

No. 23-15087

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

COALITION ON HOMELESSNESS; TORO CASTAÑO;
SARAH CRONK; JOSHUA DONOHUE; MOLIQUE FRANK;
DAVID MARTINEZ; TERESA SANDOVAL; and NATHANIEL
VAUGHN,

Plaintiffs-Appellees

v.

CITY AND COUNTY OF SAN FRANCISCO, SAN FRANCISCO POLICE
DEPARTMENT; SAN FRANCISCO DEPARTMENT OF PUBLIC
WORKS; SAN FRANCISCO DEPARTMENT OF HOMELESSNESS AND
SUPPORTIVE HOUSING; SAN FRANCISCO FIRE DEPARTMENT; and
SAN FRANCISCO DEPARTMENT OF EMERGENCY MANAGEMENT,

Defendants-Appellants.

On Appeal from the United States District Court for the Northern District
of California No. 4:22-cv-05502-DMR
Hon. Donna M. Ryu

**MOTION FOR LEAVE TO FILE BRIEF OF LOCAL PROGRESS
IMPACT LAB AND 63 CURRENT AND FORMER LOCAL
ELECTED OFFICIALS AS *AMICI CURIAE* IN SUPPORT OF
APPELLEES**

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MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF

Pursuant to Federal Rule of Appellate Procedure 29(a)(3), Local Progress Impact Lab and 63 current and former local elected officials move for leave to file the attached *Amici Curiae* brief (Exhibit A) in support of the Appellees in this proceeding, seeking affirmance of the district court preliminary injunction order.

Amicus Local Progress Impact Lab (LPIL) works to advance a racial and economic justice agenda through all levels of government. LPIL works with over 1,300 local elected officials in over 600 municipalities across nearly every state who build power with underrepresented communities, share bold ideas and policy, and fight to reshape what is possible in local government. LPIL convenes local leaders, partners, and experts to build the knowledge, skills, and leadership needed to advance bold ideas and build equitable, thriving, and just communities.

Amici are 63 current and former local elected officials from across the country who are committed to housing-first and service-oriented approaches to alleviating the homelessness crisis. Although some *Amici* serve in jurisdictions with prohibitions similar to those in the City and County of San Francisco, they have focused in their wards or districts on providing services, shelter, and housing rather than enforcement—and many advocate for the deprioritization of enforcement city-wide.

As proponents of housing-first and service-oriented approaches, *Amici* have a keen interest in ensuring that constitutional rights are respected as local governments seek to address the homelessness crisis. The outcome of this appeal will not only

directly affect *Amici* who serve on local governments within the Ninth Circuit, but it will also serve as a model in other jurisdictions where *Amici* are advocating for housing-first and service-oriented approaches to homelessness that protect people's constitutional rights.

As local elected officials who confront very similar issues and policy decisions as those faced in San Francisco, *Amici* feel that they can offer the Court a unique perspective about the workability of the district court's injunction in light of this Court's precedent. *Amici* have offered several examples of strategies and approaches to facilitate a housing-first approach that do not rely on enforcement when there are not sufficient shelter beds. *Amici* hope that their perspective can support the affirmance and implementation of the district court's preliminary injunction.

Appellees have consented to the filing of this brief. Appellants do not oppose the filing of this brief in support of Appellees.

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(e), *Amici* certify that no counsel for any party authored this brief in whole or in part, no party or party's counsel contributed money that was intended to fund preparation or submission of the brief, and no persons other than *Amici* contributed money that was intended to fund preparation or submission of the brief.

Based on their interest in supporting local governments in taking housing-first approaches that lead to long-term solutions to the homelessness crisis, *Amici* hereby

submit this brief in support of the Appellees, and respectfully request that the Court grant them leave to file it.

Dated: April 11, 2023

LAW OFFICES OF MARISSA ROY

/s/ Marissa Roy_____

Marissa Roy
Attorney for *Amici Curiae*

EXHIBIT A

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**BRIEF OF LOCAL PROGRESS IMPACT LAB AND 63 CURRENT
AND FORMER LOCAL ELECTED OFFICIALS AS *AMICI CURIAE*
IN SUPPORT OF APPELLEES**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, counsel for the *Amicus Curiae* Local Progress Impact Lab (LPIL) certify that (1) LPIL does not have any parent corporations, and (2) no publicly held companies hold 10% or more of the stock or ownership interest of LPIL.

