No. 19-247

In The

Supreme Court of the United States

CITY OF BOISE, IDAHO,

Petitioner,

v.

ROBERT MARTIN, et al.,

Respondents.

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

BRIEF OF THE PEOPLE CONCERN AND WEINGART CENTER ASSOCIATION AS AMICI CURIAE SUPPORTING PETITIONER

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INTEREST OF AMICI CURIAE

Amici are nonprofit organizations devoted to helping people experiencing homelessness in the greater Los Angeles area, including its Skid Row neighborhood. They respectfully submit this brief to share their perspective on how the Ninth Circuit's decision in this case, if allowed to stand, will have unintended adverse consequences for the people that amici serve.[1]

One of Los Angeles County's largest social services agencies, **The People Concern** was formed in 2016 in a merger of two trusted social service organizations based in Los Angeles County, OPCC and Lamp Community. Informed by more than fifty years of work in the community, The People Concern is a leading provider of, and advocate for, evidence-based solutions to the multi-faceted challenges inherent in homelessness and domestic violence. With compassion and profound respect for those it serves, The People Concern provide a fully integrated system of care—including outreach, interim housing, mental and medical health care, substance abuse services, domestic violence services, life skills and wellness programs, and permanent supportive housing—tailored to the unique needs of homeless

[1] No counsel for a party authored this brief in whole or in part; no such counsel nor any party made a monetary contribution intended to fund the preparation or submission of the brief; and no person or entity, other than the amici curiae, their members, or their counsel, made such a monetary contribution. See S. Ct. R. 37.6. The parties have entered blanket consents to the filing of amicus briefs, and copies of their letters of consent are on file with the Clerk's Office. The parties were timely notified of amici's intent to file this brief.

individuals, survivors of domestic violence, challenged youth, and others who have nowhere else to turn. The People Concern's model of integrated and comprehensive care empowers its participants to navigate the multi-faceted obstacles in their lives, become their best selves, and ultimately, connect with and contribute to their communities.

The mission of **Weingart Center Association** is to empower and transform lives by delivering innovative solutions to combat poverty and break the cycle of homelessness. Founded in 1983 as a 501(c)(3) nonprofit organization located in the heart of downtown Los Angeles's Skid Row, the Weingart Center offers a multitude of programs and services aimed to help individuals address the personal challenges they face daily. The Weingart Center combats poverty by giving homeless men and women the basic skills necessary to stabilize their lives, secure income, and find permanent housing. As one of the best comprehensive human services organizations in the western United States, the Weingart Center is committed to establishing a world in which all people have and maintain a high-quality productive life. Its programs and services are housed in its 11-story former El Rey Hotel building, located at the corner of 6th and San Pedro Streets. The Weingart Center provides direct services to more than 20,000 economically disadvantaged individuals per year. It offers programs uniquely tailored to meet the needs of this diverse population. Whatever the obstacles are—debt, addiction, a criminal record, mental illness, or physical illness—the Weingart Center helps

them overcome these challenges and clear the way for a fulfilling life.

SUMMARY OF ARGUMENT

Amici know better than most that the Ninth Circuit's decision in this case is no way to help individuals experiencing homelessness. As nonprofit organizations committed to helping homeless and low-income individuals in Los Angeles's Skid Row neighborhood and elsewhere, amici firmly believe that neither criminalizing nor constitutionalizing homelessness can solve this complex and tragic humanitarian crisis. Unfortunately, amici's experiences in Los Angeles have confirmed that never-ending litigation over constitutional rights makes it harder for amici and similar organizations to help individuals experiencing homelessness. Such litigation can effectively cement homeless encampments into place and significantly increase the difficulty of providing the assistance that is critical to helping these individuals build lives of self-sufficiency.

