

No. 23-175

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

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CITY OF GRANTS PASS, OREGON,

*Petitioner,*

*v.*

GLORIA JOHNSON, ET AL.,

*Respondents.*

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

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**BRIEF OF NEIGHBORS FOR A BETTER SAN  
FRANCISCO AND MORE THAN 300 SAN  
FRANCISCO-BASED BUSINESS OWNERS  
AND EXECUTIVES, CIVIC ORGANIZATIONS,  
PROFESSIONALS, AND NEIGHBORHOOD  
LEADERS AS *AMICI CURIAE* IN SUPPORT OF  
PETITIONER**

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**QUESTION PRESENTED**

Whether a municipal government's enforcement of generally applicable laws regulating sleeping and camping on public property constitutes cruel and unusual punishment in violation of the Eighth Amendment.

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**INTEREST OF *AMICI CURIAE*\***

*Amici curiae* are a broad range of San Francisco-based companies, business owners and executives, other professionals, and neighborhood leaders. They include a former United States Attorney for the Northern District of California, a retired Chief of the San Francisco Police Department, the former Chairman and CEO of Wells Fargo & Co., the CEO and Chairman of Prologis, the President of Paramount Hotels, senior members of leading foundations and investment firms, numerous small business owners and employees, and many other community leaders and stakeholders. A full list of *amici* appears as Appendix A to this brief.

*Amici* hold widely varying views on many policy issues, but they agree on the key aspects of this case: San Francisco is facing a growing homelessness crisis that endangers the City's residents, businesses, visitors, and homeless people themselves. A critical tool in addressing that crisis is the enforcement of common-sense public safety laws that prevent homeless encampments from taking over the City's streets. By holding that the enforcement of such laws violates the Eighth Amendment, the Ninth Circuit committed a serious legal error that will have devastating consequences for cities on the frontlines of the homelessness crisis. *Amici* urge the Court to reverse the flawed decision below.

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\* Pursuant to Supreme Court Rule 37, *amici* affirm that no counsel for a party authored this brief in whole or in part, and no one other than *amici* or its counsel made a monetary contribution intended to fund the preparation or submission of the brief.

## INTRODUCTION AND SUMMARY OF ARGUMENT

This case involves a Ninth Circuit decision preventing Grants Pass, Oregon, from enforcing common sense laws to address the dangers to public safety and welfare created by homelessness—as well as to improve conditions for homeless people themselves. The stakes of the Court’s decision, however, will reach far beyond that single city. Throughout the West, local governments, business leaders, and residents have grappled with similar challenges and faced similar obstacles in the wake of *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019). Reversing the Ninth Circuit’s profoundly flawed approach will not only help restore order and opportunity in Grants Pass, but will deliver much-needed relief to people in some of our country’s most important and most troubled cities.

One of those places is San Francisco, which amici are proud to call home. San Francisco combines spectacular natural beauty, vibrant culture and arts, and a spirit of innovation that has endured from the Gold Rush to the Tech Boom. Those features have attracted generations of residents, entrepreneurs, and visitors. And the City has long prided itself on its openness and tolerance, welcoming diverse ways of life and points of view.

Unfortunately, San Francisco now faces a dire crisis arising from homelessness. In many parts of the City, it is impossible to walk down the sidewalk or enter buildings because of homeless encampments—collections of tents and other personal belongings where homeless people congregate to live and sleep. En-

campments are frequently sites of drug use and violence, endangering both passersby and homeless people themselves. And encampments create other health and safety risks, ranging from fire to disease.

For too long, San Francisco’s leaders ignored—or even encouraged—the homelessness crisis. While the City’s policies may have reflected good intentions, they were badly misconceived. There is nothing compassionate about abandoning homeless people to the nightmare of encampments. It is not a hallmark of progress to let addicts use drugs in public or defecate on the streets. It is an abdication of the first duty of government: to enforce the law and protect the people.

Spurred by business and civic groups, including many of the amici joining this brief, San Francisco’s leaders have finally started to grapple with the homelessness crisis. The City has devoted vast amounts of resources to expanding shelter capacity, while beginning to enforce laws to reclaim public spaces for all members of the community. But just as that belated response has begun, a new obstacle has emerged.

In *Martin*, the Ninth Circuit held that a city’s enforcement of laws prohibiting public sleeping and camping against “involuntarily” homeless people violates the Eighth Amendment. 920 F.3d at 617. Suits followed against many cities throughout the West, including this suit against Grants Pass and one against San Francisco. The Ninth Circuit panel in this case reiterated and expanded *Martin*’s holding. Pet. App. 42a–55a. Then, relying on *Martin* and the panel decision in this case, the district court in *Coalition on Homelessness v. City & County of San Francisco* enjoined San Francisco from enforcing laws prohibiting



similar practices, including two that were adopted by city voters through referenda in 2010 and 2016.<sup>1</sup> The Ninth Circuit recently affirmed the core aspects of that injunction and paused the period for further review pending the Court’s decision in this case.<sup>2</sup>

Accordingly, unless this Court reverses the decision below, San Francisco’s efforts to enforce critical public safety laws will continue to be severely hampered. And the consequences will continue to be tragically predictable: a rise in crime, an exodus of downtown residents and businesses, a decline in tourism, and—worst of all—even more miserable conditions for the homeless.

There is no legal foundation for those dire results. The Ninth Circuit’s decisions in this case, *Martin*, and *Coalition* are an indefensible overreach. They have no basis in the text or original meaning of the Eighth Amendment, which cannot plausibly be read to bar enforcement of public safety laws that impose modest penalties for defined conduct—not a person’s status. They violate principles of federalism and judicial restraint by allowing federal courts to displace the policy judgments of local leaders and voters who are closest to the problems. They conflict with the decisions of other appellate courts—including the California Supreme Court—upholding similar laws. And they do not promote values of compassion or tolerance; they make it more dangerous to live, work, and travel

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<sup>1</sup> *Coal. on Homelessness v. City & Cnty. of S.F.*, 22-cv-05502, 2022 WL 17905114 (N.D. Cal. Dec. 23, 2022) (“*Coalition*”). This brief cites the appellate excerpts of record (“ER”) in the *Coalition* case.

<sup>2</sup> *Coal. on Homelessness v. City & Cnty. of S.F.*, 90 F.4th 975 (2024); *id.* at Dkt. 98.

in our nation’s largest cities, and they ultimately worsen life for the homeless themselves.

When a federal appellate court has enjoined state and local laws on federal constitutional grounds, local residents and businesses have nowhere to turn but this Court. Amici urge the Court to reverse the egregious errors committed by the Ninth Circuit.

## ARGUMENT

### I. San Francisco’s Experiences Demonstrate The Dire Effect Of The Ninth Circuit’s Rulings

Frank Lloyd Wright once called San Francisco “the only city I can think of that can survive all the things [that] people are doing to it and still look beautiful.”<sup>3</sup> The homelessness crisis, exacerbated by the Ninth Circuit’s decisions, is testing that description. And diminishing the City’s appearance is only the beginning of the problem. The constraints imposed by the Ninth Circuit are creating intolerable safety risks and inflicting other profound costs on residents, businesses, tourists, and homeless people themselves.

#### A. San Francisco Faces An Increasingly Dire Homelessness Crisis

Homelessness is not a new challenge in San Francisco. Amid the City’s vast cultural and economic prosperity, some people have always lacked housing for a complex range of reasons. Public and private entities in the City have responded in different ways

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<sup>3</sup> Kevin Fisher-Paulson, *SF Retains Beauty Despite All Our Decorating*, S.F. CHRON. (Jan. 30, 2018), <https://tinyurl.com/2s4hky9w>.

at different times, producing what can fairly be described as mixed results. But while the problem has long persisted, it has generally been manageable.

That has changed. Over the past few years, homelessness in San Francisco has escalated into a crisis. The problems of earlier eras—struggling people sleeping on park benches or outside shelters—have given way to the new phenomenon of homeless encampments, where large numbers of people congregate for extended periods, often with a substantial volume of belongings. As a result, sidewalks, streets, and other public spaces in many parts of the City are littered with an array of tents, tarps, boxes, shopping carts, cooking gear, trash heaps, spoiled food, suitcases, and other paraphernalia. The image below (drawn from the record in the *Coalition* suit against San Francisco) is from the Embarcadero near Washington Street, one of the tourism and commercial centers of the City.