Dated: April 11, 2023

LAW OFFICES OF MARISSA ROY

/s/ Marissa Roy

Marissa Roy
Attorney for *Amici Curiae*

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES..... ii

INTRODUCTION 1

INTERESTS OF AMICI 3

ARGUMENT..... 4

 I. Local Governments Have Many Tools at Their Disposal to Solve Homelessness Without Sweeps..... 4

 A. A Housing-First Approach is Necessary to Solve Homelessness..... 4

 B. Local Governments Can Leverage Existing Housing Supply & Interim Solutions. 6

 C. Local Governments Can Generate Sustainable Streams of Revenue Without Consuming their General Fund. 8

 D. Local Governments Can Aggregate Existing Data to Understand the Population Experiencing Homelessness and Housing Supply. 9

 E. San Francisco Has Strong Housing-First Programs that It Can Further Invest in Under the District Court’s Injunction. 10

 II. Sweeps without Credible Offers of Shelter are a Costly and Ultimately Counterproductive Approach to the Homelessness Crisis. 11

 III. The District Court’s Injunction is Both Workable and Required by this Court’s Precedent..... 14

CONCLUSION 15

TABLE OF AUTHORITIES

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INTRODUCTION

San Francisco is not alone in its struggle to solve a growing crisis of homelessness. With over half a million people experiencing homelessness every day in the U.S., local governments face a crisis not easily solved. The supply of affordable housing has diminished, unaddressed for decades, leaving many just one missed rent payment away from eviction. When people fall into homelessness—unable to afford housing after a rent increase, unexpected expense, or sudden job loss, for example—the difficulty of accessing support can lead them to become chronically homeless, increasing their risk of health issues or premature death. Local governments struggle to address a variety of needs at once—the need to provide emergency services to address chronic homelessness, the need to prevent people on the brink from falling into homelessness, and the need to address the root causes of homelessness, namely the lack of affordable housing—all with limited resources.

Amici are local elected officials from across the country, who understand this struggle better than most. But *Amici* also know that sweeps¹ without shelter do not answer this crisis. Costly and counter-productive, sweeps displace people experiencing homelessness without addressing their individual needs. This forced removal can have detrimental and traumatic consequences: People caught up in sweeps may lose

¹*Amici* define “sweeps” as the forced removal of encampments from public property, including the removal of people experiencing homelessness and their property.

essential property, such as government-issued identification; sweeps can disconnect people experiencing homelessness from service providers they were working with; and finally, where sweeps are accompanied by charges or prosecution, a criminal record can disqualify people from the very jobs, housing, and benefits they need.

This Court’s opinions in *Martin* and *Johnson* provide local governments with the right guidance and caution to respect constitutional rights even when a crisis seems overwhelming. As this Court recognized, if individuals experiencing homelessness cannot obtain shelter, then sitting, sleeping, or lying on public property are “unavoidable consequences” that cannot be punished. *Martin v. City of Boise*, 920 F.3d 584, 616-17 (9th Cir. 2019). Thus, “so long as there is a greater number of homeless individuals in [a jurisdiction] than the number of available beds [in shelters],’ the jurisdiction cannot prosecute homeless individuals for ‘involuntarily sitting, lying, and sleeping in public.’” *Id.* at 617; accord *Johnson v. City of Grants Pass*, 40 F.4th 787 (9th Cir. 2022). The district court followed this holding by issuing the underlying order, which concluded upon review of the evidence that such prohibitions were being enforced when there was a greater number of homeless individuals than available shelter.

Amici write to urge this Court to affirm this order and to emphasize that compliance with the order is not only constitutionally required, but workable. *Amici* acknowledge that solving a crisis of this magnitude is never easy. But, in *Amici*’s experience, there are many tools that local governments can use to provide shelter and services effectively without resorting to sweeps or misdemeanor enforcement.

