature on our behalf. Additionally, the League is contracting with the City of Glendale for data from the Department of Revenue which will be used to show the legislature how their decisions related to municipal revenue affect our cities and towns.

Vice President Kevin Hartke and member of the League Budget Subcommittee reported that the budget subcommittee met to review the financial statements and the proposed budget for the upcoming year. It was recommended to keep the dues unchanged considering the existing balance and the fiscal

challenges faced by the cities. The committee emphasized the importance of reassessing the need for any changes to the dues next year.

Vice President Kevin Harke called for a motion to approve the proposed dues for FY25. Mayor Alexis Hermosillo of El Mirage approved the motion; Mayor Joe Pizzillo of Goodyear seconded the motion and it carried unanimously.

#### **4. UPDATE ON DATA PORTAL INITIATIVES**

Executive Director Tom Belshe introduced Deputy Director Rene Guillen to provide an update on data portal initiatives.

The committee received an update on recent data portal initiatives highlighting the League's efforts to demonstrate its value through thorough data analysis. The initiatives included an online data story titled "The Value of the League," which showcased the organization's accomplishments, illustrated its return on investment, and featured various testimonials from member city officials.

The recent work was put forth as a resource not just for officials but also for the public, elucidating the benefits of league membership. New technology updates for future executive committee meetings were also discussed, aiming to enhance the experience of both in-person and virtual participants.

Vice President Kevin Hartke called for any other business for the good of the order. No other business was brought forth. Vice President Hartke adjourned the Executive Committee meeting at 11:55 a.m.



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**EXECUTIVE COMMITTEE MEETING**  
Friday, May 10, 2024

**Agenda Item #2      Legislative Policy Overview and Session Update**

**Summary:**      The Second Regular Session of the Fifty-Sixth Arizona Legislature is now beyond its statutory 100th day. This session saw 1,761 bills introduced. To date, 244 have passed the legislature and 55 of these measures have been vetoed. League staff tracked 570 bills, weighed in on about 100 bills, and testified in committee on 25 measures throughout the session. League staff will report on the session related to issues of interest to cities and towns. Significant topics for discussion include:

- State Budget Progress
- Housing Bills
- Sober Living Homes

**Responsible Person:**      Tom Belshe & League Legislative Staff

**Attachments:**      [Click Here](#) to access Legislative Bulletins to date



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EXECUTIVE COMMITTEE MEETING  
Friday, May 10, 2024

**Agenda Item #3**      **2024 League Conference Update**

**Summary:**              Preparations for the 2024 League Conference are well underway. The Conference will be held August 27-30 at the Arizona Biltmore in Phoenix. The registration information will be sent out to all cities and towns during the last week of May.

**Responsible Person:**   Matt Lore, Deputy Director

**Attachment:**              List of Conference Sponsors to date

**Link to Attachment:**   [Corporate Sponsorship Information](#)

## 2024 Annual Conference Sponsors

*As of 5/1/2024*

APS	<b>Platinum</b>
Cigna Healthcare	<b>Platinum</b>
Climatec	<b>Platinum</b>
Pierce Coleman, P.L.L.C.	<b>Platinum</b>
Resolution Copper	<b>Platinum</b>
UA Local 469	<b>Platinum</b>
Wecom Fiber	<b>Platinum</b>
Abdo	<b>Gold</b>
Arizona Dept of Administration	<b>Gold</b>
Cox Communications	<b>Gold</b>
Public Agency Retirement Services (PARS)	<b>Gold</b>
Republic Services	<b>Gold</b>
Schneider Electric	<b>Gold</b>
Stifel	<b>Gold</b>
Veregy	<b>Gold</b>
Waste Management of Arizona, Inc.	<b>Gold</b>
Brown & Associates	<b>Silver</b>
Core Construction	<b>Silver</b>
Southwest Gas Corporation	<b>Silver</b>
The Nature Conservancy	<b>Silver</b>
1GPA	<b>Bronze</b>
American Airlines	<b>Bronze</b>
AT&T	<b>Bronze</b>
Banner Aetna	<b>Bronze</b>
Blink Public Policy	<b>Bronze</b>
Central Arizona Project	<b>Bronze</b>
Dignity Health	<b>Bronze</b>
Gammage & Burnham	<b>Bronze</b>
Goodman Schwartz Public Affairs	<b>Bronze</b>
HighGround, Inc.	<b>Bronze</b>
Oncourse Home Solutions	<b>Bronze</b>
Salt River Project	<b>Bronze</b>
Verizon	<b>Bronze</b>
Grand Canyon University	<b>Youth</b>
AMRRP	<b>Key Partner</b>
Horizon Strategies	<b>Partner</b>
American Legal Publishing	<b>Endorsed</b>
Valley Schools Management Group (VSMG)	<b>Endorsed</b>
BMO Harris Bank	<b>Endorsed</b>



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**EXECUTIVE COMMITTEE MEETING**  
Friday, May 10, 2024

**Agenda Item #4      League Budget for 2024-2025**

**Summary:**                      The proposed budget for the League for the upcoming fiscal year, as recommended by the Budget Subcommittee, is presented for your review and approval.

**Responsible Person:**      Mayor Mila Besich, Superior, Budget Subcommittee Chair  
Tom Belshe

**Attachments:**                FY 2024-2025 Recommended Budget and Budget Narrative

**Action Requested:**        Approval

## 2024-2025 League Budget

### PROPOSED

REVENUES	Budget FY 2024	Expected FY 2024	Over / (Under)	PROPOSED FY 2025	% Change	% of Total Budget	Notes
Affiliate Group Contracts	195,500	197,000	1,500	197,000	0.8%	5.2%	At current rates: ACMA \$75K; GFOAz \$69K; AMCA \$10K; WLG \$43K
Annual Conference	500,000	832,042	332,042	800,000	60.0%	21.0%	Estimate \$270K income
Dues	2,361,478	2,361,478	0	2,387,552	1.1%	62.7%	No change to formula
Interest	25,000	121,495	96,495	110,000	340.0%	2.9%	
Miscellaneous	14,000	16,300	2,300	16,000	14.3%	0.4%	Includes publication sales & job postings.
Partnership Programs	41,000	39,974	(1,026)	42,000	2.4%	1.1%	American Legal (~\$5,000), APS Internship (\$12,000), Valley Schools (\$25,000)
Risk Pool	185,000	191,205	6,205	202,000	9.2%	5.3%	
Seminars and Meetings	50,000	36,000	(14,000)	53,000	6.0%	1.4%	NEO in FY25
<b>TOTAL REVENUES</b>	<b>\$3,371,978</b>	<b>\$3,795,494</b>	<b>\$423,516</b>	<b>\$3,807,552</b>	<b>12.9%</b>		
<b>EXPENDITURES</b>							
Annual Conference	230,000	558,900	328,900	530,000	130.4%	13.5%	
Benefits	586,000	585,500	(500)	645,000	10.1%	16.4%	Estimate 12% increase to UHC premiums (eff. 10/2024). Estimate 3% increase to dental premiums (eff. 5/2024). Decrease of .02% in the ASRS contribution rate.
Capital Outlay	15,000	78,956	63,956	15,000	0.0%	0.4%	O365 = ~\$5000 annually; Board authorized FY23 Reserve Fund expenditure for meeting room upgrades which was not spent; due to unexpected delays, the project is now nearing completing in FY24.
Equipment Rental & Maintenance	8,000	7,254	(746)	7,000	-12.5%	0.2%	
Executive Committee	7,000	7,301	301	7,000	0.0%	0.2%	
Insurance	9,000	7,719	(1,281)	8,000	-11.1%	0.2%	Rec'd \$-2469 dividend for FY24
Postage & Shipping	6,000	5,681	(319)	6,000	0.0%	0.2%	
PR & Communications	62,000	65,150	3,150	64,000	3.2%	1.6%	Includes HighGround (\$60,000); misc (\$4,000)
Printing	14,000	13,500	(500)	14,000	0.0%	0.4%	Includes directory, MPS, calendar & legis poster
Professional Services	413,000	344,472	(68,528)	493,000	19.4%	12.5%	
Accounting	54,000	49,579	(4,421)	52,000	-3.7%	1.3%	Includes audit, accountants & payroll processing service
Contract Lobbying & Consulting Svcs	323,000	290,400	(32,600)	411,000	27.2%	10.5%	Includes HighGround (\$120K); Rounds (\$91K); K Jackson (\$7K); C Jagger (\$3K); Flo (\$30K- data); H. Arellano (\$90K); Anubhav (\$40K); Robert Half Marketing (\$15K); City of Glendale (data) (\$15K)
Legal	36,000	4,493	(31,507)	30,000	-16.7%	0.8%	
Prop Corp - Building Improvement Fund	10,000	10,000	0	10,000	0.0%	0.3%	Savings for building repairs / improvements.
Rent	105,000	105,000	0	105,000	0.0%	2.7%	
Salaries	1,700,000	1,714,680	14,680	1,809,000	6.4%	46.0%	5% COLA increase; position/salary level adjustments; no vacancies
Seminars and Meetings	47,000	68,475	21,475	48,000	2.1%	1.2%	
Subscriptions and Dues	72,000	71,916	(84)	72,000	0.0%	1.8%	
Supplies / Office Expenses	55,000	56,691	1,691	56,000	1.8%	1.4%	general cost increases, and credit card fee increases
Telecommunications	24,000	19,561	(4,439)	20,000	-16.7%	0.5%	Changeover from Mitel to Airespring
Travel	20,000	19,441	(559)	20,000	0.0%	0.5%	
<b>TOTAL EXPENDITURES</b>	<b>\$3,383,000</b>	<b>\$3,740,197</b>	<b>\$357,197</b>	<b>\$3,929,000</b>	<b>16.1%</b>		
<b>Reserve Fund</b>				<b>\$121,448</b>			Subcommittee recommends using reserve funds to cover revenue deficiency.
<b>Revenues Over (Under) Expenditures</b>	<b>(\$11,022)</b>	<b>\$55,297</b>	<b>\$66,319</b>	<b>\$0</b>			
<b>Beginning Fund Balance</b>	<b>\$2,248,351</b>	<b>\$2,248,351</b>		<b>\$2,303,648</b>			
<b>Ending Fund Balance</b>	<b>\$2,237,329</b>	<b>\$2,303,648</b>		<b>\$2,182,200</b>			

<b>AUDITED YEAR END FIGURES</b>	<b>Ending Balance *</b>	<b>FY</b>	<b>Rev over Exp</b>
Total fund balance as of July 1, 2023	\$2,248,351	22-23	\$61,701
Total fund balance as of July 1, 2022	\$2,186,650	21-22	\$105,326
Total fund balance as of July 1, 2021	\$2,081,324	20-21	(\$277,345)
Total fund balance as of July 1, 2020	\$2,358,669	19-20	\$134,693
Total fund balance as of July 1, 2019	\$2,223,976	18-19	(\$128,219)
Total fund balance as of July 1, 2018	\$2,352,195	17-18	\$254,405
Total fund balance as of July 1, 2017	\$2,097,790	16-17	\$117,613
Total fund balance as of July 1, 2016	\$1,980,177	15-16	\$152,942
Total fund balance as of July 1, 2015	\$1,827,235	14-15	(\$609)
Total fund balance as of July 1, 2014	\$1,827,844	13-14	\$203,785
Total fund balance as of July 1, 2013	\$1,624,059	12-13	\$165,383
Total fund balance as of July 1, 2012	\$1,458,676	11-12	\$200,953
Total fund balance as of July 1, 2011	\$1,257,723	10-11	(\$53,713)
Total fund balance as of July 1, 2010	\$1,311,436	09-10	\$98,313
Total fund balance as of July 1, 2009	\$1,213,123	08-09	\$212,926
Total fund balance as of July 1, 2008	\$1,000,197	07-08	\$323,069
Total fund balance as of July 1, 2007	\$677,128	06-07	\$192,095
Total fund balance as of July 1, 2006	\$485,033	05-06	\$101,561
Total fund balance as of July 1, 2005	\$383,472	04-05	(\$23,245)
Total fund balance as of July 1, 2004	\$406,717	03-04	(\$11,936)
Total fund balance as of July 1, 2003	\$418,653	02-03	

<b>* FUND BALANCE DESIGNATIONS</b>		
40.0%	\$849,340	Rainy Day fund balance
Remaining funds	\$1,399,011	for infrastructure improvements and
	\$2,248,351	unexpected legal and/or research
		costs

## 2024-2025 League Budget Narrative

### PROPOSED

REVENUES	Budget FY 2024	Expected FY 2024	Over / (Under)	PROPOSED FY 2025	% Change	% of Total Budget
<b>Affiliate Group Contracts</b>	195,500	197,000	1,500	197,000	0.8%	5.2%
The Arizona City/County Management Association (\$75,000), the Government Finance Officers Association of Arizona (\$69,000), the Arizona Municipal Clerks Association (\$10,000), and the Arizona Women Leading Government Association (\$43,000) contract with the League for staff services. The four associations currently pay \$193,367 for services including graphic design, website management, conference planning and membership management.						
<b>Annual Conference</b>	500,000	832,042	332,042	800,000	60.0%	21.0%
Revenues from the Annual Conference are estimated since that number is highly variable depending on sponsorships and attendance. Conference revenue is intended to cover all conference expenses, except staff salaries, plus provide approximately \$270,000 in net revenue to the League to support other programs throughout the year. Sponsorships play a very important role in conference revenue and we will continue to pursue existing and new companies to assure that our sponsorship revenues will remain strong. Conference registration fees and sponsorships are the second-largest source of revenue for ongoing League operations.						
<b>Dues</b>	2,361,478	2,361,478	0	2,387,552	1.1%	62.7%
The current dues formula is a \$4,300 base fee plus a varying per capita rate ranging from \$.52 to \$.55 depending on population. Cities over 185,000 population pay on a capped dues formula.						
<b>Interest</b>	25,000	121,495	96,495	110,000	340.0%	2.9%
Through investment accounts, the League earns interest income on our unexpended fund balances. The bulk of the funds are invested with the State Treasurer's Local Government Investment Pool.						
<b>Miscellaneous</b>	14,000	16,300	2,300	16,000	14.3%	0.4%
This item includes publication sales and job postings.						
<b>Partnership Programs</b>	41,000	39,974	(1,026)	42,000	2.4%	1.1%
Any revenue realized from League partnership programs is included in this line item. Current programs included in this item are: American Legal, APS Internship and Valley Schools.						
<b>Risk Pool</b>	185,000	191,205	6,205	202,000	9.2%	5.3%
The League receives an annual fee from the Arizona Municipal Risk Retention Pool (AMRRP) for institutional value related to our sponsorship, marketing, promotion, lobbying and other services for the insurance pool program. The Executive Director serves as a non-voting member of the AMRRP Board.						
<b>Seminars and Meetings</b>	50,000	36,000	(14,000)	53,000	6.0%	1.4%
The League offers a variety of classes and training program opportunities throughout the year, most at minimal or no cost. We also present programs in conjunction with one of the affiliate groups such as the city managers or city clerks, or other government-related groups. Fees are assessed to cover costs of training materials, mailings, refreshments, building space, etc.						
<b>TOTAL REVENUES</b>	<b>\$3,371,978</b>	<b>\$3,795,494</b>	<b>\$423,516</b>	<b>\$3,807,552</b>	12.9%	

## Prior Years Actuals

FY22-23 Actual	FY21-22 Actual	FY20-21 Actual	FY19-20 Actual	FY18-19 Actual
\$191,337.00	\$159,450.00	\$137,950.00	\$137,950.00	\$136,950.00
\$722,493.00	\$606,420.67	\$0.00	\$529,184.55	\$535,420.55
\$2,234,308.00	\$2,226,243.00	\$1,875,056.00	\$2,097,422.00	\$1,912,145.00
\$100,387.00	\$6,618.32	\$3,029.85	\$47,307.69	\$63,065.52
\$16,803.00	\$20,484.33	\$10,258.40	\$15,631.58	\$25,513.36
\$46,054.00	\$41,425.87	\$101,972.16	\$79,345.06	\$65,395.03
\$179,899.00	\$166,970.68	\$164,623.04	\$159,976.00	\$155,768.56
\$52,460.00	\$35,845.00	\$37,140.00	\$14,155.00	\$54,842.00