#### **Embarcadero near Washington Street<sup>4</sup>**

In some places, encampments create even more serious problems, obstructing walkways and blocking entrances to schools, businesses, residences, health clinics, pharmacies, grocery stores, public transportation, and other critical destinations.<sup>5</sup> The result is to make those places more difficult and dangerous—and in some cases impossible—to access, posing severe challenges for daily living. The obstructions also force more pedestrians (including those with strollers or wheelchairs) into the streets, where they face greater

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<sup>4</sup> *Coalition*, 2-ER-120.

<sup>5</sup> See e.g., Lezla Gooden, *SF Apartment Building Seeks Help as Homeless Encampment Grows Underneath*, CBS NEWS BAY AREA (July 19, 2023), <https://tinyurl.com/ycynt574>.

danger from vehicles.<sup>6</sup> One of many examples is depicted below.



#### **Erie Street between SOMA and the Mission<sup>7</sup>**

In effect, a significant number of San Francisco's public spaces have been converted into unofficial open-air public housing facilities. That transformation has far-reaching negative effects. For one, illegal drug use and attendant crime thrive within homeless encampments, fueling the deadly fentanyl epidemic and creating new health risks through discarded needles and drugs—some of which end up in playgrounds or other areas accessible to children.<sup>8</sup>

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<sup>6</sup> *SF Neighborhood Group Installs Planters Along Sidewalk Once Taken Over by Homeless Encampment*, CBS NEWS BAY AREA (June 13, 2023), <https://tinyurl.com/49ucrtdc>.

<sup>7</sup> *Coalition*, 2-ER-179.

<sup>8</sup> Dion Lim, *Drug Dealing, Defecation, Debris: SF Street Causing 'Chaos' for Homeowners, Businesses*, ABC 7 NEWS (June 23, 2023), <https://tinyurl.com/2k2he3rn>; Mallory Moench, *Dad Reveals Horrific Details of Baby's Reported Fentanyl Overdose at S.F. Playground*, S.F. CHRON. (Nov. 30, 2022), <https://tinyurl.com/46few9nn>; Andrea Cavallier, *Inside San*

Homeless encampments also lack most elements of modern sanitation. A recent filing by the City described its collection from an encampment of “items (including bedding and clothing) soiled by infectious or hazardous materials, including human waste, body fluids, mold and mildew, as well as items infested by rodents and insects, such as rats, mice, fleas, lice and bed bugs.”<sup>9</sup> Such conditions require homeless people to endure unthinkable hardships, repel residents and visitors from approaching, and contribute to the spread of communicable diseases like tuberculosis.<sup>10</sup>

Encampments create other physical risks as well. They are frequently sites of violence and harassment, both for passersby and those in the encampments.<sup>11</sup>

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*Francisco’s Open Air Drug Market*, DAILY MAIL (Jan. 25, 2022), <https://tinyurl.com/yz77b8kz>; Erin McCormick, *The Daily Battle to Keep People Alive as Fentanyl Ravages San Francisco’s Tenderloin*, THE GUARDIAN (Apr. 23, 2022), <https://tinyurl.com/mr2r44ab>.

<sup>9</sup> *Coalition*, 5-ER-1047.

<sup>10</sup> Caroline J. Waddell et al., *Possible Undetected Mpox Infection Among Persons Accessing Homeless Services and Staying in Encampments — San Francisco, California, October–November 2022*, CTRS. FOR DISEASE CONTROL & PREVENTION: MORBIDITY AND MORTALITY WKLY. REP. (Mar. 3, 2023), <https://tinyurl.com/2s3b9e8t>; C.Y. Liu et al., *Communicable Disease Among People Experiencing Homelessness in California*, 148 EPIDEMIOLOGY & INFECTION e85 (2020), <https://tinyurl.com/4dan2jvk>.

<sup>11</sup> Da Lin, *‘Coming to the City, I’m Sorry, It’s Scary’; Safety Fears Linger in Wake of a Violent Week in San Francisco*, CBS NEWS BAY AREA, (Apr. 8, 2023), <https://tinyurl.com/3ncyxpnd>; Maureen Kelly, *San Francisco Business Owner Considering Closing Shop After Being Bitten by Homeless Person Twice*, KRON4 (Sept. 10, 2019), <https://tinyurl.com/5h2e9ukm>.

Additionally, the use of open flames in encampments—for cooking, warmth, and drug use—creates fire hazards.<sup>12</sup> In recent months, several fires started in encampments have spread to other parts of the community, destroying property and endangering lives.<sup>13</sup> Eight hundred fires have been linked to homeless encampments in 2023, causing millions of dollars in property damages.<sup>14</sup> San Franciscans with disabilities have suffered greatly, as encampments frequently obstruct sidewalks.

The proliferation of encampments has been devastating to San Francisco’s business and working communities. The ever-expanding roster of companies reducing operations or fleeing the City includes commercial leaders like T-Mobile, AT&T, Banana Republic, Old Navy, Whole Foods, Nordstrom, Disney, Gap, and Office Depot.<sup>15</sup> In the iconic Union Square neighborhood alone, “[a]t least 22 big-name businesses

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<sup>12</sup> Betty Yu, *Homeless Encampment Fires Plague Residents of San Francisco Tenderloin District Building*, CBS NEWS BAY AREA (June 27, 2023), <https://tinyurl.com/mw9skjt7>; Dan Thorn, *Homeless Encampment Fire Destroys Woman’s Car in San Francisco*, KRON4 (July 28, 2023), <https://tinyurl.com/yc4p833j>.

<sup>13</sup> Michael Thomas et al., *Residents: We Warned SF City Leaders Before Massive Fire*, KRON4 (Aug. 2, 2023), <https://tinyurl.com/ned4r4c6>.

<sup>14</sup> Josh Koehn & David Sjostedt, *Homeless encampment fires in San Francisco doubled over 5 years, causing millions in damage*, S.F. STANDARD (Feb. 7, 2024), <http://tinyurl.com/5n6jjmws>.

<sup>15</sup> Joshua Rhett Miller, *Old Navy to Nordstrom: Half of Retailers Fleeing Downtown San Francisco*, NY POST (June 21, 2023), <https://tinyurl.com/9jjj29us>; Henry O’Loughlin, *Every Business Leaving San Francisco*, BUILD REMOTE (2020–2023) (Sept. 3,

have closed or announced plans to flee the area since January 2022.”<sup>16</sup> And things are only getting worse; the City has already lost six major 2024 conferences sponsored by large technology companies, including Google, Meta, and Samsung.<sup>17</sup> Predictably, San Francisco’s hotels have paid a heavy price and since October 2022, at least two San Francisco hotels have been sold at foreclosure auctions and one hotel owner was forced to surrender nearly 3,000 rooms after defaulting on a loan.<sup>18</sup>

Small businesses have been especially hard hit. The owner of a small grocery store was bitten on two separate occasions by homeless people and forced to

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2023), <https://tinyurl.com/3sruvfpk>; Alex Bitter & Jordan Hart, *Nordstrom Closes Flagship Location as Office Vacancies and Fears of Crime Rise in San Francisco*, BUSINESS INSIDER (Aug. 29, 2023), <http://tinyurl.com/6t73n2jd>; Miles Dilworth, *San Francisco Exodus Gather Pace: T-Mobile Shuttters Flagship Store After Nordstrom And Saks Off Fifth Shut-Up Shop*, DAILY MAIL (May 8, 2023), <https://tinyurl.com/3p47r82e>; James Gordon, *San Francisco Whole Foods Made More Than 560 Emergency Calls Over 13 Months After Rampant Drug Use In Restrooms, People Defecating On The Floor, Violence Towards Staff*, DAILY MAIL (May 1, 2023), <https://tinyurl.com/mr3y6b5p>.

<sup>16</sup> Miller, *supra* note 15.

<sup>17</sup> Stephen Council, *Downtown San Francisco is Losing a Bunch of tech Conferences, Report Says*, SFGATE (Feb. 5, 2024), <http://tinyurl.com/56avme3b>.