Further, *Amici* stand ready to share ideas and best practices to support San Francisco in finding solutions consistent with this Court's precedent.

INTERESTS OF AMICI

Amicus Local Progress Impact Lab (LPIL) works to advance a racial and economic justice agenda through all levels of government. LPIL works with over 1,300 local elected officials in over 600 municipalities across nearly every state who build power with underrepresented communities, share bold ideas and policy, and fight to reshape what is possible in local government. LPIL convenes local leaders, partners, and experts to build the knowledge, skills, and leadership needed to advance bold ideas and build equitable, thriving, and just communities.

Amici are 63 current and former local elected officials² from across the country who are committed to housing-first and service-oriented approaches to alleviating the homelessness crisis. Although some *Amici* serve in jurisdictions with prohibitions similar to those in the City and County of San Francisco, they have focused in their wards or districts on providing services, shelter, and housing rather than enforcement—and many advocate for the deprioritization of enforcement city-wide.

Amici adopt Appellee's arguments that they have met the standard for a preliminary injunction. *Amici* write separately to demonstrate that the issued

² A full list of *Amici* current and former local elected officials is provided in the Appendix.

injunction is both workable and tailored to lead to a more effective approach to the homelessness crisis. *Amici* can show through their own experience that approaches that build trust and prioritize services, shelter, and housing lead to long-term solutions for people experiencing homelessness. *Amici's* approaches underscore that enforcement is not a necessary element of addressing the homelessness crisis.

ARGUMENT

I. **Local Governments Have Many Tools at Their Disposal to Solve Homelessness Without Sweeps.**

A. **A Housing-First Approach is Necessary to Solve Homelessness.**

Local governments can best address the current homelessness crisis by focusing on housing. Though the homelessness crisis has many effects and implications—relating to public health, poverty, and safety—recent research has isolated housing supply as the driving cause behind homelessness.³ Analyzing the variance in rates of homelessness across the 30 cities and counties in the U.S. that account for 45% of the population experiencing homelessness, researchers observed that rates of homelessness relate neither to poverty or unemployment nor mental illness or drug use.⁴ Indeed, areas with high rates of poverty and unemployment, like Detroit and Philadelphia, have lower rates of homelessness than prosperous counties

³ See Clayton Page Aldern & Gregg Colburn, *Homelessness is a Housing Problem: How Structural Factors Explain U.S. Patterns* (2022).

⁴ See *id.*

like San Francisco,⁵ which has a below-average unemployment rate⁶ and approximately 1/3 of the poverty rate of Detroit.⁷ Additionally, analysis found no reliable relationship between homelessness and mental health or drug use (not even specifically related to the opioid crisis); indeed, people struggling with mental illness or drug addiction are both housed and unhoused.⁸ What significantly affected the risk of homelessness was higher housing costs and lower housing supply.⁹ In cities with the highest rental rates and lowest supplies of affordable housing, people could become easily rent-burdened and prone to falling into homelessness, where the longer they experienced homelessness, the higher the risk they develop health or other issues.¹⁰ The root cause of these numerous and complex aspects of the homelessness crisis is housing. Thus, any long-term solution to homelessness must place housing first.

Local leaders like *Amici* who invest in housing-first approaches—where the priority is connecting people experiencing homelessness with permanent supportive housing and then wrap-around services—have seen long-term successes. In 2016, the

⁵ *See id.* at 76-82.

⁶ *Compare United States Unemployment Rate*, Trading Economics, <https://tradingeconomics.com/united-states/unemployment-rate> (last visited Apr. 7, 2023) with U.S. Bureau of Labor Statistics, *San Francisco-Oakland-Fremont, CA* https://www.bls.gov/eag/eag.ca_sanfrancisco_msa.htm (last visited Apr. 7, 2023).

⁷ U.S. Census, *Quick Facts San Francisco County, California; Detroit City, Michigan* <https://www.census.gov/quickfacts/fact/table/sanfranciscocountycalifornia,detroitcitymichigan/PST120221> (last visited Apr. 7, 2023).