EXPENDITURES	Budget FY 2024	Expected FY 2024	Over / (Under)	PROPOSED FY 2025	% Change	% of Total Budget	FY22-23 Actual	FY21-22 Actual	FY20-21 Actual	FY19-20 Actual	FY18-19 Actual
<b>Annual Conference</b>	230,000	558,900	328,900	530,000	130.4%	13.5%	\$465,758.00	\$410,723.50	\$1,657.39	\$318,244.41	\$330,711.86
The amount budgeted for Conference expenses is only an estimate because final contracts for meal functions and other activities are not yet finalized. This amount includes direct costs only, primarily for the conference hotel; staff time is not included in this figure. Revenue received from the Conference is expected to offset the entire amount of these expenses.											
<b>Benefits</b>	586,000	585,500	(500)	645,000	10.1%	16.4%	\$526,582.00	\$513,598.26	\$481,589.74	\$494,054.61	\$507,001.51
Both the professional and clerical staff have pension coverage with the Arizona State Retirement System (ASRS) in addition to Social Security. Employees are covered by group insurance for health under policies with United Healthcare, a dental plan through Delta Dental, life insurance through the Guardian and long term disability insurance under ASRS. The League pays 100% of each employee's costs and 80% of an employees' dependent health coverage. The League also offers two other options: a vision program and AFLAC insurance, both options fully paid by employees. By League policy, staff is also provided with an opportunity to participate in a professional development activity such as specialized training or conferences and higher education, upon the approval of the Executive Director. The following expenditures are projected: ASRS - \$225,000; Group Health - \$224,000; Group Dental - \$14,000; Life Insurance - \$4,500; FICA - \$141,500; Worker's Compensation - \$4,400; Other Miscellaneous - \$32,600; Education/Professional Development - \$10,000.											
<b>Capital Outlay</b>	15,000	78,956	63,956	15,000	0.0%	0.4%	\$9,744.00	\$17,453.10	\$13,576.20	\$26,297.57	\$11,218.71
The amount budgeted in this category is to keep up with the ongoing schedule of replacing computer equipment and operating software.											
<b>Equipment Rental &amp; Maintenance</b>	8,000	7,254	(746)	7,000	-12.5%	0.2%	\$13,401.00	\$4,520.38	\$10,890.81	\$8,562.34	\$12,794.66
This category includes the costs for equipment repair and maintenance agreements on office equipment such as the copiers and computers as well as IT services.											
<b>Executive Committee</b>	7,000	7,301	301	7,000	0.0%	0.2%	\$5,228.00	\$2,475.49	\$97.78	\$6,705.11	\$7,089.52
Members of the Executive Committee and subcommittees are eligible for reimbursement of expenses incurred in attending Executive Committee meetings other than the meeting held during the Annual Conference and for special meetings or legislative matters. The League President can be reimbursed for travel, lodging and related costs for attendance at the two major conferences of the National League of Cities. This category also includes the costs incurred for the luncheons in conjunction with the Executive Committee meetings.											
<b>Insurance</b>	9,000	7,719	(1,281)	8,000	-11.1%	0.2%	\$6,363.00	\$9,261.30	\$8,775.44	\$8,675.25	\$8,161.25
The League has consolidated all our liability and workers comp coverage through AMRRP, the League-sponsored municipal insurance pool. This item includes insurance coverage for office contents, liability, data processing and employee bond.											
<b>Postage &amp; Shipping</b>	6,000	5,681	(319)	6,000	0.0%	0.2%	\$4,642.00	\$3,415.56	\$5,027.92	\$5,264.43	\$5,146.85
The largest costs for the year in the postage and shipping budget are for shipping of the Local Government Directory, Legislative Poster and Annual Calendar.											
<b>PR &amp; Communications</b>	62,000	65,150	3,150	64,000	3.2%	1.6%	\$59,948.00	\$55,271.22	\$49,500.00	\$58,218.67	\$60,781.00
The League retains the services of a communications management firm to coordinate our social media messaging in response to legislative issues.											
<b>Printing</b>	14,000	13,500	(500)	14,000	0.0%	0.4%	\$13,545.00	\$10,170.83	\$10,772.48	\$9,557.19	\$9,457.18
The League prints as many publications as possible in-house. Copy costs for in-house work are included in their respective lease/maintenance plans which are in the Equipment Rental and Maintenance budget item. Larger projects, such as the Local Government Directory are competitively bid out to private printing firms. Budgeted printing projects for the next fiscal year include the Local Government Directory, Policy Statement, Legislative Poster and Calendar.											
<b>Professional Services</b>	413,000	344,472	(68,528)	493,000	19.4%	12.5%	\$416,157.00	\$274,895.59	\$329,020.06	\$254,549.98	\$185,750.46
Accounting	54,000	49,579	(4,421)	54,000	0.0%	1.4%	\$49,548.00	\$47,721.58	\$47,705.56	\$47,544.85	\$47,150.46
Contract Lobbying & Consulting Svcs	323,000	290,400	(32,600)	411,000	27.2%	10.5%	\$344,114.00	\$200,820.00	\$248,530.00	\$142,950.00	\$133,850.00
Legal	36,000	4,493	(31,507)	36,000	0.0%	0.9%	\$52,495.00	\$26,001.36	\$32,784.50	\$64,055.13	\$4,750.00
This category principally includes services from outside vendors and consultants such as contract lobbying assistance, specialized expertise on municipal elections, one-time projects and outside legal counsel. It also includes our annual audit by a certified public accounting firm, our monthly accounting services which are handled by a contractual agreement with a private accounting firm, paycheck processing fees and contracting fees for web hosting and maintenance.											

EXPENDITURES	Budget FY 2024	Expected FY 2024	Over / (Under)	PROPOSED FY 2025	% Change	% of Total Budget	FY22-23 Actual	FY21-22 Actual	FY20-21 Actual	FY19-20 Actual	FY18-19 Actual
<b>Prop Corp - Building Improvement Fund</b>	<b>10,000</b>	<b>10,000</b>	<b>0</b>	<b>10,000</b>	<b>0.0%</b>	<b>0.3%</b>	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00
The League contributes \$10,000 annually into a fund to save for future building improvements.											
<b>Rent</b>	<b>105,000</b>	<b>105,000</b>	<b>0</b>	<b>105,000</b>	<b>0.0%</b>	<b>2.7%</b>	\$105,000.00	\$105,000.00	\$105,000.00	\$105,000.00	\$105,000.00
The League building is owned by the League's Property Corporation. In order to account for maintenance and utility costs, the League pays rent to the Property Corporation. The rental cost for next year is \$105,000, a rate of \$19/sq. ft.											
<b>Salaries</b>	<b>1,700,000</b>	<b>1,714,680</b>	<b>14,680</b>	<b>1,809,000</b>	<b>6.4%</b>	<b>46.0%</b>	\$1,566,356.00	\$1,519,084.03	\$1,451,972.85	\$1,440,064.32	\$1,423,874.94
Staff salaries make up the largest expenditure line item of the League budget. Our fifteen staff positions include Executive Director, two Deputy Directors, Legislative Director, General Counsel, two Legislative Associates, Tax Policy Analyst, Member Services Associate, Member Services Assistant, Office Manager, three clerical staff and a Graphic Designer. We also hire interns for the legislative session and other special projects. Over time, our goal has been to have a competitive compensation package compared to other similar public and private organizations in order to retain our talented and effective League staff, while remaining sensitive to the fiscal condition of many of our member cities and towns. Maintaining staff stability helps with continuity on many complex issues, provides greater value to our members and gives us the opportunity to develop credibility and positive relationships with the legislators. <i>The budgeted amount includes various salary adjustments and COLA increases for FY25.</i>											
<b>Seminars and Meetings</b>	<b>47,000</b>	<b>68,475</b>	<b>21,475</b>	<b>48,000</b>	<b>2.1%</b>	<b>1.2%</b>	\$106,603.00	\$50,772.46	\$12,915.54	\$40,795.46	\$77,903.67
This category includes all costs associated with our training seminars, workshops, luncheon meetings and special events. It also includes charges for receptions at the NLC conferences for Arizona delegates.											
<b>Subscriptions and Dues</b>	<b>72,000</b>	<b>71,916</b>	<b>(84)</b>	<b>72,000</b>	<b>0.0%</b>	<b>1.8%</b>	\$69,244.00	\$67,423.21	\$64,406.37	\$64,300.79	\$59,391.27
The bulk of this category is used to pay the League's annual dues for membership in the National League of Cities. Other costs in this category include our subscriptions to printed versions of legislative bills and amendments, legislative-related newsletters and background sheets, our online legislative information tracking service and the update costs for the state statutes and legal resources housed in our library.											
<b>Supplies / Office Expenses</b>	<b>55,000</b>	<b>56,691</b>	<b>1,691</b>	<b>56,000</b>	<b>1.8%</b>	<b>1.4%</b>	\$57,245.00	\$58,688.81	\$25,740.82	\$41,283.34	\$46,798.97
This line item pays for general office supplies such as paper and toner for the printers, pens, pads, notebooks as well as mailing supplies. It also includes other miscellaneous office expenses such as bankcard fees for processing credit card payments.											
<b>Telecommunications</b>	<b>24,000</b>	<b>19,561</b>	<b>(4,439)</b>	<b>20,000</b>	<b>-16.7%</b>	<b>0.5%</b>	\$24,208.00	\$25,863.41	\$24,888.16	\$23,667.43	\$23,667.47
This category includes usage charges for the phones, Internet service, and web hosting fees. This category also includes charges for teleconferencing and virtual meeting services which are used extensively for legislative business and other meetings and webinars.											
<b>Travel</b>	<b>20,000</b>	<b>19,441</b>	<b>(559)</b>	<b>20,000</b>	<b>0.0%</b>	<b>0.5%</b>	\$22,020.00	\$19,515.41	\$1,542.20	\$28,135.89	\$17,852.10
As part of their job duties, League staff members travel to our member cities and towns for in-person visits and presentations as often as reasonably possible. It is a priority for staff members to keep in touch with our members across the state in support of legislative efforts and city assistance projects. Items in this category include rental vehicles as well as reimbursement for actual travel costs. This line item also includes air travel and lodging for NLC conferences and special meeting activities such as various State League meetings and NLC related meetings.											
<b>TOTAL EXPENDITURES</b>	<b>\$3,383,000</b>	<b>\$3,740,197</b>	<b>\$357,197</b>	<b>\$3,929,000</b>	<b>16.1%</b>						
<b>Reserve Fund</b>				<b>\$121,448</b>							
<b>Revenues Over (Under) Expenditures</b>	<b>(\$11,022)</b>	<b>\$55,297</b>	<b>\$66,319</b>	<b>\$0</b>							
<b>Beginning Fund Balance</b>	<b>\$2,248,351</b>	<b>\$2,248,351</b>		<b>\$2,303,648</b>							
<b>Ending Fund Balance</b>	<b>\$2,237,329</b>	<b>\$2,303,648</b>		<b>\$2,182,200</b>							



EXECUTIVE COMMITTEE MEETING  
Friday, May 10, 2024

**Agenda Item #5      Legal Update**

**Summary:**

- A. U.S. Supreme Court decision in [\*Sheetz v. El Dorado County\*](#) (impact fees)
- B. Amicus Updates:
  - *Johnson v. Grants Pass* (homelessness; Eighth Amendment). The most recent amicus brief is attached.
  - *Beram v. Sedona* (homelessness; ADA; Eighth Amendment)
  - *Sacramento Homeless Union v. City of Sacramento* (homelessness; state-created danger)
  - *Hammer House v. Phoenix* (Restatement (Second) of Torts, Sec. 552)
  - *City of Flagstaff v. State of Arizona* (minimum wage)
  - *Arizona Health Care Cost Containment System v. Silverman et al.* (public records)
- C. Overview of Ballot Measures in November 2024 (summaries attached)
- D. Model Ordinance for HB2297 (Commercial buildings; adaptive reuse)

**Responsible Person:** Nancy Davidson, General Counsel

**Attachments:**

- Amicus brief on the merits in *Johnson v. Grants Pass*
- Amicus brief in *Beram v. City of Sedona*
- On the Ballot in November 2024

**Note:** *If necessary, the Executive Committee may vote to convene in executive session for the purpose of obtaining legal advice from the League attorney pursuant to A.R.S. § 38-431.03(A)(3).*

No. 23-175

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**In The Supreme Court of the United States**

CITY OF GRANTS PASS, OREGON,

*Petitioner,*

v.

GLORIA JOHNSON, ET AL., ON BEHALF OF THEMSELVES  
AND ALL OTHERS SIMILARLY SITUATED,

*Respondents.*

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**On Writ of Certiorari to the United States Court of  
Appeals for the Ninth Circuit**

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**BRIEF OF *AMICI CURIAE* CITY OF PHOENIX  
& THE LEAGUE OF ARIZONA CITIES AND  
TOWNS SUPPORTING PETITIONER**

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## INTEREST OF AMICI CURIAE<sup>1</sup>

The City of Phoenix (the “City” or “Phoenix”) is the capital of Arizona and the fifth largest city in the country, with a population of over 1,600,000 people. As of 2023, there were an estimated 14,237 homeless people in Arizona.<sup>2</sup> According to the U.S. Department of Housing and Urban Development statistics, western states like Arizona report some of the highest concentrations of people experiencing homelessness.<sup>3</sup> In Arizona, 54% of individuals experiencing homelessness were unsheltered in 2023.<sup>4</sup> Phoenix was burdened with housing a significant portion of these individuals, with almost half of the State’s unsheltered population residing in Phoenix, according to the 2023 Point-in-Time count.<sup>5</sup>

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<sup>1</sup> Amici certify that: (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, or their counsel contributed money that was intended to fund preparing or submitting the brief.

<sup>2</sup> U.S. DEP’T OF HOUS. AND URB. DEV., *The 2023 Annual Homelessness Assessment Report (AHAR) to Congress at 16 (2023)*, <https://www.huduser.gov/portal/sites/default/files/pdf/2023-AHAR-Part-1.pdf>.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> The 2023 Point-in-Time count by the Maricopa Association of Governments counted 3,333 unsheltered individuals. MARICOPA ASS’N OF GOV’TS, *2023 Point-in-Time (PIT) Count Report at 4 (2023)*, <https://azmag.gov/Portals/0/Homelessness/PIT-Count/2023/2023-PIT-Count-Report-Final.pdf?ver=8CRzv7xw28C-V2G0sMdKfw%3d%3d>.

Founded in 1937, the League of Arizona Cities and Towns (the “League”) is a voluntary membership organization of all 91 incorporated Arizona municipalities. The League advocates for its members’ interests before the legislature and courts. The League is advised by its Amicus Committee, which identified this case for statewide significance.

Arizona suffered from one of the Nation’s worst surges in homelessness from 2022 to 2023, with an estimated 23.8% increase.<sup>6</sup> During this same time, the largest homeless encampment in Arizona was located in downtown Phoenix, in an area colloquially referred to as the “Zone,” with populations fluctuating to as high as 1,000 people. Although the area has now been closed to public camping and cleaned after millions of dollars of taxpayer money were expended to create new shelter beds and outdoor campground space, the City continues to struggle to accommodate the fluctuation of homeless individuals, provide shelter to people moving into the City from other areas, and prevent people experiencing homelessness from reoccupying its downtown area.

And Phoenix is not alone. From larger cities to rural towns, municipalities are struggling to address large increases in homelessness, which is evident from encampments taking over public parks, freeway underpasses, and downtown areas, in addition to countless miles of public rights-of-way repurposed from community spaces to makeshift encampments. Cities and towns are simply overwhelmed with the

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<sup>6</sup> U.S. DEP’T OF HOUS. AND URB. DEV., *supra* note 2, at 81.

services and shelters needed to address homelessness.<sup>7</sup>

Amicis' interest in this case is rooted in federal and state lawsuits stemming from the Ninth Circuit 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), which combine to significantly limit municipalities' ability to address public health and safety concerns arising from homeless encampments. This brief intends to provide the Court with a snapshot into the unworkable standard the Ninth Circuit precedent sets, and to examine how the rule advocated for by Respondents wreaks havoc on local governments and law enforcement. The City's struggles with addressing homelessness provide important context for this Court's consideration in deciding whether to affirm Ninth Circuit jurisprudence that unreasonably impedes the enforcement of critical public health and safety laws.

