

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

◆

**BRIEF OF THE CALIFORNIA STATE
ASSOCIATION OF COUNTIES AND THE
LEAGUE OF CALIFORNIA CITIES AS
AMICI CURIAE IN SUPPORT OF PETITIONER**

◆

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Marcus White, <i>Newsom Slams ‘Preposterous’ Injunction on SF Homeless Sweeps</i> , S.F. Examiner, Aug. 30, 2023, https://www.sfexaminer.com/news/housing/gavin-newsom-slams-sf-homeless-sweeps-injunction-as-inhumane/article_340647a4-4766-11ee-8ebe-7bcecf3ba0f4.html	12
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 OTHER AUTHORITIES	
City of Manteca, <i>Homelessness, Homeless Navigation Center</i> , https://www.manteca.gov/departments/office-of-the-city-manager/homelessness/homeless-navigation-center	22
City of Woodland, <i>Homeless Coordination: Permanent Supportive Housing</i> , https://www.cityofwoodland.org/1045/Permanent-Supportive-Housing	18

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Regional Impact Council, <i>Regional Action Plan: A Call to Action From the Regional Impact Council</i> (Feb. 2021), http://www.allhomeca.org/wp-content/themes/allhome/library/images/plan	21
 GOVERNMENT PUBLICATIONS	
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City of Fremont, <i>Fremont Housing Navigation Center Annual Report</i> (Oct. 2020 – Oct. 2021) https://www.fremont.gov/home	22
City of Lodi, <i>Lodi Police Department Policy Manual</i> , Policy 429.2 (Aug. 8, 2023) https://www.lodi.gov/DocumentCenter/View/4153/Lodi-Policy-Policy-and-Procedure	20
City of San Luis Obispo, <i>Homeless Response Strategic Plan 2022-2024</i> (Mar. 21, 2023), https://www.slocity.org/home/showpublisheddocument/34018/638162026749800000	19
City of Stanton, <i>Homeless Services Report: July 2023</i> (Aug. 15, 2023) p. 2, https://cms9files.revize.com/stantonca/Homeless%20Services%20July%202023.pdf	20
State of California Business, Consumer Services and Housing Agency, <i>Putting the Funding Pieces Together: Guide to Strategic Uses of New and Recent State and Federal Funds to Prevent and End Homelessness</i> (Sept. 12, 2021), https://bcsh.ca.gov/calich/documents/	15, 16

**AMICI CURIAE SUBMIT THIS
BRIEF IN SUPPORT OF PETITIONER**

The California State Association of Counties (“CSAC”) and the League of California Cities (“Cal Cities”) respectfully submit this brief as amici curiae in support of Petitioner.



INTERESTS OF THE AMICI CURIAE¹

CSAC is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels’ Association of California and is overseen by the Association’s Litigation Overview Committee, comprised of County Counsels throughout the state. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

Cal Cities is an association of 477 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. Cal Cities is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from

¹ The parties were notified more than ten days prior to the due date of this brief of the intention to file. This brief was not authored in whole or in part by counsel for any party. No person or entity other than amici curiae made a monetary contribution to this brief’s preparation or submission.

all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.



STATEMENT OF THE CASE

Amici join in and refer to the Statement of Facts found in Petitioner's Petition for Writ of Certiorari ("Writ Petition" at 6-14).



SUMMARY OF THE ARGUMENTS

There is perhaps no greater challenge currently facing California's cities and counties than homelessness. Addressing this challenge cuts across almost all aspects of local government activities, including health and behavioral health, land use and housing, social services and job training, public health, code enforcement, and law enforcement. The continuing work toward addressing homelessness is critical for local governments, both for the health and humanity of the unhoused living among us and the quality of life for the entire community. Having every possible tool available to cities and counties is necessary to make progress on this critical issue. That includes, among a myriad of other programs and services, enforcement of camping ordinances in appropriate circumstances.

In *Martin v. City of Boise*, 920 F.3d 584, 616 (9th Cir. 2019) (“*Martin*”), the Ninth Circuit Court of Appeals held that, as applied to involuntary conduct, any ordinance that allowed for the “imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter” unconstitutionally criminalized the status of being homeless. The court described its holding as “narrow,” stating that its ruling does not require government agencies to allow camping at any time or in any place, but rather that “as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.” *Id.* at 617.