⁸ *See Aldern & Colbern, supra* note 3, at 85-90.

⁹ *See id.* at 123-144.

¹⁰ *See id.*

City of Denver—where nearly 7,000 experience homelessness¹¹—launched a housing-first initiative to increase housing stability and decrease jail stays among people experiencing chronic homelessness.¹² Denver offered supportive housing to 724 participants without preconditions that might deter them from accepting support.¹³ At all supportive housing sites, case managers, counselors, and nurses were available for 24-hour support.¹⁴ Rather than relying on law enforcement for intervention or mental health incidents, case managers were trained in behavioral health interventions. Over 3 years, 77% of participants remained in housing and there was a 40% reduction in arrests.¹⁵ A housing-first approach helped Denver break the homelessness-jail cycle.

B. Local Governments Can Leverage Existing Housing Supply & Interim Solutions.

Local governments can remove significant barriers that people experiencing homelessness face when seeking housing. In Dallas, where over 4,000 people experience homelessness,¹⁶ *Amicus* City Councilmember Adam Bazaldua has worked

¹¹ See DJ Summers, *Denver's Homeless Population Count Hits 14-year Record*, KDVR (Oct. 24, 2022), <https://kdvr.com/news/data/denver-homeless-population-point-in-time-count-2022/>.

¹² See Mary K. Cunningham et al., *Breaking the Homelessness Jail Cycle with Housing First*, Urban Inst. (July 15, 2021), <https://www.urban.org/research/publication/breaking-homelessness-jail-cycle-housing-first-results-denver-supportive-housing-social-impact-bond-initiative>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See *The State of Homelessness in 2022*, United Way Metropolitan Dallas (June 9, 2022), <https://unitedwaydallas.org/updates/the-state-of-homelessness-in-2022/>.

on a Master Leasing Program, through which Dallas grants to a third-party organization to lease vacant units for use by people experiencing homelessness who may not have been able to lease the units themselves because of income thresholds or credit history.¹⁷ Once in these units, people are assigned case managers to ensure they receive other available benefits and services. By assuming the risk of the investment, local governments remove barriers to housing.

Because the diminishing affordable housing supply has gone unaddressed for decades, not all cities that are currently experiencing a homelessness crisis have the capacity to provide immediate permanent supportive housing to all who need it. However, this does not mean that cities need to resort to sweeps. Many *Amici* have been piloting innovative projects to provide interim shelter as they seek to rapidly increase affordable housing supply. In Sacramento, *Amicus* Councilmember Katie Valenzuela worked to create the first “safe ground” site after highway construction threatened to displace an encampment of 300 people.¹⁸ From approval to opening, the site was set up in 10 days to create a safe space for people to either camp or sleep in parked cars. Case managers worked on-site in trailers to provide support for mental health and addiction issues as well as connect people to housing. Over the course of 5

¹⁷ See Jacob Vaughn, *Dallas Master Leasing Program Could Reduce Barriers to Housing the Homeless*, *Dall. Observer* (Mar. 8, 2023), <https://www.dallasobserver.com/news/dallas-master-leasing-program-could-reduce-barriers-to-housing-the-homeless-16085793>.

¹⁸ See *Safe Ground*, City of Sacramento, <https://homeless.cityofsacramento.org/SafeGround> (last visited Apr. 7, 2023).

months, the site served 500 people, 40% of whom had positive exits including family reunification, indoor shelter, and permanent supportive housing.¹⁹ Sacramento has since moved its site to another location and has seen a similar rate of positive exits; Sacramento recently voted to authorize \$3.2 million in funding for safe ground sites.²⁰

C. Local Governments Can Generate Sustainable Streams of Revenue Without Consuming their General Fund.

Piloting interim approaches while building a sustainable supply of affordable housing requires significant resources, but *Amici* have leveraged strategies to reallocate funds or create new revenue streams to fund needed programs. In Seattle, *Amicus* City Councilmember Teresa Mosqueda has worked to create long-term revenue streams by passing a Jumpstart Progressive Payroll Tax that taxes the highest earners and designates 2/3 of the revenue to increase affordable housing supply. Already, the tax has raised more than expected and funded significant investments in affordable housing.²¹ In LA, voters passed Measure ULA in 2022 to tax the sale or transfer of properties over \$5 million, with over 90% of the proceeds directed to support affordable housing projects; the tax—expected to generate \$900 million per year—will provide a constant, reliable source of funding to increase affordable housing supply.²²

¹⁹ *Id.*

²⁰ Sacramento, Cal., Ordinance 2022-02173 (Jan. 24, 2023).

