


No. 19-247

In the
Supreme Court of the United States



CITY OF BOISE,

Petitioner,

v.

ROBERT MARTIN, LAWRENCE LEE SMITH,
ROBERT ANDERSON, JANET F. BELL,
PAMELA S. HAWKES, AND BASIL E. HUMPHREY,

Respondents.

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

**BRIEF OF AMICUS CURIAE
LEAGUE OF OREGON CITIES
IN SUPPORT OF PETITIONER**

ANNA M. JOYCE
COUNSEL OF RECORD
JACQUELINE S. KAMINS
HARRY B. WILSON
MARKOWITZ HERBOLD PC
1455 SW BROADWAY, SUITE 1900
PORTLAND, OR 97201
(503) 295-3085
ANNAJOYCE@MARKOWITZHERBOLD.COM

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COUNSEL FOR AMICUS CURIAE

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INTEREST OF AMICUS CURIAE¹

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

Oregon cities are, quite literally, on the front lines of confronting homelessness in America. Oregon has America’s second highest percentage of unsheltered homeless population—four times the national average.² Oregon cities have been far from complacent in their efforts to address this serious, yet complicated, crisis. Cities are attempting a broad range of solutions, from economic to creative. In 2018, residents of the City of Portland passed a \$652 million bond to address the homelessness crisis, just two years after residents approved a similar \$258 million bond—in addition to

¹ Blanket consents to file amicus briefs have been filed by both Petitioner and Respondents. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae* or their counsel made a monetary contribution to its preparation or submission.

² Zane Sparling, *Feds Say Oregon Has Second-Most Unsheltered Homeless*, Forest Grove News Times (Jan. 7, 2019), <https://pamplinmedia.com/fgnt/36-news/416454-318926-feds-say-oregon-has-second-most-unsheltered-homeless>.

the city’s over \$32 million annual investment in homeless services.³ These financial investments are significantly larger than those of other cities of similar size.⁴ At the other end of the spectrum, several smaller cities are erecting “homeless villages”—collections of tiny houses with access to services designed to transition homeless residents to permanent housing.⁵

Oregon cities are also obligated to provide safe and livable communities for all residents, a charge that has become nearly impossible in the wake of the decision in *Martin v. City of Boise*, the subject of the petition. The decision demands that a city follow a hopelessly unworkable framework before it can prohibit someone from sleeping on city property. And, as a direct result, the majority of Oregon cities with ordinances

³ OPB Staff, *Portland-Area Voters Pass \$653 Million Affordable Housing Bond*, Or. Pub. Broadcasting (Nov. 6, 2018), <https://www.opb.org/news/article/oregon-election-affordable-housing-metro/>; Jim Redden, *Wheeler: Homeless Spending Straining City Budget*, Portland Tribune (May 8, 2019), <https://pamplinmedia.com/pt/9-news/427695-334532-wheeler-homeless-spending-straining-city-budget> (Portland spending 7% of general budget to fight homelessness).

⁴ See, e.g., Michael Lyle, *Las Vegas Asks to Raise Taxes, Fees to Take on Homelessness Crisis*, Nevada Current (Nov. 15, 2018), <https://www.nevadacurrent.com/2018/11/15/las-vegas-asks-to-raise-taxes-fees-to-take-on-homelessness-crisis/> (Las Vegas spends 2% of general budget to combat homelessness).

⁵ Damian Mann, *More Homeless Villages in the Works*, Mail Tribune (June 4, 2019), [https://mailtribune.com/news/top-stories/grants-pass-will-get-homeless-village-similar-to-medford-oregon](https://mailtribune.com/news/top-stories/grants-pass-will-get-homeless-village-similar-to-medford-oregon;); *This Tiny Home Community in Oregon Is Bringing Shelter and Hope to the Homeless*, Huffpost, https://www.huffpost.com/entry/tiny-homes-are-helping-address-homelessness-in-eugene-oregon_n_5b19a0dde4b086050ad1f320 (last visited Sept. 18, 2019).

that restrict camping on public property have altogether stopped enforcement.

The cost imposed by these unchecked homeless encampments is catastrophic. Cities are forced to spend huge portions of already stretched budgets on law enforcement patrols and costly yet ineffective, short-term clean-up efforts—funds that could otherwise be used to meaningfully address the housing crisis. The last thing Oregon cities need as they attempt to alleviate homelessness and protect livability is a decision whose requirements stymie both efforts.