Over the last several years, however, this “narrow” holding has become increasingly broader, creating significant uncertainty for local governments within the Ninth Circuit on what it means to be involuntarily homeless and when ordinances prohibiting the time and location of camping may be constitutionally enforced. This has exacerbated the homelessness and homeless encampment challenges – which are now all too familiar to many, especially in California’s urban centers – to the detriment of everyone in the community, including those who are unhoused.

This case is an example of how implementation of *Martin* has become unworkable. The opinion significantly restricts the ability to enforce camping ordinances – even in ways deemed permissible under *Martin v. Boise* – by allowing a class certification that

eliminates the individualized determination of whether a person is involuntarily unsheltered. As a result, in any jurisdiction in which the unhoused population is greater than the number of shelter beds available, plaintiffs can use class certification to enjoin enforcement of camping ordinances against unsheltered persons, even in circumstances where a particular person is not “involuntarily” homeless because they have options other than camping on public property.

To be sure, camping ordinances are not, by themselves, a solution to homelessness. As detailed in this brief below, the State of California and its cities and counties are engaged in unprecedented efforts to address homelessness through the creation of significant new policy initiatives and funding investments. However, camping ordinances can be a useful tool in appropriate circumstances in addressing the complex conditions that exist in our homeless populations. It is therefore critical to have clarification from this Court on the involuntary homeless standard, and for local governments to have workable solutions for providing healthy and safe communities while also protecting the vulnerable population experiencing homelessness.



ARGUMENT

I. Class certification in the context of the Eighth Amendment claims asserted here illustrates how *Martin* has become unworkable.

The district court in this case granted plaintiffs' motion for class certification with a class comprised of "all involuntarily homeless persons in Grants Pass." *Blake v. City of Grants Pass*, No. 1:18-cv-01823-CL, 2019 U.S. Dist. LEXIS 132508 (D. Or. Aug. 7, 2019).² The district court went on to define what it means to be involuntarily homeless for purposes of the class certification:

As to the "involuntary" qualifier of the proposed class, the Ninth Circuit has defined involuntary homelessness as follows: a person is involuntarily homeless when "there is a greater number of homeless individuals in [a jurisdiction] than beds available [in shelters]." *Martin v. City of Boise*, 920 F.3d 584, 617 (9th Cir. 2019). There are more homeless individuals than shelter beds in the City of Grants Pass. Currently, the only shelters for adult homeless individuals are run by the Gospel Rescue Mission. These shelters have a total of thirty beds in a dorm for single men, four bunk rooms for single women, and twelve rooms for mothers with up to four children.

² This unreported district court order on class certification is also available in Appendix C to the Petition for a Writ of Certiorari at App. 206a. For ease of reference, future citations will be to the Appendix.

The PIT Count conducted by UCAN counted 602 currently homeless individuals in Grants Pass. Therefore, there are more homeless individuals than shelter beds in the City of Grants Pass, and Plaintiffs are involuntarily homeless based upon the definition provided by *Martin*.

App. 216a-217a, citations to district court record omitted.

In other words, the class as it was certified by the district court in this case comes down to nothing more than a point-in-time mathematical equation. If plaintiffs seeking class certification can show that there are more homeless persons than there are shelter beds within a particular jurisdiction at a particular point in time, homelessness is considered involuntary and all homeless persons within the jurisdiction at that point in time are therefore included in the class. However, as Circuit Judge Collins noted in dissent from the Ninth Circuit opinion, the district court's interpretation of how the *Martin* court addressed involuntariness is in error. *Johnson v. City of Grants Pass*, 50 F.4th 787, 814.

Martin specified that its holding was narrow, citing case law to reinforce that the established standard is that *as applied to a plaintiff*, there is "not a single place where they can lawfully be." *Martin v. City of Boise*, 920 F.3d 584, 617 (9th Cir. 2019), *citing Pottinger v. City of Miami*, 810 F. Supp. 1551, 1565 (S.D. Fla. 1992), *and Johnson v. City of Dallas*, 860 F. Supp. 344, 350 (N.D. Tex. 1994). *Martin's* ruling that for homelessness to be involuntary there must be no other options

available to the individual is inconsistent with the district court's definition of involuntariness that looks only to the number of unhoused individuals versus the number of shelter beds within that particular jurisdiction at a particular point in time.

