

No. 23-175

In the Supreme Court of the United States

CITY OF GRANTS PASS, OREGON,
PETITIONER

v.

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

*ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT*

**BRIEF OF AMICI CURIAE BAY AREA COUNCIL ET AL.
IN SUPPORT OF PETITIONER CITY OF GRANTS PASS**

DAVID C. CASARRUBIAS

Counsel of Record

SAMANTHA D. WOLFF

SAMIR J. ABDELNOUR

TREVOR T. TANIGUCHI

BRENDAN G. ADAMS

SHANDYN H. PIERCE

JILLIAN AMES

Hanson Bridgett LLP

425 Market Street, 26th Floor

San Francisco, CA 94105

(415) 777-3200

dcasarrubias@hansonbridgett.com

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INTEREST OF AMICI CURIAE¹

Amicus curiae the Bay Area Council is a business-sponsored, public policy advocacy organization for the nine-county San Francisco Bay Area. The Council proactively advocates for a strong economy, a vital business environment, and a better quality of life for everyone who lives here. Founded in 1945, the Bay Area Council is committed to working with public and civic leaders to make the Bay Area the most innovative, globally competitive, and sustainable region in the world.

Amicus curiae the San Francisco Chamber of Commerce is San Francisco's most vibrant business network. Founded during the Gold Rush in May 1850, the Chamber has been a leading champion of entrepreneurialism and economic prosperity for more than 172 years. From the transcontinental railroad to the Panama-Pacific International Exposition, the Chamber has a long history of championing the initiatives that make San Francisco a global landmark.

Amicus curiae TMG Partners is a privately-held full service development company headquartered in San Francisco focusing on urban infill projects in the San Francisco Bay Area. TMG Partners' exclusive focus in the Bay Area helps it understand the nuances of market trends and timing.

¹ No counsel for any party authored this brief in whole or in part, and no person other than *amici curiae* or their counsel made a monetary contribution to the preparation or submission of this brief. See Sup. Ct. R. 37.6.

Amicus curiae the Golden Gate Restaurant Association (GGRA) is a nonprofit industry organization that serves as the voice for the San Francisco restaurant community. Its mission is to celebrate and empower the restaurant community through advocacy, education, marketing, events, and training. Founded by restaurateurs in 1936 to give restaurants a collective voice and bargaining power, the GGRA has evolved to be the trusted one-stop resource for the culinary community in the Bay Area and beyond. The GGRA advocates and provides educational and training programs to make sure restaurant members are apprised of legislation and stay in compliance. The GGRA also celebrates and showcases its members through annual events like Eat Drink SF and SF Restaurant Weeks. It also produces events such as its biennial Industry Conference. Its member community includes restaurants of all sizes, types, and cuisines, but largely represents independent restaurants that are so critical to the fabric of San Francisco.

Amicus curiae the Building Owners and Managers Association (BOMA) San Francisco, represents 250 commercial buildings in San Francisco, Marin, Sonoma, and San Mateo counties. Since 1911, the association has represented the commercial real estate industry through advocacy, professional development, and information exchange for property owners, managers, and the various service providers that support commercial building operations.

Amicus curiae SynBioBeta is the premier innovation network for biological engineers, innovators, entrepreneurs, and investors who share a passion for

using biology to build a better, more sustainable planet. Every year SynBioBeta hosts the Global Synthetic Biology Conference which showcases the cutting-edge developments in biology that are transforming how we fuel, heal, and feed the world.

Amicus curiae SAMCEDA (San Mateo County Economic Development Association) was founded in 1953 to promote business issues that enhance and sustain the economic prosperity of our region and its local communities. The message, “Business is Good, Business Brings Opportunity,” remains timeless. The rapid pace of change demands that SAMCEDA meet an ever-changing environment with information, ideas and tools its members can utilize to remain one step ahead.

Amicus curiae the Hotel Council of San Francisco is a nonprofit trade organization representing the San Francisco Bay Area hospitality industry. Founded in 1987, the Hotel Council advocates on behalf of its hotel and allied members to ensure the economic vitality of the local hospitality community. The Hotel Council works with business, civic, and elected leaders at all levels to serve as a pillar of support for the hospitality community, enabling collaboration, advocacy, education, and growth.