SUMMARY OF ARGUMENT

In the opinions dissenting from and concurring with the Ninth Circuit’s decision denying rehearing *en banc*, Judge Smith and Judge Berzon looked into their individual crystal balls and foresaw very different outcomes of the panel’s decision. Judge Berzon’s concurrence brushes away any concerns: “There is no reason to believe that [the homelessness crisis] has grown, and is likely to grow larger, because *Martin* held it unconstitutional to criminalize simply sleeping somewhere in public if one has nowhere else to do so.” Pet.App.6a. Judge Smith, on the other hand, soberly cautioned: “I fear that the panel’s decision will prohibit local governments from fulfilling their duty to enforce an array of public health and safety laws. Halting enforcement of such laws will potentially wreak havoc on our communities.” Pet.App.20a. In the year since the *Martin* decision, Oregon’s experience has rendered Judge Smith’s prophecy a reality.

As Judge Smith predicted, the majority of Oregon cities are not enforcing ordinances prohibiting camping on city property. The cost of complying with the Ninth Circuit's requirements to enforce such ordinances is simply too great. Indeed, the very first requirement is a non-starter—cities must count homeless individuals and determine whether there are enough vacant shelter beds. Counting homeless people is prohibitively expensive for large cities, and often cannot be done with any accuracy. Second, most shelter beds do not qualify under the Ninth Circuit's decision. The majority of homeless shelters are sponsored by religious organizations which, according to the opinion, infringes upon the Establishment Clause. Moreover, many smaller cities and towns do not have a shelter within city limits at all and therefore cannot prohibit camping on their city property—even if a shelter is in an adjacent city. Finally, even direct evidence of an individual's voluntary choice to forego a vacant shelter bed is irrelevant—if there are more homeless individuals than available, non-religious shelter beds, the choice to sleep outside is categorically involuntary and cannot be regulated.

Judge Smith also correctly foresaw that the inability to prevent people from sleeping on public property would wreak havoc on Oregon's cities. The sheer need for cleanup and law enforcement patrol is enormous. And, likely contrary to the Ninth Circuit's intention, there has been a marked increase in unsheltered homeless in the aftermath of the court's opinion. Citizen complaints have risen dramatically, reflecting not only resident dissatisfaction, but also reduced tourism, often in cities hardest hit by Oregon's timber industry decline. Not only does this opinion do nothing

to alleviate the conditions for those experiencing homelessness, it has exacerbated the secondary crisis—the impact on cities and towns of the proliferation of the unsheltered homeless.



ARGUMENT

I. OREGON CITIES ARE PREVENTED “FROM FULFILLING THEIR DUTY TO ENFORCE AN ARRAY OF PUBLIC HEALTH AND SAFETY LAWS.”⁶

The Ninth Circuit’s framework to enforce no-camping ordinances is impossible to satisfy. Judge Berzon reassures that the opinion rejects only “municipal ordinances that criminalize sleeping, sitting, or lying in all public places, when no alternative sleeping space is available”—apparently assuming that cities have a magic wand to devise a system that prohibits sleeping only in some public places, or only when shelter beds are available. Pet.App.3-4a (emphasis in original). The most telling indicator is the startling breadth of the decision: the vast majority of Oregon cities with no-camping ordinances have no such wand. Rather, they have abandoned efforts to enforce those ordinances, full stop. In most Oregon cities and towns, nothing stands in the way of homeless people sleeping on sidewalks, alleys, parks, and neighborhoods streets. Any examination of the Ninth Circuit decision demonstrates why this is so.

⁶ Pet.App.20a.

First, the opinion allows enforcement of a city-wide ordinance preventing people from camping on public property only on nights when the number of vacant shelter beds exceeds the number of homeless people within city limits. Pet.App.15a. As Judge Smith noted, it is widely recognized that in most large cities, it is not possible to count homeless with any accuracy and without significant expense.⁷ Pet.App.17a. Cities confronting a serious problem need a serious solution; diverting funds from the provision of critical services to a Sisyphean exercise in tallying is not good governance.