<sup>18</sup> Roland Li, *S.F.’s Hotel Pain Could Spread as More than 30 Owners Face Mortgages Deadlines*, S.F. CHRONICLE (Jun. 7, 2023), <http://tinyurl.com/4cejpj25>; Sam Whiting, *S.F.’s Historic Huntington Hotel Has Been Sold*, S.F. CHRONICLE (Mar. 20, 2023), <https://tinyurl.com/mrarr2b5r>; Sam Mauhay-Moore, *S.F. Micro-Hotel Yotel Acquired for \$62M in Foreclosure Auction*, S.F. GATE (Oct. 13, 2022), <http://tinyurl.com/3ubb3b5e>.



replace the store’s backdoor after it was corroded by urine.<sup>19</sup> The owners of multiple stores have been attacked by homeless people near their businesses, including one person who was beaten after asking a man to stop urinating in the street.<sup>20</sup> A neighborhood bike shop recently announced that it made the “tough decision to close” after “repeated break-in attempts over the last year, and more broken windows than we can count.”<sup>21</sup> The owners of a dog daycare center are facing the same choice because “homeless people are leaving needles and feces on their front door” and “threatening people as they walk in.”<sup>22</sup> One owner of a restaurant impacted by the proliferation of homeless encampments along the popular Van Ness Avenue has “described people routinely defecating on the sidewalk and sometimes coming into his restaurant yelling and throwing items during lunchtime” and has complained that “the city’s inability to respond to filth and criminal activity has deterred customers,

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<sup>19</sup> William Cole, *San Francisco Grocery Store Owner Considers Closing His Store After Being Bitten by a Homeless Person for the Second Time in Four Months*, DAILY MAIL (Sept. 11, 2019), <http://tinyurl.com/34rj5k3v>.

<sup>20</sup> *Candy Store Owner, Employee and Customer Attacked at San Francisco Store*, KTVU (Sept. 28, 2023), <http://tinyurl.com/yc7ejnf8>; Patrick Reilly, *San Francisco Shop Owner Slugged in the Face After Asking Man to Stop Urinating in Street*, NY POST (Jul. 22, 2023), <http://tinyurl.com/yc2xmvyx>.

<sup>21</sup> Katy Grimes, *San Francisco Collapse: More Store Closures, Lawlessness, Drugs, Homeless*, CAL. GLOBE (May 11, 2023), <https://tinyurl.com/2z7v5fn8>.

<sup>22</sup> Justine Waldman, *SF Business Owners Concerned About Homeless Near Store*, KRON4 (May 23, 2023), <https://tinyurl.com/4dx6czj7>.

prompting him to consider taking legal action or leaving the city entirely.”<sup>23</sup> Countless other closures have deprived communities of needed commerce and workers of their livelihoods. One retailer spoke for many when it recently took out a full-page newspaper ad admonishing the City for “allowing the homeless to occupy our sidewalks, to openly distribute and use illegal drugs, to harass the public[,] and to defile the city’s streets.”<sup>24</sup>

### **B. San Francisco’s Attempts To Address Its Homelessness Crisis Have Been Undermined By The Ninth Circuit**

As the homelessness crisis has escalated, San Francisco residents have responded. They have supported massive public expenditures—\$672 million last year alone—to expand shelter capacity, fund new public housing, and provide direct financial assistance to the homeless.<sup>25</sup> They have provided common-sense legal tools for City officials to use in addressing homelessness, such as a public ordinance adopted by referendum in 2016 that makes it “unlawful to place an [e]ncampment upon a public sidewalk.”<sup>26</sup> They have urged City officials to enforce that and other

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<sup>23</sup> David Sjostedt, *San Francisco homeless encampments: Tensions boil over on one of city’s busiest streets*, S.F. STANDARD (Oct. 20, 2023), <http://tinyurl.com/mt2rj9eu>.

<sup>24</sup> Isabel Keane, *Luxury San Francisco store may close after 166 years due to ‘litany of destructive’ policies making the city ‘unlivable’*, N.Y. POST (Aug. 16, 2023), <https://tinyurl.com/5n7ctk5v>.

<sup>25</sup> *Coalition*, 5-ER-1040–1042.

<sup>26</sup> S.F., Cal., Police Code § 169(c).

laws to reclaim public spaces for the whole community. And when officials have refused, residents have replaced them at the ballot box.<sup>27</sup>

After delaying for far too long, San Francisco’s leaders started to address the problem. Using the 2016 encampment ordinance and other public safety laws that prohibit camping or sleeping in public places, the City began cleaning up several homeless encampments per week.<sup>28</sup> Before cleaning up any encampment, City personnel offer a range of services to those affected, including assisting homeless people in finding shelter.<sup>29</sup> After encampments are cleared and public access restored, the City retains any belongings collected for return to homeless people who left them behind.<sup>30</sup>

Just as those efforts started to yield progress, however, the Ninth Circuit’s decisions have emerged as a new obstacle. In *Martin*, the Ninth Circuit held that a city’s enforcement of laws prohibiting public sleeping and camping against “involuntarily” homeless people—a term that the decision does not define—violates the Eighth Amendment. 920 F.3d at 617. The court expanded that holding in the decision below, allowing a class action and permitting an injunction based on even civil enforcement. *See* Pet.

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<sup>27</sup> *See, e.g., San Francisco District Attorney Chesa Boudin Recalled*, 136 HARV. L. REV. 1740, 1741–43 & n.12 (2023).

<sup>28</sup> *Coalition*, 5-ER-1052.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 1066.

App. 135a–136a (statement of Graber, J., respecting the denial of rehearing en banc).

Predictably, a wave of similar suits has followed against cities throughout the West, and beyond.<sup>31</sup> See Appendix B, *infra* (compiling list of suits). One of those suits was filed by the Coalition on Homelessness, seeking to enjoin San Francisco from enforcing similar laws. It succeeded. Relying on *Martin* and the panel decision in this case, a district court granted a sweeping preliminary injunction that prohibits San Francisco from enforcing or threatening to enforce against anyone deemed “involuntarily” homeless a host of provisions, including the 2016 encampment ordinance, a 2010 ordinance enacted by referendum that prohibits sitting or lying on public sidewalks during the daytime, and three sections of the California Penal Code that prohibit occupying or obstructing public property.<sup>32</sup>

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<sup>31</sup> In addition to sparking a flurry of lawsuits, the legal uncertainty stemming from *Martin* has led at least one city outside the Ninth Circuit to voluntarily cease enforcement of its anti-camping ordinances. Following *Martin*, the City Council of Austin, Texas repealed the city’s ban on homeless encampments in 2019. Philip Jankowski, *U.S. Supreme Court Lets Stand Ruling That Was Backbone of Austin’s Camping Ban Repeal*, AUSTIN AMERICAN-STATESMAN (Dec. 16, 2019), <http://tinyurl.com/y2fz5nd2> (citing *Martin* as “influential” in the City Council’s decision). Two years later, however, Austin voters voted decisively to reverse the city council and reinstate the ban. Ryan Autullo, *Austin Voters Choose to Bring Back Homeless Camping Ban*, AUSTIN AMERICAN-STATESMAN (May 1, 2021), <http://tinyurl.com/mjmw56ad> (noting that voters voted to reinstate the ban by a 15 percent margin). Sadly, San Francisco voters have no such recourse.

<sup>32</sup> *Coalition*, 2022 WL 17905114 at \*7.

San Francisco appealed from the grant of the injunction, primarily arguing that the district court adopted too broad a reading of “involuntary” homelessness.<sup>33</sup> Though the Ninth Circuit acknowledged that the district court failed to clearly state that the injunction applied only to those who would be considered “involuntarily” homeless under circuit precedent, the court remanded to give the district court an opportunity to “clarify” its language while leaving the injunction in place.<sup>34</sup>

As a result, San Francisco’s efforts to address homeless encampments have been sharply curtailed. Predictably, the constraints imposed by the injunction have reversed the progress that the City was making and fueled the crisis described above. To take just one recent example, City officials were unable to remove a homeless encampment in the Tenderloin neighborhood even after a fire that started in the encampment burned down a community laundromat and endangered a large apartment building full of tenants.<sup>35</sup> Residents sought police help given that the “fires started right underneath [their] house,” but lamented that “[t]he police do nothing because they say the injunction prevents them from clearing that camp.”<sup>36</sup> The injunction exacerbates the problem in

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<sup>33</sup> *Coalition*, ECF 11, 51, 54, 57, 68.