In several ways, the Ninth Circuit's decision in this case breaks new ground, but for Los Angeles it is familiar territory. Back in 2006, the Ninth Circuit adopted a similarly sweeping Eighth Amendment rule for Los Angeles, restricting the city's ability to enforce a public sleeping ordinance "so long as there is a greater number of homeless individuals in Los Angeles than the number of available beds." *Jones* v. *City of Los*

Angeles, 444 F.3d 1118, 1138 (9th Cir. 2006). Knowing that housing sufficient for Los Angeles's tens of thousands of homeless individuals was a distant prospect, the city settled the case, and the *Jones* decision was vacated. Under the terms of the settlement, however, Los Angeles continued to abide by the *Jones* ruling—and did not enforce public sleeping laws—during the overnight hours.

But that was hardly the end of the lawsuits. The next legal battle was over the right to leave property on the street unattended. In *Lavan* v. *City of Los Angeles*, 693 F.3d 1022, 1024 (9th Cir. 2012), the Ninth Circuit ruled that the city likely violated homeless Skid Row inhabitants' Fourth and Fourteenth Amendment rights by seizing and destroying unabandoned personal possessions. Los Angeles settled that case, too, but still more lawsuits and settlements followed. Most recently, the city settled *Mitchell* v. *City of Los Angeles*, in which the district court preliminarily enjoined the city from confiscating any amount of Skid Row property, whether in a cleanup effort or incident to an arrest, "absent an objectively reasonable belief that it is abandoned, presents an immediate threat to public health or safety, is evidence of a crime, or is contraband." No. CV 16-01750 SJO (GJSx), 2016 WL 11519288, at *7 (C.D. Cal. Apr. 13, 2016). This injunction applied not only to such essentials as tents, clothing, and medication, but also bulky items like sofas and appliances. *Mitchell* v. *City of Los Angeles*, No. CV 16-01750 (SJO) (JPRx), 2017 WL 10545079, at *2, *3-4 (C.D. Cal. Sept. 25, 2017).

No matter how well-intentioned, these lawsuits and rulings hamper efforts to find constructive solutions to homelessness. Taken together, the rulings make it virtually impossible to clean up encampments in a municipality, like Los Angeles, where the number of individuals experiencing homelessness invariably exceeds the amount of shelter space. And entrenched encampments make it harder for amici to succeed in their missions. In amici's long experience, access to housing and services—including counseling, treatment, and training, among other things—are indispensable to get people back on their feet. But it is far harder to persuade individuals to make use of available housing and services when they are settled in quasi-permanent encampments that become fixed, and overrun with disease and crime, in neglected parts of town. And it is also harder to build popular support around constructive solutions to homelessness—like the construction of new housing—when the public debate is fixated on courtroom battles.

The status quo in Skid Row, which offers a glimpse into the future for cities throughout the Ninth Circuit if the decision below stands, is not good for the people who live in those encampments, the people trying to rebuild their lives nearby, or the people who provide services to them. In amici's view, the Court should grant certiorari and reverse the Ninth Circuit's judgment.

ARGUMENT

I. The Ninth Circuit's Decision Is Sure To Worsen The Homeless Encampment Crisis.

A. Los Angeles's Experience After *Jones* Provides A Cautionary Tale.

Dissenting from the denial of en banc rehearing, Judge Milan Smith offered a photograph of what is, to amici, a familiar sight: a long line of tents filling a Skid Row sidewalk, surrounded by scattered personal effects and debris. Pet. App. 21a (M. Smith, J., dissenting). This particular sidewalk is just around the corner from the Weingart Center, but there is nothing unique about it. Countless sidewalks around Los Angeles look much the same.

Judge Berzon contended in her concurrence that the picture is irrelevant to this case. It cannot "be said to illuminate the impact of *Martin* within this circuit," Judge Berzon argued, because it predates that decision and depicts Los Angeles rather than Boise. Pet. App. 4a (Berzon, J., concurring). But that argument does not hold up. The Ninth Circuit decision below expressly based its holding on the earlier, Los Angeles–directed decision in *Jones*. See Pet. App. 35a, 59a-60a, 62a (citing *Jones*, 444 F.3d at 1136-1138). Both decisions hold that public camping laws are unenforceable against people experiencing homelessness "so long as there is a greater number of homeless individuals in [a jurisdiction] than the number of available beds [in shelters]." Pet. App. 62a (quoting *Jones*, 444 F.3d at 1138).