Moreover—and despite the known difficulty of achieving accuracy—the Ninth Circuit decision leaves utterly no room for error. Many Oregon cities and towns report that they have already received lawsuits or threats of litigation based on *Martin*, subjecting them to potentially massive litigation costs.

Indeed, the impact on one struggling Oregon city is substantial. The District of Oregon recently certified a class action in the City of Grants Pass of homeless individuals who wish to sleep on city property, using a definition of homelessness that includes individuals

⁷ See Institute of Medicine (US) Committee on Health Care for Homeless People. *Homelessness, Health, and Human Needs*, Appendix B, “The Methodology of Counting the Homeless”, Washington (DC): National Academies Press (US); 1988. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK218229/> (recognizing that no method of counting the homeless is free from technical inadequacies because of the mobility of the population, varying definitions of homelessness, the cyclical nature of homelessness, and the reluctance of homeless individuals to be found or interviewed).

living in transitional and subsidized housing.⁸ Grants Pass has been hit hard by the loss of the timber industry, and experienced job losses at twice the national average during the great recession.⁹ It employs one full-time attorney and one part-time attorney.¹⁰ The costs of this litigation have likely already exceeded the city’s annual budget for legal services and discovery has barely begun.¹¹ Oregon cities are on notice that their homeless counts will be carefully scrutinized and a single error carries potentially devastating consequences.

Second, the Ninth Circuit draws a seemingly random line of where this tally must occur: within the “municipality.” Pet.App.16a. However, many small cities—often the most impacted by the arrival of a large encampment—are simply too small to have a shelter within the municipality’s limits and are therefore powerless to enforce a no-camping ordinance. This is true even when the nearest shelter is in a neighboring town. For example, there are no homeless shelters in North Bend, Oregon. However, the neighboring town

⁸ *Blake, et al. v. City of Grants Pass*, 1:18-cv-01823-CL, 2019 WL 3717800 at *1 (D. Or. Aug. 7, 2019).

⁹ Josh Lehner, *Poverty and Progress, Josephine County Edition*, Oregon Office of Economic Analysis (Nov. 3, 2016), <https://oregoneconomicanalysis.com/2016/11/03/poverty-and-progress-josephine-county-edition/>.

¹⁰ *Adopted Operating & Capital Budget*, City of Grants Pass, Oregon, <https://www.grantspassoregon.gov/DocumentCenter/View/12918/Adopted-Operating-Budget-Document-FY19?bidId=> (last visited Sept. 18, 2019).

¹¹ *See* Docket, *Blake, et al. v. City of Grants Pass*, 18-cv-01823-CL, 2019 WL 3717800 (D. Or. 2019).

of Coos Bay’s shelter is 1.4 miles from North Bend city center.¹² An individual experiencing homelessness in North Bend could be within walking distance of a shelter with vacant beds but decides to sleep on the sidewalk. For purposes of the Ninth Circuit decision (and contrary to reality) this individual has nowhere else to sleep and must be permitted to sleep on public property.

Third, even the existence of a shelter with vacant beds within municipal limits is frequently insufficient to enable cities to prevent people from sleeping on public property. Many shelters—indeed, according to some studies, a majority of shelters¹³—are sponsored by religious organizations with a “religious atmosphere.” Pet.App.47a. Under the *Martin* decision, these shelters are not viable options because they implicate the Establishment Clause. Pet.App.47-48a. And even non-religious shelters have rules that would preclude some people from using their services, including restrictions on pets, single people, drug and alcohol use, and time of entry.¹⁴

¹² *North Bend Homeless Shelters & Services for the Needy*, Homeless Shelter Directory, <https://www.homelessshelterdirectory.org/cgi-bin/id/city.cgi?city=North%20Bend&state=OR> (last visited Sept. 18, 2019).

¹³ Adelle M. Banks, *Homeless Find Rest in Faith-Based Shelters More Than Others*, Religion News Service (Feb. 1, 2017), <https://religionnews.com/2017/02/01/homeless-find-rest-in-faith-based-shelters-more-than-others/>.

¹⁴ Rui Kaneya, *How Ditching The Rulebook Helped This Homeless Shelter Get People Off The Street*, Huffpost (Dec. 6, 2017), https://www.huffpost.com/entry/hawaii-next-step-homeless-shelter_n_7489214.