A hypothetical proves the point. Even if a jurisdiction has insufficient shelter beds for the entire homeless population, there may be a shelter for individuals with no pets that regularly has empty beds, while there are no available bed spaces for individuals with pets. Under that scenario, an individual with no pets camping in a public place in violation of an ordinance would not be there involuntarily because there is shelter space available to that person. However, an individual with pets in the same situation could be involuntarily without shelter. Under *Martin*, there would be no Eighth Amendment violation in enforcing the ordinance against the person without a pet who declines available shelter space, while there could be a violation for enforcing against the person with a pet. Yet both are included in the district court's class action injunction in this case based on nothing more than the fact that there are not enough shelter beds for the City's entire homeless population.³

³ And this is just one of several plausible hypotheticals. A very real scenario might also be that a particular jurisdiction has insufficient shelter beds, but a neighboring jurisdiction has available beds within a short distance. In fact, as illustrated below in this brief, regional solutions to homelessness are common and encouraged. This is particularly relevant since all states, including California, operate Continuums of Care ("COC"), which receive federal grant money to provide various types of housing and

Perhaps in recognition of this obvious problem with the district court’s class certification, the Ninth Circuit’s majority opinion sidesteps the district court’s definition of involuntary, finding that “[i]ndividuals who have shelter or the means to acquire their own shelter simply are never class members.” *Johnson v. City of Grants Pass*, 50 F.4th 787, 805 (9th Cir. 2022). The opinion states that point even more bluntly in a footnote: “A person with access to temporary shelter is not involuntarily homeless unless and until they no longer have access to shelter.” *Id.* at 805, fn. 24.

There are two problems with the majority opinion on this point. First, it simply does not reflect the class as it was certified by the district court. There is nothing in the district court’s class certification order stating that if a person has access to temporary shelter, they are not part of the class. Rather, the district court quite plainly made the “involuntary” determination based on nothing more than whether the City has more homeless individuals than it does shelter beds. If the majority believed that was not an accurate description of how to determine whether an individual is involuntarily homeless, it should have reversed and remanded for the district court to reconsider the definition of who is included in the class.

Second, the majority opinion’s attempt to redefine the class as only those individuals without temporary

supportive services. 42 U.S.C. § 11381 et seq. The focus of the COC program is on “geographic areas,” which typically go beyond just one city’s boundaries. See 42 U.S.C. § 11386a.

shelter creates a “fail safe” class⁴ that is not only impermissible under the law, but is also unmanageable from the perspective of both the defendants and the court.

The fail-safe class is impermissible because “its membership can only be ascertained by a determination of the merits of the case because the class is defined in terms of the ultimate question of liability. ‘[T]he class definition precludes the possibility of an adverse judgment against class members; the class members either win or are not in the class.’” *Rodriguez v. Countrywide Home Loans, Inc.*, 695 F.3d 360, 369-370 (5th Cir. 2012) (citations omitted).

The class certification analysis here is a classic example of this problem. In attempting to avoid the error made by the district court of creating a class that is inconsistent with the *Martin* standard, the Ninth Circuit creates a class that requires a determination on the merits of the claim to ascertain whether an individual is in the class. Because *Martin* found it is unconstitutional to enforce a camping ordinance against an individual when there is no viable shelter space

⁴ “The fail-safe appellation is simply a way of labeling the obvious problems that exist when the class itself is defined in a way that precludes membership unless the liability of the defendant is established. When the class is so defined, once it is determined that a person, who is a possible class member, cannot prevail against the defendant, that member drops out of the class.” *Kamar v. Radio Shack Corp.*, 375 F.App’x 734, 736 (9th Cir. 2010). See *Ruiz Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1138 (9th Cir. 2016), *Melgar v. CSK Auto, Inc.*, 681 F.App’x 605, 607 (9th Cir. 2017).

available to that individual, defining the class as only those persons for whom there is no viable shelter space available means that determining membership in the class also resolves the ultimate question of liability, which is impermissible.