True, the *Jones* decision was later vacated after the parties settled their dispute. But the terms of the settlement required adherence to *Jones*'s core ruling, at least at night: Los Angeles agreed that it would not enforce its ordinance against public camping between the hours of 9:00 p.m. and 6:00 a.m.[2] That policy of nightly non-enforcement was to remain in effect until the city constructed an additional 1,250 units of permanent supportive housing for homeless individuals within city limits.[3]

Los Angeles continued to adhere to that non-enforcement policy even after the city's Housing and Community Investment Department reported, in 2015, that the housing-construction requirements of the *Jones* settlement had been met.[4] And the city stayed the course after Los Angeles voters approved Measure HHH to fund up to $1.2 billion in new housing, as well as a sales tax increase to fund additional services.[5]

Far from halting the rise of homeless encampments over the past decade, the city's adherence to *Jones* has coincided with their dramatic growth.

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[2] Jones *v.* City of Los Angeles *Settlement Agreement*, https://veniceupdate.com/wp-content/uploads/2018/06/Jones-Settlement.pdf.

[3] *Ibid.*

[4] Susan Shelley, *LA Should Revisit Lawsuit Settlement That Allowed Skid Row Conditions Everywhere*, L.A. DAILY NEWS (Aug. 28, 2017), https://www.dailynews.com/2017/06/20/la-should-revisit-lawsuit-settlement-that-allowed-skid-row-conditions-everywhere-susan-shelley/.

[5] *Ibid.*

Within Metro Los Angeles, known as "Service Planning Area 4," the number of unsheltered individuals—those who live on sidewalks or in cars, parks, abandoned buildings, or other places not meant for human habitation—more than *doubled* over the past decade, rising from 5,972 in 2009 to 12,281 in 2019.[6] Some in the city believe that *Jones* and its settlement contributed to the entrenchment of encampments like the one depicted in Judge Smith's opinion.[7]

B. Personal Property Litigation Naturally Follows Public Camping Litigation.

Judge Berzon's concurring opinion downplays concerns that the *Jones/Martin* rule will foster encampments. As portrayed in the concurrence, the *Martin* opinion does not "outlaw[] ordinances 'barring the obstruction of public rights of way or the erection of certain structures,' such as tents." Pet. App. 5a (Berzon, J., concurring) (quoting Pet. App. 62a n.8). But again, Los Angeles's experience suggests otherwise: if

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[6] Compare LOS ANGELES HOMELESS SERVS. AUTH., 2009 GREATER LOS ANGELES HOMELESS COUNT REPORT 2 (2009), http://documents.lahsa.org/planning/homelesscount/2009/HC09-fullreport.pdf, with L.A. HOMELESS SERVS. AUTH., 2019 GREATER LOS ANGELES HOMELESS COUNT—DATA SUMMARY: TOTAL POINT-IN-TIME HOMELESS POPULATION BY GEOGRAPHIC AREAS (2019), https://www.lahsa.org/documents?id=3467-2019-greater-los-angeles-homeless-count-total-point-in-time-homeless-population-by-geographic-areas.pdf.

[7] See, *e.g.*, Shelley, *supra* note 4.

individuals have a right to sleep on sidewalks, they also have certain rights to keep their belongings there.

The Ninth Circuit has already recognized as much. In *Lavan*, a divided panel upheld a preliminary injunction against Los Angeles based on allegations that the city was improperly seizing and destroying unattended personal effects on Skid Row. 693 F.3d at 1027. According to the Ninth Circuit majority, the city likely violated both the Fourth and Fourteenth Amendments by seizing and destroying unattended personal property that had not been abandoned. *Ibid.* In so holding, the panel rejected the suggestion that such conduct was reasonable, for Fourth Amendment purposes, because leaving property unattended on a public sidewalk violated the municipal code. *Id.* at 1027, 1029-1030. It similarly found the ordinance irrelevant to the owners' procedural due process rights. *Id.* at 1031-1032. The court was particularly critical of what it called "the City's 'practice of on-the-spot destruction of seized property.'" *Id.* at 1032 (citation omitted).