Fourth, the opinion's casual reference to a city's ability to permit camping only in some area belies reality. Pet.App.3a. Establishing areas of public property where people are authorized to sleep creates a host of problems. First, most public property is not safe for human habitation and authorizing camping in such areas with no services puts the campers at risk of injury or illness, and the city at risk of liability. Moreover, cities that do have areas designated for homeless report increases of crime from those areas, with the campers as both perpetrators and victims. Finally, cities that have designated certain areas of public property as available sites for homeless people to sleep experienced an unfortunate consequence: the town's unsheltered homeless population increases. For example, the City of Brownsville has a population of approximately 1840 and estimated its homeless population at 1.¹⁵ When the city allowed camping in the town's only park, the homeless population increased more than 20-fold, creating a critical drain on city services in such a small town.

Finally (and ironically), evidence that an individual intentionally decided to forego available shelter and sleep on public property does not rebut the Ninth Circuit's presumption that any decision to sleep outside is involuntary. Under the Ninth Circuit's opinion, the only question is whether the city conducts a count of homeless people and determines the number of people exceeds available beds; whether people would ever use the beds is irrelevant. Short of that count, enforcement

¹⁵ *Population of Cities in Oregon (2019)*, World Population Review, <http://worldpopulationreview.com/states/oregon-population/cities/> (last visited Sept. 18, 2019).

against those who announce their refusal to go to a shelter is impossible.

For example, a Portland man sued the city for attempting to remove a wooden, padlocked “home” he erected under a city bridge. He describes himself as “voluntarily homeless,” choosing not to waste his undisputed monthly income on rent or sleeping in a homeless shelter “[w]ith all those people coughing and hacking.”¹⁶ Although the district court dismissed the case, the Ninth Circuit remanded for reconsideration in light of *Martin*.¹⁷ This man is not alone—many unsheltered homeless freely acknowledge that they will not go to a shelter, regardless of the availability of beds.¹⁸ And this phenomenon has grown more acute,

¹⁶ Maxine Bernstein, *Appeals Court Revives Challenge of Portland’s Anti-Camping Ordinance by Man Living Under Bridge*, *The Oregonian* (Jan. 29, 2019), https://www.oregonlive.com/portland/2018/10/appeals_court_revives_challeng.html; Lyndsey Hewitt, *Homeless Advocate’s Challenge of City Camping Ordinance Goes to Federal Appeals Judges*, *Portland Tribune* (July 13, 2017), <https://pamplinmedia.com/pt/9-news/366186-247605-homeless-advocates-challenge-of-city-camping-ordinance-goes-to-federal-appeals-judges>.

¹⁷ *O’Callaghan v. City of Portland*, F. App’x 704 (9th Cir. 2018).

¹⁸ Arielle Brumfield, *Homelessness on Rise in Central Oregon*, *KTVZ* (Aug. 9, 2019), <https://www.ktvz.com/news/homelessness-on-rise-in-central-oregon/1106300788> (Camper explaining: “If you’ve ever been to jail, I would compare it to that. You have to be in by a certain time, 5:30 p.m. to 7 p.m. at night and then be out by 6 o’clock in the morning.”); Carsyn Currier, *Homeless Shelter Reaction After Class-Action Lawsuit for Homeless in Grants Pass*, *KTVL* (Aug. 13, 2019), <https://ktvl.com/news/local/homeless-shelter-reaction-after-class-action-law-suit-for-homeless-in-grants-pass> (Shelter employee acknowledging: “A lot of homeless people are

as law enforcement in cities across Oregon report homeless individuals citing *Martin* and refusing to even answer questions necessary to determine whether they qualify for an available shelter bed. With all the hurdles, costs, and risk to enforcing no-camping ordinances, it is no wonder that most Oregon cities have thrown up their proverbial hands and given up any effort to avert the significant problems stemming from large numbers of people camping on public property.

II. NON-ENFORCEMENT HAS “WREAKED HAVOC”¹⁹ ON OREGON CITIES.

The consequences of Oregon cities’ inability to prevent people from sleeping on public property are disastrous. Before the Ninth Circuit decision, Oregon already far exceeded the national rate of homelessness, and ranks second in the nation in unsheltered homeless.²⁰ Against this backdrop, the decision’s impact is seismic.

comfortable sleeping in the bushes. They want to be left alone and do things their own way[.]”).