Amicus curiae Advance SF is an organization comprised of San Francisco’s leading employers dedicated to supporting an equitable, resilient, and vibrant economy shared by everyone working and living in San Francisco. Through education, advocacy, and research, the organization is a meaningful partner in

efforts to transform San Francisco into an affordable, thriving city. Advance SF addresses issues impacting the ability of people and businesses to prosper including those associated with quality of life, public safety, economic and physical resilience, and access to economic and social opportunity.

Amicus curiae the California Hotel and Lodging Association (CHLA) is the leading resource and advocate for California's more than 6,000 hotels, motels and boutique inns that employ more than 235,000 workers. CHLA, established in 1893, is the largest state lodging industry association in the nation and is a partner with the American Hotel & Lodging Association.

Amicus curiae the San Francisco Travel Association has, for more than 100 years, worked on behalf of its members to promote San Francisco as the destination of choice for conventions and leisure travel. The Association is an outgrowth of the San Francisco Convention and Tourist League, a non-profit, local business association founded in 1909 to reclaim the City's position as a world-class destination in the wake of the devastating 1906 earthquake and fire. San Francisco Travel continues that mission today, aggressively marketing and selling San Francisco to attract visitors. San Francisco Travel is a private, not-for-profit, 501(c)(6) membership organization, headed by a Board of Directors made up of 39 business leaders from various companies, elected by the membership.

Amicus curiae the California Travel Association (CalTravel) is the advocacy organization for the

travel and tourism industry in California. CalTravel has protected and advanced the interests and investments of California's travel industry since 1981. They serve 240 member organizations, including destinations, resorts, attractions, airports, transportation companies, industry associations, ad agencies, universities, media companies, and other organizations for whom travel and tourism advocacy is important.

Amicus curiae the North Bay Leadership Council is an employer led public-policy advocacy organization serving Marin, Sonoma, and Napa Counties. The North Bay Leadership Council is committed to providing leadership in ways to make the North Bay sustainable, prosperous and innovative. Its members represent a wide variety of businesses, non-profits and educational institutions, with a workforce in excess of 25,000. Founded in 1990, the business and civic leaders of the North Bay Leadership Council make it their goal to promote sound public policy to make the region a better place to live and work.

Amici curiae write to shed light on the practical consequences flowing from the Ninth Circuit precedents of which the decision below is the latest extension. Communities in the West face a crisis of homelessness, and decisions by the Ninth Circuit have invited lower courts to act in ways that have both exacerbated that crisis and hamstrung local governments' efforts to respond appropriately, to the detriment of unhoused persons, residents, and businesses alike. *Amici curiae* respectfully submit that this practical information will aid the Court in reversing the Ninth Circuit's decision.

SUMMARY OF ARGUMENT

Communities across the West find themselves beset by one of the most significant humanitarian crises of our time: homelessness. Cities, counties, and other local governments are primarily responsible for addressing the health and safety of their citizens, and that responsibility places local governments on the front lines in responding to the homelessness crisis. Yet, the Ninth Circuit's recent line of decisions, beginning with *Martin v. City of Boise*, have become one of the central obstacles preventing local governments from meaningfully addressing the issue, to the detriment of both unhoused persons and the residents and businesses in those communities. 902 F.3d 1031, 1049-1050 (9th Cir. 2018), amended and superseded on reh'g denied, 920 F.3d 584 (9th Cir. 2019).

Johnson v. City of Grants Pass, 72 F.4th 868 (9th Cir. 2023) is the latest decision exacerbating this legal impediment to sound policy. Before *Johnson*, local governments were already hobbled by *Martin's* ambiguous definition of "involuntary" homelessness. But after *Johnson*, local governments find themselves unable to enact any ordinances or implement policies to address the health and safety concerns that the growth of homelessness and homeless encampments have presented. As a result, local governments have lost yet another arrow in their ever-shrinking quiver to combat the homelessness epidemic.

If allowed to stand, *Johnson* will sow widespread confusion among local agencies within the

Ninth Circuit. Varied, and sometimes competing, judicial opinions interpreting *Martin* have already contributed to a spike in the unhoused population across the West.