After *Lavan*, the city reevaluated its approach to unattended personal property. In 2016, the city council approved amendments to the municipal code that permitted individuals to keep a limited amount of personal property—as much as could fit in a 60-gallon container.[8] Other personal property could be seized, but generally only if the city first provided 24 hours'

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[8] Gale Holland, *L.A. Council OKs Law Limiting Homeless People's Belongings To What Can Fit In A Trash Bin*, L.A. TIMES (Mar. 30, 2016).

notice; and then seized property would be stored for owners' retrieval for 90 days.[9]

Before that new law could take effect, however, new litigation was already underway. In *Mitchell* v. *City of Los Angeles*, plaintiffs alleged that the city had improperly seized or destroyed Skid Row inhabitants' personal property without providing notice or storage. 2016 WL 11519288, at *1. Although the district court acknowledged that the evidence for and against the plaintiffs' allegations was inconclusive, it nonetheless concluded based on *Lavan* that the plaintiffs had shown a likelihood of success, and awarded a preliminary injunction. *Id.* at *3-5. The injunction prohibited the confiscation of property in Skid Row and surrounding areas—whether incident to an arrest or part of a cleanup of an area where homeless individuals are located—unless the city had an objectively reasonable belief that the property was abandoned, posed an immediate health and safety risk, or was evidence of a crime or contraband. *Id.* at *7. In a follow-up ruling, the court denied the city's request for clarification that "sofas, appliances, sheds, and other bulky items" could properly be removed without satisfying those conditions. *Mitchell*, 2017 WL 10545079, at *2. Under the *Mitchell* injunction, not even sofas and appliances could be seized unless they pose an immediate threat to public health or safety. *Id.* at *4 ("If a bulky item does not pose such a threat, then it must not be seized.").

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[9] *Ibid.*

Los Angeles settled *Mitchell* too.[10] For a three-year period, the city has agreed not to limit the total amount of property that individuals can keep in the Skid Row neighborhood, abandoning the 2016 ordinance's 60-gallon maximum for that particular area.[11]

A spokesperson for the city's mayor described the agreement as "the outcome of several unfortunate options," and added, "It's time we break the cycle of litigation that keeps us from helping people in need."[12] José Huizar, a city councilmember whose district encompasses Skid Row, voted against the settlement and criticized the city for continuing to "allow litigation to drive policy on homelessness instead of proactive policy."[13]

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[10] Nicholas Slayton, *Homeless Property Settlement Imposes New Rules For Skid Row, Surrounding Areas*, L.A. DOWNTOWN NEWS (May 31, 2019), http://www.ladowntownnews.com/news/homeless-property-settlement-imposes-new-rules-for-skid-row-surrounding/article_db57038c-83c4-11e9-a1eb-33c5105a99c7.html.

[11] Gale Holland & David Zahniser, *L.A. Agrees To Let Homeless People Keep Skid Row Property—And Some In Downtown Aren't Happy*, L.A. TIMES (May 29, 2019), https://www.latimes.com/local/lanow/la-me-ln-homeless-cleanup-property-skid-row-downtown-lawsuit-mitchell-case-20190529-story.html.

[12] *Ibid.* (quoting Alex Comisar, a spokesperson for Mayor Eric Garcetti).

[13] Nicholas Slayton, *Council Votes To Settle* Mitchell *Case And Limit Property Seizures On Skid Row*, L.A. DOWNTOWN NEWS (Mar. 6, 2019), http://www.ladowntownnews.com/news/council-votes-to-settle-mitchell-case-and-limit-property-seizures/article_a27b6a8a-4076-11e9-b1df-070c6d75e026.html.