²¹ See Angela King & Katie Campbell, *Seattle's Jumpstart Payroll Tax Raised More Than Expected. Is the Money Going Where It's Most Needed?*, KUOW (July 20, 2022), <https://www.kuow.org/stories/the-new-jumpstart-payroll-tax-raised-more-than-expected-is-the-money-going-where-it-s-most-needed>.

²² See *Yes on ULA*, <https://unitedtohousela.com/> (last visited Apr. 7, 2023).

And, in Denver, the City used a social impact bond to fund its housing-first initiative, where the City raised \$8.6 million upfront from private investors who would be paid back—potentially with a positive return—based on performance measures.²³

D. Local Governments Can Aggregate Existing Data to Understand the Population Experiencing Homelessness and Housing Supply.

Investing in housing-first approaches also requires accurate data on available shelter and housing options. Luckily, local governments already collect and maintain much of the relevant data; they simply need to aggregate it. In LA, where over 40,000 experience homelessness,²⁴ *Amicus* City Controller Kenneth Mejia announced that his office is working to create a publicly accessible map that shows the overall supply of interim housing beds within LA in real-time.²⁵ Since such information has not generally been readily available, Controller staff have gathered it by calling interim housing service providers within LA to request information. To date, the Controller’s team has reached out to more than 350 interim housing sites in the City. They have collected information on population(s) served, requirements for entry, referral processes, current bed availability, and daily reporting practices for all sites. The working beta version of the Controller’s interim housing map currently includes

²³ See Cunningham, *supra* note 12.

²⁴ See Kristine Lazar & Tom Wait, *Homeless Count Reveals Nearly 42,000 People Are Living on Streets of LA*, CBS L.A. (Sept. 8, 2022), <https://www.cbsnews.com/losangeles/news/homeless-count-reveals-nearly-42000-people-are-living-on-the-streets-of-la/>.

²⁵ See @lacontrollermajia, *Week 12 Update!*, TikTok (Mar. 5, 2023), <https://www.tiktok.com/@lacontrollermejia/video/7207330424983391531>.

information on eligibility criteria, number of total beds at site, and number of beds currently available—which will ultimately be updated in real time. This map will eventually allow city council offices and local agencies to give people a credible offer of shelter and match people to shelter options.²⁶

E. San Francisco Has Strong Housing-First Programs that It Can Further Invest in Under the District Court’s Injunction.

Amici are confident that housing- and service-first approaches can continue to work in San Francisco. San Francisco has already done great work to implement safe camping sites, create Navigation Centers, utilize state funds to purchase and make permanent some of the Covid-19 shelter-in-place hotels, and expand permanent housing offerings, mental health and homelessness prevention services through Proposition C, a voter-approved dedicated business tax supporting the Our City Our Home fund.²⁷ Through these successful approaches, San Francisco reduced its unsheltered homeless population by 15% from 2019 to 2022.²⁸

There are still opportunities to increase the effectiveness of these approaches. Only 26% of Proposition C revenue has been spent, leaving over \$400 million

²⁶ *See id.*

²⁷ *See Shelter-in-Place Hotel Program*, S.F. Dep’t of Homelessness & Supportive Housing <https://hsh.sfgov.org/covid-19/shelter-in-place-hotel-program-overview/> (last visited Apr. 9, 2023); *OCOH Fund Annual Report FY21-22*, sf.gov, <https://sf.gov/data/ocoh-fund-annual-report-fy21-22-executive-summary> (last visited Apr. 9, 2023).