The San Francisco Bay Area has borne the brunt of the crisis and, accordingly, has been greatly affected by the *Martin-Johnson* framework. San Francisco has been especially overburdened, as it provides over half of the Bay Area's supportive housing inventory and a large number of its emergency shelters for the unhoused. Like many other cities in California and across the West, San Francisco does not have the resources to provide shelter to the growing homeless population of its surrounding region and, thus, the *Martin-Johnson* line of cases ties its hands with respect to addressing the health and safety concerns presented by homeless encampments. Consequently, *Martin's* implied shelter requirement must, at the least, be narrowed to provide jurisdictions with sufficient flexibility to determine what constitutes adequate shelter so they may speedily provide life-saving assistance to homeless residents and properly maintain public spaces.

The situation has become untenable and lives are on the line. Accordingly, *amici curiae* respectfully urge this Court to reverse the *Martin-Johnson* line of cases.

ARGUMENT

- I. **The Court should reverse the Ninth Circuit because the *Martin-Johnson* line of cases and the confusion they have caused are preventing local governments from responding appropriately to the persistent and rising rates of homelessness.**

Johnson is the latest case extending *Martin*—the initial Ninth Circuit decision that opened the floodgates for the current levels of unsheltered homelessness in the West. In *Martin*, the Ninth Circuit held that the Eighth Amendment’s Cruel and Unusual Punishments Clause prevents cities from enforcing criminal restrictions on public camping unless the homeless person has “access to adequate temporary shelter.” 920 F.3d at 617 & n.8. Following *Martin*, a series of cases were filed seeking to enjoin local governments from enforcing their criminal laws against public camping. E.g. *Coal. on Homelessness v. City & Cnty. of S.F.*, No. 22-cv-05502-DMR, 2022 WL 17905114, at *28 (N.D. Cal. Dec. 23, 2022) (enjoining San Francisco from enforcing its public camping ordinance “as long as there are more homeless individuals in San Francisco than there are shelter beds available”); *Fund for Empowerment v. City of Phx.*, No. CV-22-02041-PHX-GMS, 2022 WL 18213522, at *9 (D. Ariz. Dec. 16, 2022) (district court order enjoining Phoenix from enforcing its public-camping ordinance “as long as there are more unsheltered individuals in Phoenix than there are shelter beds available”).

Below, the *Johnson* decision broadened *Martin*'s already sweeping scope, construing the Eighth Amendment not only to bar criminal sanctions, but also to bar civil actions commonly employed by local governments to ensure the public's health and safety. *Johnson*, 72 F.4th at 880 ("The core issue involving enforcement of the anti-camping ordinances is governed in large part by *Martin*."). In short, *Johnson* leaves local governments worse off by combining *Martin*'s implied shelter requirement with the elimination of civil enforcement as a tool to combat the negative effects of homelessness.

A. *Johnson*'s expansion of *Martin* constitutes an imminent threat to local governments' ability to safely and effectively address homelessness.

In the four years since the *Martin* opinion was issued, and leading up to *Johnson*, the homeless population in the West has dramatically increased. Local governments—always on the front lines of this humanitarian crisis—have found themselves hobbled and, thus, incapable of meeting the rising need for services, safety, and security.²

² Vox, The little-noticed court decision that changed homelessness in Am., <https://www.vox.com/23748522/tent-encampments-martin-boise-homelessness-housing>.

The onset of the COVID-19 pandemic exacerbated the issue.³ In California, a state with the nation’s largest homeless population, the number of homeless citizens increased by 20,243 from 2019 to 2022.⁴ Cities such as San Francisco, Oakland, and Los Angeles struggled to find means to address the growth of encampments while staying within the bounds of *Martin*. A slew of ordinances have been challenged or invalidated since the opinion was published, causing a ripple effect across California and beyond to other parts of the region.

San Francisco’s efforts to curb the rise in permanent homeless encampments throughout the City were stifled through *Martin*-based litigation. In *Coal. on Homelessness v. City & Cnty. of S.F.* a group purporting to represent the interests of the unhoused prevailed in obtaining a preliminary injunction enjoining San Francisco from clearing homeless encampments located within its jurisdiction—even when shelter was offered. No. 22-CV-05502-DMR, 2022 WL 17905114, at *28 (N.D. Cal. Dec. 23, 2022). The district court granted the preliminary injunction based, in part, on

³ Cal Matters, Cal. homeless population grew by 22,000 over pandemic, <https://calmatters.org/housing/2022/10/california-homeless-crisis-latinos/>.