C. The Panel's Decision In This Case Will Prompt Still More Litigation.

Despite these settlements, the Los Angeles city government knows that litigation over homelessness is unlikely to end soon. After the Ninth Circuit's ruling in this case, the city council's homelessness and poverty committee recommended a full rewrite of the municipal code provision that gave rise to the *Jones* litigation and settlement.[14] Today, there are over 27,000 unsheltered individuals in Los Angeles as a whole, but only 8,100 shelter beds.[15] The city council committee accordingly thinks that a more narrowly tailored provision is necessary to comply with the ruling below.[16]

And while Los Angeles has been wrestling with these issues for over a decade, future litigation will not be confined to that city alone. Throughout the Ninth Circuit, plaintiffs can and already do cite the panel's decision, as well as the *Lavan* precedent, to argue for constitutional rights to sleep in public and keep personal possessions. Given those two Ninth Circuit precedents, municipalities throughout the western United States will quickly find themselves with severely

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[14] Matt Tinoco, *LA's Rules About Where Homeless People Are Allowed To Sit And Sleep Could Get Even More Complicated*, LAIST (Aug. 22, 2019), https://laist.com/2019/08/22/los-angeles-homeless-sit-lie-sleep-law.php.

[15] *Ibid.*

[16] *Ibid.*

restricted options in combatting the growth and increasing permanence of homeless encampments.

II. Rights To Reside In Encampments Are An Inadequate Response To The Homeless Population's Needs.

Aside from witnessing the progression of the Los Angeles–based litigation, amici also have firsthand knowledge of how to help individuals overcome homelessness. The way to do that is by getting them into housing and services. There are different types of housing and different types of services—including skills training, addiction treatment, case management, and medical and mental health care—and room for reasonable disagreement over optimal policy and which types of housing and services to prioritize. But the overall goal should be to help people get off the streets.

Unfortunately, enshrining legal rights to live in encampments can undermine that goal. Although the litigation recounted above has been pursued with noble intentions and has secured rulings that seem to benefit the homeless in the short term, it also has significant drawbacks. In many ways, constitutionalizing rights to camp and keep property in public can have adverse unintended effects. It can lead to extremely unsafe conditions, jeopardize the effective provision of the vital and indeed life-altering housing and services that amici and similar organizations offer, and distort

the public debate over how best to help this underserved population.

A. Encampments Are Beset By Appalling Health And Safety Problems.

Day in and day out, amici see homelessness's human toll. On Skid Row, outbreaks of disease are common. Because of the close quarters and lack of effective systems for dealing with human waste, physicians who treat the homeless describe encampment conditions as "just like a Third World environment."[17] Those who live in this environment can be particularly susceptible to outbreaks of disease due to weakened immune systems from stress and malnutrition.[18]

Typhus, which is spread by infected fleas on rats and other animals, recently spread through the downtown streets and even required the closure of parts of city hall after rodents invaded the building.[19] In 2017, the Los Angeles County Department of Public Health declared a local outbreak of hepatitis A, with a large majority of cases occurring among homeless individuals and those who provide services to them.[20]

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[17] Anna Gorman & Kaiser Health News, *Medieval Diseases Are Infecting California's Homeless*, THE ATLANTIC (Mar. 8, 2019), https://www.theatlantic.com/health/archive/2019/03/typhustuberculosis-medieval-diseases-spreading-homeless/584380/.

[18] *Ibid.*

[19] *Ibid.*

[20] L.A. CTY. HEALTH ALERT NETWORK, LAC DPH HEALTH ALERT: OUTBREAK OF HEPATITIS A IN LOS ANGELES COUNTY

But disease is far from the only problem. Bad actors prey on those who live in encampments, viewing them as easy victims. Hundreds of gang members hide in encampments.[21] They use the cover of the tents to move drugs and weapons, and take advantage of the homeless individuals who live in and around them.[22]

Drug dealers engage in similar exploitation. Deaths among individuals experiencing homelessness in Los Angeles County have risen 76% in the past five years, with substance abuse a likely cause for the increase.[23] Between 2014 and 2018, 3,612 homeless individuals died in Los Angeles, over a third of whom died in public places like sidewalks, hillsides, riverbeds, and freeway on-ramps, often from substance abuse.[24] In 2016, prosecutors obtained the conviction of a drug dealer who "preyed on the vulnerable homeless population of Skid Row," taking in $1.6 million and selling more than 15 pounds of cocaine along the way.[25]

AMONG THE HOMELESS AND PEOPLE WHO USE ILLICIT DRUGS (Sept. 19, 2017), http://publichealth.lacounty.gov/eprp/Health%20Alerts/DPH%20HAN%20Hep%20A%20Outbreak%20091917.pdf.