²⁸ *See City Performance Scorecards: Homelessness*, City & County of S.F., <https://sfgov.org/scorecards/safety-net/homeless-population> (last visited Apr. 9, 2023).

available to support housing and services.²⁹ Many permanent supportive housing units lie vacant and ready to house individuals who have been approved.³⁰ ER 1602-07. Though coordination can be challenging—as San Francisco noted its struggle with lack of resources and reliable data to connect people experiencing homelessness to shelter, Op. Br. at 2, 44–47—*Amici* can share strategies to overcome these challenges. Continuing to invest in housing and shelter—rather than sweeps—will lead to more successful long-term solutions to the homelessness crisis.

II. Sweeps Without Credible Offers of Shelter Are a Costly and Ultimately Counterproductive Approach to the Homelessness Crisis.

Every year, local governments spend millions on sweeps of encampments that do not lead to long-term solutions to homelessness.³¹ Sweeps merely displace people experiencing homelessness without addressing their individual needs or providing them with the support that will ultimately help them obtain and remain housed. As people are displaced from location to location, they can lose critical property, like government-issued identification, fall out of contact with service providers and case

²⁹ See J.D. Morris, *Here's How Much San Francisco Has Spent of \$600 in Prop C Money Slated for Homelessness Services*, S.F. Chron. (May 27, 2022), <https://www.sfchronicle.com/sf/article/Here-s-how-much-San-Francisco-spent-prop-C-tax-17202036.php>.

³⁰ See Chron. Editorial Bd., *Hundreds of Housing Units for the Homeless Are Sitting Empty. Why Can't S.F. Fill Them?*, S.F. Chron. (Mar. 5, 2023), <https://www.sfchronicle.com/opinion/editorials/article/san-francisco-homeless-housing-vacancies-17804113.php>.

³¹ See Rudy Perez, *Homeless Encampment Sweeps May Be Draining Your City's Budget*, Housing Matters (Jan. 4, 2023), <https://housingmatters.urban.org/feature/homeless-encampment-sweeps-may-be-draining-your-citys-budget>.

managers, and suffer deep distress or health consequences. Ultimately, it becomes harder for local leaders like *Amici* to build trust, provide services, and connect people to shelter and permanent supportive housing.

For these reasons, many local leaders like *Amici* have shifted away from enforcement-based approaches to homelessness. Oklahoma City, for example, saw first-hand that ordinances that criminalized conduct related to homelessness did not actually address the root causes. In 2015, Oklahoma City had passed a criminal ordinance banning panhandling, framing the measure as an effort to maintain public safety along highway medians. The City recorded 745 violations, only collecting 16% of the \$71,894 assessed in fines. At the same time, the ordinance was immediately challenged and the City spent four years in litigation, ultimately paying \$1 million to plaintiffs.³² This approach thus helped no one and simply squandered city resources. Since then, *Amicus* Councilmember JoBeth Hamon has worked with Oklahoma City to deploy an “encampment decommissioning” model where a bank of housing options are identified prior to outreach so that individuals experiencing homelessness can be given options that meet their needs. Once individuals are matched with permanent supportive housing options, wrap-around services and case management support are provided. Councilmember Hamon has discouraged the use of sweeps or

³² See Marty Peercy, *Judge Orders City of OKC to Pay Nearly \$1 Million for Lost Panhandling Case*, Okla. City Free Press (Aug. 26, 2021), <https://freepressokc.com/judge-orders-city-of-okc-to-pay-nearly-1-million-for-lost-panhandling-case/>.

enforcement of criminal ordinances, as these tactics can make it more difficult for service providers to maintain contact with people experiencing homelessness and erode their trust in the community.

In LA, *Amicus* Councilmember Hugo Soto-Martinez changed course after his predecessors' sweeps had devastating consequences for people experiencing homelessness. In March 2021, then-Councilmember Mitch O'Farrell staged a sweep of 193 individuals experiencing homelessness at Echo Park Lake.³³ With just 24-hour's notice, 400 police officers descended to clear anyone who had not left Echo Park Lake and erect a fence to keep people from returning.³⁴ This approach was both divisive and detrimental: an analysis one year after the sweep showed that 82 of the people experiencing homelessness had disappeared and 6 had died.³⁵ Before he was even sworn in, Councilmember Soto-Martinez changed this approach—convening nonprofits, city and county agencies, other council offices, and the mayor's office to create a plan to remove the fence and provide services at Echo Park with day and night outreach every day of the week. Two weeks before the fence was removed, the Councilmember partnered with service providers to conduct outreach to 64 people experiencing homelessness in the district, 63 of whom accepted offers of housing. Now, the fence has been removed and the district takes a service-first approach.