⁴ Compare U.S. Dep’t of Hous. and Urban Dev., The 2019 Ann. Homelessness Assessment Report (AHAR) to Cong., <https://www.huduser.gov/portal/sites/default/files/pdf/2019-AHAR-Part-1.pdf>, with U.S. Dep’t of Hous. and Urban Dev., The 2022 Ann. Homelessness Assessment Report (AHAR) to Cong., <https://www.huduser.gov/portal/sites/default/files/pdf/2022-ahar-part-1.pdf>.

a determination that San Francisco provided insufficient evidence to show it had offered shelter to each and every homeless person at the camps it sought to clear. *Id.* at *22. Accordingly, and in line with the *Martin-Johnson* framework, the district court concluded it was “beyond dispute that homeless San Franciscans have no voluntary ‘option of sleeping indoors,’ and as a practical matter ‘cannot obtain shelter.’” *Id.* at *24. Essentially, the district court found an implied requirement that cities maintain and provide sufficient shelter to every homeless individual or allow them to take up permanent residence in public spaces.

San Francisco found its efforts to address the growth of homeless encampments hamstrung by its inability to prove affirmatively that it offered shelter to each and every homeless individual its employees encountered. Now, with *Johnson* also at play, San Francisco has even less alternatives to protect the health and safety of its residents from the adverse impacts that permanent homeless encampments pose because it cannot fall back on civil penalties as a means for code enforcement.

Legally and practically, the *Martin-Johnson* framework acts as an obstacle to the necessary action cities engage in to protect the public, including providing access to healthcare, safety, and other services to the unhoused.

B. The *Martin-Johnson* framework is creating widespread confusion throughout the West.

The legal strictures and ambiguous shelter requirement imposed by the *Martin* line of cases have also led to widespread confusion among local governments in the region. That confusion will no doubt be intensified if *Johnson* is allowed to stand.

Despite the Ninth Circuit’s “narrow” holding in *Martin*, local agencies are faced with a confusing array of guidance and decisions regarding what is and is not prohibited. Indeed, local governments and lower courts struggle to determine if an ordinance or other camping restriction implicates the *Martin* line of cases by reference to a range of uncertain factors. See, e.g., *Aitken v. City of Aberdeen*, 393 F.Supp.3d 1075, 1081-1082 (W.D. Wash. 2019).

Additionally, while the *Martin* Court distinguished between homeless persons’ voluntary and involuntary conduct, it did not address who bore the burden of establishing voluntariness. See *Fund for Empowerment*, 2022 WL 18213522, at *3. Unfortunately, this has not deterred lower courts from assigning the burden to cities seeking to enforce local laws. *E.g. id.* (holding that Phoenix bore the burden to determine whether sleeping outside on public property was voluntary, and whether those camping in public places could “practically” obtain shelter). Notably, *Martin* did not establish a burden shifting framework, nor did it establish a practicality requirement. Thus, *Martin*’s ambiguities have allowed lower courts to apply its

holding in a manner which has left cities with little to no flexibility in determining adequate shelter needs.

The situation in Phoenix serves as a salient example of the judicial conflict and confusion the *Martin* line of cases has created and how it exacerbates local governments' confusion. Following the *Fund for Empowerment* decision, an Arizona state court issued a competing ruling ordering Phoenix to clean up and remove a homeless encampment because it constituted a public nuisance. *Brown, et al. v. City of Phx.*, No. CV 2022-010439 (Ariz. Super. Ct. Jul. 7, 2023). In its order, the court concluded that Phoenix had erroneously applied *Martin* and admonished the City for intentionally decreasing enforcement of “criminal, health, and other quality of life statutes and ordinances” within the encampment. *Id.* at 3.

If allowed to stand, *Johnson* will contribute to the confusion *Martin* has spawned, leaving cities with scant guidance on how to address the alarming rates of homelessness across the West. Local governments must simultaneously determine whether homeless persons' behavior is voluntary, account for the amount of shelter beds and “practical” access thereto, and address the growing humanitarian aspects the homelessness crisis presents—all while avoiding the use of criminal and civil penalties as a means for enforcement of local ordinances. However well intentioned, *Johnson's* extension of the Eighth Amendment beyond *Martin's* already broad scope unduly and unnecessarily adds unworkable and costly requirements.