This approach was recently rejected by the Eighth Circuit in *Orduno v. Pietrzak*, 932 F.3d 710 (8th Cir. 2019). The claim in that case involved a breach of data privacy protections. Plaintiffs were seeking to certify a class comprised of individuals whose data was impermissibly obtained by defendant. Both the district court and the Court of Appeals rejected that approach, finding that plaintiff could not “solve the predominance problem by creating a so-called ‘fail-safe class,’ in which the class is defined to preclude membership unless a putative member would prevail on the merits. That sort of class ‘is prohibited because it would allow putative class members to seek a remedy but not be bound by an adverse judgment – either those “class members win or, by virtue of losing, they are not in the class” and are not bound.’ *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 538 (6th Cir. 2012) (quoting *Randleman v. Fid. Nat’l Title Ins. Co.*, 646 F.3d 347, 352 (6th Cir. 2011)); accord *Messner v. Northshore Univ. HealthSystem*, 669 F.3d 802, 825 (7th Cir. 2012).” *Orduno v. Pietrzak*, 932 F.3d 710, 716 (8th Cir. 2019). Similarly here, individuals who have a shelter bed available to them would fail on their Eighth Amendment claim and by definition would also be excluded from the class.

In addition to violating the rules of class certification, such “fail-safe” classes pose practical problems as well. As the court noted in *Orduno*, a “fail-safe class is also unmanageable, see Fed. R. Civ. P. 23(b)(3)(D), because the court cannot know to whom notice should be sent.” *Orduno, supra*, 932 F.3d at 717. “Insofar as the fail-safe class is a means to establish predominance, its independent shortcomings are an alternative basis to affirm the denial of certification.” *Ibid*; see *Adashunas v. Negley*, 626 F.2d 600, 604 (7th Cir. 1980).

Judge Milan Smith, in his dissent from rehearing en banc, summarized the class certification problem succinctly: “*Martin* misread Supreme Court precedent, yet we failed to give that case the en banc reconsideration it deserved. *Grants Pass* now doubles down on *Martin* – crystallizing *Martin* into a crude population-level inquiry, greenlighting what should be (at most) an individualized inquiry for classwide litigation, and leaving local governments without a clue of how to regulate homeless encampments without risking legal liability. *Martin* handcuffed local jurisdictions as they tried to respond to the homelessness crisis; *Grants Pass* now places them in a straitjacket. If this case does not ‘involve[] a question of exceptional importance,’ I cannot imagine one that does.” App. 142a.

This court should grant the petition to address the unworkability of the *Martin* standard, including to clarify whether and under what circumstances class certification is appropriate in cases where an individualized determination is necessary to prove the underlying claim.

II. District court efforts to follow *Martin* illustrate the confusion local governments face in understanding constitutionally viable options for addressing homelessness.

A review of federal district court cases addressing *Martin* claims related to removal from property or enforcement of camping ordinances underscores Judge Smith’s point that local governments are left “without a clue” in understanding constitutionally viable options for addressing homelessness. For example, some district courts have questioned whether broad injunctions are proper based on the principles of *Martin* since individualized determinations are needed to know whether a person’s homeless status is voluntary. *Fund for Empowerment v. City of Phoenix*, No. CV-22-02041-PHX-GMS, 2022 U.S. Dist. LEXIS 234327 (D. Ariz. Dec. 16, 2022); *Bilodeau v. City of Medford*, 1:21-cv-00766-CL, 2022 U.S. Dist. LEXIS 231124 (D. Or. Nov. 29, 2022). Yet in this case, a broad injunction in regards to a certified class of individuals was issued. Similarly, a very public battle is underway concerning the scope of a broad injunction issued against the City and County of San Francisco in *Coalition on Homelessness v. City and County of San Francisco*, No. 22-cv-05502-DMR, 2023 U.S. Dist. LEXIS 58692 (N.D. Cal. Apr. 3, 2023).⁵

⁵ See Marcus White, *Newsom Slams ‘Preposterous’ Injunction on SF Homeless Sweeps*, S.F. Examiner, Aug. 30, 2023, https://www.sfexaminer.com/news/housing/gavin-newsom-slams-sf-homeless-sweeps-injunction-as-inhumane/article_340647a4-4766-11ee-8ebe-7bcecf3ba0f4.html.