³³ See Ananya Roy et al., *(Dis)placement: The Fight for Housing and Community After Echo Park Lake*, UCLA Luskin Inst. for Inequality & Democracy (Mar. 23, 2022).

³⁴ *Id.*

³⁵ *Id.*

When the significant resources spent on sweeps and other enforcement measures are reallocated to services and housing, local governments not only see savings but long-term successes. When Eugene, Oregon began deploying medical and mental health care workers rather than law enforcement to address calls involving people experiencing homelessness, they saved an average of \$8.5 million per year and saw positive results for public safety overall.³⁶ Compliance with the district court's injunction could actually save resources spent on costly sweeps for use toward housing, shelter, and services that contribute to long-term solutions.

III. The District Court's Injunction is Both Workable and Required by this Court's Precedent.

In issuing the challenged preliminary injunction, the district court carefully balanced what is required by this Court's precedent with what would be feasible. This Court has addressed cases where cities issue civil or criminal penalties for sitting, sleeping or lying in public even where there is no shelter capacity. *See Johnson* 50 F.4th at 792; *Martin*, 920 F.3d at 604–06. This Court has noted that the Eighth Amendment prohibits criminal punishment of someone's state of being or unavoidable consequences that flow from that state. *Martin*, 920 F.3d at 616–17. And, when shelter is unavailable to people experiencing homelessness, "an unavoidable consequence of homelessness . . . [is] sitting, lying or sleeping on the streets." Criminalizing such an unavoidable consequence would thus violate the Eighth Amendment. Accordingly,

³⁶ *See Perez*, *supra* note 31.

this Court held that “so long as there is a greater number of homeless individuals in [a jurisdiction] than the number of available beds [in shelters],’ the jurisdiction cannot prosecute homeless individuals for ‘involuntarily sitting, lying, and sleeping in public.’” *Id* at 617.

The district court followed this Court’s precedent. Reviewing the evidence, the district court concluded that San Francisco had been conducting sweeps and enforcing criminal ordinances prohibiting sitting, sleeping, or lying in public when there were a greater number of people experiencing homelessness than available shelter beds. The district court did not find the ordinances unconstitutional, nor did it affirmatively order San Francisco to construct shelter. The district court merely suspended enforcement until there are enough shelter options to allow for credible offers to be made. The injunction is consistent with precedent.

San Francisco has many options to follow the district court’s order. The suspension of enforcement removes a costly tactic and would allow San Francisco to continue to focus on other policies that could yield greater long-term solutions.

CONCLUSION

Amici thus urge this Court to affirm the workable preliminary injunction issued by the district court. *Amici* look forward to supporting San Francisco to develop long-term solutions to the homelessness crisis.

Dated: April 11, 2023

LAW OFFICES OF MARISSA ROY

/s/ Marissa Roy

Marissa Roy
Attorney for *Amici Curiae*

APPENDIX

List of *Amici Curiae* 63 Current and Former Local Elected Officials¹

Adam Bazaldua

Councilmember
Dallas, Texas

Akanni Oyegbola

Former Acting Mayor
South Tuscon, Arizona

Amy Miller

Councilmember
Port Angeles, Washington

Andrew David Lewis

North Westwood Neighborhood
Council Vice President
Los Angeles, CA

Anthony Grice

Councilmember
City of Newburgh, New York

Autumn Vogel

Councilmember
Meadville, Pennsylvania

Bill Henry

Comptroller
Baltimore, Maryland

Brad Lander

Comptroller
New York City, New York

Brandon Chase McGee

Councilmember
Denton, Texas

Candi CdeBaca

Councilmember
Denver, Colorado

Carolyn Delvecchio Hoffman

Legislator
Monroe County, New York

Carrie Douglass

Bend-La Pine School Board Director
Bend, Oregon

Carrie Evans

Councilmember
Minot, North Dakota

Ce-Ce Gerlach

Councilmember
Allentown, Pennsylvania

Chelsea Lee Byers

Councilmember
West Hollywood, California

Christina Jones

Councilor
Raleigh, North Carolina

Clark Gilman

Mayor Pro Tem
Olympia, Washington

¹ Affiliations of amici are provided for purposes of identification only.