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<sup>7</sup> The challenges posed by homelessness are further complicated for border states. For example, during one week in December, Pima County hosted 10,187 people who were released by U.S. Customs and Border Protection. *Pima County Administrator warns of 'homelessness on steroids' as federal funding for asylum seekers ends*, Tucson Sentinel (Feb. 19, 2024, 2:11 PM), [https://www.tucson sentinel.com/local/report/021924\\_migrant\\_shelter\\_funding/pima-county-administrator-warns-homelessness-steroids-as-federal-funding-asylum-seekers-ends/](https://www.tucson sentinel.com/local/report/021924_migrant_shelter_funding/pima-county-administrator-warns-homelessness-steroids-as-federal-funding-asylum-seekers-ends/). Of those, nearly 6,100 were families arriving in the U.S. with children. *Id.* Without federal funding to provide shelter to asylum seekers, cities and towns in border states struggle to locate temporary or long-term housing for immigrants, which compounds an already stark lack of shelter in the aftermath of a global pandemic, record-high inflation, and affordable housing gap.

## INTRODUCTION

Unlike the officials tasked with addressing homelessness, the members of our court are neither elected nor policy experts. Of course, the political process must yield to the fundamental rights protected by the Constitution, and some of federal courts' finest moments have come in enforcing the rights of politically marginal groups against the majority. But when asked to inject ourselves into a vexing and politically charged crisis, we should tread carefully and take pains to ensure that any rule we impose is truly required by the Constitution not just what our unelected members think is good public policy.

*Johnson*, 72 F.4th at 943 (denial of rehearing en banc) (Smith, J. dissenting).

The question before this Court is whether the rule imposed by the Ninth Circuit has misinterpreted the Eighth Amendment in a manner that frustrates municipalities' ability to address public health and safety hazards. The Eighth Amendment is intended to protect individuals from cruel and unusual punishment, not restrict the ability of municipalities to protect residents from conditions that are unsanitary or unsafe, such as human waste, detritus, used syringes, and other hazardous conditions that have been associated with homeless encampments. The interests in protecting people from cruel and

unusual punishments *and* unsafe and unsanitary conditions are not in competition. Both interests can be advanced simultaneously. Under the Ninth Circuit's approach, however, it is necessary to sacrifice one interest for the sake of the other. This is an untenable result.

This Court may harmonize the diverse interests posed by allowing municipalities to clean up encampments while permitting unsheltered individuals who refuse a lawful directive to vacate an area or otherwise cease engaging in unlawful activities to assert the Eighth Amendment as a defense to criminal liability in prosecution. In contrast, the Ninth Circuit's rule advocated for by Respondents ties law enforcement hands before they even encounter an individual experiencing homelessness. Ultimately, the Ninth Circuit decisions in *Martin v. Boise* and *Johnson v. Grants Pass* are unworkable, bad public policy, and, frankly, are internally inconsistent.

First, in *Martin v. Boise*,<sup>8</sup> the Ninth Circuit appeared to adopt a broad rule prohibiting enforcement of anti-camping and sleeping laws if there are more unsheltered individuals in a jurisdiction than there are shelter beds available. While the goal may have been laudable, the result was problematic, insofar as it operates as an impediment to a municipality's ability to maintain clean and orderly public areas. Although lower courts may disagree on the scope of the *Martin* decision, the decision cast doubt on the enforcement of public

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<sup>8</sup> 920 F.3d at 617.

camping laws for jurisdictions struggling to provide shelter to involuntarily homeless individuals.

This rule continued in *Johnson v. Grants Pass*,<sup>9</sup> with the Ninth Circuit seeming to adopt either (1) a mathematically driven restraint on all enforcement, or (2) at a minimum, a requirement that a municipality conduct an individualized inquiry tied to the number of available shelter beds. In other words, if the total number of homeless individuals exceeds the available shelter beds, or alternatively, if there is no shelter bed for a specific individual to go to, a municipality cannot enforce public camping laws and ask people to leave public property in order to address hazardous and unsanitary living conditions endangering both the homeless population and the surrounding public.

Then, in an amended *Johnson v. Grants Pass* decision,<sup>10</sup> the Ninth Circuit excised this language and replaced it with a more flexible recitation of the law: “Pursuant to *Martin*, it is an Eighth Amendment violation to criminally punish involuntarily homeless persons for sleeping in public if there are *no other public areas* or appropriate shelters where those individuals can sleep.”<sup>11</sup> Thus, *Johnson*, as amended, recognizes that anti-camping and sleeping ordinances may be enforced so long as there are alternative *public spaces*—not just “beds in shelters”—where unsheltered persons may reside. However, there

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<sup>9</sup> 50 F.4th 787, 813 (9th Cir. 2022).

<sup>10</sup> 72 F.4th at 877.

<sup>11</sup> *Id.* (emphasis added).

remains a lack of clarity regarding the application of this standard.

Although this later recitation of the Eighth Amendment rule may provide some much-needed flexibility, problems exist based on ambiguity regarding any alleged duty to assess the availability and adequacy of alternative spaces to accommodate each unsheltered person's circumstances. This, in turn, has made it exceedingly difficult for cities and towns to vacate an area even when health and safety concerns demand it.

However, the truth is that it is unnecessary to unravel the Ninth Circuit's vague pronouncements. To the extent the Eighth Amendment is applicable, it should not be applied at the *outset* of an encounter with an unsheltered person during a municipality's cleanup efforts – circumstances that necessarily restrict or significantly delay the ability to address public hazards. Rather, it should be asserted *as a defense* in the case of criminal prosecution. With a simple change, the Eighth Amendment can be applied in a manner that protects individual interests while protecting public health and safety.

Phoenix and the League file this brief to assist the Court in understanding the errors the Ninth Circuit and the Respondents make in arguing for upholding the *Martin/Johnson* standard, and to provide this Court context for its ruling – namely, the extraordinary expense and effort required of Phoenix to comply with Ninth Circuit precedent.

Ultimately, efforts at compliance require a legal tightrope walk, with the risk of injunction and liability every time a city or town tries to close an encampment that threatens public health and safety. The judiciary should adopt an approach that allows both the protections of the Eighth Amendment and a municipality's ability to enforce health and safety laws to coexist.

### **SUMMARY OF THE ARGUMENT**

The Ninth Circuit's decisions in *Martin* and *Johnson* should be reversed because they improperly and unnecessarily intrude upon the enforcement of health and safety laws.

Respondents would have this Court adopt a mathematical formula that restricts the ability to address hazardous conditions, or at the very least, requires detailed individualized inquiries before even a simple citation or arrest can be made if an unsheltered person refuses to vacate an area that requires cleanup. Neither interpretation is workable. Both jeopardize public health and safety.

At bottom, the Eighth Amendment does not prohibit a municipality from addressing hazardous conditions stemming from a homeless encampment, nor does the Eighth Amendment blanketly prohibit the imposition of fines and misdemeanor criminal penalties for violations of generally applicable public health and safety laws.

This Court may reject the *Martin/Johnson* standard while still allowing the assertion of

constitutional rights by the involuntarily homeless at various stages during judicial proceedings. For example, prosecutors may be persuaded not to charge a person based on his or her status as involuntary homeless, or to agree to a diversion program that provides much needed services. Furthermore, defense attorneys may assert the Eighth Amendment as a defense to criminal liability, or as a mitigating circumstance during the sentencing phase. Thus, the approach advocated by Amici strikes an appropriate balance by allowing for the enforcement of health and safety laws while preserving constitutional arguments against the imposition of criminal penalties for violating anti-camping ordinances.

This Court should correct course and reject the problematic standard urged by Respondents. Neither of the Ninth Circuit's tests work in practice, and both unnecessarily restrict a municipality's enforcement powers.

## ARGUMENT

In granting certiorari, this Court asked whether the Eighth Amendment restricts the enforcement of certain health and safety laws. The answer is an emphatic no. The Eighth Amendment states: “Excessive bail shall not be required, nor excessive fines imposed, *nor cruel and unusual punishments inflicted.*”<sup>12</sup> The Ninth Circuit erred in reading into this clause a requirement that law enforcement assess the voluntariness of an individual’s actions before enforcing health and safety laws or conducting cleanups that require a hazardous area to be vacated.

Cities and towns require discretion to address homelessness and tailor programs best suited for their communities. For example, cities like Phoenix have chosen to lead with services and increase shelter capacity. However, whether a citation or an arrest may at some point be necessary to address encampments threatening public health and safety is fundamentally a decision best left to local officials. Amici respectfully request that this Court overturn *Grants Pass* and adopt a more practical standard that permits reasonable action to address health and safety hazards.

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<sup>12</sup> U.S. CONST. amend. VIII. (emphasis added).

## I. THE NINTH CIRCUIT'S LEGAL STANDARD IS UNWORKABLE.

Under *Martin* and *Johnson*, it is only an Eighth Amendment violation if a municipality arrests or civilly cites an *involuntarily* homeless person for public camping or sleeping.<sup>13</sup> Cities across the Ninth Circuit struggle with what this means.<sup>14</sup> Ordinarily, police operate on well-defined standards when dealing with individuals' constitutional rights, such as informing them that they have the right to remain silent. However, determining whether someone qualifies as "involuntarily" homeless is anything but straightforward.

The Ninth Circuit tests and pre-penalty application of the Eighth Amendment raise more questions than answers. Before an officer decides whether they may legally cite or arrest someone for public camping, they need clarity on how to assess whether an individual's homeless status is voluntary or involuntary. For instance, is it sufficient to ask if the person has somewhere else to go? Or is it necessary to conduct a deeper inquiry into the person's financial status, mental health, and other personal circumstances?

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<sup>13</sup> 920 F.3d at 617; 72 F.4th at 896.

<sup>14</sup> The court in *Grant Pass* stated that people are not involuntarily homeless if they have access to adequate, temporary shelter. *See* 72 F.4th at 877. Simply accepting that definition at face value is insufficient. Rather, further analysis is required as cities and towns must determine whether a person has "access" to shelter and, if so, whether the shelter they have access to is "adequate."

This raises the question of whether these inquiries can or should be performed by police – or is it necessary to involve case workers, which will delay the process and require additional personnel (and cost) to address basic health and safety concerns?

The bottom line is that this type of investigation is no simple *Miranda* warning. Officers need to make quick decisions in the field. Without additional clarity, efforts to address health and safety hazards will continue to be unnecessarily hamstrung.

Fortunately, there is a more effective and doctrinally sound solution than to presume involuntariness at the outset of a law enforcement encounter. The criminal justice system provides a superior venue to assess whether an individual is involuntarily homeless, following an arrest or citation. First, citations and arrests are reviewed by prosecutors, who, with the application of prosecutorial discretion and availability of discovery, are better suited to determine whether the individual possessed the necessary intent or culpability to be held accountable for the alleged offense. Beyond prosecutors, defense counsel is equipped to defend clients, whether based on the involuntariness of the conduct, insanity, or any other number of defenses. And trusted trial court judges remain the gatekeepers, ensuring fair process and punishment based on the facts of particular criminal cases and the law.

Severely restricting action to address health and safety concerns, however, puts the cart before the horse. The solution is not to allow prophylactic bans

on enforcement of health and safety statutes, but to allow the criminal justice system to adjudicate an individual defendant's status as a defense to the alleged violation.

If the Ninth Circuit's interpretation of the Eighth Amendment is adopted by this Court as the rule of law for the Nation, the Court will be endorsing an approach that infringes on state and local rights by restricting the ability to perform the fundamental duty of providing safe and sanitary conditions for their residents. Further, and perhaps most disappointing, the Court would be denying individuals experiencing homelessness the dignity of being treated as an individual, rational actor with meaningful choices, as well as denying them access points to obtain services to assist those struggling with addiction or mental health disorders, which court systems and diversion programs commonly provide. The result is an ineffective constitutional standard that fails to provide law enforcement with workable tools and similarly fails to help the homeless individuals on the streets.

## II. CITIES AND TOWNS REQUIRE LAW ENFORCEMENT TOOLS TO PROTECT PUBLIC HEALTH AND SAFETY – BOTH FOR INDIVIDUALS EXPERIENCING HOMELESSNESS AND RESIDENTS AND BUSINESSES WHO LIVE AND WORK NEAR HOMELESS ENCAMPMENTS.

In the case of Phoenix, the City adopted laws to regulate camping and sleeping on public property.<sup>15</sup> Under Arizona law, these types of offenses are punishable as misdemeanors with a maximum consequence of six months in jail, 36 months' probation, and a fine of not more than \$2,500.00 at the highest misdemeanor level (a class one misdemeanor).<sup>16</sup>

However, as a practical matter, municipal courts commonly offer diversion programs and community courts provide homeless individuals resources in lieu of prosecution and/or defer criminal penalties or fines for unsheltered individuals seeking assistance.<sup>17</sup> Community courts are common in

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<sup>15</sup> See PHX., ARIZ. CODE §§ 23-30 (prohibiting camping in any park, preserve, or building, parking lot or structure owned, possess, or controlled by the City) and 23-48.01 (prohibiting use of public right-of-way for lying, sleeping, or otherwise remaining in a sitting position except in the case of physical emergency or administration of medical assistance).

<sup>16</sup> A.R.S. §§ 13-707 and 802; see also PHX., ARIZ. CODE § 1-5.

<sup>17</sup> *Phoenix Community Court Creates Alternative Legal Solutions for People Experiencing Homelessness*, City of Phx. (Jan. 26, 2024 6:00 PM),

<https://www.phoenix.gov/newsroom/city-manager/2999>.

Arizona to assist people experiencing homelessness.<sup>18</sup>

The Eighth Amendment's text and history provide no basis for barring states and local governments from enforcing public camping and sleeping laws through civil fines and misdemeanor prosecutions. Instead, the Amendment was established to prevent punishments that were grossly disproportionate to the offense committed—circumstances that do not exist here. Moreover, under the approach urged by the Amici, there would be no loss of Eighth Amendment protection, as involuntarily unsheltered persons would be free to raise constitutional issues in any enforcement proceedings.

The City asks this Court to hold that the Eighth Amendment's prohibition against cruel and unusual punishment does not operate as a preemptive restriction on misdemeanor arrests or citations for civil offenses related to camping on public property. To the extent that the Eighth Amendment applies to these types of low-level offenses, the constitutional protections should follow the initial citation or arrest when levying the sentence – not before the officers have even decided whether to cite or arrest.

The power to enact intra-state criminal laws and civil ordinances belongs exclusively to state and local governments. This is because, through the Tenth

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<sup>18</sup> Taylor Stevens, *Metro Phoenix cities turn to homeless courts to help people navigate the justice system*, Ariz. Republic (June 3, 2022, 4:30 PM), <https://www.azcentral.com/story/news/local/arizona/2022/06/03/homeless-courts-help-people-streets-navigate-legal-system/9584678002/>.

Amendment, states have a “police power” to protect the health, safety, and welfare of state citizens.<sup>19</sup> The standard urged by Respondents robs state and local governments of the ability to enact public health and safety laws ranging from restrictions on urban camping and fire code violations to potential laws prohibiting public urination, defecation, and other disorderly and unsanitary acts.

Large homeless encampments pose significant threats to public health and safety, primarily due to hazardous living conditions such as overcrowding, inadequate waste disposal, open fires, substance abuse, and rampant crime. Furthermore, these encampments may draw a criminal element to the area that preys on the population. The implementation of ordinances prohibiting public camping and sleeping on rights-of-way serves to prevent the emergence of such encampments. Municipalities must possess the authority to arrest, cite, or forcibly remove individuals camping on public property when their actions jeopardize public safety.

The Ninth Circuit erred in creating a legal standard that obstructs such public health and safety measures before any meaningful opportunity to evaluate the defendant’s particular facts and

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<sup>19</sup> *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 535–36 (2012) (“The States thus can and do perform many of the vital functions of modern government—punishing street crime, running public schools, and zoning property for development, to name but a few—even though the Constitution’s text does not authorize any government to do so. Our cases refer to this general power of governing, possessed by the States but not by the Federal Government, as the ‘police power.’”).

circumstances, ideally with the assistance of defense counsel. Consideration of involuntariness is better addressed after the individual has been arrested or cited. At that point, individuals can assert involuntariness as a defense to criminal prosecution or civil penalties. This approach allows homeless individuals and their counsel to articulate their circumstances to the court. By resolving the involuntariness element post-apprehension, the judicial system can better uphold the principles of justice while allowing municipalities to retain the practical ability to create and enforce generally applicable laws that protect public health and safety.