¹⁹ Pet.App.6a.

²⁰ Jim Redden, *Report: Oregon Far Exceeds Nation in Percent of Homeless*, Koin (Mar. 15, 2019), <https://www.koin.com/news/oregon/report-oregon-far-exceeds-nation-in-percent-of-homeless/>; Nigel Jaquiss, *Oregon Has Nation’s Second Highest Rate of Unsheltered Homeless People, According to New Federal Report*, Willamette Week (Dec. 17, 2018), <https://www.wweek.com/news/2018/12/17/oregon-has-nations-second-highest-rate-of-unsheltered-homeless-people-according-to-new-federal-report/>.

A. The Number of Unsheltered Homeless Has Risen Sharply in Oregon Cities.

In Multnomah County—where the City of Portland is located—more people than ever before are choosing to forego shelter and sleep outside. Indeed, Multnomah County has seen between a 20% and 37% increase in unsheltered homeless in the year following the Ninth Circuit’s decision, despite the total number of homeless in Portland remaining flat.²¹ This increase occurred despite the fact that Portland doubled the number of shelter beds.²² And people who were previously homeless but have found housing are more likely than ever to return to sleeping on the street.²³

Other Oregon cities are experiencing an influx of homeless people—both sheltered and unsheltered. Oregon provides more public benefits than border states Washington and Idaho, and draws people from across

²¹ Molly Harbarger, *Multnomah County Sees 20% More People Sleeping Outside in Latest Homeless Count*, The Oregonian (Aug. 1, 2019), <https://www.oregonlive.com/news/2019/08/multnomah-county-sees-20-more-people-sleeping-outside-in-latest-homeless-count.html>; Rachel Monahan, *Portland’s Homeless Numbers Are Flat*, Willamette Week (Aug. 6, 2019), <https://www.wweek.com/news/city/2019/08/06/portlands-homeless-numbers-are-flat-but-the-number-of-people-in-the-most-dire-condition-keeps-growing/>.

²² Jim Redden, *Wheeler Defends Homeless Response*, Portland Tribune (May 10, 2019), <https://pamplinmedia.com/pt/9-news/427951-335094-wheeler-defends-homeless-response>.

²³ Simon Gutierrez, *City of Portland Report Shows Homeless People Who Do Find Housing Often End Up Back on the Streets*, KPTV (Aug. 15, 2019), https://www.kptv.com/news/city-of-portland-report-shows-homeless-people-who-do-find/article_4da9853e-bfb8-11e9-9fd8-73b5b3efd2f3.html.

the country seeking a more temperate climate.²⁴ Lane County (home of the City of Eugene and the main campus of the University of Oregon) has seen an increase of between 32% and 44% of homeless in the year following the Ninth Circuit’s decision.²⁵ Indeed, Lane County recently declared a state of emergency as a direct result of this increase.²⁶ Many other cities and areas in Oregon also report dramatic increases in the homeless population and several smaller cities confronting homeless camps report that they did not even have a homeless population before 2019.²⁷

²⁴ Michael Tanner and Charles Hughes, *The Work Versus Welfare Trade-Off*: 2013, Cato Institute White Paper (2013), https://www.cato.org/sites/cato.org/files/pubs/pdf/the_work_versus_welfare_trade-off_2013_wp.pdf; *see also* Anna Griffin, *The Magnet Myth*, *The Oregonian* (Feb. 14, 2015), <https://www.oregonlive.com/projects/portland-homeless/magnet.html> (evaluating reasons Portland is seen as a magnet for homeless).

²⁵ *Homelessness in Lane County Up 32% Over Last Year, Annual Report Finds*, KVAL (May 29, 2019), <https://kval.com/news/local/annual-count-finds-increase-in-number-of-people-experiencing-homelessness-in-lane-county>.

²⁶ Henry Houston, *Lane County Commissioners Declare Homelessness an Emergency*, *Eugene Weekly* (Sept. 9, 2019), <https://www.eugeneweekly.com/2019/09/10/lane-county-commissioners-declare-homelessness-an-emergency/>.