<sup>34</sup> *Coal. on Homelessness v. City & Cnty. of San Francisco*, No. 23-15087, 2024 WL 125340, at \*1 (9th Cir. Jan. 11, 2024).

<sup>35</sup> Wilson Walker, *Homeless Encampment Sweeps Are Just One Aspect of a System Not Working for SF Residents*, CBS NEWS BAY AREA (Aug. 23, 2023), <https://tinyurl.com/3x6ebw9v>.

<sup>36</sup> *Id.*

other ways as well; it allows criminals to turn encampments into safe havens for drug dealing, prostitution, and other forms of illicit conduct under the guise of being “involuntarily homeless.” Moreover, the injunction harms some of San Francisco’s most vulnerable citizens: those with disabilities. The injunction has prohibited the enforcement of laws that “permit San Francisco police officers to make an arrest when a person or the person’s belongings ‘obstruct[a] passageway such that a person using a wheelchair would be unable to pass.’”<sup>37</sup>

Under the Ninth Circuit’s rulings, San Francisco and other cities have been barred by federal courts from enforcing state and local laws to address “the defining public health and safety crisis in the Western United States.” Pet. App. 138a (M. Smith, J., dissenting from the denial of rehearing en banc). The results will be felt “not merely by cities, but block by block, building by building, doorway by doorway,” where residents and businesses are having their lives endangered and livelihoods destroyed. *Id.* at 161a (Bress, J., dissenting from the denial of rehearing en banc).

This disturbing reality has not gone unnoticed by state and local policymakers, who have pleaded for help from this Court to save San Francisco, including by filing amicus briefs in this case.<sup>38</sup>

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<sup>37</sup> *Coal. on Homelessness*, 90 F.4th at 997 (Bumatay, J., dissenting) (quoting S.F. Police Dep’t Bull. A-19-080 (Apr. 16, 2019)).

<sup>38</sup> *See, e.g.*, Brief for California Governor Gavin Newsom as Amicus Curiae Supporting Petitioner 10–11 (filed Sept. 22,

## II. The Ninth Circuit’s Decision Is Wrong

It would be one thing if the burdens imposed by the Ninth Circuit were required by the Constitution; *amici* cherish the protections of the Bill of Rights and recognize that enforcing those safeguards sometimes has costs. But as petitioner and the dissenting judges in this case, *Martin*, and *Coalition* explain in detail, the Ninth Circuit’s decisions have no basis in the Eighth Amendment as written, originally understood, or interpreted by this Court.

### A. The Eighth Amendment Does Not Prohibit State Or Local Governments From Punishing Proscribed Conduct

The Eighth Amendment prohibits the infliction of “cruel and unusual punishments.” By its terms, that Clause “expresses a substantive constraint on the kinds of punishments governments may ‘inflict.’” *Jones v. Hendrix*, 599 U.S. 465, 488 (2023) (alteration omitted). It “proscribes ... barbarous and out-of-use punishments” but does not address the scope of what governments may criminally or civilly prohibit. *Coal.*

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2023) (discussing the “affirmative[] harm[]” *Martin* has caused San Francisco’s efforts to improve); Brief for Amici Curiae City and County of San Francisco and Mayor Breed in Support of Petitioner (filed Sept. 22, 2023); Jeremy B. White, *Newsom Urges SCOTUS to Consider Encampment Ruling That Has ‘Paralyzed’ California Cities*, POLITICO (Sept. 22, 2023), <http://tinyurl.com/rpcf9fud> (quoting California Gov. Gavin Newsom as saying of the Ninth Circuit’s jurisprudence, “I hope this goes to the Supreme Court, and that’s a hell of a statement for a progressive Democrat . . . It’s gone too far. People’s lives are at risk.”).

on *Homelessness*, 90 F.4th at 991 (Bumatay, J., dissenting).

That reading of the Eighth Amendment’s text reflects its history and original understanding. The Cruel and Unusual Punishments Clause “has always been considered, and properly so, to be directed at the *method or kind of punishment imposed* for the violation of criminal statutes.” *Ingraham v. Wright*, 430 U.S. 651, 667 (1977) (emphasis added). “There is simply no indication in the history of the Eighth Amendment that [it] was intended to reach the substantive authority of Congress” or state and local governments to determine the scope of criminal or civil prohibitions. *Martin*, 920 F.3d at 602 (Bennett, J., dissenting from the denial of rehearing en banc).

This Court has applied the Eighth Amendment to the substantive scope of criminal prohibitions in just one narrow context. In *Robinson v. California*, 370 U.S. 660 (1962), the Court held that the Cruel and Unusual Punishments Clause barred enforcement of a state statute that made it a misdemeanor for a person “to be addicted to the use of narcotics.” *Id.* at 660 n.1, 666–67. The Court emphasized that a neighboring provision of the same statute that prohibited the “use” of narcotics was permissible. *Id.* at 664. In short, the Court held that the Eighth Amendment prohibits criminalizing *status* but permits criminalizing *conduct*. *Id.* at 666–68.

That distinction was reiterated in *Powell v. Texas*, 392 U.S. 514 (1968), which involved a state law prohibiting public intoxication. The plurality opinion explained that the statute did “not fall within th[e] hold-



ing” of *Robinson*, because the defendant “was convicted, not for being a chronic alcoholic, but for being in public while drunk on a particular occasion.” *Id.* at 532. Accordingly, Texas had “not sought to punish a mere status, as California did in *Robinson*.” *Id.* Rather, it had “imposed upon [the defendant] a criminal sanction for public behavior which may create substantial health and safety hazards, both for [him] and for members of the general public, and which offends the moral and esthetic sensibilities of a large segment of the community.” *Id.* That was “a far cry from convicting one for being an addict.” *Id.* at 532.

In the ensuing decades, this Court has “never wavered from the decision in *Robinson* and the status-act distinction that it articulated.” *Manning v. Caldwell*, 930 F.3d 264, 288 (4th Cir. 2019) (en banc) (Wilkinson, J., dissenting). That does not mean that voluntariness has no place in determining liability. The “centuries-long” criminal-law requirement of a voluntary act, along with familiar defenses like necessity and duress, protect against the misapplication of responsibility for conduct that a person cannot avoid. *Powell*, 392 U.S. at 535–36 (plurality opinion). Critically, however, definition of those requirements and defenses is “the province of the States” and Congress, not federal courts. *Id.* at 536; *see, e.g.*, William J. Stuntz & Joseph L. Hoffman, *DEFINING CRIMES* 53 (2011) (“[I]nsofar as the principle of voluntariness is respected, it is respected by the terms of state and federal criminal statutes, not federal constitutional law.”).

## B. The Ninth Circuit Badly Misinterpreted the Eighth Amendment

The Ninth Circuit’s holdings in this case and *Martin* defy those well-established constitutional principles. The decisions do not even attempt to establish that the text or original meaning of the Eighth Amendment forecloses the enforcement of laws against sleeping in, camping in, or otherwise obstructing access to public spaces. Nor do the decisions suggest that the state and local laws at issue expressly criminalize status in the way that the law in *Robinson* did; to the contrary, the panel here recognized that the laws “prohibit [respondents] from engaging in *activity*.” Pet. App. 46a (emphasis added).

The Ninth Circuit’s decisions instead rest on the proposition that the Eighth Amendment prohibits criminalization of “conduct that is involuntary or the product of a ‘status.’” Pet. App. 47a (quoting *Martin*, 920 F.3d at 617). But that reasoning collapses the status/conduct distinction that this Court articulated in *Robinson* and has adhered to ever since. By the Ninth Circuit’s logic, statutes prohibiting the use of narcotics would violate the Eighth Amendment if the user’s conduct was “the product of” an addiction. *Id.* But this Court rejected precisely that line of argument in *Robinson*, see 370 U.S. at 664, and has never accepted it since.

