



February 8, 2023

Via email

Governor Katie Hobbs - engage@az.gov

Members of Senate Committee on Commerce

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Dear Governor Hobbs and Members of the Senate Commerce Committee:

We write on behalf of the National Homelessness Law Center (“Law Center”) to urge you to **oppose SCR 1011**, which, if enacted, would severely threaten the constitutional rights of encampment residents by displacing them, confiscating their shelters, and destroying their personal property. And with COVID-19 posing an unique threat to homeless citizens, SCR 1011 also violates federal guidelines released by the U.S. Centers for Disease Control and Prevention (“CDC”) and instead potentially poses a state-created danger. Moreover, SCR 1011 would limit Arizona’s ability to fund and construct permanent supportive housing, while also displacing and criminalizing people currently experiencing homelessness in Arizona. As legislators may be aware, this bill is based on a template from the Cicero Institute, another version of which was recently passed in Missouri and is already subject to multiple lawsuits.

It is also important to note that this bill is inherently discriminatory. Because homelessness has a disparate racial impact as well as disparate impacts on persons with disabilities and LGBTQ+ populations, these policies criminalizing homelessness will also exacerbate discriminatory gaps in arrests, incarceration, fines and fees, and other collateral consequences of criminal justice involvement.

Also troubling, the bill leaves little to no recourse for homeless individuals forcibly removed from constitutionally-protected encampments and placed in to potentially dangerous “sanctioned shelters,” prohibiting civil actions unless the claim involves “intentional or grossly negligent conduct.” Simply put, this provides state and local actors cover to act with total disregard for the

rights of Arizona's most vulnerable citizens, with zero accountability, while undermining the very programs that have demonstrated real and proven success in reducing homelessness.

Whether viewed from a constitutional standpoint, a moral standpoint, a policy standpoint, or a social responsibility standpoint, SCR 1011 is unacceptable and we urge you to take a firm stance against it.

Who We Are

The Law Center is the national legal advocacy organization dedicated solely to ending and preventing homelessness. We have over 30 years of experience in policy advocacy, public education, and impact litigation. Since 2006, the Law Center has tracked laws criminalizing homelessness in 187 cities across the country, and we have documented the failures and costs of those policies in numerous national reports, including [Housing Not Handcuffs 2019: Ending the Criminalization of Homelessness in U.S. Cities](#) (2019) and [Housing Not Handcuffs 2021: State Law Supplement](#) (2021). We have also published best practices, model policies, and case studies from across the country on how to constructively address homeless encampments. See [Tent City, USA: The Growth of America's Homeless Encampments, and How Communities are Responding](#) (2018).

We also litigate in federal courts to challenge policies that punish homeless people for living in public space when they lack adequate indoor options. One of our cases, [Martin v. City of Boise](#), resulted in an order from the U.S. Court of Appeals for the Ninth Circuit which held that the Eighth Amendment to the U.S. Constitution prohibits enforcement of laws criminalizing sleeping, sitting, and lying down outside against people with no access to indoor shelter.

Discussion

We understand that the Senate Committee On Commerce is scheduled to hold a hearing on SCR 1011 on February 8, 2023. As you know, the proposed bill intends to severely limit the ability of the state to use state funds to construct and fund permanent supportive housing, explicitly conditioning the receipt of funds on the forcible removal of homeless citizens from encampments. This runs contrary to the [Federal Strategic Plan to Prevent and End Homelessness](#) by the U.S. Interagency Council on Homelessness and the U.S. Department of Housing and Urban Development strategies to improve the effectiveness of the homelessness response system, which notes “[C]riminalization of homelessness...makes it harder for unsheltered people to get housing.” Rather than support the efforts to support homeless citizens, SCR 1011 instead seeks to displace people experiencing homelessness from their makeshift housing and communities, and goes a step further to criminalize unsheltered homelessness by making it unlawful to erect makeshift housing in certain areas and by compelling municipal law enforcement officers to enforce the law under threat of loss of funding or legal threat from the Attorney General. This is unacceptable.