²⁷ Sean C. Morgan, *School Board Learns Homeless Rate Rising in Sweet Home district*, *Sweet Home News* (Sept. 11, 2019), <https://www.sweethomenews.com/story/2019/09/11/news/school-board-learns-homeless-rate-rising-in-sweet-home-district/22201.html>; Garrett Andrews, *Homelessness Increases in Central Oregon*, *Bend Bulletin* (May 6, 2019), <https://www.bendbulletin.com/localstate/7141262-151/homelessness-increases-in-central-oregon>; Janet S. Stevens, *Report Dives into Oregon Homelessness*, *Bend Bulletin* (Mar. 28, 2019), <https://www.bendbulletin.com/opinion>

B. The Proliferation of Homeless Camps Poses a Monumental Challenge for Oregon Cities' Public Resources.

The impact of this massive increase of people sleeping in public areas is deeply felt. From a sheer physical standpoint, the camps operate outside the public-works grid, creating a major strain on public resources. A full half of Portland's homeless-related complaints (more than 450 each week) include reports of human waste.²⁸ The small town of Brownsville has had to divert its limited resources to policing public fornication in the city park and cleaning five-gallon buckets of human waste. In Florence, a town with a population of 9,300, city employees regularly field complaints about the smell from standard trashcans with jugs of urine poured into them.²⁹ In Ontario, population 11,000, people routinely set up camp along the Snake River, using the river as a dumping ground for human waste and trash—endangering the river's ecosystem, threatening the water supply, and increasing the flood risk due to shore degradation.

/7043846-151/janet-stevens-column-report-dives-into-oregon-homelessness; John Tapogna and Madeline Baron, *Homelessness in Oregon*, Oregon Community Foundation (Mar. 2019), <https://m.oregoncf.org/Templates/media/files/reports/OregonHomelessness.pdf> (Jackson County's homeless population at a seven-year high).

²⁸ Gordon R. Friedman, *Portland Has a Plan for Its Human Poop Problem*, *The Oregonian* (June 11, 2019), <https://www.oregonlive.com/portland/2019/06/portland-has-a-plan-for-its-human-poop-problem.html>.

²⁹ *Population of Cities in Oregon (2019)*, World Population Review, <http://worldpopulationreview.com/states/oregon-population/cities/> (last visited Sept. 18, 2019).



Homeless campsite in Eugene after campers vacated.³⁰

³⁰ Tiffany Eckert, *Eugene's Camp 99 Officially Closes, Homeless Campers Disperse*, KLCC (Jan. 16, 2019), <https://www.klcc.org/post/eugenes-camp-99-officially-closes-homeless-campers-disperse>.



Homeless campsite in Warrenton
(population 5,900) after campers vacated.³¹

Attempting to clean these camps is not just time-consuming and expensive—it is hazardous. A Florence city employee was severely injured when he cut his hand on a sharp edge topped with human waste and concealed by a discarded tent.

³¹ *Population of Cities in Oregon (2019)*, World Population Review, <http://worldpopulationreview.com/states/oregon-population/cities/> (last visited Sept. 18, 2019).

C. Oregon Cities Struggle with the Post-*Martin* Increase of Unsheltered Homeless-Related Crimes and Complaints.

The consequences extend beyond the blight and cost of the mess that encampments leave behind—Oregon cities also report an increase in crime both by and against the unsheltered homeless. For example, in Portland, a man frustrated with the inability of police to enforce against a homeless encampment set fire to the camp.³² In April 2019, two men were arrested for beating two homeless people with bats and batons, causing serious internal injuries.³³ And Lane County’s emergency declaration was in part motivated by the tragic death of a woman sleeping in an alley who was killed by a garbage truck.³⁴

The incidence of crime against residents also rises near homeless encampments. Waterloo, Oregon, population 230, has experienced the arrival of homeless campers for the first time in town memory. Waterloo’s City Hall—free of crime for as long as residents can remember—was been robbed twice in

³² Everton Bailey Jr., *Portland Man Walks into Homeless Camp, Intentionally Starts Fire That Torches Tent, Authorities Say*, *The Oregonian* (Aug. 29, 2019), <https://www.oregonlive.com/portland/2019/08/portland-man-walks-into-homeless-camp-intentionally-starts-fire-that-torches-tent-authorities-say.html>.

³³ *Two Men Arrested, Accused of Trying to Kill Homeless People in Oregon*, Q13 Fox (Apr. 2, 2019), <https://q13fox.com/2019/04/02/two-men-arrested-accused-of-trying-to-kill-homeless-people-in-oregon/>.