In *Martin*'s wake, *Johnson* threatens to sow greater confusion and, consequently, wreak greater havoc across the region. In the meantime, the practical effects of the crisis worsen, negatively impacting the unhoused and other city residents.

II. The Court should reverse the Ninth Circuit because the *Martin* line of cases has only exacerbated homelessness across the West, and fails to competently address public health and safety concerns.

Unsheltered homelessness across the West is at an all-time high since *Martin* was decided and is primed to increase if *Johnson* is allowed to stand. Despite increasing shelter capacity to comply with the *Martin-Johnson* framework, homelessness in western cities remains rampant and ever-growing.⁵

⁵ See Seattle Human Services, Addressing Homelessness, <https://www.seattle.gov/human-services/reports-and-data/addressing-homelessness>; Nat'l Alliance to End Homelessness, Idaho, <https://endhomelessness.org/homelessness-in-america/homelessness-statistics/state-of-homelessness-report/idaho/>; Christinna Bautista, "Homelessness in Ada Cnty. is increasing by 6% in just the last three years," Idaho News 6, May 31, 2023, [https://www.kivity.com/news/homelessness-in-ada-county-is-increasing-by-6-in-just-the-last-three-years#:~:text=Facebook-,Homelessness%20in%20Ada%20County%20is%20increasing%20by%206,just%20the%20last%20three%20years&text=BOISE%2C%20Idaho%20%E2%80%94%20Ada%20County's%20homelessness,and%20local%20businesses%2C%20and%20residents.](https://www.kivity.com/news/homelessness-in-ada-county-is-increasing-by-6-in-just-the-last-three-years#:~:text=Facebook-,Homelessness%20in%20Ada%20County%20is%20increasing%20by%206,just%20the%20last%20three%20years&text=BOISE%2C%20Idaho%20%E2%80%94%20Ada%20County's%20homelessness,and%20local%20businesses%2C%20and%20residents.;); Bay Area Council Econ. Inst., Bay Area Homelessness: New Urgency, New Solutions, <http://www.bayareaconomy.org/files/pdf/HomelessnessReportJune2021.pdf>; Michael Corkery, *Fighting for Anthony: The Struggle to Save Portland*,

Cities across the West have serious and worsening unsheltered homelessness problems. In Phoenix, residents are suing the City for failing to manage homeless encampments which they describe as a “great humanitarian crisis.”⁶ Constrained by *Martin*’s prohibition on criminal enforcement against public encampments, residents have resorted to hiring private security firms to guard their property and businesses.⁷ Similarly, in Sacramento, leaders are being sued for failing to address homeless encampments.⁸ Homeowners recounted being threatened with firearms at their front door and having their properties broken into and vandalized—which has even driven some residents from their homes.⁹

Meanwhile, businesses in San Francisco complain that homelessness is “untenable” and “crippling” to their success with unhoused people harassing

Or., N.Y. Times, Jul. 29, 2023, <https://www.ny-times.com/2023/07/29/us/portland-oregon-fentanyl-homeless.html#:~:text=The%20city%20has%20long%20grappled,to%20the%20city's%20progressive%20identity.&text=Come%20to%20Portland%2C%20his%20sister%20said>.

⁶ *Id.*

⁷ Eli Saslow & Todd Heisler, *A Sandwich Shop, a Tent City and an Am. Crisis*, N.Y. Times, Mar. 31, 2023, <https://www.ny-times.com/2023/03/19/us/phoenix-businesses-homelessness.html>.

⁸ Tran Nguyen, “*Sacramento sued over homeless encampments*,” KTLA5, September 19, 2023, <https://ktla.com/news/california/ap-sacramento-prosecutor-sues-californias-capital-city-over-failure-to-clean-up-homeless-encampments/>.