Significantly, SCR 1011 presents a threat to homeless people's constitutional rights. As discussed in brief below, SCR 1011 will face significant constitutional challenges in the event it is passed, as demonstrated in the multiple [legal challenges](#) currently facing the Missouri legislation based on the same flawed template.

First, SCR 1011 provisions that seek to criminalize the homeless population are also susceptible to constitutional challenges. In *Martin v. Boise*, the 9th Circuit ruled that punishing a person experiencing homelessness for sitting, sleeping, or lying on public property in the absence of adequate alternative shelter or housing constitutes cruel and unusual punishment under the Eighth Amendment. *Martin v. City of Boise*, No. 15-35845, Opinion (2018). A recent district court decision also clarified *Martin*, holding that an ordinance in Oregon that prohibited sleeping on any public sidewalks or streets was unconstitutional because “it is not enough under the Eighth Amendment to simply allow sleeping in public spaces; the Eighth Amendment also prohibits a City from punishing homeless people for taking necessary minimal measures to keep themselves warm and dry while sleeping when there are no alternative forms of shelter available.” *Blake v. City of Grants Pass*, Case No. 1:18-cv-01823-CL, Opinion and Order (2020). Nor are legalized spaces for camping necessarily adequate alternatives, as one judge stated “[c]alling a plot of land a shelter does not make it so.” *Warren v. City of Chico*, No. 2:21-CV-00640-MCE-DMC (E.D. Ca. July 8, 2021). SCR 1011’s proposal to provide “camping facilities” is exactly the type of alternative that does not pass constitutional muster under the Eighth Amendment. Making contingent the receipt of funds on the forcible removal of people from encampments in public spaces no doubt implicates the Eighth Amendment and this entire line of cases.

Next, federal courts across the country have held that homeless people have a compelling ownership interest in their personal property, and that unreasonable deprivation of homeless people’s property is unconstitutional under the Fourth Amendment. *Lavan v. City of Los Angeles*, 797 F.Supp. 2d 1005, 1016 (C.D. Cal. 2011); *See v. City of Fort Wayne*, Case No. 1:16-cv-00105-JVBSLC, 2016 U.S. Dist. LEXIS 185598 (N.D. Ind. June 16, 2016). And the Supreme Court has held that merely providing some advance notice, without any meaningful opportunity to dispute the seizure and destruction of homeless people’s property, does not satisfy the due process requirements under the Fourteenth Amendment. *See United States v. James Daniel Good Real Property*, 510 U.S. 43, 53 (1993) (pre-deprivation hearing and notice is required except in the “extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event”). In sum, homeless individuals must be provided with notice and opportunity to be heard (due process) before their personal possessions being maintained on public property are seized. SCR 1011 contains no provisions that could possibly comport with due process requirements instead specifically directs state actors to move individuals into these “sanctioned camping sites. Statutes such as SCR 1011 create the danger that homeless individuals would be deprived of due process with respect to their belongings and areas that they have made a home. In contrast, SCR 1011 goes one step further and actually precludes even civil liability if homeless persons are injured at the hand of state and local government officials.

Moreover, similar to other aspects of the criminal system, inequitable enforcement of laws criminalizing homelessness against Black, Indigenous, and other persons of color experiencing homelessness dominates its use, just as homelessness disproportionately affects persons of color. A leading report illustrates [that unhoused Black and Latinx people are 9.7 and 5.7 times more likely](#) to be cited under laws criminalizing homelessness than white people. [Black Americans](#) represent 40% of people experiencing homelessness nationally, despite constituting only 13% of the overall population. There is also overrepresentation of [Indigenous people and other people of color](#), and overrepresentation based on [gender identity, sexual orientation](#), and [disability status](#)

amongst unhoused persons. People with multiple marginalized identities, such as LGBTQ+ people of color, are even more vulnerable to homelessness, to criminalization, and to the [ensuing collateral consequences](#). The Department of Housing & Urban Development has noted potential conflicts with the Missouri law and the federal Fair Housing Act. *See* Letter from Ulysses M. Clayborn, Regional Administrator to Jenni Miller, Missouri Housing Development Corporation, Sept. 7, 2022. Laws like SCR 1011 will likely also result in segregation and other discriminatory impacts in violation of civil rights protections for marginalized populations.