At a minimum, the Eighth Amendment is more appropriately applied once a homeless individual has been formally charged with a violation of an anti-camping and sleeping ordinance or issued a civil citation for such conduct (in the civil context, citation amounts to nothing more than a promise to appear in court with an opportunity to enter a plea and have a trial on the merits—no fee is charged simply for receiving a citation and making an appearance in court on such citation).

However, the *Martin* and *Johnson* holdings restrict cities and towns from being able to make an arrest or even civilly cite individuals, presumably, unless they can demonstrate the individual had another place to stay or the financial resources to obtain a hotel room or other residence. But at the arrest/citation phase, the individual has not been found guilty, undergone criminal sentencing, or been subject to civil fines, nor have officers had the time to

engage in any detailed analysis of the individual's financial circumstances. Deferred consideration of Eighth Amendment defenses preserves both constitutional rights and a municipality's ability to address public health and safety hazards.

**III. PUBLIC POLICY FAVORS HARMONIZING THE EIGHTH AMENDMENT WITH MUNICIPALITIES' ENFORCEMENT POWERS.**

In its brief in support of Petitioner's request for a writ of certiorari, Phoenix presented this Court with a snapshot of its efforts to address homelessness to illustrate the exceptional importance of these issues. Since that brief was filed, the City has made huge strides in addressing homelessness downtown. But that effort came at a significant cost and has no clear end. The City provides this brief to update the Court on the continuing efforts to address public health and safety concerns and related challenges due to the state of the law.

**A. Western States Continue to Suffer from Dramatic Increases in Homelessness.**

The homeless population in western states continues to escalate. In 2022, Arizona recorded a population of over 13,000 homeless people, with more than 59% residing in unsheltered locations, such as on streets, in abandoned buildings, or other places unsuitable for habitation.<sup>20</sup> The City's downtown area

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<sup>20</sup> U.S. DEPT OF HOUS. AND URB. DEV., *supra* note 2, at 16.

has borne the brunt of this dramatic spike, with up to 1,000 people camping in a once sprawling homeless encampment that local businesses and property owners called the “Zone.” This area garnered national media attention as the City struggled to combat criminal activity and address public health hazards from the concentration of unsheltered people camping downtown.<sup>21</sup>

As of November 2023, the City successfully closed the encampment downtown by conducting an extensive cleanup and outreach effort with the removal of all tents, makeshift structures, and homeless individuals camping in the public right-of-way. The City offered shelter to each displaced individual. This accomplishment follows months of around-the-clock efforts dedicated to improving conditions in the area, and to this day, requires constant vigilance to prevent people from returning to the area. Unfortunately, the unsheltered homeless count continues to rise in Arizona.<sup>22</sup>

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<sup>21</sup> See, e.g., Grant Archer, *Half of violent crimes in Phoenix come from 8% of city blocks*, ABC (June 6, 2023, 6:23 PM), <https://www.abc15.com/news/crime/half-of-violent-crimes-in-phoenix-come-from-8-of-city-blocks>; Jack Healy, *Phoenix Dismantles a Homeless Encampment, One Block at a Time*, N.Y. Times (May 10, 2023), <https://www.nytimes.com/2023/05/10/us/phoenix-homeless-camp-the-zone.html>.

<sup>22</sup> U.S. DEP’T OF HOUS. AND URB. DEV., *supra* note 2, at 16.

**B. Even After Significant Efforts to Build Shelter, Insufficient Capacity Exists.**

Recognizing the burgeoning homeless crisis before it, in 2020, the Phoenix City Council adopted strategies to respond to homelessness and address complicating factors from the opioid epidemic, COVID-19 pandemic, and affordable housing crisis.<sup>23</sup> The City further established the Office of Homeless Solutions to more efficiently administer a litany of programs and services for individuals experiencing homelessness. Key among these strategies was the immediate construction of shelter space.

*Construction of Shelters.* In Phoenix, like numerous cities in the Ninth Circuit, local officials struggle with addressing health and safety concerns associated with homeless encampments because there are insufficient shelter beds to accommodate the entire unsheltered population. To illustrate, in 2023, there were approximately 3,333 homeless individuals in Phoenix, but only 3,219 shelter beds (the vast majority of which were already occupied on any given night).<sup>24</sup> Many of the existing shelter beds had restrictions—limiting them to families with children,

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<sup>23</sup> During the COVID-19 pandemic, CDC guidelines provided that cities and towns should not close encampments unless individual housing units were available. *CDC Advises Against Clearing Homeless Encampments if Alternate Housing Is Not Available During Coronavirus Outbreak*, Nat'l Low Income Hous. Coal. (Mar. 30, 2020), <https://nlihc.org/resource/cdc-advises-against-clearing-homeless-encampments-if-alternate-housing-not-available>.

<sup>24</sup> *MARICOPA ASS'N OF GOV'TS*, *supra* note 5, at 4.

victims of domestic violence, or working unsheltered, to name a few. Put simply, there were not enough beds to accommodate all the unsheltered downtown, let alone the entire City.

To address this issue, the City invested substantial resources in housing and shelter alternatives, particularly in its downtown area. In total, the City added 600 shelter beds in 2022 and 482 shelter beds in 2023, with approximately 800 more in various stages of construction.<sup>25</sup>

Ultimately, the City needs more shelter, including options tailored to specific groups such as victims of domestic violence, families with school-age children, and those seeking heat respite. The City is actively constructing shelter to meet the diverse needs of its homeless population. There is, however, no way to predict the ebbs and flows of homelessness to ensure the City will have sufficient capacity to house the homeless in perpetuity, especially considering that a large amount of the City's investments in this area are funded by temporary federal COVID relief funds. The City will struggle next year to maintain shelter spaces when this temporary funding dries up unless new monies are appropriate by the federal government or the State of Arizona. Construction—and long-term maintenance—of homeless shelters is a costly endeavor.

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<sup>25</sup> *City of Phoenix Places 585 People in Shelter While Complying with Court Order Ahead of Deadline*, City of Phx. (Nov. 3, 2023, 4:00 PM), <https://www.phoenix.gov/newsroom/homeless-solutions/2910>.

***Cleanup of Homeless Encampments.*** To address encampment concerns, cities have developed detailed cleaning procedures. In Phoenix’s case, the City focused on implementing “enhanced engagements,” which refers to a process the City developed to methodically clean streets and sidewalks, close blocks to urban camping, and connect unsheltered people with appropriate shelter and services.

Facilitating enhanced engagements is a meticulous undertaking that demands careful consideration of various factors, including, most significantly, the constitutional rights of involuntarily unsheltered. In 2023, the City conducted approximately sixteen enhanced engagements with a shelter acceptance rate of 80%.<sup>26</sup> In early November 2023, after a dedicated, nearly-year-long effort, the City cleared the area referred to as the Zone of all homeless encampments.<sup>27</sup>

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<sup>26</sup> Katherine Davis-Young, *Phoenix clears last remaining block of ‘The Zone’ encampment*, KJZZ (Nov. 15, 2023, 7:53 AM), <https://kjzz.org/content/1861760/phoenix-clears-last-remaining-block-zone-encampment>.

<sup>27</sup> *Id.*

This herculean feat was only possible because the City was able to **close** public right-of-way and easements to public camping. And the results of Phoenix's efforts are striking, as illustrated by pictures taken from January 2023 to November 2023 in downtown Phoenix. Before the City's enhanced engagements, homeless encampments lined City rights-of-way, blocking sidewalks:<sup>28</sup>



<sup>28</sup> See images of Madison Street and 9<sup>th</sup> Avenue. Def's Hr'g Mem. Ex. 2, *Freddy Brown, et al. v. City of Phoenix*, No. CV2022-010439 (Maricopa Cnty. Super. Ct. Nov. 20, 2023).

The encampments limited public access and visibility to City-owned property, downtown buildings, and public art:<sup>29</sup>



*Mural on Madison Street, January 2023 & November 2023*

<sup>29</sup> See images of the City Mural on Madison Street. *Id.*

Cities and towns, especially Phoenix—which is among the geographically largest cities in the country—maintain massive amounts of public right-of-way and easements lining city streets in every neighborhood, downtown area, and intersection across the United States. Restricting law enforcement’s ability to intervene can quickly transform anything from vacant lots to narrow six-foot rights-of-way into havens for dangerous encampments:<sup>30</sup>



*Jackson Street and 9<sup>th</sup> Avenue, January 2023 & November 2023*

<sup>30</sup> See images of Jackson Street and 9<sup>th</sup> Avenue. *Id.*

### ***Closing Areas to Public Camping.***

Following each enhanced engagement, the City would

close the area to camping.<sup>31</sup> But the work does not end with merely offering homeless individuals appropriate shelter and assisting them in transportation to such shelter. Instead, cities must implement proactive measures to deter homeless individuals from returning to public property. Homelessness numbers are not static, with economic, political, and social conditions beyond the control of any municipality



impacting the number of unsheltered across the nation and Arizona in particular. Although Phoenix is committed to addressing homelessness, it cannot, like every other government before it, guarantee freedom from poverty, crime, or homelessness.

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<sup>31</sup> See image of City of Phoenix Clean Up Notice. Def's Hr'g Mem. Ex. 3, *Freddy Brown, et al. v. City of Phoenix*, No. CV2022-010439 (Maricopa Cnty. Super. Ct. Nov. 20, 2023).

Cities must have the ability to remove tents and other structures from sidewalks. Similarly, cities must be able to tell people they cannot camp indefinitely on public property and rights-of-way. Some individuals may prefer to live on the streets instead of in shelters. In such instances, cities must be able to enforce public camping laws without first establishing enough shelter capacity for the jurisdiction's entire unsheltered population.

### **C. Ninth Circuit Case Law Threatens Public Health and Safety.**

Due to a lack of shelter space, municipal efforts to address sprawling encampments have been curtailed—either voluntarily while legal guidance is promulgated or by way of court order (or both).<sup>32</sup> Municipalities are grappling with the scope of *Martin* and *Johnson*, including how to make an individualized determination of what constitutes adequate shelter, whether someone is involuntarily homeless, and what regulations might survive constitutional scrutiny.

When homelessness within Phoenix escalated over the last three years, the City relied on the precedent set in the rigid *Martin* decision, employing the one-person, one-bed formula to assess whether

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<sup>32</sup> See, e.g., *Quintero v. City of Santa Cruz*, No. 5:19-CV-01898-EJD, 2019 WL 1924990, at \*3 (N.D. Cal. Apr. 30, 2019) (“The City has suspended the enforcement of its camping ordinance to ensure that no indigent homeless individual will be cited for sleeping outdoors or camping.”); *Aitken v. City of Aberdeen*, 393 F. Supp. 3d 1075, 1085 (W.D. Wash. 2019) (observing that the city’s camping ordinance was not being enforced due to the city’s inability to provide adequate shelter to the homeless).

citations could be issued for public camping.<sup>33</sup> This posed a significant problem because the population of homeless individuals in the Phoenix downtown area consistently surpassed the available shelter beds on any given night. By adhering to this approach, the City struggled to effectively tackle the issues downtown in fear of violating the homeless individuals' rights under *Martin*. Not only was it impossible for individual officers to know how many beds were available in shelters nightly, but the number of unsheltered was clearly more than the number of available shelter beds city-wide. This required a dedicated effort to locate appropriate shelter for each individual prior to enforcement action.

Following *Johnson's* revised decision in July 2023, the City's discretion was broadened, which helped facilitate the closure of downtown areas to camping and the relocation of individuals from the Zone—but only so long as there was adequate shelter or another *appropriate public area* where the person could go.<sup>34</sup> The City was able to construct shelter and build outdoor campgrounds. Yet, the lingering question revolves around what qualifies as “adequate” shelter or “appropriate” public areas for camping.

***Adequate/Appropriate Shelter.*** The Ninth Circuit has not established clear guidance for defining “adequate and/or appropriate shelter.” The *Martin* decision originally suggested that “adequate shelter” necessitates indoor sleeping arrangements.<sup>35</sup> Based

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<sup>33</sup> 920 F.3d at 617.

<sup>34</sup> 72 F.4th at 877.

<sup>35</sup> 920 F.3d at 617.

on this premise, a California District Court found that a city's temporary outdoor shelter facility at the municipal airport was unsuitable for people.<sup>36</sup> The court's reasoning highlighted that the airport site was essentially an "asphalt tarmac with no roof and no walls, no water and no electricity. It is an open space with what amounts to a large umbrella for some shade. It affords no real cover or protection to anyone."<sup>37</sup>

While the amended decision in *Johnson* appears to suggest that there is no rigid, one-size-fits-all definition of adequate shelter, the law is far from clear as to how the standard is applied. The acceptability of outdoor camping facilities under Ninth Circuit precedent remains ambiguous. Given the numerous unresolved questions regarding shelter space, many municipalities temporarily halted cleanup efforts over the past few years. Municipalities have tried to develop policies and procedures to withstand judicial scrutiny in a changing landscape only exacerbated by continuous litigation.

***The Availability of Shelter.*** Historically, most cities in Arizona, like Phoenix, have not owned, operated, or maintained shelters. Instead, shelters have been run by nonprofits, county or state health departments, or third-party vendors. In Phoenix's case, because it does not own or operate most of the shelter facilities within the metropolitan area, there is no easy way to determine the number of available beds

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<sup>36</sup> *Warren v. City of Chico*, No. 221CV00640MCEDMC, 2021 WL 2894648, at \*3 (E.D. Cal. July 8, 2021).

<sup>37</sup> *Id.* at 4.

on any given day. City employees must contact various facilities to ascertain capacity. Bed availability fluctuates regularly, requiring constant research before law enforcement engagement.

There is also an unsettled question of how long an offer of shelter must remain open—may a city take enforcement action against an unsheltered individual a day after rejecting an offer of shelter, a week? This ambiguity persists and taxes insufficient resources.

***Time, Place, and Manner Restrictions.*** The fact that *Martin* may allow restrictions on the time, place, and manner of encampments does not provide much relief either.<sup>38</sup> In practice, the injunctions being issued against the enforcement of camping laws have been sweeping in nature<sup>39</sup> and do not allow for such restrictions. Moreover, the Ninth Circuit in *Martin* and *Johnson* failed to explain what time, place, and manner restrictions might be valid, thus diminishing the utility of this exception. Ultimately, even if a city prohibits camping on public property, it still faces the

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<sup>38</sup> See *Martin v. City of Boise*, 902 F.3d 1031, 1048 n.8 (9th Cir. 2018), *opinion amended and superseded on denial of reh'g*, 920 F.3d 584 (9th Cir. 2019) (“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.”) (emphasis added). *But cf. Boring v. Murillo*, No. LACKV2107305DOCKET, 2022 WL 14740244, at \*6 (C.D. Cal. Aug. 11, 2022) (a California district court allowed an Eighth Amendment challenge to survive a motion to dismiss despite the ordinance being framed as a time, place, and manner restriction providing that homeless people could sleep anywhere in the City except for its downtown area at specified times).

<sup>39</sup> Order at 3, *City of Phoenix v. Fund for Empowerment*, No. CV-22-02041-PHX-GMS (D. Ariz. Oct. 17, 2023), ECF No. 119.

threat of federal litigation and broad injunctions if there is insufficient shelter space for the homeless.

**D. Efforts to Address Homelessness Are Frustrated by Lawsuits Fueled by *Martin and Johnson*.**

Despite the City's considerable efforts to adhere to Ninth Circuit precedent, it found itself facing conflicting lawsuits both in federal and state court. On the one hand, the District of Arizona issued an injunction significantly constraining the City's efforts to enforce its camping and sleeping ordinances against the homeless.<sup>40</sup> On the other hand, the Maricopa County Superior Court compelled the City to remove tents and take enforcement action against the homeless.<sup>41</sup> The City found itself treading carefully to avoid violating either injunction.

In the state lawsuit, *Freddy Brown, et al. v. City of Phoenix*, the Plaintiffs, comprised of property and business owners in the Zone, sought an injunction to declare the area a public nuisance requiring abatement. The trial court issued a permanent injunction in their favor, compelling the City to remove all tents and makeshift structures in the Zone and take enforcement action against "individuals

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<sup>40</sup> Order at 2, *City of Phoenix v. Fund for Empowerment*, No. CV-22-02041-PHX-GMS (D. Ariz. Dec. 15, 2022), ECF No. 34.

<sup>41</sup> Under Advisement Ruling, *Freddy Brown, et al. v. City of Phoenix*, No. CV2022-010439 (Maricopa Cnty. Super. Ct. Sept. 20, 2023).

committing offenses against the public order”<sup>42</sup> by November 4, 2023.