[21] Lolita Lopez & Phil Dreschler, *Gangs Of LA On Skid Row*, NBC LOS ANGELES (Feb. 19, 2018), https://www.nbclosangeles.com/news/local/Gangs-of-LA-on-Skid-Row-474531353.html.

[22] *Ibid.*

[23] Anna Gorman & Harriet Blair Rowan, *The Homeless Are Dying In Record Numbers On The Streets of L.A.*, KAISER HEALTH NEWS (Apr. 24, 2019), https://khn.org/news/the-homeless-are-dying-in-record-numbers-on-the-streets-of-l-a/.

[24] *Ibid.*

[25] Marissa Wenzke & Courtney Friel, *Skid Row Drug Kingpin, Found With $600,000 in $1 Bills, Is Sentenced To 11 Years In*

On any given night, there are also 4,800 to 10,000 homeless minors on the streets of Los Angeles.[26] Up to one-eighth of Los Angeles's homeless population are unaccompanied minors, who are particularly vulnerable to sex trafficking and exploitation.[27] Statistics are hard to calculate, but by one estimate, one in three teens will be recruited into sex work within 48 hours on the street, and according to two other reports, these victims are, on average, 13 to 15 years old.[28]

And conditions may be getting worse. In 2018, serious crimes involving at least one homeless victim rose 68% from the previous year.[29] Much of the increase was attributable to robbery, larceny, and rape.[30] In the words of one Skid Row service provider, "People

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Prison, KTLA5 (Aug. 7, 2017), https://ktla.com/2017/08/07/skid-row-drug-kingpin-found-with-600000-in-1-bills-is-sentenced-to-11-years-in-prison/.

[26] Lane Anderson, *Saving "Throwaway Kids." In Los Angeles, Sex Trafficking Doesn't Look Like It Does In The Movies*, DESERET NEWS (Dec. 31, 2015), https://www.deseret.com/2015/12/31/20579729/saving-throwaway-kids-in-los-angeles-sex-trafficking-doesn-t-look-like-it-does-in-the-movies#john-jay-college-of-criminal-justice-molnar-et-al-suicidal-behavior-and-sexual-physical-abuse-among-street-youth-child-abuse-neglect.

[27] *Ibid.*

[28] *Ibid.*

[29] L.A. CHIEF OF POLICE, THE LOS ANGELES POLICE DEPARTMENT'S 2018 FOURTH QUARTER REPORT ON HOMELESSNESS 2 (Jan. 29, 2019), http://www.lapdpolicecom.lacity.org/031219/BPC_19-0073.pdf.

[30] Kate Cagle, *Crime Rate Among Homeless Skyrockets In Los Angeles*, SPECTRUM NEWS 1 (May 7, 2019), https://spectrumnews1.com/ca/la-west/news/2019/05/07/crime-among-the-homeless-explodes-in-los-angeles.

get beaten, women get raped."[31] "It's just a brutal environment."[32]

B. Encampments Interfere With The Provision Of Housing And Vital Services To The Homeless.

Such conditions make it much harder for service providers like amici to provide housing and critical services to individuals experiencing homelessness. That is for several reasons.

Unsurprisingly, when encampment conditions are dangerous for people experiencing homelessness they are also dangerous for those who serve them. The presence of communicable diseases hampers the outreach efforts of homeless service providers. There have been several hepatitis A cases "among people who provide services to the homeless."[33] A police department employee assigned to Skid Row became infected with typhoid fever, with two other employees showing symptoms as well.[34] Andy Bales, the CEO of the Union

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[31] Eric Johnson, *Paradise Lost: Homeless In Los Angeles*, KOMO NEWS (June 18, 2019), https://komonews.com/news/local/paradise-lost-homeless-in-los-angeles (quoting Andy Bales, CEO of the Union Rescue Mission).

