January 29, 2024

Sen. Alexis Calatayud, Chair, Committee on Public Affairs
Sen. Rosalind Osgood, Vice-Chair
Sen. Dennis Baxley
Sen. Lori Berman
Sen. Jennifer Bradley
Sen. Jason Brodeur
Sen. Jonathan Martin
Sen. Jason W. B. Pizzo
Via e-mail

RE: FL SB 1530

Dear Chair Calatayud, Vice-Chair Osgood, and Members of the Committee on Public Affairs:

We write on behalf of the National Homelessness Law Center ("Law Center") to urge you to **oppose SB 1530**, which, if enacted, would create unfunded mandates and threats of liability for local governments and threaten the constitutional and human rights of unhoused Florida residents by encouraging localities to criminalize them for sheltering themselves, even in the absence of adequate alternative housing or shelter. Under this law, incredibly, Florida's *homeless* residents have no right demand housing or shelter—basic human needs—from their government, but *housed* residents will have the right to sue their local government to destroy the meager tents or other forms of shelter homeless people try to keep themselves safe with.

SB 1530 reflects elements of a template bill being promoted by an out-of-state interest group called the Cicero Institute. This template legislation ignores the true causes of homelessness in Florida: a study released last week found in some counties *more than 60 percent of Floridian renters* are facing unaffordable rents that exceed more that 30% of their income, and more than one-third are paying *more than half* their income on rent every month. Joint Center for Housing Studies of Harvard Univ., *America's Rental Housing, Cost-Burden Share* (2024), https://www.jchs.harvard.edu/arh-2024-cost-burden-share. But under this law, one of those hardworking Floridians, or an elder on fixed income, who loses their housing just because their rent is too high and there is nowhere else for them to rent, would likely be criminalized and thrown in jail just for trying to keep out of the weather. This law does nothing to solve Florida's structural housing crisis that is causing homelessness, it just punishes the people who are already the victims of it.

While the law theoretically allows for the permitting of legal camping areas, the bureaucratic requirements—include a requirement to not "adversely and materially affect the value or security of existing residential or commercial properties"—virtually guarantees these facilities will not be built at all given strong Not-In-My-Back-Yard prejudices against accommodations, or at least not in areas that facilitate their ease of use by their supposed end users, people experiencing homelessness. Although the law conveniently does not require state reimbursement for the duty it imposes on localities to eliminate homeless encampments (a fact that the fiscal note glosses over, but in other states has been conservatively estimated at upwards of $19 million), enforcing this law will likely encourage inefficient and costly use of law enforcement, and therefore be a drain on Florida communities' resources that could be much better used to end homelessness, rather than extend and deepen it, by giving homeless persons criminal records and fines and fees that will only serve as a barrier to their exiting homelessness. In short, this law puts local governments on the hook for having to exile homeless persons to either far flung relocation camps or the county jail, all of which will make it harder for them to actually end homelessness in their jurisdiction.

It is also important to note that this bill is inherently discriminatory. Because homelessness in Florida and nationally 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.

Finally, we are gravely concerned that SB 1530 would further demonize, destabilize, criminalize, and violate the human rights of unhoused Floridians while failing to address the underlying driver of homelessness: the lack of affordable and accessible housing to Floridians with the lowest incomes. Whether viewed from a constitutional standpoint, a moral standpoint, a policy standpoint, or a social responsibility standpoint, SB 1530 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 Public Affairs is scheduled to hold a hearing on SB 1530 on January 29, 2024. As you know, although the proposed bill does not create an explicit statewide camping ban, it instead prohibits municipalities from permitting it and creates a cause of action for citizens against their local government if they allow encampments to exist, though it does not obligate municipalities to provide adequate alternatives nor does it fund them to do so. It thereby implicitly encourages localities to criminalize those who must shelter themselves in public areas despite the lack of adequate alternatives. 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, SB 1530 instead seeks to force an unfunded mandate on localities to displace people experiencing homelessness from their makeshift housing and communities with the threat of lawsuits against them.

SB 1530 puts communities in a "damned if you do, damned if you don't" bind between their constitutional obligations to their residents and the statutory obligations it imposes. In *McArdle v. Ocala*, a Florida court affirmed the principle stakes out in *Martin v. Boise* and *Pottinger v. Miami*, 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. *McArdle v. Ocala*, 418 F. Supp. 3d 1004 (M.D. Fla. 2019); *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019); *Pottinger v. Miami*, 10 F. Supp. 1551 (S.D. Fla. 1992). 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). SB 1530 makes no provision for ensuring adequate alternative housing or shelter exists prior to arresting or ticketing an individual, but they would be under immediate threat of lawsuits from individuals to force homeless people out of encampments anyway. Of course, the federal constitutional rights of individuals would eventually prevail over the statutory obligations imposed by the state legislature, but at significant cost to both localities and the court system.

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 disaility 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. Laws like SB 31 will likely also result in segregation and other discriminatory impacts in violation of civil rights protections for marginalized populations.

Additionally, because the unreimbursed enforcement of this law would take away funding that could be going to permanent housing and services to put into "housing" unhoused individuals in jail, this bill would making the encampments it purports to be concerned about a more permanent features of our cityscapes. The Economic Roundtable of Homelessness in Los Angeles found that housing reduced average monthly spending by 41% per person, even after including the cost of providing housing. This savings included a 95% reduction in jail facilities and services costs. Though it may hide the costs in the law enforcement and jail budget, the proposed ordinance will incur significant costs for Florida communities and their taxpayers—without solving the problem of homelessness. In contrast, communities such as Gainesville, FL, adopted a planned phase out of an unregulated 222-person encampment which, through a process with deep involvement of the directly-impacted encampment residents, was moved to a temporary site adjacent to the main shelter and service provider, who then worked to house every person living in the encampment, eventually closing the camp altogether. *See* Jon DeCarmine & Joseph Jackson, *A Tale of Two Tent Cities: The Critical Role of Housing Engagement in Addressing Homeless Encampments* 30 GEO. JOUR. ON POV. LAW & POL'Y 371 (2023). This program was closely monitored and evaluated, and succeeded in closing the encampment without a single arrest, less than a 10% dispersal rate into the community, and 150 successful placements into permanent housing in less than two years.[11] The only way to permanently end encampments is to end the *need* for encampments.

The permitting process set up under SB 1530 is woefully deficient, and will not likely result in the creation of any legalized encampments, leaving unhoused Floridians with no where to go. In other states where similar legislation supposedly permitting legalizing encampments has passed, virtually no counties have actually set them up because of the opposition from potential neighboring properties. While much of this opposition is based on prejudice and misinformation, and in fact legalized encampments have been show to not decrease property values, this opposition is nonetheless fierce, and the bill's wording to require no adverse impact on the value or security of existing properties is so vague as to leave the door wide open for misinformed arguments. It is willful ignorance to believe that any legalized space for homeless persons will actually be created under this bill.

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

[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).

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.").

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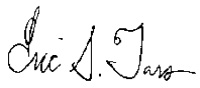
In an era of record, prolonged unemployment, and a shrinking stock of affordable housing, sensible and cost-effective policies are needed. We all wish to end homelessness in our communities—but the best, most cost-effective, and permanent way to achieve that is to ensure that all who are unsheltered 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 best practices and controlling federal precedent and not enact SB 1530. Permanent housing, with adequate supports if necessary, is the proven best practice to help people exit homelessness; criminalization will only exacerbate and prolong homelessness in Florida.

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

Sincerely,



Eric S. Tars, Senior Policy Director, National Homelessness Law Center