The trial court provided the City with less than seven weeks to relocate hundreds of homeless persons while navigating the legal minefields created by the Ninth Circuit’s undefined test for voluntariness and indeterminate standard for the adequacy of shelter. Fortunately, the City successfully complied with the deadline set by the trial court, accomplished, in part, by erecting a safe outdoor campground for temporary shelter. However, the permanent injunction threatens to tie the City’s hands for years as the City must prevent camping in the Zone in perpetuity (thereby forcing those individuals who come to the area for services into surrounding neighborhoods or other areas of the City absent a continuing effort to increase shelter capacity).

In the federal lawsuit, *Fund for Empowerment et al. v. City of Phoenix et al.*, the plaintiffs sought an injunction barring enforcement of the City’s camping and sleeping ordinances and halting cleaning activities in the Zone. The District Court largely agreed with the plaintiffs and enjoined the City from “[e]nforcing the Camping and Sleeping Bans against individuals who practically cannot obtain shelter as long as there are more unsheltered individuals in Phoenix than there are shelter beds available.”<sup>43</sup> The District Court’s decision was largely in line with *Martin’s* mathematical formula. However, after the amended *Johnson* decision was issued, the City filed a

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<sup>42</sup> *Id.*

<sup>43</sup> Order, *supra* note 40, at 2.

motion to modify the federal preliminary injunction based on *Johnson's* interpretation of the *Martin* holding.

Fortunately, the federal judge agreed with the City's position and modified the injunction as follows: The City cannot enforce "Camping and Sleeping Bans against involuntarily homeless persons for sleeping in public *if there are no other public areas or appropriate shelters where those individuals can sleep.*"<sup>44</sup> Although this modified injunction allowed the City to offer both indoor shelter beds and safe outdoor spaces when individuals were simply not ready to accept shelter, the injunction continues to strain resources as the City grapples with determining what constitutes appropriate shelter or adequate public areas for camping.

Ultimately, the tension between the lawsuits illustrates the practical difficulties municipalities face when trying to tackle homeless encampments—and Phoenix is not alone in facing competing lawsuits. On September 19, 2023, two lawsuits were filed against the City of Sacramento, one by private businesses and residents and another by the Sacramento County District Attorney,<sup>45</sup> both alleging unsanitary conditions in homeless encampments and seeking to

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<sup>44</sup> Order, *supra* note 39, at 3 (emphasis added).

<sup>45</sup> Compl., *Prime Auctions, LLC et. al. v. City of Sacramento*, No. 23CV008662 (Sacramento Cnty. Super. Ct. Sept. 19, 2023); Compl., *People v. City of Sacramento*, No. 23CV008658 (Sacramento Cnty. Super. Ct. Sept. 19, 2023).

compel city action—the very action that *Martin* and *Johnson* purport to restrain.

Twenty-five briefs supporting the City of Grants Pass’ petition for a writ of certiorari painted this Court a bleak picture of the real-world impact judicial rulings on homelessness have had on local attempts to enforce public health and safety laws and assist individuals experiencing homelessness in getting off the streets. Public policy favors construing the Eighth Amendment in a manner that preserves individual rights yet avoids hamstringing efforts to address other municipal interests such as sanitation, public safety, and providing access points for services and appropriate shelter.

**E. Restricting Decisions on Whether to Cite or Arrest for Violation of Public Camping Laws Compels Judges to Act More as Homeless Policy Czars Than Judicial Officers Applying Discernible Rules of Law.**

As some members of this Court have analogized, judges are like umpires calling balls and strikes, not players in the game. This Court should reject the substantial overreach by the Ninth Circuit, which unnecessarily adopted a legal standard that compels judges to act as policy experts, second-guessing local officials and slowing law enforcement responses to public health and safety concerns.

The constitutional principles at hand strike at core legislative and executive functions, including how to best use law enforcement resources, expend

taxpayer money to remedy homelessness, and use prosecutorial discretion when faced with criminal conduct and individualized mitigating circumstances.<sup>46</sup> The practical results of the decisions in *Martin* and *Johnson* have municipalities scrambling to reallocate resources and build massive amounts of shelter, safe outdoor campgrounds, and other public facilities to accommodate dramatic increases in homelessness under the threat of liability for both action and inaction amid sprawling homeless encampments taking over public property.

The Eighth Amendment does not require this result. Homelessness raises quintessential legislative questions that are more appropriate for political debate and policy discussion than applying what should be discernible principles of constitutional law.

The Ninth Circuit approach may be well-intended, and indeed, cities like Phoenix have adopted strategies to lead with services, not citations, but the adoption of a standard that preemptively bars citation absent adequate shelter space for the entire unsheltered population within a jurisdiction is not constitutionally sound. Even the amended *Johnson* approach – allowing unsheltered individuals to move to other outdoor public spaces to camp – leaves significant legal questions regarding what is adequate

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<sup>46</sup> Courts do not have the expertise to adjudicate social questions such as how to prevent homelessness. *See, e.g.*, JEFF KING, JUDGING SOCIAL RIGHTS 5–6 (2012) (Courts do not have the expertise to determine “whether some proposed procedural right will cause unsustainable problems in a modern bureaucracy are matters on which expertise must be brought to bear.”).

public space. Must there be air conditioning in the summer? Heaters in the winter? More than an airport tarmac with tents and sanitation stations?

At bottom, municipalities deploy multiple tools to minimize impacts of camping laws—including cite and release options, diversion programs, and specialty homeless courts.<sup>47</sup> While the wisdom of these different approaches may be debatable, there is no reason to construe the Eighth Amendment in a manner that preemptively and unnecessarily impedes a municipality’s ability to use its enforcement powers to eliminate hazards. A better path exists that preserves constitutional rights while allowing municipalities to provide citizens with the safe and sanitary conditions they deserve. This Court should take it.

### CONCLUSION

Municipalities have struggled to walk the legal tightrope established by the Ninth Circuit in *Martin* and *Johnson*. The Ninth Circuit construed the Eighth Amendment in a manner that preemptively restricts enforcement of health and safety laws. This is wrong.

The involuntariness standard, which paralyzes enforcement action to address health and safety hazards, has been stretched beyond any recognizable jurisprudence and requires judicial correction. State

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<sup>47</sup> See, e.g., Andrew I. Lief, Comment, *A Prosecutorial Solution to the Criminalization of Homelessness*, 169 U. PA. L. REV. 1971 (2021); Ben A. McJunkin, *Homelessness, Indignity, and the Promise of Mandatory Citations for Urban Camping*, 52 ARIZ. ST. L.J. 955 (2020).

and local legislatures, executive officers, prosecutors, as well as nonprofit organizations, churches, community advocates, and various other stakeholders at city and town hall meetings across the nation, are debating how to best address inflation, lack of affordable housing, and unprecedented levels of drug and alcohol addiction.

Injunctions against enforcement of public health and safety laws serve no purpose other than to frustrate local decisions to address these societal ills, replacing the decisions of individuals on the ground in their own communities working for positive change with sweeping federal court preferences for how cities and towns should be run. The Constitution does not compel this result.

The City of Phoenix and the League of Arizona Cities and Towns respectfully ask this Court to reverse the Ninth Circuit decision and adopt a standard that harmonizes the Eighth Amendment with the need to address dangerous and unsanitary conditions. Individuals experiencing homelessness deserve better. Residents and business owners requesting law enforcement action in the face of sprawling encampments deserve better. And state and local officials struggling to manage this unprecedented crisis require basic police powers, law enforcement tools, and discretion to provide viable options for managing this crisis.

RESPECTFULLY SUBMITTED THIS 4th day  
of March 2024.

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NO. 23-15912

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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SABRINA BERAM,

*Plaintiff-Appellant,*

v.

CITY OF SEDONA,

*Defendant-Appellee,*

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On Appeal from The United States District Court  
District of Arizona  
No. CV-21-08063  
Hon. Diane J. Humetewa

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**BRIEF OF THE LEAGUE OF ARIZONA CITIES AND TOWNS AS  
*AMICUS CURIAE* IN SUPPORT OF AFFIRMANCE AND  
OF APPELLEE CITY OF SEDONA  
(WITH THE WRITTEN CONSENT OF THE PARTIES)**

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## IDENTITY OF AMICUS CURIAE AND SOURCE OF AUTHORITY

The League of Arizona Cities and Towns (“League”) is a voluntary membership organization of 91 incorporated municipalities in Arizona.<sup>1</sup> The League represents the interests of these members before the Arizona Legislature, while also providing technical and legal assistance, coordinating shared services, and organizing conferences and educational events. The League is advised by its Amicus Committee, comprised of city and town attorneys from all regions of the state. The Committee monitors litigation of concern to municipalities and identifies cases with statewide significance. The Committee has identified this case as having such significance because the League’s members have an interest in federal and state court lawsuits stemming from the Ninth Circuit decisions in *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019) (“*Martin*”) and *Johnson v. City of Grants Pass*, 72 F.4th 868 (9th Cir. 2023) (“*Grants Pass*”). They also have an interest in enforcing public health and safety ordinances of general applicability.

The League submits this brief with the written consent of the parties pursuant to Rule 29 of the Federal Rules of Appellate Procedure (“FRAP”). No counsel for any party authored this brief in whole or in part. No party and no counsel to any party contributed money that was intended to fund the preparation

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<sup>1</sup> The League is not a corporation; it is an instrumentality of the State of Arizona. Therefore, it did not include a disclosure statement.

or submission of this brief. No person—other than the League, its members, or its counsel—contributed money that was intended to fund the preparation or submission of this brief.

## **SUMMARY OF THE ARGUMENT**

This case is not about the homelessness crisis. It is about Article III jurisdiction.

Article III confines federal judicial power to cases and controversies. *See* U.S. Const. art. III. A case or controversy can exist *only* if a plaintiff can show an injury in fact, caused by the defendant's conduct, that can be redressed by a favorable result.<sup>2</sup> *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). The federal judiciary lacks Article III jurisdiction over this case because, despite multiple attempts, no such showing was made.

Appellant Sabrina Beram (“Beram”) filed this suit against the City of Sedona (“Sedona”), challenging the Sedona City Code 9.10.010 (“Code”) under Title II of the Americans with Disabilities Act (“ADA”) and the Eighth Amendment. The Code generally prohibits vehicular camping in Sedona if a camper does not have permission from the underlying property owner. *See generally* Sedona City Code 9.10.010. Since the ruling in *Martin*, however, Sedona

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<sup>2</sup> The injury in fact and ripeness query are virtually the same. *See, e.g., Thomas v. Anchorage Equal Rights Comm'n*, 220 F.3d 1134, 1138 (9th Cir. 2000).

has not prosecuted violations of the Code against involuntarily transient persons on public property. *Martin* held that “the Eighth Amendment's prohibition on cruel and unusual punishment bars a city from prosecuting people criminally for sleeping outside on public property when those people have no home or other shelter to go to.” *Id.* at 603 (quoting Boise City Code § 9-10-02).

After five different complaints attempting to allege sufficient facts to establish standing, the District Court denied Beram’s Motion for Leave to File the Fourth Amended Complaint and dismissed the case with prejudice, finding that Beram lacked standing to bring the action. [Excerpts of Record, hereafter “ER”-11] This appeal followed.

While *Martin* emphasized that its ruling was narrow, *Martin*, 920 F.3d at 617, the impacts of *Martin* have been anything but narrow as illustrated in this case. Beram is contorting the ruling in *Martin* and attempting to lower the factual bar for standing, allowing her and other litigants to challenge lawful municipal ordinances without specifically stating any injury-in-fact.

Beram is correct that she “is not a typical challenger to city anti-camping statutes.” [Appellant’s Opening Brief, hereinafter “AOB”-2] She does not allege that she is homeless or that she sleeps outdoors in the elements. She acknowledges that she rents an apartment in Sedona. [AOB-4; ER-103; ER-127] She regularly sleeps in her vehicle at her apartment complex [ER-103; ER-107] where she does

not allege that any contact with Sedona has ever occurred. She does not allege that she was cited, arrested, or prosecuted under the Code. Instead, Beram alleges she was verbally “warned” by a Sedona police officer about violating the Code when she was sleeping inside her car as a “coping mechanism” to an alleged disability. [AOB-7; AOB-8] At no point does Beram allege that she *informed* any police officer during an encounter that she suffers from any disability or considers herself “transient” because of a disability. [ER-13; AOB-2; AOB-33; AOB-40] To the contrary, the incident report indicates that Beram told a Sedona police officer that “she has a place to stay but that she sometimes likes to rest in nature.” [ER-13; AOB-10; AOB-39, AOB-44; AOB-47] Beram mentions this language four times in her brief and has not disputed any information from the incident report. [AOB-10; AOB-39; AOB-44; AOB-47]

Beram also fails to show any credible risk that she is facing imminent prosecution under the Code. Since April 2, 2021, only *two* citations have been issued against others for violating the Code and *both were dismissed* by Sedona. [ER-17; ER-34; ER-35] The individuals in question were camping on *private* property without permission from the property owner. [ER-31; ER-55] Beram alleges no other incident of enforcement in the history of the Code, which was initially adopted in 1999. Beram even mentions Sedona’s letter [AOB-52] in which she is informed that Sedona generally does not prosecute sleeping in public places

when there is no room at a homeless shelter. [ER-121] There is nothing in the incident report that would indicate that any criminal charge is “certainly impending” against her. To the contrary, the police officer concluded the report with this sentence: “Nothing further.” [ER-13] And, as stated in the incident report, no criminal charge was ever filed against Beram, even though she regularly sleeps in her vehicle. [AOB-7; AOB-8; AOB-31; ER-103; ER-126]

With respect to the ADA claim, Beram fails to identify any cognizable injury for ADA purposes. First, “enforcement of the Code” is not service, program or activity for the purpose of ADA. Second, Beram fails to show how she was denied a reasonable accommodation request. She never alleges that, during any police encounter, she requested an accommodation or need for an accommodation. [ER-129] Regarding the letters to the Mayor and City Attorney, the request for blanket immunity from the prosecution of an ordinance on private and/or public property at any time with no regard for any disability (and without consent of the private property owner) is not a reasonable accommodation. To hold otherwise would create dangerous precedent and create an impossible standard for local governments to meet. Nothing in the ADA, its purpose, or the regulations can reasonably be read to give disabled individuals immunity from prosecution of generally applicable ordinances or grant them access to other privileges that would not be available to them if they did not have a disability. The purpose of the ADA

is to place those with disabilities on an equal footing, not to give them an unfair advantage.

Beram does not have standing. Allowing a litigant to challenge lawful municipal ordinances without specifically stating any injury-in-fact would negate standing as a doctrine, open litigation floodgates against municipalities, drain municipal budgets, insert the judiciary into policymaking, and hinder the enforcement of generally applicable public welfare and safety ordinances. The League urges this Court to avoid such results and affirm on both claims.

## **ARGUMENT**

### **I. Beram lacks standing for the Eighth Amendment claim.**

To have standing, a plaintiff must demonstrate an injury that is “concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398 (2013). For an injury to be “concrete,” it cannot be “abstract” but rather “must actually exist” and cause real-world harm to the plaintiff. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). The “particularized” requirement, in turn, demands that the injury “affect the plaintiff in a personal and individual way.” *Id.* at 339. It cannot be a “generalized grievance” that is widely shared by other people in an “undifferentiated” way. *United States v. Richardson*, 418 U.S. 166, 176–77 (1974). In addition, the injury must “personally harm” the plaintiff. *TransUnion LLC v.*

*Ramirez*, 141 S. Ct. 2190, 2205 (2021). A plaintiff cannot bring suit merely as a concerned citizen or as a bystander, asserting standing based on an injury suffered by another person. *Hollingsworth v. Perry*, 570 U.S. 693, 707 (2013) (“Article III standing ‘is not to be placed in the hands of ‘concerned bystanders,’ who will use it simply as a ‘vehicle for the vindication of value interests.’” (quoting *Diamond v. Charles*, 476 U.S. 54, 62 (1986))).

Beram does not allege that she was arrested, cited, or prosecuted under the Code—despite her claim that she regularly sleeps in her vehicle as a coping mechanism to an alleged disability. [ER-126; ER-129] She does not allege that she suffered a monetary loss, physical harm, or the deprivation of any property. She alleges she was verbally “warned” by a Sedona police officer about violating the Code [ER-8] This is not a sufficient injury for the purpose of standing.