The Ninth Circuit purported to draw support for its position from Justice White’s opinion concurring in the judgment in *Powell*, along with the dissents in that case. See *Martin*, 920 F.3d at 616. But that approach represents a “startling misapplication of” this Court’s rules on interpreting its own decisions. Pet.

App. 125a (statement of O’Scannlain, J.). As noted, the result of *Powell* was to *reject* the argument that Texas’s public-intoxication statute was invalid because it punished conduct resulting from addiction. There is no valid way to get from that decision to the Ninth Circuit’s position that *Powell* supports invalidating the laws at issue here. *See id.* at 125a–128a.

With no foundation in the Eighth Amendment, the Ninth Circuit’s holding effectively amounts to recognition of an unenumerated constitutional right to sleep and camp on public property in at least some circumstances. But “[u]nder well-settled precedent,” such a right may be recognized only if it is so “rooted in the traditions and conscience of our people as to be ranked as fundamental.” *Kahler v. Kansas*, 140 S. Ct. 1021, 1027 (2020). The Ninth Circuit did not attempt to show that the right it recognized meets that standard, and no such showing is possible. After all, “[l]aws prohibiting loitering and vagrancy have been a fixture of Anglo–American law at least since the time of the Norman Conquest.” *City of Chicago v. Morales*, 527 U.S. 41, 103 (1999) (Thomas, J., dissenting). And, as demonstrated by the wave of litigation in the wake of *Martin*, such laws remain highly prevalent today.

The Ninth Circuit’s position also lacks any meaningful limiting principle. The court’s rationale in *Martin* was that constitutional protection extends to “acts or conditions [that] are universal and unavoidable consequences of being human,” on the basis that “any conduct” arising from such conditions “is involuntary and inseparable from status.” 920 F.3d at 616–17. The court has applied that principle to strike down laws prohibiting public sleeping because “human beings are biologically compelled to rest.” *Id.*; *see*

Pet. App. 46a–48a. But the logic of the Ninth Circuit’s position hardly stops there. Indeed, as Judge Bumatay observed, the panel majority in *Coalition* upheld a preliminary injunction on the enforcement of laws “forbidding lying on the sidewalk at certain hours, preventing camping or erecting structures, and banning the obstruction of parks, squares, streets, and highways.” *Coal. on Homelessness*, 90 F.4th at 999 (Bumatay, J., dissenting). The enjoined laws were intended to “restrict activities in certain ways, at certain times, and in certain places,” rather than simply prohibiting the act of public sleeping. *Id.*

The biologically compelled consequences of being human extend beyond sleeping to include, for example, expelling bodily waste. “By holding that the Eighth Amendment proscribes the criminalization of involuntary conduct,” the Ninth Circuit’s reasoning thus seems to “inevitably result in the striking down of laws that prohibit public defecation and urination.” *Martin*, 920 F.3d at 596 (M. Smith, J., dissenting from the denial of rehearing en banc).

The reasoning can be extended even further. If cooking food with open flames and campfires is in service of biologically compelled needs, such conduct might also fall within the Ninth Circuit’s rationale. Use of drugs in public by a person with a biologically rooted addiction might too. *See, e.g., Manning*, 930 F.3d at 292–93 (Wilkinson, J., dissenting) (discussing the “staggering” consequences of discarding the status/conduct distinction, including possible invalidation of laws prohibiting child molestation and domestic violence against offenders who have addictions).

Nor is *Martin*'s rationale logically limited to sleeping or camping in outdoor spaces such as public parks and sidewalks. The same reasoning seemingly could justify a right of involuntarily homeless individuals to sleep or camp in public buildings. Indeed, *Martin* held that Boise could not issue citations for "sleeping in a public restroom." *Martin*, 920 F.3d at 618.

The breadth of the Ninth Circuit's reasoning confirms its error. As Justice Marshall's plurality opinion in *Powell* stressed, the Court's holding in *Robinson* reaches "but a very small way into the substantive criminal law." 392 U.S. at 533. "[U]nless *Robinson* is so viewed it is difficult to see any limiting principle that would serve to prevent this Court from becoming, under the aegis of the Cruel and Unusual Punishment Clause, the ultimate arbiter of the standards of criminal responsibility, in diverse areas of the criminal law, throughout the country." *Id.* The Ninth Circuit's position leads to precisely that impermissible result.

### **C. The Ninth Circuit's Decisions Undermine Core Principles of Federalism and Judicial Restraint**

The Ninth Circuit not only misreads the Constitution; it does so in a way that undermines core principles of federalism and judicial restraint. "Under our federal system, state and local leaders—not distant federal judges—are primarily entrusted with the power and duty to protect the common welfare of our towns, cities, and neighborhoods, and to ensure that our streets, squares, and sidewalks remain clean and safe." Pet. App. 133a (statement of O'Scannlain, J.). The basis for state and local "legislative responsibility

over criminal law is fundamental: the criminal law exists to protect the safety of citizens, and ensuring the safety of the people is one of those things that popular government exists to do.” *Manning*, 930 F.3d at 297 (Wilkinson, J., dissenting); see *Roberts v. Louisiana*, 431 U.S. 633, 646 (1977) (Rehnquist, J., dissenting) (“[T]he State has an interest in protecting its citizens ... this surely is at the core of the Lockean ‘social contract’ idea.”).

By prohibiting cruel *and* unusual punishments, the Eighth Amendment expressly recognizes the primacy of legislative judgments and the “essential considerations of federalism.” *Powell*, 392 U.S. at 535 (plurality opinion); see *Gregg v. Georgia*, 428 U.S. 153, 175 (1976) (“[T]he constitutional test is intertwined with an assessment of contemporary standards and the legislative judgment weighs heavily in ascertaining such standards.”); *Kennedy v. Louisiana*, 554 U.S. 407, 462 (2008) (Alito, J., dissenting) (“Our cases have cautioned against using the aegis of the Cruel and Unusual Punishment Clause to cut off the normal democratic processes.” (internal quotation omitted)). Thus, “in assessing a punishment selected by a democratically elected legislature against” an Eighth Amendment challenge, “a heavy burden rests on those who would attack the judgment of the representatives of the people.” *Gregg*, 428 U.S. at 175.

Given those constitutional principles, courts should take care to avoid “significantly limit[ing] the States in their efforts” to address “a widespread and important social problem” such as homelessness “by announcing a revolutionary doctrine of constitutional law that would also tightly restrict state power to deal with a wide variety of other harmful conduct.” *Powell*,

392 U.S. at 537 (Black, J. concurring).<sup>39</sup> “Diversity ... is the very *raison d’être* of our federal system,” and the Eighth Amendment should not be understood to “disabl[e] the States from ... responding to changed social conditions.” *Harmelin v. Michigan*, 501 U.S. 957, 990 (1991) (opinion of Scalia, J.). Rather, “in the face of [] uncertainty, ... courts should pay particular deference to reasonable legislative judgments.” *Jones v. United States*, 463 U.S. 354, 365 n.13 (1983).