³⁴ *Police ID Homeless Woman Killed by Garbage Truck*, *The Register-Guard* (Aug. 30, 2019), <https://www.registerguard.com/news/20190830/police-id-homeless-woman-killed-by-garbage-truck>.

2019. And the crimes extend beyond petty theft. In Portland, a couple visiting a public beach along the Willamette River were brutally beaten by a homeless man with a baton who did not want the couple's unleashed dog near his campsite. Police had been made aware of the threat posed by the dangerous individual, but—as the couple's lawsuit alleges—did nothing to remove his campsite.³⁵

Unsurprisingly, citizen complaints have skyrocketed in the year following the Ninth Circuit's decision. Astoria reports a 300% increase in homeless-related complaints, and Waterloo reports a 700% increase year-to-date.³⁶ And in Portland, for the first time ever, homelessness is the top issue on voters' minds—ahead of schools, road conditions, crime, traffic, and health care.³⁷ In the year following the *Martin* decision, 33% of residents cited homelessness as their biggest concern—the year prior, that number was 10%.³⁸

³⁵ Maggie Vespa, *An Ideal Opportunity to Go Unnoticed*, KGW (July 26, 2019), <https://www.kgw.com/article/news/local/an-ideal-opportunity-to-go-unnoticed-lawsuit-litter-fires-point-spotlight-at-homeless-on-beaches/283-d0c6f4ed-1968-46fa-ac8f-8f003001b068>.

³⁶ Maggie Vespa, *Astoria Police Tracking Calls Involving 'Aggressive' Homeless People*, KGW (May 17, 2019), <https://www.kgw.com/article/news/astoria-police-tracking-calls-involving-aggressive-homeless-people/283-0b1fc494-b2b1-46ce-bbd4-570b2a535819>.

³⁷ Molly Harbarger, *Homelessness Surges to Top Concern Among Portlanders, Poll Finds*, *The Oregonian* (Feb. 8, 2019), <https://www.oregonlive.com/business/2019/02/homelessness-surges-to-top-concern-among-portlanders-poll-finds.html>.

³⁸ *Id.*

As these complaints reveal, livability and tourism across Oregon has suffered, including in many of the Oregon cities already devastated by the decline of the timber industry. Ironically, the decline of the timber industry is a major contributor to rural homelessness.³⁹ The Ninth Circuit’s judicial policy-making thwarts these cities’ efforts to mount a desperately needed tourism industry and reduce housing instability in their communities.

The Ninth Circuit’s decision purports to address “the distressing homelessness problem[,]” which Judge Berzon attributes to several governmental policy decisions including the lack of “affordable care for people with mental illness, and the failure to provide adequate treatment for drug addiction.” Pet.App.5a. However, fundamental doctrines of American democracy counsel against converting judicial opinions into federal rights.⁴⁰ The experience of Oregon cities in the aftermath of the *Martin* decision is a case study in the wisdom of that separation.

³⁹ Patricia A. Post, *Hard to Reach: Rural Homelessness & Health Care*, National Health Care for the Homeless Council (Jan. 2002), <https://nhchc.org/wp-content/uploads/2019/08/Rural-Homelessness.pdf>.

⁴⁰ See, e.g., *Tyson & Bro.-United Theatre Ticket Offices, Inc. v. Banton*, 273 U.S. 418, 446 (1927) (Holmes, J., dissenting) (“[A] state Legislature can do whatever it sees fit to do unless it is restrained by some express prohibition in the Constitution . . . , and that Courts should be careful not to extend such prohibitions beyond their obvious meaning by reading into them conceptions of public policy that the particular Court may happen to entertain.”).



CONCLUSION

For the reasons stated in the Petition for Writ of Certiorari and this *amicus curiae* brief, this Court should grant the Petition for Writ of Certiorari.

Respectfully submitted,

ANNA M. JOYCE

COUNSEL OF RECORD

JACQUELINE S. KAMINS

HARRY B. WILSON

MARKOWITZ HERBOLD PC

1455 SW BROADWAY, SUITE 1900

PORTLAND, OR 97201

(503) 295-3085

ANNAJOYCE@MARKOWITZHERBOLD.COM

COUNSEL FOR AMICUS CURIAE

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