“[G]eneralized threats of prosecution do not confer constitutional ripeness. Rather, there must be a *genuine* threat of *imminent* prosecution.” *Clark v. City of Seattle*, 899 F.3d 802, 813 (9th Cir. 2018) (quoting with emphasis added *Bishop Paiute Tribe v. Inyo Cnty.*, 863 F.3d 1144, 1154 (9th Cir. 2017)).

To determine whether a genuine threat of imminent prosecution exists, courts look at three factors: “. . . whether the plaintiffs have articulated a concrete plan to violate the law in question, whether the prosecuting authorities have communicated a specific warning or threat to initiate proceedings, and the history

of past prosecution or enforcement under the challenged statute.” *Bishop Paiute Tribe*, 863 F.3d at 1154. Two of the factors are absent in this case.

Beram has not alleged that prosecuting authorities communicated a specific threat to prosecute her. She also has not pointed to anything in the incident report or elsewhere that would indicate that a criminal charge is being threatened or is “certainly impending” against her. To the contrary, the police officer concluded by saying there was “[n]othing further.” [ER-13] And, as stated in the report, no criminal charge was ever filed or threatened against Beram after this encounter, even though Beram regularly sleeps in her vehicle to this day. [AOB-7; AOB-8; AOB-31; ER-103; ER-126] It is important to note that the Code neither mandates a citation after a warning, nor does it limit the number of warnings that can be given to a person—and Beram has not alleged otherwise. Rather, the Code mandates the police to provide *warnings* and *opportunities to comply*. See Sedona City Code 9.10.010(E).

While some courts in other circuits<sup>3</sup> have required a *conviction* to challenge a camping ordinance, there are cases in the Ninth Circuit where a citation, arrest, or seizure was sufficient to constitute the initiation of a criminal proceeding. In *O’Callaghan v. City of Portland*, however, a plaintiff lacked standing to raise an

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<sup>3</sup> See, e.g., *Johnson v. City of Dallas*, 61 F.3d 442, 443–45 (5th Cir. 1995) (concluding the plaintiffs lacked standing despite being issued numerous tickets because none had been convicted of violating the ordinance).

Eighth Amendment challenge to Portland's camping ordinance despite alleging that he “endured 19 illegal campsite notices” and “the destruction of three of his homes.” *See* No. 3:12-CV-0201-YY, 2020 WL 265197, at \*1 (D. Or. Jan. 17, 2020). The court concluded that he did not face a credible risk of prosecution because he was never prosecuted or fined for violating the ordinance. *Id.*

Similarly, in *Smith v. City of Corvallis*, an Eighth Amendment claim was dismissed because “none of the plaintiffs [had] alleged that they were ever arrested or faced any criminal charges, citations, or fines of any kind.” No. 6:14-CV-01382-MC, 2016 WL 3193190, at \*9 (D. Or. June 6, 2016) (citation omitted). As a result, “the criminal justice system was never utilized or instigated by the defendant against the plaintiffs” who were experiencing homelessness. *Id.* (citation omitted). Again, Beram does not allege that Sedona initiated any criminal proceeding against her.

With respect to the third factor, Beram points to *two* citations that were issued between April 2, 2021, and the present day [ER-17] regarding two individuals who were sleeping on private property without the permission of the property owner. [ER-31; ER-55] Both of these citations were *dismissed* by Sedona. [ER-34; ER-35] Beram alleges no other incident of enforcement in the history of the Code. Beram even quotes from Sedona’s letter [AOB-52] in which Sedona

states that it generally does not prosecute sleeping in public places when there is no room at a homeless shelter. [ER-120]

Beram does not cite to *Martin*<sup>4</sup> in any of her standing arguments, but it will be addressed here because Beram mentions the ruling with respects to the merits of the Eighth Amendment claim. Regardless, *Martin* does not support any finding that Beram has standing. The Ninth Circuit panel in *Martin* concluded there was a genuine issue of material fact as to whether the plaintiffs were facing a credible threat of imminent prosecution under the city ordinances on a night when they lacked access to shelter space. *Martin*, 920 F.3d at 610. The plaintiffs were experiencing homelessness, had been *cited or convicted* at least once before, one of the plaintiffs had been refused access to shelter space in the past, and there was a reasonable possibility that the plaintiffs would lack access shelter space in the future. *See id.* The plaintiffs also alleged specific injuries stemming from the citations, including “the continued inclusion of the citations on plaintiffs’ criminal records” and “the accumulation of a host of criminal fines and incarceration costs.” *Id.* at 613 (internal citations omitted). Notably, the City of Boise was *continuing to issue citations* under both ordinances. *See id.* at 610 (noting that over 175 citations had been issued in a three-month span). With respect to the merits, *Martin*

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<sup>4</sup> Beram also does not cite or discuss *Grants Pass* to support any standing arguments.

ultimately held that “the Eighth Amendment's prohibition on cruel and unusual punishment bars a city from *prosecuting* people criminally for sleeping *outside* on *public* property when those people have no home or other shelter to go to.” *Id.* at 603 (emphasis added).

The facts and legal issues in this case have no resemblance to those in *Martin*. Beram rents an apartment and does not allege that she is homeless or that she sleeps outside on public property. She argues she is “transient” because she sleeps in her car about one-third to one-half of all nights as a “coping mechanism” to a disability. [ER-126] Even if Beram considers herself “transient” because of her disability, she was never cited, arrested, or fined. She does not allege that she sought access to a shelter, was refused access to a shelter, or that there is a reasonable probability that she will be refused access to a shelter in the future. She does not allege that she *informed* any police officer during an encounter that suffered from a disability or that considered herself involuntarily homeless because it. Again, the incident report indicates that she informed the Sedona police officer that had a home, but occasionally preferred to sleep in nature. [ER-13; AOB-10; ER-39; ER-44; ER-47] The report also provides that Beram “agreed to move along without incident.” [ER-13] Finally, Sedona communicated to Beram that is generally does not prosecute sleeping in public places when there is no homeless shelter available—and Beram has not pointed to any instance where Sedona

prosecuted a person for sleeping outside on public property when there is no shelter space available. [ER-9; ER-34; ER-35; ER-121]

A “telling indication of the severe constitutional problem” with an assertion of standing “is the lack of historical precedent” supporting it. *Free Enterprise Fund v. Public Company Accounting Oversight Bd.*, 561 U. S. 477, 505 (2010) (internal quotation marks omitted). Beram has failed to provide any precedent to support her proposition that the alleged warnings are sufficient to establish standing for her Eighth Amendment claim.

## **II. Beram lacks standing for the Eighth Amendment claim.**

Title II of the ADA provides that “no qualified individual with a disability shall by reason of such disability be excluded from participation in or denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C.A. § 12132. A “qualified individual with a disability” is “an individual with a disability who, with or without reasonable modifications to rules, policies, or practices . . . meets the essential eligibility requirements for receipt of services or the participation in programs or activities provided by a public entity.” 42 U.S.C. § 12131.

To state a claim under Title II of the ADA, a plaintiff generally must show: (1) she is an individual with a disability; (2) she is otherwise qualified to participate in or receive the benefit of a public entity's services, programs or

activities; (3) she was either excluded from participation in or denied the benefits of the public entity's services, programs or activities or was otherwise discriminated against by the public entity; and (4) such exclusion, denial of benefits or discrimination was by reason of her disability. *See O'Guinn v. Lovelock Corr. Ctr.*, 502 F.3d 1056, 1060 (9th Cir. 2007).

In a Title II claim grounded in a public entity's alleged failure to provide a reasonable accommodation under 28 C.F.R. § 35.130(b)(7), the plaintiff bears the initial burden of producing evidence of the existence of a reasonable accommodation. *See Vinson v. Thomas*, 288 F.3d 1145, 1154 (9th Cir. 2002). A public entity may defeat a reasonable accommodation claim by showing “that making the modifications would fundamentally alter the nature of the service, program, or activity.” 28 C.F.R. § 35.130(b)(7); *see Zukle v. Regents of Univ. of Cal.*, 166 F.3d 1041, 1047 (9th Cir. 1999).

Beram alleges Sedona wrongfully denied her accommodation requests, but she has failed to produce any evidence or case law to support her claim her requests were reasonable. *See Raines v. Byrd*, 521 U. S. 811, 826 (1997) (“Not only do appellees lack support from precedent, but historical practice appears to cut against them as well”).

To begin, it bears repeating that Beram does not allege that she requested an accommodation during any police encounter. Her first request was made

*anonymously* via Community Legal Services (“CLS”) in the form of a letter to the Mayor of Sedona on February 10, 2021. [ER-129] CLS asked Sedona to grant its unidentified client what amounts to blanket immunity from prosecution under the Code with respect to private and public property throughout Sedona at all times, regardless of whether their client was able to sleep in her apartment or not because of an alleged disability. [ER-129] The letter also asked the Mayor to rescind the Code. [ER-129] On February 22, 2012, Sedona declined request since it was overbroad, unreasonable, and not required by any law. [ER-120; ER-121]

On February 24, 2021, CLS sent a second letter to the Sedona City Attorney [ER-21], identifying its client as Beram and amending the accommodation request on her behalf. [ER-123] CLS requested the nonenforcement of the Code against her at all times with respect to the parking areas of the private apartment complex. [ER-123] CLS also asked for a written document “to show the property owners and any police persons of the reasonable modification.” [ER-123] Since this is a private parking lot, Sedona contacted the owners of the apartment complex to determine whether they would allow Beram to sleep in her vehicle on their property, but they were “unwilling to allow such activity.” [ER-122] On March 1, 2021, Sedona denied Beram’s amended request. [ER-122]

On April 2, 2021, Beram sued both the apartment complex and Sedona, alleging Sedona wrongfully denied her accommodation requests. [ER-125] She

requested declaratory and injunctive relief related to the Code. [ER-132; ER-133]  
Shortly thereafter, Beram and the apartment complex entered into a confidential settlement agreement that allows her to sleep in her car at the apartment complex. [ER-5; ER-103; ER-105; ER-127]

Sedona has not denied any “benefit” to Beram because of her disability. Sedona denied her requests because nonenforcement of the Code or immunity from the Code is not a “service, program, or activity” within the scope of the ADA – and Beram has not alleged otherwise. Her requests were unreasonable and overbroad. They related to *private* property and were not tied to conduct that is affected by a disability. To hold otherwise would fundamentally alter Sedona’s law enforcement activities. It would also create dangerous precedent. Nothing in the ADA, its purpose, or the regulations can reasonably be read to give Beram access to privileges that would not be available to other Sedona residents who do not have a disability.

In sum, Beram failed to identify any cognizable injury that would confer standing for the ADA claim.

## **CONCLUSION**

For the foregoing reasons, the judgment of the District Court should be affirmed.

Date: January 9, 2024

League of Arizona Cities and Towns

/s/ Nancy L. Davidson

Nancy L. Davidson

*Attorney for Amicus Curiae League of  
Arizona Cities and Towns*

**CERTIFICATE OF COMPLIANCE**

**9th Cir. Case Number(s)** No. 23-15912

I am the attorney.

**This brief contains 4121 words**, including 0 words manually counted in any visual images, and excluding the items exempted by FRAP 32(f). The brief's type size and typeface comply with FRAP 32(a)(5) and (6).

I certify that this brief:

is an **amicus** brief and complies with the word limit of FRAP 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).

**Signature** s/ Nancy L. Davidson **Date:** January 9, 2024

## ON THE BALLOT IN NOVEMBER

As of April 27, 2024, six statewide ballot measures were certified for the election on November 5, 2024 (three legislatively referred state statutes and three legislatively referred constitutional amendments):

<a href="#"><u>Criminal Conviction Fee for First Responder Death Financial Benefit Measure</u></a>	<p>Amends state law to establish a \$20 fee on every conviction for a criminal offense, which would go to pay a benefit of \$250,000 to the family of a first responder who is killed in the line of duty.</p>
<a href="#"><u>Emergency Declarations Amendment</u></a>	<p>Amends the Arizona Constitution to:</p> <ul style="list-style-type: none"> <li>• Allow the legislature to terminate a state of emergency or alter the emergency powers of the Governor during the state of emergency; and</li> <li>• Provide for any emergency power granted to the Governor to automatically terminate 30 days after the state of emergency is proclaimed, unless the state legislature extends the emergency powers granted to the Governor, and except in cases for a state of war emergency or an emergency arising from a flood or a fire.</li> </ul>
<a href="#"><u>Life Imprisonment for Sex Trafficking of a Child Measure</u></a>	<p>Amends state law to require life imprisonment for an individual who is convicted of sex trafficking of a child.</p>
<a href="#"><u>*Property Tax Refund for Non-Enforcement of Public Nuisance Laws Measure</u></a>	<p>Amends state law to allow a property owner, beginning in tax year 2025, to apply for an annual primary property tax refund if either:</p> <ul style="list-style-type: none"> <li>• The property owner incurred expenses in mitigating the effects of a city, town, or county adopting and following a policy, pattern, or practice of declining to enforce existing laws or ordinances that prohibit camping, obstructing public thoroughfares, loitering, panhandling, public urination or defecation, public consumption of alcoholic beverages or possession or use of illegal substances; or</li> <li>• The city, town or county maintained a public nuisance and the property owner incurred documented expenses to mitigate the effects of the public nuisance on their real property.</li> </ul> <p>Provides that, if the policy, pattern, practice or public nuisance remains in place after the property owner applies for a refund, the property</p>

owner is entitled to another refund in a subsequent tax year, unless the affected city, town or county and the property owner enter into a settlement agreement, or the public nuisance is abated.

Limits the annual refund to the amount paid by the property owner in primary property taxes for the previous year; however, the property owner can apply for the remaining portion of a refund the following and successive tax years, as needed.

Provides that refund is in lieu of any claim for monetary damages or any rights under [A.R.S., Title 12, Ch. 8, Art. 2.1](#).

Requires DOR to notify the affected city, town, or county within 15 days after receiving a refund application and the affected jurisdiction must accept or reject the refund and notify the department of that determination within 30 days.

Provides that a property owner can challenge a decision to reject a refund application in superior court. If the property owner files an action in superior court:

- the questions of whether the property owner is entitled to the refund and whether the amount of the refund is reasonable are judicial questions.
- the city, town or county must bear the burden of demonstrating that its actions are lawful or that the amount of the refund is unreasonable.
- if a property owner prevails, the court must award the property owner reasonable attorney fees and costs; however, if the property does not prevail, the property owner is not liable to the city, town or county for attorney fees or costs.

Directs the State Treasurer to withhold from the distribution of monies pursuant to [A.R.S. 42-5029\(D\)](#) to the affected city, town or county.

In each instance where a prosecutor declines to prosecute an offender, requires the prosecutor to prepare a written justification to explain such a decision. The written justifications must be published on a monthly basis.

	<p>Provides three exceptions: acts or omissions taken pursuant to an emergency declaration of the Governor; acts or omissions mandated by federal law; acts of executive clemency.</p> <p>States that the legislative intent is for cities, towns, and counties to prioritize the funding of public health and safety services from monies received pursuant to <a href="#">A.R.S. 42-5029(D)</a>.</p> <p>Adds a delayed repeal date of January 1, 2036</p>
<p><a href="#">Require Partisan Primaries Amendment</a></p>	<p>Amends the Arizona Constitution to:</p> <ul style="list-style-type: none"> <li>• Require partisan primary elections for partisan offices.</li> <li>• Prohibits primary elections where all candidates, regardless of political party affiliation, run in the same primary election, such as top-two, top-four, and top-five primaries.</li> <li>• Provides that the state's direct primary election law supersedes local charters and ordinances that are inconsistent with that law.</li> </ul>
<p><a href="#">Signature Distribution Requirement for Initiatives Amendment</a></p>	<p>Amends the Arizona Constitution to establish signature requirements for statewide citizen initiatives based on state legislative districts.</p> <p>Instead of requiring 10% of votes cast statewide for citizen-initiated state statutes, and 15% of votes cast statewide to qualify citizen-initiated constitutional amendments, the initiative would:</p> <ul style="list-style-type: none"> <li>• Require signatures from 10% of votes cast for governor in each legislative district to qualify initiated state statutes for the ballot, and</li> <li>• Require signatures from 15% of votes cast for governor in each legislative district to qualify initiated constitutional amendments for the ballot.</li> </ul>



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**EXECUTIVE COMMITTEE MEETING**  
Friday, May 10, 2024

**Agenda Item #6      Executive Session**

**Summary:**                      Executive Session pursuant to A.R.S. 38-431.03(A)(3) for the purpose of discussion and consultation for legal advice with the League’s attorneys regarding a legal challenge to HCR2023.