Some courts have found that for a claim to be valid under *Martin*, a plaintiff must show that camping is banned *anywhere* in the jurisdiction, and not just in one particular park or area. *Bacon v. City of Chula Vista*, No. 1:21-cv-00766-CL, 2022 U.S. Dist. LEXIS 231124 (D. Or. Aug. 30, 2022); *Tournahu v. Flynn*, No. 22-cv-03220-EMC, 2022 U.S. Dist. LEXIS 148418 (N.D. Cal. Aug. 18, 2022). In other cases, claims are allowed to proceed even when bans are not city-wide but apply only to one area of the city. *Boring v. Murillo*, No. LA CV 21-07305-DOC, 2022 U.S. Dist. LEXIS 198089 (C.D. Cal. Aug. 11, 2022).

Another area of confusion is whether a city or county must provide alternative indoor shelter in order to avoid a *Martin* claim, or whether alternative outdoor camping sites suffice. In *Warren v. City of Chico*, No. 2:21-CV-00640-MCE-DMC, No. 2:21-CV-00640-MCE-DMC (N.D. Cal. July 8, 2021), among the reasons cited by the court for ruling in favor of plaintiffs is that *Martin* “seems to contemplate shelter will offer individuals a place to sleep ‘indoors’” and thus making a camping site available near a local airport was not enough to make individuals choosing not to go to the site involuntarily homeless. By contrast, another district court case found that “*Martin* may not apply so long as there are spaces where unhoused individuals may camp without risking sanctions.” *Tournahu v. Flynn*, No. 22-cv-03220-EMC, 2022 U.S. Dist. LEXIS 148418 (N.D. Cal. Aug. 18, 2022)

It is not even clear whether a local government can clear campers from a publicly-owned lot that, unlike a

park, is generally not open to the public. In *Rios v. County of Sacramento*, 562 F. Supp. 3d (E.D. Cal. 2021), the court ruled in favor of plaintiffs who were occupying a vacant lot owned by the County, finding that *Martin* prevented the County from enforcing its property rights as a landowner against trespass where plaintiffs “chose a publicly owned lot that has been vacant for over ten years, with no forthcoming development plans, to create a community where they could sleep without isolation and risk of danger.” Yet in *Spinks v. California Department of Transportation*, No. 3:22-cv-05067-WHO, 2023 U.S. Dist. LEXIS 35426 (N.D. Cal. Mar. 2, 2023), the court found there was no Eighth Amendment claim where plaintiff did not have a legal right to be on the government-owned property because, unlike the sweeping criminal ban on camping in *Martin*, there was no criminal ordinance at play in the trespass removal.

The only thing clear from the dizzying array of cases in every direction post-*Martin* is that all interests – government, businesses, community organizations, and housed and unhoused residents – need clarification on the permissible means for addressing public camping and encampments. The current patchwork of cases and endless litigation is not workable or sustainable.

III. Local governments in California are tackling the homelessness crises through use of creative and proactive approaches, and enforcement of anti-camping ordinances is just one tool among many used to protect the health and welfare of the community, including the unhoused population.

In California, unprecedented efforts are underway to address homelessness. While the ability to enforce time, place and manner camping restrictions on a case-by-case basis is important in addressing this difficult and pervasive problem, it is by no means the only approach being used at the State and local level. In considering the Petition for a Writ of Certiorari, this Court should keep in mind the ongoing and comprehensive homelessness programs Amici's members are undertaking.

The examples are numerous. By way of illustration, consider the following:

State Investments in Homelessness Programs.

The State of California has recently created and provided funding for a myriad of homelessness programs, including Project Homekey, Homeless Housing, Assistance and Prevention Program, CalWorks Housing Support Program, CalWorks Homeless Assistance Program, Housing and Disability Advocacy Program, Home Safe, Bringing Families Home, Veterans Support to Self-Reliance, and more.⁶ Funding for these

⁶ State of California Business, Consumer Services and Housing Agency, *Putting the Funding Pieces Together: Guide to Strategic*

programs can be used for non-congregate shelter, interim housing, rental assistance, permanent supportive and service-enriched housing, and diversion and homelessness prevention.⁷

CARE Court. The California State Legislature adopted and the Governor signed SB 1338 [Cal. 2022 Stats. Ch. 319], creating the Community Assistance, Recovery, and Empowerment (“CARE”) Court Program. This new program, which begins to phase in next month, will help bring some of the most difficult-to-serve populations into the system through court-adopted plans to provide them with available social services and housing. Counties and the courts are now doing the preliminary work to establish the CARE Courts, with implementation set to begin in October in the Cohort One counties.