⁹ *Id.*

guests and employees.¹⁰ Vendors are even declining to deliver in certain areas of the City where homelessness is acutely prevalent.¹¹ Less people are visiting San Francisco, and those that do visit overwhelmingly identify homelessness as the number one improvement from which the City could benefit.¹²

No doubt, the economy is suffering. Data suggests that the presence of homeless encampments and persons on transit and public rights of way are discouraging employees from returning to offices. The unwillingness to return to in-person work is undermining the very tax base with which state and local governments derive the resources needed to provide homeless services. San Francisco's Controller estimates property tax receipts could decline as much as \$200 million in 2028, roughly equal to two-thirds of the revenue from San Francisco's Measure C tax to fund homeless housing.¹³

Missoula declared a state of emergency this past summer due to the unhoused crisis.¹⁴ Currently,

¹⁰ Golden Gate Restaurant Association, "*Member Priorities 2023*," 2023.

¹¹ *Id.*

¹² San Francisco Travel Association, "*San Francisco Travel: 2022 San Francisco Visitor Profile Study*," January-December 2022.

¹³ Morris, J.D. Hallowed-out office spaces could hit S.F.'s city budget hard—here's how bad it could get. San Francisco Chronicle. Nov, 16, 2022. <https://www.sfchronicle.com/sf/article/San-Francisco-office-vacancies-could-mean-a-200-17590029.php>.

¹⁴ Carly Graf, *Missoula struggles to solve increasing homelessness, influx of 'urban campers*, Mont. Free Press, Jul. 14, 2023,

the Montana city has less than half the beds necessary to comply with the *Martin-Johnson* framework despite allocating 2.5 million dollars in 2023 to homeless services.¹⁵ San Francisco similarly has insufficient shelter capacity to support its growing unhoused population—meeting less than half of the demand despite expanding its emergency shelter inventory.¹⁶ Waitlists for shelter beds in San Francisco can be over 300 people long.¹⁷

The ambiguities in the *Martin-Johnson* line of cases as to what constitutes “adequate” shelter and acceptable enforcement also makes it near impossible for local governments in the West to comply with *Martin*’s broader objectives of ensuring municipalities provide the shelter necessary to safeguard public health and safety, while protecting unhoused residents’ Eighth Amendment rights. The situation worsens every day

<https://montanafreepress.org/2023/07/14/missoula-struggles-to-solve-increasing-homelessness-influx-of-urban-campers/>.

¹⁵ *Id.*

¹⁶ Bay Area Council Econ. Inst., Bay Area Homelessness: New Urgency, New Solutions, <http://www.bayareaconomy.org/files/pdf/HomelessnessReportJune2021.pdf>; David Sjostedt, *What Keeps San Francisco Homeless People From Finding Homes? Some Say the Shelter System*, The S.F. Standard, Aug. 4, 2023, <https://sfstandard.com/2023/08/04/as-san-francisco-expands-homeless-shelters-clients-say-the-system-is-holding-them-back/>.

¹⁷ David Sjostedt, *What Keeps San Francisco Homeless People From Finding Homes? Some Say the Shelter System*, The S.F. Standard, Aug. 4, 2023, <https://sfstandard.com/2023/08/04/as-san-francisco-expands-homeless-shelters-clients-say-the-system-is-holding-them-back/>.

and implicates public health and safety concerns throughout the region.

One recent study of unhoused individuals in Los Angeles County found that unhoused persons were nearly 4.5 times more likely to die from coronary heart disease, 8 times more likely to commit suicide, 15 times more likely to be murdered, and 20 times more likely to die from transportation-related injuries as compared to the housed population.¹⁸ Another study found that the average death age for the unhoused is 37% below the housed population.¹⁹ Homeless encampments are often latent with crime and gang activity.²⁰ Unhoused deaths are frequently the result of violent and traumatic injuries, such as stabbings and gunshot wounds.²¹ And fires originating in homeless encampments are increasingly commonplace.²²

¹⁸ L.A. Cnty. Dep't of Pub. Health, *Mortality Rates and Causes of Death Among People Experiencing Homelessness in Los Angeles County: 2014-2021*, http://www.publichealth.lacounty.gov/chie/reports/Homeless_Mortality_Report_2023.pdf.