The Ninth Circuit squarely defied those admonitions in *Martin, Coalition*, and this case. In all three cases, panels of three federal appellate judges countermanded the judgments of local officials who are entrusted by voters to make policy decisions and who experience the effects of the homelessness crisis in their communities every day. As Judge O’Scannlain aptly observed, “[i]t is easy enough for [judges], behind marble walls and sealed doors, to dismiss the consequences of our decisions.” Pet. App. 132a. “But for those who call these communities home—who must live by the criminal violence, narcotics activity, and

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<sup>39</sup> Indeed, the Ninth Circuit’s position contradicts the California Supreme Court’s holding in *Tobe v. City of Santa Ana*, 892 P.2d 1145 (1995). In *Tobe*, homeless residents of Santa Ana sought to enjoin enforcement of that city’s ordinances barring camping on public streets, arguing that it was impermissible punishment of the involuntary status of being homeless. *Id.* at 1166. The California Supreme Court expressly rejected the argument, holding that *Robinson* and *Powell* “ma[ke] clear ... that punishing the conduct of using or possessing narcotics, even by an addict, is not impermissible punishment for status” and that “the Supreme Court has not held that the Eighth Amendment prohibits punishment of acts derivative of a person’s status.” *Id.*

dangerous diseases that plague the homeless encampments buttressed by our decisions—the consequences of our judicial arrogation are harder to accept.” *Id.*

Indeed, while the Ninth Circuit’s decisions sharply constrain the ability of state and local governments to protect their communities, the *federal* government has been able to cope so far with the effects of the San Francisco crisis by spending millions of dollars on “improvements” to the area outside of the San Francisco Federal Building, including a “galvanized steel fence to keep the plaza free of drug users and the unhoused.”<sup>40</sup> The federal government has also allowed its employees stationed in downtown San Francisco to work from home.<sup>41</sup>

Of course, most residents and businesses in San Francisco are not able to escape the problem so easily. For that reason, too, “[i]t is hard to imagine a jurisprudence that combines so little regard for the sacred words of the Constitution, with so much disregard for the state and local authorities that our constitutional system entrusts as the primary protectors of the health, safety, and welfare of our communities.” Pet. App. 133a (statement of O’Scannlain, J.).

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<sup>40</sup> Lyanna Melendez, *Some Federal Employees in SF Asked to Work From Home Amid Drug, Crime Concerns: Report*, ABC 7 NEWS (Aug. 14, 2023), <https://tinyurl.com/bdew9zdk>.

<sup>41</sup> See Megan Cassidy, *Crime Is So Bad Near S.F. Federal Building Employees Are Told to Work From Home, Officials Said*, S.F. CHRON. (Aug. 11, 2023), <https://tinyurl.com/58xdxedu>; Jonah Lamb, *Bloody Sidewalks, Knife Attacks and a Corpse: What Workers Face Outside San Francisco Federal Building*, S.F. STANDARD (Sept. 8, 2023), <https://tinyurl.com/9a7t9xfm>.



*Amici* accordingly urge the Court to reverse the decision below which has had profound negative effects on residents, businesses, workers, and others in San Francisco and similar cities throughout the West.

**CONCLUSION**

The Court should reverse the decision below.

Respectfully submitted.

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March 4, 2024

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**APPENDIX A**  
**List of *Amici Curiae***

**Business Owners, Executives, and Companies**

Aisling Ferguson (Business Owner)  
Alex Rosen (Managing Partner, Ridge Ventures)  
Alexander R. Mehran (Chairman, Sunset  
Development Company)  
Alexander Rosen (Managing Partner, Ridge  
Ventures)  
Alicia Strzodka (Property Owner)  
Amy Devereux (Owner, Amy Design)  
Anqi Zhang (CEO, Bidirectional Energy)  
Arthur Patterson (Founder, Accel Partners)  
Barbara J. Dwyer (Owner, Dolores Park Properties)  
Bill Fisher (Founder, Manzanita Capital)  
Bill Poland (Founder and Principal, Bay West  
Group)  
Brian Mullin (Co-Founder and Executive Creative  
Director, Manifold)  
Carole McNeil (Owner and Chairman, McNeil  
Capital, LLC)  
Carrie Pomerantz (Business Leader)  
Christopher J. Ewers (Managing Director, Marsh  
Risk & Insurance Services)  
Cyril Sanandaji (Founder and Managing Principal,  
Presidio Bay Ventures)  
Dana M. Emery (Chair and CEO, Dodge & Cox)  
Danny Conway (Managing Partner, Niche Capital)  
David Butler (Owner, Butler Cues)  
David Rogers (Owner, ConvertClick Digital  
Analytics)  
David Sage (Small Business Owner)  
David Zhang (Business Executive)

Diane Morris (Chairman, Morris Capital Management)  
Ditka Reiner (Woman Owned Small Business Executive)  
Don Papa (President, OTA)  
Doug Biederbeck (Owner, Bix Restaurant and Florio Restaurant)  
Douglas J. Durkin (President, Douglas Durkin Design, Inc.)  
Douglas Wolf (Managing Director, PCG Equity, Inc.)  
Dr. Michael Waclawiczek (Retired Senior Software Executive)  
Eduardo Sagues (Head of Development, March Capital Management)  
Elizabeth Everdell (Principle and CEO, Everdell Garden Design)  
Elliot Scharge (Founder, Ad Hoc Ventures LLC)  
Gary Shansby (Former CEO, San Francisco based Company)  
Hamid Moghadam (Co-Founder, CEO & Chairman of Prologis)  
Hendy Dayton (Small Business Owner)  
Hugh Scott (Executive Managing Director, Jones Lang LaSalle)  
Jackie Safier (President, Helen Diller Foundation)  
James Mann (Senior Vice President, UBS)  
James Sangiacomo (Principal, Trinity Properties)  
Jay Jeffers (CEO and Owner, Jay Jeffers, Inc.)  
Jean-Pierre L.Conte (Chairman and Managing Partner, Genstar Capital, L.P.)  
Jeff Jurow (Business Owner and Member, Marina Community Association)  
John Adair (Managing Partner, Glencrest Group)

John Bryant (CEO, Building Owners and Managers Association San Francisco)  
John Philip Coghlan (Chairman, Life360)  
John Pritzker (Geolo Capita)  
Jon Dayton (Managing Director, Alex Brown)  
Justin Hughes (Founder, Phase 2 Partners)  
Kabir Seth (COO, Presidio Bay Ventures)  
Katherine August DeWilde (Independent Corporate Board Member and C-Suite Executive)  
Katherine Stiggelbout (Owner, In Flow)  
Kevin Russell (CEO, Centric Construction, Inc.)  
Kristi Major (Owner, KristiFit)  
Lee Wittlinger (Business Leader)  
Lucy Junus (Founder, Lucy Junus Interior Design)  
Luis A. Belmonte (Co-CEO, Seven Hills Properties)  
Margaret Liu Collins (CEO and Founder, Liu International Management LLC and Gig Media LLC)  
March Capital Management  
Mark Conroe (Managing Partner, Presidio Development Partners LLC)  
Mark Lerdal (President, Global X Digital)  
Mark Sugarman (President, Banks & Sugarman)  
Matt Aljets (President, MDA Brokerage Corp)  
Matt Brewer (Owner, Back Home Hospitality)  
Matthew Stern (Managing Partner of Deca Companies)  
Matthew C. Sheridan (Business Owner)  
Matthew Zitzmann (CEO, Garage AI, Inc.)  
Max Rhodes (CEO, Faire)  
Megumi Mansfield (Director of Revenue Operations, Resilience)  
Michael Covarrubias (TMG Partners)  
Michael Green (CEO, Virtu Investments)

Mike Cagney (Founder and CEO, Figure Technologies)  
Mike Lin (Founder, Punk Rock Camp)  
Ned Segal (Technology Executive and Board Director)  
Oz Erickson (Chairman, Emerald Fund, Inc.)  
Peter Dwares (President, Dwares Groupfeduar)  
Peter Reinhardt (CEO and Co-founder, Charm Industrial)  
Peter Yorke (CEO, Voyomotive, LLC)  
Phil West (Managing Member, Second Label LLC d/b/a The Beehive)  
Richard J. Leider (Paramount Hotels Inc)  
Richard M. Kovacevich (Retired Chairman and CEO Wells Fargo & Co.)  
Richard R. Nuñez, Jr. (Vice President, Business Development and Alliances)  
Richard Selsted (Director, Oryn Therapeutics, Inc.)  
Rob Giljum (Owner, The Edge, Midnight Sun and Beaux)  
Robert Cohn (Managing Partner, Wellington Management and Consulting, LLC)  
Robert Emmons (Owner, San Francisco Mercantile)  
Robert Tillman (CEO, RRT Partners, LLC)  
Robert Whitworth (Business Owner)  
Rod Diehl (Senior Vice President, Co-Head of West Coast Regions, BXP)  
Ron Conway (Founder, SV Angel)  
Ruchi Sanghvi (Founder and General Partner, South Park Commons)  
Russell Notides (Former CFO, Rapt, Inc.)  
Sharad Singh (CEO, Trivium, Inc. and Trivium Insurance Services, Inc.)  
Sigmund Anderman (Founder, Ellie Mae, Inc.)