Colby Sledge
Councilmember
Nashville & Davidson County,
Tennessee

Damon Seils
Mayor
Carrboro, North Carolina

David Hunter
Echo Park Neighborhood
Councilmember
Los Angeles, California

Eunisses Hernandez
Councilmember
Los Angeles, California

Gabriela Santiago-Romero
Councilmember
Detroit, Michigan

Gregory D. Young
Supervisor
Fulton County, New York

Hugo Soto-Martinez
Councilmember
Los Angeles, California

Jacqueline “Jack” Porter
Commissioner
Tallahassee, Florida

Jalen McKee-Rodriguez
Councilmember
San Antonio, Texas

James Coleman
Councilmember
South San Francisco, California

Jason Chavez
Councilmember
Minneapolis, Minnesota

Jillian Johnson
Councilmember
Durham, North Carolina

Jo Ann A. Hardesty
Former Commissioner
Portland, Oregon

JoBeth Hamon
Councilmember
Oklahoma City, Oklahoma

Joe Gould
Commissioner
Beltrami County, Minnesota

John I. Clark
Mayor
Ridgeway, Colorado

Kathleen Ferguson
Commissioner
Hillsborough, North Carolina

Katie Valenzuela
Councilmember
Sacramento, California

Dr. Kelly Kent
Culver City Unified School District
Vice President
Culver City, California

Kenneth Mejia
Controller
Los Angeles, California

Kesha Hamilton
Jackson Board of Education Member
Jackson, Michigan

Laura M. Nakamura
Councilmember
Concord, California

Lawrence A. Robinson II
Phoenix Public Schools Governing
Board Member
Phoenix, Arizona

Lindsey Schromen-Wawrin
Councilmember
Port Angeles, Washington

Megan E. Green
President, Board of Aldermen
St. Louis, Missouri

Michael G. Parker
Councilmember
Chapel Hill, North Carolina

Michalyn Easter-Thomas
Councilmember
Memphis, Tennessee

Michele Hirsch
Aldерwoman
Kingston, New York

Nancy Metayer Bowen
Commissioner
Coral Springs, Florida

Navarra Carr
Councilmember
Port Angeles, Washington

Nigel Herbig
Mayor
Kenmore, Washington

Pamela Stuart
Councilmember
Sammamish, Washington

Paris Miller-Foushee
Councilmember
Chapel Hill, North Carolina

Paula Amezola De Herrera
Culver City Unified School District
President
Culver City, California

Rebeca Armendariz
Councilmember
Gilroy, California

Rigel Robinson
Councilmember
Berkeley, California

Roberto C. Alcantar
Southwestern Community College
District President
Chula Vista, California

Sally Greene
Commissioner
Orange County, North Carolina

Sasha Renée Pérez
Councilmember
Alhambra, California

Shawn Rush
Mayor Pro Tem
East Spencer, North Carolina

Stanley Martin

Councilmember At-Large
Rochester, New York

Stephanie Loreda

Culver City Unified School District
Governing Board Member
Culver City, California

Teresa Mosqueda

Councilmember
Seattle, Washington

Valarie Bachelor

Oakland Unified School District Board
Director
Oakland, California

Varisha Khan

Councilmember
Redmond, Washington

Yasmine-Imani McMorrin

Vice Mayor
Culver City, California

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

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CERTIFICATE OF SERVICE

I, Marissa Roy, hereby certify that I electronically filed the following document with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on April 11, 2023.

Dated: April 11, 2023

LAW OFFICES OF MARISSA ROY

/s/ Marissa Roy

Marissa Roy
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