[32] *Ibid.*

[33] Cty. of Los Angeles Public Health, *Public Health Announces Hepatitis A Outbreak In LA County* (Sept. 19, 2017), http://publichealth.lacounty.gov/phcommon/public/media/mediapubhpdetail.cfm?prid=1754.

[34] Chris Woodyard, *As Homeless Are Suffering, Risk Of Hepatitis, Typhus And Other Diseases Is Growing*, USA TODAY (July 10, 2019), https://www.usatoday.com/story/news/nation/2019/06/18/

Rescue Mission, became infected by E. coli, strep, and staph while serving the Los Angeles homeless, requiring the amputation of his leg.[35]

Encampments also restrict the resources that can be committed to providing vital services. Municipalities must direct substantial resources to keeping such areas safe. As the U.S. Interagency Council on Homelessness has correctly observed, such municipalities bear significant "costs to ensure the safety, security, and well-being of the people living within the encampments, which can prevent funding from being directed to supporting and creating permanent housing and service options for all who are unsheltered."[36]

Encampments also encourage municipalities to write off particular parts of the city, where conditions are out of sight and mind for many citizens. Take the *Mitchell* settlement, for example. Instead of negotiating a solution that would have treated all of Los Angeles equally, the city decided to create special rules for Skid Row and certain nearby areas.[37] It is no secret that Los Angeles's government has decided, in Councilman Huizar's words, to "treat Skid Row and

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homeless-homelessness-disease-outbreaks-hepatitis-public-health/1437242001/.

[35] Johnson, *supra* note 31.

[36] U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, ENDING HOMELESSNESS FOR PEOPLE LIVING IN ENCAMPMENTS: ADVANCING THE DIALOGUE 2 (Aug. 2015), https://www.usich.gov/resources/uploads/asset_library/Ending_Homelessness_for_People_Living_in_Encampments_Aug2015.pdf.

[37] Slayton, *supra* note 10.

Downtown different than the rest of the City," but in doing so the city "allow[s] conditions to worsen for [Skid Row's] population of people experiencing homelessness."[38]

That differential treatment is particularly bad for those who are trying to use service providers' assistance and are earnestly seeking to recover from homelessness. Such recovery efforts typically take place near encampments, where the recovering individuals formerly lived. That is both where service providers like amici operate and where new bridge housing is being built, through programs like Los Angeles's "A Bridge Home."[39] In the words of Mike Arnold, the President and CEO of The Midnight Mission, "everyone deserves to walk through their neighborhoods without the threat of violence, assault, or drug dealing," but the several hundred people who sleep at The Midnight Mission's shelter each night, and "thousands of other people who are both in the process of recovering from homelessness and living in Skid Row," cannot "walk outside and make ten steps without being offered drugs, alcohol, or sex."[40] The members of this community "do not deserve less than any other community in Los Angeles."[41]

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[38] Slayton, *supra* note 13.

[39] *A Bridge Home*, OFFICE OF L.A. MAYOR ERIC GARCETTI, https://www.lamayor.org/ABridgeHome (last visited Sept. 25, 2019).

[40] Mike Arnold, President & CEO of The Midnight Mission, Testimony at the L.A. City Council Homelessness & Poverty Comm. 23:20 (Oct. 3, 2018), http://lacity.granicus.com/mediaplayer.php?view_id=46&clip_id=18406.