Finally, displacing encampment residents and tearing down their “makeshift housing”¹ threatens the life and health of encampment residents in a very real (and unconstitutional) way. Because people experiencing homelessness have heightened risks of serious illness, hospitalization, and early morbidity compared with the general population, they are especially vulnerable to serious harms flowing from loss of their shelters and other property. NAT'L HEALTH CARE FOR THE HOMELESS COUNCIL, [Homelessness & Health: What's the Connection?](#) 1–2 (2019). For many unsheltered homeless people, property loss is “the greatest threat” to their survival. Chris Herring, *Complaint-Oriented Policing: Regulating Homelessness in Public Space*, 84 AM. SOCIOLOGICAL REV. 769, 790 (2019). Makeshift housing, like tents, offer protection, however rudimentary, from outdoor elements and allows the homeless citizens to seek shelter in locations where they feel most safe (relatively speaking). The destruction and removal of their tents and other temporary structures deprives homeless people of this protection, thus exposing already vulnerable individuals to increased risk of serious physical harm. *See Jeremiah v. Sutter Cty.*, Case No. 2:18–cv–00522, 2018 WL 1367541, at *4; 2018 U.S. Dist. LEXIS 43663, at *12 (E.D. Cal. Mar. 16, 2018) (“[T]he Court finds that Sutter County would knowingly place the homeless at increased risk of harm if it confiscates and seizes Plaintiffs’ shelters and possessions.”).

This is especially true with the ongoing COVID-19 pandemic. Federal courts have found that removing and forcing encampment residents into sanctioned areas “flies in the face of this CDC guidance and [constitute efforts] undertaken for no good reason.” *Sausalito/Marin Cty. Chapter of the Cal. Homeless Union v. City of Sausalito*, 522 F. Supp. 3d 648, 650 (N.D. Cal. 2021). Specifically, SCR 1011 runs counter to updated public health guidance released on June 7, 2021 by the CDC. *See* [Interim Guidance on People Experiencing Unsheltered Homelessness](#). The CDC guidelines state in part, “[i]f individual housing options are not available, **allow people who are living unsheltered or in encampments to remain where they are.** Clearing encampments, even if just for certain hours, can cause people to disperse throughout the community and break connections with service providers. This increases the potential for infectious disease spread.” *Id.* As such, the CDC advises that communities should not clear any encampments unless they can provide individual housing units for those displaced. Specifically, the CDC states that “[e]ncampment disbursement should **only be conducted as part of a plan to rehouse people living in encampments**, developed in coordination with local homeless service providers and public health partners.” *Id.* Otherwise, the CDC recommends that encampment residents be

¹ When people lose their housing, “their decisions about where to stay represent pragmatic choices among the best available alternatives, based on individual circumstances at a particular moment in time. Encampments form in response to the absence of other, desirable options for shelter.” REBECCA COHEN, WILL YETVIN & JILL KHADDURI, [Understanding Encampments of People Experiencing Homelessness and Community Responses](#) (2019).

allowed to remain where they are and be provided with necessary sanitation facilities.