Encampment Resolution. The State of California has invested \$700 million for Encampment Resolution Funding (“ERF”) “to support collaborative, innovative efforts to resolve encampment issues, and connect people experiencing unsheltered homelessness to supportive services and housing.”⁸ Notably, the FY 22-23 funds prioritizes \$150 million for assisting

Uses of New and Recent State and Federal Funds to Prevent and End Homelessness (Sept. 12, 2021) p. 5, https://bcsh.ca.gov/calich/documents/covid19_strategic_guide_new_funds.pdf.

⁷ *Ibid.*

⁸ See California Business, Consumer Services and Housing Agency, California Interagency Council on Homelessness, FY 22-23 Budget Summary (Sept. 1, 2022) p. 1, https://bcsh.ca.gov/calich/meetings/materials/20221017_budget_letter.pdf.

persons living in encampments located on state rights-of-way.

Investments in Supportive Services. In California, cities and counties work in partnership with the State to implement all manner of supportive services designed to address the underlying causes of homelessness. In FY 22-23 alone, these include, but are not limited to:⁹

- \$3.1 billion to continue implementation of CalAIM, which provides incentives to build integrated, long-term services and programs clinically linked to a housing continuum for our homeless population.
- \$1.5 billion over two years for the Behavioral Health Bridge Housing Program to provide additional housing and treatment for those with complex behavioral health needs.
- \$1.4 billion over five years for the Medi-Cal Community-Based Mobile Crisis Intervention Services as a covered Medi-Cal covered benefit.
- \$644.2 million for the Housing and Homelessness Incentive Program to fund local plans to address homelessness and housing.

Permanent Supportive Housing. Amici's members are making investments in permanent supportive

⁹ California Dept. of Finance, California State Budget Summary FY 22-23 (June 27, 2022) pp. 89-92, <https://www.ebudget.ca.gov/2022-23/pdf/Enacted/BudgetSummary/HousingandHomelessness.pdf>.

housing, which provides short- or long-term rental subsidies in combination with varying levels of supportive services. For example, Los Angeles County has increased available permanent supportive housing slots to 33,592, and its placement of clients into permanent housing increased 74% on an annual basis between 2015 and 2020.¹⁰ Similarly, the City of Woodland partnered with community non-profits and affordable housing developers to create what it calls “Woodland Micro-Neighborhood.” The project is a mixed-income development of approximately 100 for-rent single and duplex micro-dwellings. The first phase of 60 micro-houses is underway, funded through a combination of federal Housing First grants and State’s \$2 billion No Place Like Home bond program. The project provides shelter for the most vulnerable – those who are homeless or unstably housed.¹¹ Even the small city of King, California (a community of roughly 14,000 in the Salinas Valley) is working on permanent supportive housing for its unhoused residents. The City had previously partnered with local agencies and non-profits to temporarily relocate a group of homeless individuals and families from a riverbed with unsafe conditions, such as extreme weather, flooding issues, and significant fire hazards. (In fact, one homeless individual had even died as a result of one of those fires.) Now, with the support of Project Homekey funds, the

¹⁰ Los Angeles County Homeless Initiative, *What We Do: Permanent Housing*, <https://homeless.lacounty.gov/permanent-housing/>.

¹¹ City of Woodland, *Homeless Coordination: Permanent Supportive Housing*, <https://www.cityofwoodland.org/1045/Permanent-Supportive-Housing>.