**Responsible Person:**      Nancy Davidson, General Counsel

**Attachments:**                HCR2023

House Engrossed

property tax; refund; nuisance enforcement.

State of Arizona  
House of Representatives  
Fifty-sixth Legislature  
Second Regular Session  
2024

## **HOUSE CONCURRENT RESOLUTION 2023**

A CONCURRENT RESOLUTION

ENACTING AND ORDERING THE SUBMISSION TO THE PEOPLE OF A MEASURE RELATING  
TO PROPERTY TAX.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it resolved by the House of Representatives of the State of Arizona,  
2 the Senate concurring:

3 1. Under the power of the referendum, as vested in the Legislature,  
4 the following measure, relating to property tax, is enacted to become  
5 valid as a law if approved by the voters and on proclamation of the  
6 Governor:

7 AN ACT

8 AMENDING TITLE 42, CHAPTER 17, ARIZONA REVISED STATUTES, BY  
9 ADDING ARTICLE 9; REPEALING TITLE 42, CHAPTER 17, ARTICLE 9,  
10 ARIZONA REVISED STATUTES; RELATING TO PROPERTY TAX.

11 Be it enacted by the Legislature of the State of Arizona:

12 Section 1. Title 42, chapter 17, Arizona Revised  
13 Statutes, is amended by adding article 9, to read:

14 ARTICLE 9. REFUNDS

15 42-17451. Refund; failure to abate public nuisance;  
16 applicability; definitions

17 A. NOTWITHSTANDING ANY OTHER LAW, SUBJECT TO SUBSECTION  
18 C, PARAGRAPH 3 AND SUBSECTION I OF THIS SECTION, BEGINNING IN  
19 TAX YEAR 2025, A PROPERTY OWNER MAY APPLY FOR A REFUND IN AN  
20 AMOUNT DETERMINED PURSUANT TO SUBSECTION B OF THIS SECTION IF  
21 EITHER OF THE FOLLOWING OCCURS:

22 1. THE CITY, TOWN OR COUNTY IN WHICH THE REAL PROPERTY  
23 IS LOCATED ADOPTS AND FOLLOWS A POLICY, PATTERN OR PRACTICE OF  
24 DECLINING TO ENFORCE EXISTING LAWS, ORDINANCES OR OTHER  
25 LEGISLATION PROHIBITING ILLEGAL CAMPING, OBSTRUCTING PUBLIC  
26 THOROUGHFARES, LOITERING, PANHANDLING, PUBLIC URINATION OR  
27 DEFECATION, PUBLIC CONSUMPTION OF ALCOHOLIC BEVERAGES OR  
28 POSSESSION OR USE OF ILLEGAL SUBSTANCES AND THE PROPERTY OWNER  
29 INCURS DOCUMENTED EXPENSES TO MITIGATE THE EFFECTS OF THE  
30 POLICY, PATTERN OR PRACTICE OR THE PUBLIC NUISANCE ON THE  
31 PROPERTY OWNER'S REAL PROPERTY.

32 2. THE CITY, TOWN OR COUNTY IN WHICH THE REAL PROPERTY  
33 IS LOCATED MAINTAINS A PUBLIC NUISANCE AND THE PROPERTY OWNER  
34 INCURS DOCUMENTED EXPENSES TO MITIGATE THE EFFECTS OF THE  
35 POLICY, PATTERN OR PRACTICE OR THE PUBLIC NUISANCE ON THE  
36 PROPERTY OWNER'S REAL PROPERTY.

37 B. THE AMOUNT OF THE REFUND IS EQUAL TO THE DOCUMENTED  
38 EXPENSES INCURRED BY THE PROPERTY OWNER THAT WERE REASONABLY  
39 NECESSARY TO MITIGATE THE EFFECTS OF THE POLICY, PATTERN OR  
40 PRACTICE OR THE PUBLIC NUISANCE ON THE PROPERTY OWNER'S REAL  
41 PROPERTY.

42 C. THE REFUND ALLOWED UNDER THIS SECTION:

43 1. SHALL BE PAID IN THE SAME MANNER PRESCRIBED BY  
44 SECTION 42-1118.

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2. NOTWITHSTANDING SECTION 12-1134, SUBSECTION H, IS IN LIEU OF ANY CLAIM FOR MONETARY DAMAGES OR ANY RIGHTS UNDER TITLE 12, CHAPTER 8, ARTICLE 2.1.

3. MAY NOT EXCEED THE AMOUNT THE PROPERTY OWNER PAID FOR THE PRIOR TAX YEAR IN PRIMARY PROPERTY TAXES FOR THE TAX YEAR TO THE AFFECTED CITY, TOWN OR COUNTY. IF THE TOTAL AMOUNT OF THE REFUND DETERMINED PURSUANT TO SUBSECTION B OF THIS SECTION IS MORE THAN THE AMOUNT THE PROPERTY OWNER PAID FOR THE PRIOR TAX YEAR IN PRIMARY PROPERTY TAXES TO THE AFFECTED CITY, TOWN OR COUNTY FOR THE TAX YEAR AND THE REFUND IS ACCEPTED, THE DEPARTMENT SHALL ISSUE THE REFUND FOR THAT TAX YEAR IN AN AMOUNT EQUAL TO THE AMOUNT THE PROPERTY OWNER PAID FOR THE PRIOR TAX YEAR IN PRIMARY PROPERTY TAX TO THE AFFECTED CITY, TOWN OR COUNTY. THE PROPERTY OWNER MUST APPLY TO THE DEPARTMENT FOR THE REMAINING PORTION OF THE REFUND THE FOLLOWING AND SUCCESSIVE TAX YEARS, AS NEEDED.

D. WITHIN FIFTEEN DAYS AFTER THE DEPARTMENT RECEIVES AN APPLICATION FROM A PROPERTY OWNER FOR A REFUND UNDER THIS SECTION, THE DEPARTMENT SHALL NOTIFY THE AFFECTED CITY, TOWN OR COUNTY. WITHIN THIRTY DAYS AFTER RECEIVING THE NOTICE, THE AFFECTED CITY, TOWN OR COUNTY SHALL ACCEPT OR REJECT THE REFUND AND NOTIFY THE DEPARTMENT OF THAT DETERMINATION. IF THE AFFECTED CITY, TOWN OR COUNTY:

1. ACCEPTS THE REFUND, THE DEPARTMENT SHALL PAY THE REFUND TO THE PROPERTY OWNER PURSUANT TO SUBSECTION C OF THIS SECTION.

2. REJECTS THE REFUND, THE DEPARTMENT MAY NOT PAY THE REFUND TO THE PROPERTY OWNER. THE PROPERTY OWNER MAY FILE A CAUSE OF ACTION IN THE SUPERIOR COURT OF THE COUNTY IN WHICH THE REAL PROPERTY IS LOCATED TO CHALLENGE THE REJECTION OF THE REFUND. THE QUESTIONS OF WHETHER THE PROPERTY OWNER IS ENTITLED TO THE REFUND AND WHETHER THE AMOUNT OF THE REFUND IS REASONABLE ARE JUDICIAL QUESTIONS. IN A CAUSE OF ACTION FILED PURSUANT TO THIS PARAGRAPH:

(a) THE CITY, TOWN OR COUNTY SHALL BEAR THE BURDEN OF DEMONSTRATING THAT ITS ACTIONS ARE LAWFUL OR THAT THE AMOUNT OF THE REFUND IS UNREASONABLE.

(b) THE PROPERTY OWNER IS NOT LIABLE TO THE CITY, TOWN OR COUNTY FOR ATTORNEY FEES OR COSTS.

(c) A PREVAILING PROPERTY OWNER SHALL BE AWARDED REASONABLE ATTORNEY FEES AND COSTS.

3. DOES NOT RESPOND TO THE DEPARTMENT WITHIN THE THIRTY-DAY PERIOD, THE REFUND IS DEEMED ACCEPTED AND THE DEPARTMENT SHALL PAY THE REFUND TO THE PROPERTY OWNER.

1 E. ON NOTICE FROM THE DEPARTMENT, THE STATE TREASURER  
2 SHALL WITHHOLD FROM THE DISTRIBUTION OF MONIES PURSUANT TO  
3 SECTION 42-5029, SUBSECTION D TO THE AFFECTED CITY, TOWN OR  
4 COUNTY THE RESPECTIVE AGGREGATE AMOUNT OF REFUNDS ISSUED UNDER  
5 THIS SECTION. THE STATE TREASURER SHALL CONTINUE TO WITHHOLD  
6 MONIES PURSUANT TO THIS SUBSECTION UNTIL THE ENTIRE AMOUNT  
7 PROVIDED BY THE DEPARTMENT HAS BEEN WITHHELD. THE STATE  
8 TREASURER SHALL CREDIT ANY MONIES WITHHELD PURSUANT TO THIS  
9 SUBSECTION TO THE DEPARTMENT AS REIMBURSEMENT FOR ISSUING THE  
10 REFUNDS. THE STATE TREASURER MAY NOT WITHHOLD ANY PAYMENTS  
11 FOR DEBT SERVICE ON BONDS OR OTHER LONG-TERM OBLIGATIONS OF  
12 THE AFFECTED CITY, TOWN OR COUNTY THAT WERE ISSUED OR INCURRED  
13 BEFORE THE REFUND WAS ISSUED.

14 F. THE PROPERTY OWNER MAY NOT BE REQUIRED TO SUBMIT ANY  
15 CLAIM AS A PREREQUISITE TO DEMANDING OR RECEIVING JUST  
16 COMPENSATION IN THE FORM OF A REFUND PURSUANT TO THIS SECTION.

17 G. A PROPERTY OWNER MAY APPLY FOR A REFUND UNDER THIS  
18 SECTION ONCE PER TAX YEAR.

19 H. IF THE POLICY, PATTERN, PRACTICE OR PUBLIC NUISANCE  
20 REMAINS IN PLACE AFTER THE PROPERTY OWNER APPLIES FOR A REFUND  
21 PURSUANT TO THIS SECTION, THE PROPERTY OWNER IS ENTITLED TO  
22 ANOTHER REFUND UNDER THIS SECTION IN A SUBSEQUENT TAX YEAR,  
23 UNLESS THE AFFECTED CITY, TOWN OR COUNTY AND THE PROPERTY  
24 OWNER ENTER INTO A KNOWING AND VOLUNTARY SETTLEMENT, OR THE  
25 AFFECTED CITY, TOWN OR COUNTY ENDS THE POLICY, PATTERN OR  
26 PRACTICE OR ABATES THE PUBLIC NUISANCE.

27 I. A PROPERTY OWNER WHOSE REAL PROPERTY IS LOCATED IN  
28 THE CORPORATE BOUNDARIES OF A CITY OR TOWN IS ELIGIBLE TO  
29 APPLY FOR A REFUND ONLY FROM THAT CITY OR TOWN. A PROPERTY  
30 OWNER WHOSE REAL PROPERTY IS LOCATED IN AN UNINCORPORATED AREA  
31 OF A COUNTY IS ELIGIBLE TO APPLY FOR A REFUND ONLY FROM THAT  
32 COUNTY.

33 J. EXCEPT FOR ANY RIGHTS UNDER TITLE 12, CHAPTER 8,  
34 ARTICLE 2.1 THAT ARE FULLY WAIVED BY RECEIVING A REFUND UNDER  
35 THIS SECTION PURSUANT TO SUBSECTION C, PARAGRAPH 2 OF THIS  
36 SECTION, THE REMEDY ESTABLISHED BY THIS SECTION IS IN ADDITION  
37 TO ANY OTHER REMEDY THAT IS PROVIDED BY THE LAWS AND  
38 CONSTITUTION OF THIS STATE OR THE UNITED STATES AND IS NOT  
39 INTENDED TO MODIFY OR REPLACE ANY OTHER REMEDY.

40 K. THE DEPARTMENT SHALL PRESCRIBE THE PROCEDURE AND  
41 FORM REQUIRED TO ADMINISTER THIS SECTION.

42 L. THIS SECTION DOES NOT APPLY TO:

43 1. DECISIONS BY CITY, TOWN OR COUNTY AUTHORITIES TO  
44 EXERCISE PROSECUTORIAL DISCRETION NOT TO PROSECUTE ALLEGED  
45 OFFENDERS IF THE DECISIONS ARE MADE ON A CASE-BY-CASE BASIS

1 AND THE JUSTIFICATIONS FOR EACH DECISION ARE PUBLISHED ON A  
2 MONTHLY BASIS BY THE CITY, TOWN OR COUNTY.  
3 2. ACTS OF EXECUTIVE CLEMENCY.  
4 3. ACTS OR OMISSIONS TAKEN PURSUANT TO SECTION 26-303.  
5 4. ACTS OR OMISSIONS MANDATED BY FEDERAL LAW.  
6 M. FOR THE PURPOSES OF THIS SECTION:  
7 1. "AFFECTED CITY, TOWN OR COUNTY" MEANS A CITY, TOWN  
8 OR COUNTY IN WHICH A PROPERTY OWNER IS APPLYING FOR A REFUND  
9 PROVIDED UNDER THIS SECTION.  
10 2. "PROPERTY OWNER" MEANS THE HOLDER OF FEE TITLE TO  
11 THE REAL PROPERTY.  
12 Sec. 2. Delayed repeal  
13 Title 42, chapter 17, article 9, Arizona Revised  
14 Statutes, as added by this act, is repealed from and after  
15 December 31, 2035.  
16 Sec. 3. Legislative intent  
17 The legislature intends that a city, town or county  
18 prioritize the funding of public health and safety services  
19 from monies received pursuant to section 42-5029,  
20 subsection D, Arizona Revised Statutes.  
21 2. The Secretary of State shall submit this proposition to the  
22 voters at the next general election as provided by article IV, part 1,  
23 section 1, Constitution of Arizona.



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PROPERTY CORPORATION MEETING  
Friday, May 10, 2024

**Agenda Item #7**      **Review and Adoption of Minutes of League Property Corporation**

**Summary:**              Minutes of the previous meeting are enclosed for your review and approval.

**Responsible Person:**    President Douglas Nicholls

**Attachment:**              May 12, 2023 Minutes

**Action Requested:**      Approval

**MINUTES**  
**PROPERTY CORPORATION OF ARIZONA CITIES AND TOWNS**  
**BOARD MEETING**

Friday, May 12, 2023  
League of Arizona Cities and Towns  
1820 W. Washington St.  
Phoenix, Arizona

**MEMBERS**

**President**

Douglas Nicholls, Mayor, Yuma

**Vice President**

Kevin Hartke, Mayor, Chandler

**Treasurer**

Mila Besich, Mayor, Superior +

Ken Budge, Mayor, Bisbee  
Craig McFarland, Mayor, Casa Grande +  
Robyn Prud'homme-Bauer, Mayor, Clarkdale +  
Alexis Hermosillo, Mayor, El Mirage +  
Ginny Dickey, Mayor, Fountain Hills  
Brigitte Peterson, Mayor, Gilbert  
Jerry Weiers, Mayor, Glendale  
Al Gameros, Mayor, Globe  
Joe Pizzillo, Mayor, Goodyear  
Cal Sheehey, Mayor, Lake Havasu City +  
Tom Schoaf, Mayor, Litchfield Park +

Ed Honea, Mayor, Marana  
Nancy Smith, Mayor, Maricopa \*  
John Giles, Mayor, Mesa  
Jerry Bien-Willner, Mayor, Paradise Valley  
Jason Beck, Mayor, Peoria \*  
Kate Gallego, Mayor, Phoenix  
Stephanie Irwin, Mayor, Pinetop-Lakeside +  
Tom Murphy, Mayor, Sahuarita  
David Ortega, Mayor, Scottsdale +  
Corey Woods, Mayor, Tempe  
Regina Romero, Mayor, Tucson \*

\*Not in attendance

+Attended via Zoom

League President Douglas Nicholls called the meeting to order at 11:16 a.m.

**1. REVIEW AND ADOPTION OF MINUTES OF LEAGUE PROPERTY CORPORATION**

Mayor Kevin Hartke of Chandler moved to approve the minutes of the May 13, 2022, League Property Corporation meeting; Mayor Kate Gallego of Phoenix seconded the motion and it carried unanimously.