People experiencing homelessness are at an increased risk of contracting COVID-19 or experiencing worse COVID-19 outcomes because they are less able to self-isolate. If encampments must be cleared, it is critical that residents be provided with **individual** housing units and that communities, “make plans to maintain services for all people experiencing unsheltered homelessness.” *Id.* Unfortunately, congregate shelter facilities are not necessarily equipped to truly safeguard against the spread of COVID-19 and SCR 1011 provides no requirements or mechanisms that would ensure appropriate shelters. Congregate shelter settings do not allow for the recommended social distancing, air circulation, and sanitation necessary to stem the spread of the virus. COVID-19 outbreaks have erupted in congregate shelter facilities throughout the pandemic. In April 2020, 144 residents in a single San Francisco shelter were tested and five were found positive for COVID-19. Less than one week later, 92 of those residents tested positive for COVID-19, along with 10 shelter staff workers. *See* Colette Auerswald et al., *For the Good of Us All: Addressing the Needs of Our Unhoused Neighbors During the COVID-19 Pandemic* (2020), <https://publichealth.berkeley.edu/wp-content/uploads/2020/04/For-the-Good-of-Us-All-Report.pdf>. In July 2021, over 100 of the 156 residents at a Sonoma County homeless shelter tested positive for COVID-19. *See* <https://www.pressdemocrat.com/article/news/more-than-100-residents-at-sonoma-countys-largest-homeless-shelter-positiv/>. 64 of the infected residents were fully vaccinated against COVID-19. Forcing people from their makeshift shelters into congregate “sanctioned” shelters forces individuals into dangerous, unprotected environments.

These trends are ongoing: state departments of health [continue](#) to report that people residing and staying in congregate shelter settings are at especially risk for COVID-19 infection and complications from COVID-19. The CDC [updated](#) its guidance for homeless service providers as recently as November 2022 to reiterating the higher risk of transmission in homeless shelters and noting that “encampment closure should only be conducted as part of a plan to rehouse people living in encampments, developed in coordination with local homeless service providers and health departments.”

To support CDC guidance against encampment clearings, camping ordinances and clear data about the ways in which congregate shelter exacerbates the spread of COVID-19, FEMA implemented cost-sharing with local, state, and tribal governments for expenditures associated with COVID-19 recovery efforts, including non-congregate shelter stays for people experiencing homelessness. This FEMA funding was last [extended](#) through July 1, 2022. Although these funds are no longer available, a tremendous amount of [best practices](#) were developed through the funding that provide better approaches than sweeping encampments without adequate alternatives in place.

In addition to running counter to CDC guidance and clear initiatives from USICH and HUD to incentivize the use of American Rescue Plan funds to create affordable housing, SCR 1011 also contradicts efforts to divert people away from the criminal justice system and increase access to mental health services. Instead, SCR 1011 encourages and allows the criminalization of people with substance use disorder, developmental disabilities, and mental illness. SB1581 also punishes cities and nonprofit organizations within Arizona working to reduce homelessness by cutting off funds that they may be able to use to effectively address local homelessness.

In an era of record poverty exacerbated by the global COVID-19 pandemic, prolonged unemployment, and a shrinking stock of affordable housing, sensible and cost-effective policies are needed. We all wish to end homelessness in our communities—but the best, most cost-effective, and permanent way to achieve that is to ensure that all who are unsheltered can access adequate, alternative housing. Criminalizing unsheltered homelessness without providing individual housing units just displaces people experiencing homelessness, risks the destruction of property, and inevitably leads to subsequent encampments. *See* Sara K. Rankin, *Punishing Homelessness*, 22 NEW CRIM. L. REV. 99, 114 (2019).

We urge you to follow CDC guidance and controlling federal precedent and not enact SCR 1011. Instead, policy makers in Arizona must make sure individual housing units are provided for displaced residents. Permanent supportive housing is the proven best practice to help people exit homelessness; prohibitions on the use of federal or state funds to implement proven solutions is counterproductive and will only exacerbate and prolong homelessness in Arizona. Moving forward with SCR 1011 will also trigger legitimate constitutional challenges.

We are happy to discuss this matter with you. Please feel free to contact us at etars@nlchp.org with any questions or concerns.

Sincerely,

Eric Tars, Legal Director, National Homelessness Law Center