[41] *Ibid.*

Worse still, the rising permanency of encampments makes it harder for service providers to reach homeless individuals in the first place. Even setting aside the health and safety risks, service providers find it harder to succeed in their missions when individuals view encampments as their homes. Legally enforceable rights to stay and keep belongings in encampments have "created a semipermanent tent culture in some sectors of L.A." that actually "feeds resistance to housing" and programs offered by service providers.[42] Many are reluctant to accept housing and services, and may be distrustful of those who offer them. Not everyone wants to move from the streets to a shelter, as one Los Angeles journalist explains.[43] His efforts to persuade one homeless man, who suffered from mental illness, to agree to accept housing "took a year, and a lot of hard work by several professionals."[44] Some homeless outreach professionals estimate that it takes an average of 13 contacts before an individual accepts even basic services like a shower or haircut.[45] But the services offered in shelters can be

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[42] Maeve Reston, *Los Angeles' Homeless Crisis: Too Many Tents, Too Few Beds*, CNN.COM (June 18, 2019), https://www.cnn.com/2019/06/18/politics/los-angeles-homeless-crisis/index.html.

[43] Steve Lopez, *Would Forcing Homeless People To Move Inside And Off The Streets Work?*, L.A. TIMES (Aug. 3, 2019), https://www.latimes.com/california/story/2019-08-02/steve-lopez-homeless-shelters-housing-steinberg.

[44] *Ibid.*

[45] Anita W. Harris, *New Homeless-Outreach Program Discussed At Neighborhood Meeting*, SIGNAL TRIB. (May 3, 2019), https://signaltribunenewspaper.com/41738/news/new-homeless-outreach-program-discussed-at-neighborhood-meeting/.

an individual's most realistic source of help, including medical testing for life-threatening diseases.[46]

C. Constitutional Litigation Over Encampments Distorts The Political Process.

Amici know that the best way to help individuals overcome homelessness is to help them leave the encampments behind, with housing and services like treatment and training. Doing that requires resources, public support, and locally tailored solutions—particularly since not all individuals benefit from the same approach. But seemingly endless litigation short-circuits the process and imposes judicially fashioned solutions—or politically expedient settlements—that do not always help the communities they are meant to help.

The recent *Mitchell* case, for example, shows how a sensible legislative compromise—limiting encampment inhabitants to a limited quantity of personal property while also providing notice and post-deprivation safeguards—was scuttled by litigation. The 60-gallon limit created by Municipal Code Section 56.11, which was intended to balance property rights with safe and accessible sidewalks, was effectively eliminated when the court entered its preliminary injunction.[47] And then the city brokered a settlement that

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[46] Gorman & Kaiser Health News, *supra* note 17 (describing how certain shelters mandate tuberculosis tests which places homeless individuals in contact with health care professionals).

[47] Slayton, *supra* note 10.

further encourages encampment inhabitants to cluster in limited areas near and in Skid Row.

All the while, high-profile civil rights litigation takes up an inordinate amount of policymakers' time, attention, and resources. As the U.S. Department of Housing and Urban Development has observed, "[l]ocal jurisdictions want to avoid being taken to court over due process and cruel and unusual punishment challenges."[48] From the *Jones* litigation through the present day, it has been easy for Los Angeles officials to fixate on how best to react to the prospect of liability under 42 U.S.C. 1983 rather than on how best to bring homelessness to an end. Well-meaning groups often form battle lines when they should instead be forming coalitions.

Martin now threatens to replicate Los Angeles's experiences far and wide. Courts throughout the Ninth Circuit, if not the country, will find themselves policing municipalities' responses to a difficult health and safety and indeed moral crisis. And local officials will find themselves preoccupied by litigation risk.[49] Rather than letting our nation's homelessness crisis become the province of constitutional litigation, this

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[48] U.S. DEP'T OF HOUSING & URBAN DEV., OFFICE OF POL'Y DEV. & RES., UNDERSTANDING ENCAMPMENTS OF PEOPLE EXPERIENCING HOMELESSNESS AND COMMUNITY RESPONSES 11 (2018), https://www.huduser.gov/portal/sites/default/files/pdf/Understanding-Encampments.pdf.

[49] *Ibid.* (predicting that municipalities' fears of legal challenges are "likely to grow following * * * *Martin* v. *City of Boise*").

Court should grant certiorari and reverse the Ninth Circuit's judgment.

CONCLUSION

The petition for a writ of certiorari should be granted.

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