Stephen Rechif (Business Owner)  
Stephen Williamson (Founder and CEO, Forager  
Project)  
Steve Fukuda (Business Owner)  
Steven Merrill (President, Merrill Family  
Foundation)  
Theresa Sabella (Managing Member, Sabella  
Building LLC)  
Thomas F. White (President and CEO, TriAct  
Therapeutics, Inc.)  
Timothy F. Marks (Managing Principal, Tucker &  
Marks)  
Todd Solmson (Managing Partner, Fairwood Capital,  
LLC)  
Tommaso Trionfi (Owner, Shared Studios)  
Tracey Sylvester (Owner EHS Pilates)  
Tracy Evans MD, MPH, FAAD (CEO, Precision  
Dermatology, Inc.)  
Vince Hoenigman (Vice President, Citymark  
Development)  
Vishal Saluja (Managing Partner, Indico Capital)  
Wes Powell (Executive Managing Director, JLL)  
William Clerico (Managing Partner, Convective  
Capital)  
William Minshew (CEO, Splits)  
Yitong Zhang (Co-founder, Agora)

**Community and Civic Leaders**

Abram Dawson (Community Leader)  
Aditya Agarwal (Community Builder, South Park  
Commons)  
Alejandro Araiz (National Account Manager for  
Hotel Engine)  
Amanda Hoenigman (Civic Leader)



Ambassador Trevor D. Traina (Retired U.S.  
Ambassador to the Republic of Austria)  
Amy Winthrop (Community Activist)  
Angie Yap (Community Leader)  
Anna Sangiacomo Kane (Principal, Trinity  
Properties)  
Anna Waclawiczek (Community Leader)  
Ayman Farahat (President, Friends and Neighbors  
of Jose Coronado Playground)  
Barbara Pletz (Community Leader)  
Barry Altshuler, (EVP Investments, Equity  
Residential)  
Barry Baron, M.D. (Community Leader)  
Barry Reder (Retired Law Firm Partner)  
Blase Bova (Executive Director, St. Vincent de Paul  
Alameda County)  
Brian Hill (Board Member, Castro Community on  
Patrol)  
Cedric Akbar (Community Advocate)  
Chief Gregory Suhr (San Francisco Police  
Department (retired))  
Christine Bartlett Hinckley (Real Estate Broker,  
Grandmother)  
Claudia L. Siegel (Realtor CRS)  
Connie Cox Price (Artist and Community Organizer)  
Daman Kapoor (President, 856-858 Capp HOA)  
David Crane (President, Govern for California)  
David DeWilde (Community Leader)  
Dean Copans (Principal, Spruce Commercial Real  
Estate)  
Denis F. Shanagher (Partner, Duane Morris LLP –  
Native San Franciscan)  
Desmond Morgan (Secretary, Castro Merchant  
Association, San Francisco)

Diana Helander (Board, Hamilton HOA, Community Leader - OFarrell Neighborhood Group)  
Dina DiBattista (Business Strategy & Marketing Consultant)  
Donald Van de Mark (Real Estate Agent)  
Donna Miller Casey (Non-Profit/Business Consultant)  
Doug Mehl (AIA, Principal)  
Dr Richard Garcia-Kennedy (Community Leader)  
Dr. Mark Co (Foot and Ankle Physician/Surgeon)  
Elissa Meryl (Phycologist, Neighborhood Leader)  
Elizabeth Capdevielle Dressel (Lawyer)  
Erika Slovikoski (CPDT-KA, Community Leader)  
Forrest Liu (Stop Asian Hate activist)  
Frank Tizedes (Community Leader)  
Gary Pinkus (Community Leader)  
Glen Hookey, MD (Emergency Room Doctor)  
Gregg Lynn (Market Share-Leader Realtor in San Francisco)  
Henry Karnilowicz (President, South of Market Business Association)  
Jade Tu (Community Organizer)  
James Reuben (Partner, Reuben, Junius, & Rose)  
Jane Day (Harriet Street Advocates)  
Janice Thacher (Partner, Wilson Meany)  
Jeannette Harriss (Financial Advisor- Morgan Stanley LLC)  
Jeff Schlarb (Principal, Jeff Schlarb Design Studio)  
Jeremy Liew (Partner, Lightspeed Venture Partners)  
Jim Shapiro (Community Leader)  
Joe Camarda (Community Leader)  
John Debenedetti (Chair of the Board, All May See Foundation)

John Hooper (Buena Vista Neighborhood Association Member)  
John Kuehne (Security Committee Member, Gateway Tenants Association)  
Josel Salalima (Engineering Lead)  
Judge Kevin V. Ryan (Ret.) (Former United States Attorney for the NDCA)  
Julia Baron, PsyD (Licensed Clinical Psychologist)  
Karen Breslin (Former President of Miraloma Park Improvement Club)  
Karina Velasquez (Principal, Law Office of Karina Velasquez)  
Kate Smith (President, Saint Francis Foundation)  
Kerry Egan (Act Two Holdings)  
Kerry Riordan Sykes (San Francisco Attorney)  
Kevin Delmore (Sotheby's International Realty San Francisco Brokerage)  
Kevin Miller (Physician)  
Kris Iversen (Executive Assistant, Author, and 3rd Generation San Franciscan)  
Kristina Cahojova (Community Leader)  
Kwabena Agyeman (Community Leader)  
Kyle Olivo (SOMA Grand Community Leader)  
Lily A. Sage (Real Estate Investor)  
Lily Ho (President, Delta Chinatown Initiative)  
Louise Muhlfeld Patterson (Community Leader)  
Luke Perkocha (Community Leader)  
Madeleine Trembley (President, Gateway Tenants Association)  
Madeline Duva (Board Member, Advisor and Mentor to various technology companies)  
Madeline Mandanis (Associate, CBRE)  
Margaret Latif (Community Leader)

Maria Pasos-Nunez (Strategic Management  
Consultant, Beeline Partners)  
Mark Lehmann (Community Leader)  
Mark W. Perry (Retired NEA General Partner)  
Mary Conde (Board of Directors, Civic Center  
Community Benefit District)  
Mary Jung (Past Chair, San Francisco Democratic  
Party)  
Mary Vascellaro (Community Volunteer in  
Education)  
Mauree Jane Perry (Retired Oral Historian)  
Meet Aghera (Gateway Tenants Association)  
Melanie Born (Coordinator of Client Services in a  
Tenderloin based non-profit)  
Melanie Mandich (Community Leader and  
Volunteer)  
Melis Inceer (Community Leader)  
Michael Bradley (Community Leader)  
Michael Lai (Community Leader)  
Michela Alioto-Pier (Former San Francisco  
Supervisor)  
Michele Hennessey (BCNA Board Member)  
Nancy Montgomery (Non-Profit Board Trustee)  
Naomi Richen (Board Member, Small Property  
Owners of San Francisco)  
Natalie Jamison (Community Leader)  
Norma García-Kennedy (Community Leader)  
Oleg Verbitski (SFAR Member and SF Resident.  
Chair of GBC Committee)  
Par Hanji (Partner, Hanji & McAllister Group)  
Paulina Fayer (Executive Director, RecoverCA)  
Peter Lee (Community Leader)  
Peter Lewis (President, Mission Dolores  
Neighborhood Association)

Ralph Hibbs (Castro Community Benefit District  
Board Member and Treasurer, Member of Castro  
Commons HOA Board)  
Randi Fisher (Co-trustee Pisces Foundation)  
Rebecca Bradley (Community Leader)  
Rebecca Schumacher (Realtor)  
Remi Tan (Architect)  
Rick Chisholm (Nonprofit Board member)  
Robert C. Gordon III (Former Career Assistant  
District Attorney, City and County of San  
Francisco)  
Roberta Economidis (Partner, GE Law Group)  
Stephen Martin-Pinto (Former President West, Twin  
Peaks Central Council)  
Steven McGlocklin (Physician)  
Steven N. Fayne (Chairman of the Board, San  
Francisco Campus for Jewish Living)  
Theo Cincotta (Soma West Society)  
Thomas Shanahan (Community Leader)  
Tom Dehnel (Founder, Harrison Street Neighbors)  
Topher Conway (SV Angel)  
Vaughn de Guigne (Community Leader)  
William Brega (Stop Asian Hate Activist)  
William Stanley Andereck (Internist, Bioethicist)  
Zoe Luhtala (Community Leader)