City is creating a permanent facility with enhanced services.¹²

Mobile Crisis Units. Many jurisdictions have created mobile crisis units as an alternative to a traditional law enforcement response to certain crisis calls in the community. An example comes from the City of San Luis Obispo, which adopted a Homeless Response Strategic Plan earlier this year that includes its new mobile crisis unit, defined as: “A City funded program that consists of one City of San Luis Obispo Firefighter/Paramedic paired with a social worker from Transitions Mental Health to provide deescalation and relief to individuals experiencing a behavioral health crisis. Mobile crisis services include screening, assessment, stabilization, de-escalation, follow-up, and coordination with healthcare services and other support services.”¹³ Similarly, the City of Stanton, with a population of under 40,000, employs four full-time Homeless Outreach Coordinators who use a standardized assessment process as a road map to customize the needs of the individual and their unique circumstances and match them with supportive services conducted by various regional partners. This team has connected with over 400 individuals in just the first

¹² Ryan Cronk, *King City’s Homeless Housing, Services Approved*, King City Rustler, Mar. 24, 2022, <https://kingcityrustler.com/king-citys-homeless-housing-services-approved/>.

¹³ City of San Luis Obispo, *Homeless Response Strategic Plan 2022-2024* (Mar. 21, 2023) p. 44, <https://www.slocity.org/home/showpublisheddocument/34018/638162026749800000>.

half of this year alone.¹⁴ The City of Lodi has taken a hybrid approach by creating a “Community Liaison Officer” position within its police department. Officers who serve as Community Liaison Officers are trained to offer assistance and facilitate access to services for those who are homeless or transient. They are charged with the duty to know and use all available resources such as local shelters, low-budget motels, service providers, housing agencies, transitional living programs, city programs, health/mental health agencies, clinics, case managers, school districts, and county family resource agencies to help such individuals improve their living conditions.¹⁵

Regional Approaches. Another tool being utilized by Amici’s members as part of a comprehensive approach towards addressing homelessness is to coordinate regionally. One such example is the Regional Action Plan in the Bay Area. The plan was developed by a coalition of state and local elected officials, policy-makers, affordable housing, social equity and economic mobility stakeholders, housing and homelessness service providers, and business and philanthropic partners across nine bay area counties. The plan emphasizes a multifaceted approach that does not just rely on emergency shelter, but includes homelessness prevention,

¹⁴ City of Stanton, *Homeless Services Report: July 2023* (Aug. 15, 2023) p. 2, <https://cms9files.revize.com/stantonca/Homeless%20Services%20July%202023.pdf>.

¹⁵ City of Lodi, *Lodi Police Department Policy Manual*, Policy 429.2 (Aug. 8, 2023) p. 419, <https://www.lodi.gov/DocumentCenter/View/4153/Lodi-Police-Policy-and-Procedure>.

interim or emergency housing, permanent, deeply affordable, or permanent supportive housing, and housing subsidies.¹⁶ As another example, the Bakersfield Kern Regional Homeless Collaborative was initially formed by the County of Kern and the City of Bakersfield to recommend solutions to end homelessness in the region. Today, the organization serves as the fiscal agent for the Bakersfield/Kern County Continuum of Care and works with the region's local governments, non-profits and others to implement evidenced-based approaches to ending homelessness, focused particularly on helping those experiencing homelessness to maintain permanent housing and access supportive services. And again, in the City of Lodi, its Community Liaison Officers partner with San Joaquin County to provide mental health outreach and mental health services to the homeless population. Through a bi-weekly outreach team that includes a homeless liaison from San Joaquin County Mental Health, a representative from an organization that helps veterans, and a representative from an organization that helps with healthcare, the city, county and other organizations work together to help better serve their homeless citizens.

Navigation Centers. In 2019, the Legislature adopted AB 101 [Cal. Stats. 2019 Ch. 159], which established requirements for local jurisdictions to allow

¹⁶ Regional Impact Council, *Regional Action Plan: A Call to Action From the Regional Impact Council* (Feb. 2021) pp. 9-10, http://www.allhomeca.org/wp-content/themes/allhome/library/images/plan/210413_Regional_Action_Plan_Final.pdf.

a Low-Barrier Navigation Center (“LBNC”) as a by-right use in certain zoning districts. LBNCs are a “Housing First, low-barrier, service-enriched shelter focused on moving people into permanent housing that provides temporary living facilities while case managers connect individuals experiencing homelessness to income, public benefits, health services, shelter, and housing.” Cal. Gov. Code, § 65660, subd. (a). LBNCs reduce barriers to entry into temporary shelters for chronically homeless persons who have been living on the streets or in encampments. Upon entry, services are offered to help connect eligible persons to permanent housing. LBNCs have opened across the State following AB 101 to link those experiencing homelessness to available housing and other resources.¹⁷