¹⁹ *Id.*

²⁰ KOMO Staff, *Seattle police bust drug rings in homeless camps*, KOMO News, May 15, 2019, <https://komonews.com/news/local/seattle-police-bust-drug-rings-in-homeless-camps>; Lolita Lopez & Phil Drechsler, *Gangs of LA on Skid Row*, NBC L.A., Mar. 19, 2018, <https://www.nbclosangeles.com/news/gangs-of-la-on-skid-row/167805/>.

²¹ Bay Area Council Econ. Inst., *Bay Area Homelessness: New Urgency, New Solutions*, <http://www.bayareaconomy.org/files/pdf/HomelessnessReportJune2021.pdf>.

²² Joel Grover & Amy Corral, *Firefighters Lose Critical Tool to Battle Rise in Homeless Fires*, NBC L.A., Jul. 25, 2019, <https://www.nbclosangeles.com/news/firefighters-lose-critical->

It is imperative that local governments receive clear and flexible guidance on how to build, locate, and offer what the courts deem to be “adequate” shelter. Yet, the *Martin-Johnson* adequate shelter requirement actually impedes local governments’ ability to address such public health and safety concerns by imposing confusing and contradictory guidance.

III. The court should reverse the Ninth Circuit because the *Martin-Johnson* adequate shelter requirement unfairly and disproportionately burdens regions experiencing the most severe levels of homelessness.

The *Martin-Johnson* shelter requirement is inherently unfair insofar as it requires individual municipalities to provide adequate shelter to meet regional—arguably national—demands. On a practical level, this means that some areas are burdened with devoting significant time, money, and resources to solve cases of homelessness that originated in other areas. Viewing homelessness in such a parochial manner ignores the geographic realities of homelessness, and inadvertently tasks certain cities and counties with solving homelessness problems for entire regions. And because urban cores, where homelessness persists, are often expensive compared to other locations in a given region, this approach is guaranteed to be the costliest way to scale shelter.

tool-to-battle-rise-in-homeless-fires/132908/; Jennifer Medina, *Los Angeles Fire Started in Homeless Encampment, Officials Say*, N.Y. Times, Dec. 12, 2017, <https://www.nytimes.com/2017/12/12/us/california-fire-homeless.html>.

California unfairly shouldered a disproportionate share of homelessness for the United States. The Golden State is home to nearly a third of the Country's homeless despite having just 12% of the total U.S. population.²³ And nearly a third of the homeless population in California lacks access to emergency shelter, making it the state with the largest concentration of homeless individuals without shelter.²⁴

Within California, certain cities like San Francisco and Los Angeles contain the majority of the state's homeless population. Yet many of the unhoused first became homeless elsewhere. In San Francisco, 52% of the homeless population either lived outside the City when first becoming homeless, or were severely housing insecure on arrival and became homeless less than a year later.

California's homelessness rate is also growing faster than most other states.²⁵ In the Bay Area, the population of unhoused individuals has grown nearly four times faster than the general population in the last decade.²⁶ San Francisco is particularly burdened by recent surges in homelessness, which are primarily driven by individuals who became homeless or housing insecure in locations outside the City. In this sense, the *Martin-Johnson* line of cases disproportionately burdens the Bay Area by demanding the region

²³ Bay Area Council Econ. Inst., Bay Area Homelessness: New Urgency, New Solutions, <http://www.bayareaconomy.org/files/pdf/HomelessnessReportJune2021.pdf>.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

shell out resources to care for a homeless population that originated elsewhere.

CONCLUSION

It will take monumental efforts and significant resources to undo the damage *Martin* and *Johnson* have inflicted on cities and local municipalities across the West. As it stands, cities and other local municipalities find themselves cornered, unable to adapt to meet the swiftly changing needs of this crisis. To begin resolving the issue, the current *Martin-Johnson* framework must be abrogated and those decisions reversed.

Accordingly, *amici curiae* respectfully urge this Court to reverse the Ninth Circuit's decision in favor of the City of Grants Pass.

Respectfully submitted,

DAVID C. CASARRUBIAS
Counsel of Record
SAMANTHA D. WOLFF
SAMIR J. ABDELNOUR
TREVOR T. TANIGUCHI
BRENDAN G. ADAMS
SHANDYN H. PIERCE
JILLIAN AMES

Hanson Bridgett LLP
425 Market Street,
26th Floor
San Francisco, CA 94105
(415) 777-3200
dcasarrubias@hansonbridg
ett.com