**2. PROPERTY CORPORATION BUDGET 2023 - 2024**

President Douglas Nicholls asked Treasurer and Budget Subcommittee Chair, Mayor Mila Besich of Superior to provide an update on the Property Corporation budget.

Mayor Mila Besich shared that the proposed budget is identical to the tentative budget that was presented at the February meeting.

President Douglas Nicholls asked for any discussion on the Property Corporation budget.

Mayor Brigitte Peterson of Gilbert moved to adopt the FY 24 Property Corporation budget as recommended by the Budget Subcommittee; Mayor Tom Murphy of Sahuarita seconded the motion and it carried unanimously.

### **3. ANNUAL ELECTION OF OFFICERS**

President Douglas Nicholls asked League Executive Director, Tom Belshe to share more on the annual election of officers. Executive Director Tom Belshe explained that when changes are made to the board of the League Executive Committee and when vacancies are filled, the League Executive Committee board is then appointed to act as the governing board of the Property Corporation.

President Douglas Nicholls asked for discussion on this item and requested a motion. Mayor Ken Budge of Bisbee moved to elect the League officers and members of the Executive Committee as the board of directors for the Property Corporation; Mayor Joe Pizzillo of Goodyear seconded the motion and it carried unanimously.

Seeing no further business, President Douglas Nicholls adjourned the Property Corporation Meeting at 11:20 a.m.



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**PROPERTY CORPORATION MEETING**  
Friday, May 10, 2024

**Agenda Item #8      Property Corporation Budget for 2024-2025**

**Summary:**                    The proposed budget for the Property Corporation for the upcoming fiscal year, as recommended by the Budget Subcommittee, is presented for your review and approval.

**Responsible Person:**    Mayor Mila Besich, Superior, Budget Subcommittee Chair  
Tom Belshe

**Attachment:**                FY 2024-2025 Recommended Budget and Budget Narrative

**Action Requested:**      Approval

## 2024-2025 Property Corporation Budget

### PROPOSED

REVENUES	Budget FY 2024	Expected FY 2024	Over / (Under)	PROPOSED FY 2025
Rental Income	132,180	132,765	585	133,400
Building Improvement Fund*	10,000	10,000	---	10,000
Interest	20	18	(2)	20
Miscellaneous	1,500	2,500	1,000	3,000
<b>TOTAL REVENUES</b>	<b>143,700</b>	<b>145,283</b>	<b>1,583</b>	<b>146,420</b>
EXPENDITURES				
Accounting and Auditing	8,700	7,849	(851)	8,650
Capital Outlay	20,000	0	(20,000)	20,000
Insurance	6,500	5,125	(1,375)	6,500
Maintenance Services/Agreements	55,000	56,500	1,500	60,000
Operating Expenses	6,000	5,017	(983)	6,000
Repairs and Maintenance	15,000	22,975	7,975	15,000
Utilities	24,000	28,630	4,630	30,000
<b>TOTAL EXPENDITURES</b>	<b>135,200</b>	<b>126,096</b>	<b>(9,104)</b>	<b>146,150</b>
<b>Revenues Over (Under) Expenditures</b>	<b>\$8,500</b>	<b>\$19,187</b>	<b>\$10,687</b>	<b>\$270</b>
<b>Beginning Fund Balance</b>	<b>\$96,933</b>	<b>\$96,933</b>		<b>\$116,120</b>
<b>Ending Fund Balance</b>	<b>\$105,433</b>	<b>\$116,120</b>	<b>\$10,687</b>	<b>\$116,390</b>

	Ending Balance	FY	Rev over Exp
Total fund balance as of July 1, 2023	\$96,933	22-23	(\$114,595)
Total fund balance as of July 1, 2022	\$211,528	21-22	\$13,810
Total fund balance as of July 1, 2021	\$197,718	20-21	\$69,362
Total fund balance as of July 1, 2020	\$128,356	19-20	\$18,252
Total fund balance as of July 1, 2019	\$110,104	18-19	\$18,673
Total fund balance as of July 1, 2018	\$91,431	17-18	\$13,041
Total fund balance as of July 1, 2017	\$78,390	16-17	(\$11,916)
Total fund balance as of July 1, 2016	\$90,306	15-16	(\$13,735)
Total fund balance as of July 1, 2015	\$104,041	14-15	\$20,968
Total fund balance as of July 1, 2014	\$83,073	13-14	

## 2024-2025 Property Corporation Budget Narrative

### PROPOSED

REVENUES	Budget FY 2024	Expected FY 2024	Over / (Under)	PROPOSED FY 2025
<b>Rental Income</b>	<b>132,180</b>	<b>132,765</b>	<b>585</b>	<b>133,400</b>
Revenue from rental of space in the League Building by the League and other tenants is expected to be: League of Arizona Cities and Towns (\$19/sq ft/yr) - \$105,000; Rural Transportation Liaison (Room 104) - \$2,400; The Arizona Republic (Room 106) - \$6,000; Arizona Mirror (Room 105) - \$9,600; Associated Press (2 desks @ \$100 ea/mo) - \$2,400; Arizona News Radio (2 desks @ \$100 ea/mo) - \$2,400; Capitol Media Services (1 desk @ \$100 ea/mo) - \$1,200; Arizona Agenda (1 desk @ \$100 ea/mo) - \$1,200; Axios (1 desk @ \$100 ea/mo) - \$1,200; KJZZ (1 desk @ \$100 ea/mo) - \$1,200; Plus estimated taxes \$800. <i>[Rent prices remained at the same rate since 2009 when the legislative press lost their space at the capitol. A nominal increase will take effect July 1, 2024. The increase is not included in this proposed amount, but it does include the new tenant, KJZZ.]</i>				
<b>Building Improvement Fund</b>	<b>10,000</b>	<b>10,000</b>	<b>---</b>	<b>10,000</b>
The League contributes \$10,000 into a fund to save for future building improvements. <i>[The Building Improvement Fund has collected \$60,000 since it started in FY19.]</i>				
<b>Interest</b>	<b>20</b>	<b>18</b>	<b>(2)</b>	<b>20</b>
The Property Corporation's funds are invested in a high balance savings account.				
<b>Miscellaneous</b>	<b>1,500</b>	<b>2,500</b>	<b>1,000</b>	<b>3,000</b>
This category includes fees from Associated General Contractors for our shared refuse container and other miscellaneous revenues.				
<b>TOTAL REVENUES</b>	<b>143,700</b>	<b>145,283</b>	<b>1,583</b>	<b>146,420</b>

EXPENDITURES	Budget FY 2024	Expected FY 2024	Over / (Under)	PROPOSED FY 2025
<b>Accounting and Auditing</b>	<b>8,700</b>	<b>7,849</b>	<b>(851)</b>	<b>8,650</b>
This line item includes the CPA audit of Property Corporation accounts and for monthly accounting services and preparation of audit work papers.				
<b>Capital Outlay</b>	<b>20,000</b>	<b>0</b>	<b>(20,000)</b>	<b>20,000</b>
This item is used to make necessary repairs and improvements to the building.				
<b>Insurance</b>	<b>6,500</b>	<b>5,125</b>	<b>(1,375)</b>	<b>6,500</b>
This item includes building, flood and liability insurance				
<b>Maintenance Services/Agreements</b>	<b>55,000</b>	<b>56,500</b>	<b>1,500</b>	<b>60,000</b>
This category includes maintenance agreements for the elevator, air conditioning, parking lot sweeping and pest control, plus janitorial services, lawn service and refuse collection plus				
<b>Operating Expenses</b>	<b>6,000</b>	<b>5,017</b>	<b>(983)</b>	<b>6,000</b>
Items in this account include light bulbs, paper goods, soap, and cleaning supplies. It also includes corporation fees, business license fees and other annual operating costs.				

## Prior Years Actuals

FY22-23 Actual	FY21-22 Actual	FY20-21 Actual	FY19-20 Actual	FY18-19 Actual
\$131,445.80	\$130,622.10	\$129,696.00	\$129,696.00	\$128,049.60

\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00
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\$17.03	\$14.97	\$14.60	\$30.53	\$36.52
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\$1,947.01	\$5,085.49	\$4,186.56	\$2,287.20	\$1,974.02
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FY22-23 Actual	FY21-22 Actual	FY20-21 Actual	FY19-20 Actual	FY18-19 Actual
\$7,849.00	\$7,620.00	\$7,570.00	\$7,520.00	\$7,370.00

\$0.00	\$8,106.80	\$17,988.88	\$18,474.19	\$21,920.76
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\$3,743.22	\$6,703.35	\$6,451.00	\$6,379.00	\$5,914.00
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\$52,800.03	\$44,700.58	\$36,063.88	\$40,427.75	\$36,087.07
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\$7,599.07	\$3,223.83	\$4,943.37	\$3,559.20	\$4,952.58
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<b>EXPENDITURES</b>	<b>Budget FY 2024</b>	<b>Expected FY 2024</b>	<b>Over / (Under)</b>	<b>PROPOSED FY 2025</b>
<b>Repairs and Maintenance</b>	<b>15,000</b>	<b>22,975</b>	<b>7,975</b>	<b>15,000</b>
This budget item provides for the repair and maintenance of the heating and air conditioning system not covered by the maintenance agreement, appliances, plumbing fixtures, the roof, the sprinkler system and other miscellaneous repairs. <i>[FY24 included roof re-coat and irrigation pipe replacement.]</i>				
<b>Utilities</b>	<b>24,000</b>	<b>28,630</b>	<b>4,630</b>	<b>30,000</b>
Current utilities include Arizona Public Service, City of Phoenix, Southwest Gas.				
<b>TOTAL EXPENDITURES</b>	<b>135,200</b>	<b>126,096</b>	<b>(9,104)</b>	<b>146,150</b>
<b>Revenues Over (Under) Expenditures</b>	<b>\$8,500</b>	<b>\$19,187</b>	<b>\$10,687</b>	<b>\$270</b>
<b>Beginning Fund Balance</b>	<b>\$96,933</b>	<b>\$96,933</b>		<b>\$116,120</b>
<b>Ending Fund Balance</b>	<b>\$105,433</b>	<b>\$116,120</b>	<b>\$10,687</b>	<b>\$116,390</b>

<b>FY22-23 Actual</b>	<b>FY21-22 Actual</b>	<b>FY20-21 Actual</b>	<b>FY19-20 Actual</b>	<b>FY18-19 Actual</b>
\$48,911.07	\$11,060.29	\$9,427.66	\$17,956.11	\$17,290.73
\$24,798.16	\$23,089.24	\$24,862.27	\$21,615.76	\$26,134.69



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**PROPERTY CORPORATION MEETING**  
Friday, May 10, 2024

**Agenda Item #9**      **Annual Election of Officers**

**Summary:**              The election of officers and the board of directors for the Property Corporation is required annually according to the bylaws.

**Responsible Person:**    President Douglas Nicholls

**Action Requested:**      Approval



**Additional Informational Materials  
Not Part of the Agenda**

League Budget Report

Property Corporation Budget Report

**League of Arizona Cities & Towns**  
**FY 2022-2023 Budget vs. Actual**  
**July 2023 through March 2024**

	Jul '23 - Mar 24	Budget	\$ Over Budget	% of Budget
<b>Ordinary Income/Expense</b>				
<b>Income</b>				
4000 · Affiliate Group Contribution	124,166.64	195,500.00	-71,333.36	63.5%
4005 · Annual Conference	832,042.50	500,000.00	332,042.50	166.4%
4010 · Dues	2,361,473.00	2,361,478.00	-5.00	100.0%
4020 · Miscellaneous	6,275.60	14,000.00	-7,724.40	44.8%
4016 · Partnership Programs	36,130.54	41,000.00	-4,869.46	88.1%
4030 · Risk Pool	143,403.90	185,000.00	-41,596.10	77.5%
4035 · Seminars & Meetings	24,945.00	50,000.00	-25,055.00	49.9%
4040 · Interest Income	116,320.38	25,000.00	91,320.38	465.3%
<b>Total Income</b>	<b>3,644,757.56</b>	<b>3,371,978.00</b>	<b>272,779.56</b>	<b>108.1%</b>
<b>Expense</b>				
5005 · Annual Conference (Expense)	558,900.32	230,000.00	328,900.32	243.0%
5010 · Benefits	473,206.58	586,000.00	-112,793.42	80.8%
5015 · Capital Outlay	130,030.89	15,000.00	115,030.89	866.9%
5030 · Equipment Rental & Maintena...	1,563.97	8,000.00	-6,436.03	19.5%
5035 · Executive Committee	3,768.75	7,000.00	-3,231.25	53.8%
5050 · Insurance	7,735.28	9,000.00	-1,264.72	85.9%
5055 · Postage & Shipping	4,017.23	6,000.00	-1,982.77	67.0%
5057 · PR & Communications	55,150.57	62,000.00	-6,849.43	89.0%
5060 · Printing	12,344.56	14,000.00	-1,655.44	88.2%
5065 · Professional Services				
5065-1 · Accounting Services	37,792.34	54,000.00	-16,207.66	70.0%
5065-3 · Legal Services	5,167.50	36,000.00	-30,832.50	14.4%
5065-2 · Contract Lobbying & Cons...	221,165.48	323,000.00	-101,834.52	68.5%
<b>Total 5065 · Professional Services</b>	<b>266,325.32</b>	<b>413,000.00</b>	<b>-146,674.68</b>	<b>64.5%</b>
5070 · Rent	78,750.00	105,000.00	-26,250.00	75.0%
5071 · Salaries	1,277,481.11	1,700,000.00	-422,518.89	75.1%
5075 · Seminars and Meetings	47,408.87	47,000.00	408.87	100.9%
5085 · Subscriptions & Dues	65,360.18	72,000.00	-6,639.82	90.8%
5090 · Supplies	47,639.49	55,000.00	-7,360.51	86.6%
5095 · Telecommunications	19,204.47	24,000.00	-4,795.53	80.0%
5100 · Travel	17,235.70	20,000.00	-2,764.30	86.2%
5115 · Prop Corp-Bldg Improvement ...	10,000.00	10,000.00	0.00	100.0%
<b>Total Expense</b>	<b>3,076,123.29</b>	<b>3,383,000.00</b>	<b>-306,876.71</b>	<b>90.9%</b>
<b>Net Ordinary Income</b>	<b>568,634.27</b>	<b>-11,022.00</b>	<b>579,656.27</b>	<b>-5,159.1%</b>
<b>Net Income</b>	<b>568,634.27</b>	<b>-11,022.00</b>	<b>579,656.27</b>	<b>-5,159.1%</b>

**Property Corporation**  
**FY 2022-2023 Budget vs. Actual**  
**July 2023 through March 2024**

	Jul '23 - Mar 24	Budget	\$ Over Budget	% of Budget
<b>Ordinary Income/Expense</b>				
<b>Income</b>				
4003 · Building Improvement Fund	10,000.00	10,000.00	0.00	100.0%
4000 · Rental Income	103,034.40	132,180.00	-29,145.60	78.0%
4005 · Miscellaneous	0.00	1,500.00	-1,500.00	0.0%
4010 · Interest	11.84	20.00	-8.16	59.2%
<b>Total Income</b>	<b>113,046.24</b>	<b>143,700.00</b>	<b>-30,653.76</b>	<b>78.7%</b>
<b>Expense</b>				
5000 · Maintenance Services/Agreements	47,216.05	55,000.00	-7,783.95	85.8%
5015 · Utilities	20,162.87	24,000.00	-3,837.13	84.0%
5020 · Repairs and Maintenance	18,492.69	15,000.00	3,492.69	123.3%
5025 · Operating Expenses	2,810.18	6,000.00	-3,189.82	46.8%
5030 · Accounting and Auditing	6,778.00	8,700.00	-1,922.00	77.9%
5035 · Insurance	5,144.00	6,500.00	-1,356.00	79.1%
5040 · Capital Outlay	0.00	20,000.00	-20,000.00	0.0%
<b>Total Expense</b>	<b>100,603.79</b>	<b>135,200.00</b>	<b>-34,596.21</b>	<b>74.4%</b>
<b>Net Ordinary Income</b>	<b>12,442.45</b>	<b>8,500.00</b>	<b>3,942.45</b>	<b>146.4%</b>
<b>Net Income</b>	<b>12,442.45</b>	<b>8,500.00</b>	<b>3,942.45</b>	<b>146.4%</b>