**Neighborhood Leaders and Associations**

Adam Baron  
Alan Hopkins (District 6 Neighborhood Leader)  
Alicia Strodzka  
Ann Poletti  
Ari Shp (Mission Neighborhood Safety Advocate)  
Barbara Hill  
Barry Kane

Beau Lacey  
Bette Sue Wadsworth  
Bharath Kadaba  
Bilques Smith  
Brian Gannon  
Brian Key  
Bronagh Hanley  
Brynne Levy  
Carl M. Kawaja  
Caroline Newman  
Carolyn Mehran  
Cassandra Palo  
Christian Rieta  
Christopher Nalen  
Clyde Ikeda, MD  
David Young  
Derek Jackson  
Devon Johnson (District 2 Neighborhood Leader)  
Donald Graves  
Donna Hurowitz  
Ellanor Notides (Inner Richmond Neighborhood  
Leader)  
Francesca Pastine (President, Inner Mission  
Neighborhood Association)  
Gay-Lynn Blanding  
George Cavage  
Gia Granucci  
Gina Ciccirelli  
Glenn Risso  
Helen Spalding  
Holly Peterson  
Jackie Miller  
Jay Ernst  
Jennifer Hymes Battat

Joe Tham  
John Gall  
John Owl  
John S. Wadsworth Jr.  
Joi Pentin  
Jordan Vennes  
Joyce Ferman (Member Central Mission Neighbor-  
hood Association)  
Kalpi Kadaba  
Kathryn Ann Dougery  
Kathryn Kimball  
Lena Wong  
Leslie Podell  
Lisa Ikeda  
Lucas Weissman  
Luke deWilde  
Lyle Sweeney  
M.J. Thomas (Neighborhood Association Board  
Member)  
Marie N. Simpson  
Mark Dietrich  
Mark McHale  
Martin Quinn  
Mary Nadine Sangiacomo Kane  
Maureen S. McFadden  
Michael Jameson  
Michelle Hughes  
Mike Ruiz  
Mithun Patel  
Mission Dolores Neighborhood Association  
Naomi Hofacket  
Nathaniel Weiner  
Nikhil Gowda  
Nikhil Sachdev

Noelle Moseley  
P. Bailey Jamison  
Patrick Kennedy  
Paul Kontos  
Paul Rea  
Paul Sears  
Paul V. Simpson  
Peggy Mullin-Bogart  
Philip Vy  
Philipp Frings  
Phyllis Goodman (Member of Barbary Coast Neighborhood Association)  
Richard C. Barker  
Richard Robinson (Harbor Affairs Neighborhood Leader)  
Richard Ruvalcaba  
Robert C. Hood  
Robert Sangiacomo Kane  
Robert Vennes  
Roberta L. Baron  
Roger Williams  
Sandra Ingrish  
Stephen Diteljan (Tenderloin Neighborhood Leader)  
Steven Matthews  
Sue Graham Johnston  
Susan A. Ford  
Susan Lowe  
Sybil Gordon  
Tanguy Serra  
Tim Seufert  
Tracie Rosen  
Tracie Rosen, Esq.  
William D Evers Jr.



**APPENDIX B**  
**Lawsuits Filed Under *Martin v. City of Boise***  
**and *Johnson v. Grants Pass***

- Jewels Helping Hands v. Hansen*, No. 23-2-03122-3  
(Wash. Ct. App. Dec. 7, 2023)
- Better Days Ahead Outreach Inc. v. Borough of Pottstown*, No. 2:23-cv-04234 (E.D. Pa. Nov. 1, 2023)
- Tassey v. California Dep't of Transp.*, No. 23-cv-05041  
(N.D. Cal. Oct. 2, 2023)
- Saalman, II v. County of Mercer*, No. 3:23-cv-1538 (N.D. Ohio Aug. 8, 2023)
- Boyd v. City of San Rafael*, No. 3:23-cv-04085 (N.D. Cal. Aug 11, 2023)
- Schwab v. City of Fremont*, No. 3:23-cv-03037 (N.D. Cal. Jun 21, 2023)
- Community on Wheels v. City of Tucson*, No. 4:23-cv-00029 (D. Ariz. Jan. 17, 2023)
- Fund for Empowerment v. City of Phoenix*, No. 2:22-cv-02041 (D. Ariz. Nov. 30, 2022)
- Yesue v. City of Sebastopol*, No. 4:22-cv-06474 (N.D. Cal. Oct. 25, 2022)
- Coalition on Homelessness v. City and County of San Francisco*, No. 4:22-cv-05502 (N.D. Cal. Sep 27, 2022)
- Bacon v. City of Chula Vista*, No. 22-cv-01278 (S.D. Cal. Aug. 29, 2022)
- Blaike v. El-Tawansy*, No. 3:22-cv-04669 (N.D. Cal. Aug 15, 2022)

- McCloud v. Cnty. of Sonoma*, No. 3:22-cv-04284 (N.D. Cal. July 25, 2022)
- Balin v. Cal. Dep't of Transp.*, No. 3:22-cv-04178 (N.D. Cal. July 18, 2022)
- Blain v. California Dep't of Transp.*, No. 3:22-cv-04178 (N.D. Cal. July 18, 2022)
- Fitzpatrick v. Little*, No. 1:22-cv-00162 (D. Idaho Apr. 12, 2022)
- Brown v. City of Fresno*, No. 1:22-cv-00216 (E.D. Cal. Feb. 21, 2022)
- Pajaro/Watsonville Homeless Union v. City Of Watsonville*, No. 3:21-cv-09778 (N.D. Cal. Dec. 19, 2021)
- Dominguez v. City of Berkeley*, No. 3:21-cv-08599 (N.D. Cal. Nov. 4, 2021)
- Boring v. Murillo*, No. 2:21-cv-07305 (C.D. Cal. Sept. 13, 2021)
- Evenson-Childs v. Ravalli County Sheriff's Office*, No. 9:21-cv-00089 (D. Mont. Aug 09, 2021)
- People of City of Los Angeles Who are Un-Housed v. Garcetti*, No. 21-cv-06003 (C.D. Cal. July 26, 2021)
- Marin Cnty. Loc. of the Cal. Homeless Union v. City of Novato*, No. 21-cv-05401 (N.D. Cal. July 14, 2021)
- O'Callaghan v. City of Portland*, No. 3:21-cv-00812 (D. Or. May 25, 2021)
- Warren v. City of Chico*, No. 2:21-cv-00640 (E.D. Cal. Apr. 8, 2021)
- Geary v. City of Pacifica*, No. 3:21-cv-01780 (N.D. Cal. Mar. 15, 2021)

- Sausalito/Marin Cnty. Chapter of Cal. Homeless Union v. City of Sausalito*, No. 21-cv-01143 (N.D. Cal. Feb. 16, 2021)
- Niau v. County of Kauai*, No. 1:20-cv-00319 (D. Haw. Jul 20, 2020)
- Jackson v. Gill*, No. 6:20-cv-00906 (D. Or. Jun 05, 2020)
- Winslow v. City of Oakland*, No. 20-cv-01510 (N.D. Cal. Feb. 28, 2020)
- Mahoney v. City of Sacramento*, No. 2:20-cv-00258 (E.D. Cal. Feb. 4, 2020)
- Young v. City of Los Angeles*, No. 2:20-cv-00709 (C.D. Cal. Jan 23, 2020)
- Aitken v. City of Aberdeen*, No. 3:19-cv-05322 (W.D. Wash. Apr. 22, 2019)
- Quintero v. City of Santa Cruz*, No. 5:19-cv-01898 (N.D. Cal. Apr. 9, 2019)
- Shipp v. Schaaf*, No. 19-cv-01709 (N.D. Cal. Apr. 2, 2019)
- Le Van Hung v. Schaaf*, No. 19-cv-01436 (N.D. Cal. Mar. 19, 2019)