Safe Camping and Parking Sites. Many California cities and counties provide safe camping sites with 24-hour security, portable bathrooms and storage. For example, the Los Angeles Homeless Services Authority, a joint powers authority created by the City of

¹⁷ See, e.g., City of Fremont, *Fremont Housing Navigation Center Annual Report* (Oct. 2020 – Oct. 2021) <https://www.fremont.gov/home/showpublisheddocument/11009/637957303441430000>; City of Manteca, *Homelessness, Homeless Navigation Center*, <https://www.manteca.gov/departments/office-of-the-city-manager/homelessness/homeless-navigation-center>; Gabriel Porras, *Construction Starts on Stockton’s First Navigation Center, Low-Barrier Shelter* (ABC10 June 24, 2022), <https://www.abc10.com/article/news/local/stockton/construction-starts-low-barrier-shelter/103-6197fef5-1aa9-479a-838a-abfb9ce8d347>; Joe Vinatieri, *Whittier is Doing All It Can to Address Homelessness*, Whittier Daily News, July 14, 2023, <https://www.whittierdailynews.com/2023/08/12/what-whittier-is-doing-on-homelessness/>.

Los Angeles and the County of Los Angeles, operates 22 safe parking programs that provide vehicle dwellers with a safe and legal place to park and sleep at night.¹⁸ The programs provide: access to park a vehicle in a safe parking lot with onsite security and restrooms; access to have a Coordinated Entry System assessment completed; referrals and linkages to community resources; and access to case management, financial assistance and benefit connection. Continuing to be creative about how to meet the demand for such services, the Los Angeles Homeless Services Authority recently received approval from the Federal Aviation Administration to allow a safe parking program in designated parking lots at the LAX airport.¹⁹ Camping sites are being created as well. After moving almost all the 200 residents who were camping underneath a freeway into stable housing, the City of Sacramento’s “Safe Ground” program opened up a designated safe camping site with space for 60 tents that will serve up to 110 people experiencing homelessness with access to restrooms, showers, electricity, garbage collection and staff available around the clock to connect people with services and programs.²⁰

¹⁸ Los Angeles Homeless Services Authority, *LAHSA-Administered Safe Parking Sites in Los Angeles* (May 25, 2022) <https://www.lahsa.org/news?article=592-safe-parking>.

¹⁹ Susan Carpenter, *FAA Grants LAX Permission for Homeless Safe Parking Program*, Spectrum News 1, Feb. 16, 2022, <https://spectrumnews1.com/ca/la-west/homelessness/2022/02/16/faa-grants-lax-permission-for-homeless-safe-parking-program>.

²⁰ Giacomo Luca, *Temporary 60-Tent ‘Safe Ground’ Site Opens for Homeless in Miller Park* (ABC10 Feb. 7, 2022) <https://>

These examples serve as an important reminder that homelessness in California is a complex problem with many root causes, and it demands a comprehensive solution consisting of emergency, temporary and permanent housing coupled with a vast array of social and health care services. Even as more innovative programs and services come online, the ability to enforce lawful time, place and manner restrictions against a particular individual with shelter options available is a critical component to the overall well-being of the community, notwithstanding the fact that there might be more unhoused individuals than shelter beds available in a particular jurisdiction on a given night. The Petition for a Writ of Certiorari should be granted because the Ninth Circuit's majority panel opinion makes it incredibly difficult for cities and counties to enforce such ordinances in a manner consistent with *Martin*, and renders it nearly impossible for local governments to place any limits on the use or occupation of public space, even when necessary for the public's health, safety, and welfare.



CONCLUSION

The Ninth Circuit's opinion, and in particular its affirmance of the district court's class certification, is another in a line of federal court cases interpreting

Martin that make *Martin* unworkable, and calls into question the ability of local governments to enforce camping ordinances in a manner consistent with *Martin*. This undermines the incredible efforts that are underway in cities and counties across the State to create short- and long-term alternatives to homelessness and provide health and social services to provide stability and resources to those facing chronic housing insecurity. CSAC and Cal Cities therefore urge this Court to grant the Petition for a Writ of Certiorari in this case.

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