

No. 23-175

---

---

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

---

CITY OF GRANTS PASS,  
PETITIONER

*v.*

GLORIA JOHNSON AND JOHN LOGAN,  
RESPONDENTS

---

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

---

**BRIEF OF AMICI CURIAE FREDDY BROWN  
ET AL. IN SUPPORT OF PETITIONER  
CITY OF GRANTS PASS**

---

ILAN WURMAN\*  
STEPHEN W. TULLY  
MICHAEL BAILEY

Tully Bailey LLP  
11811 N. Tatum Blvd.  
Suite 3031  
Phoenix, AZ 85028  
(480) 965-2245  
iwurman@tullybailey.com

*\*Counsel of Record*

*Counsel for Amicus Curiae*

---

---

### **QUESTION PRESENTED**

Does the enforcement of generally applicable laws regulating camping on public property constitute “cruel and unusual punishment” prohibited by the Eighth Amendment?

## TABLE OF CONTENTS

	<b>Page</b>
QUESTION PRESENTED .....	i
TABLE OF AUTHORITIES .....	iii
INTEREST OF <i>AMICI CURIAE</i> .....	1
SUMMARY OF THE ARGUMENT .....	2
ARGUMENT .....	3
I. The Court should grant certiorari because the Ninth Circuit decisions have directly led to increases in public camping as City officials used those decisions as an excuse to stop enforcing camping and sleeping bans.....	3
II. The Court should grant certiorari because the distinction between involuntary and voluntary homelessness is difficult to apply, leading to an increase in public encampments and unsheltered homelessness.....	8
III. The Court should grant certiorari because the Ninth Circuit decisions have created a humanitarian crisis in Ninth Circuit states where both sheltered and unsheltered homelessness have increased dramatically relative to other states. ....	11
CONCLUSION .....	12

## TABLE OF AUTHORITIES

	<b>Page(s)</b>
<b>Cases</b>	
<i>Freddy Brown et al. v. City of Phoenix</i> , No. CV2022-010439 (Maricopa County Superior Court) .....	1–3, 11
<i>Fund for Empowerment et al. v. City of Phoenix et al.</i> , CV-22-02041-PHX-GMS (D. Ariz.) .....	1
<i>Johnson v. City of Grants Pass</i> , 50 F.4th 787 (9th Cir. 2022), amended on denial of reh’g, 72 F.4th 868 (9th Cir. 2023) .....	1–4, 12
<i>Martin v. City of Boise</i> , 902 F.3d 1031 (9th Cir. 2018), amended on denial of reh’g, 920 F.3d 584 (9th Cir. 2019) .....	1–4, 6–7, 10–12

## INTEREST OF *AMICI CURIAE*\*

*Amici* Freddy Brown, Joel and Jo-Ann Coplin, Joseph and Deborah Faillace, Karl Freund, Gallery 119, Michael Godbehere, Jordan Evan Greenman, Rozella Hector, Daniel and Dianne Langmade, Ian Likwarz, Matthew Lysiak, Michael Lysiak, Old Station Sub Shop, PBF Manufacturing Co., Inc., Phoenix Kitchens SPE, LLC, and Don Stockman, are homeowners, businessowners, or property owners between 7th and 15th Avenues and Van Buren and Grant Streets in Phoenix, Arizona, in a part of downtown known as “the Zone.”

The Zone comprises several city blocks of open-air public encampments on the streets and sidewalks with a population of upwards of 1,000 unsheltered individuals. *Amici* are Plaintiffs in a state court action, *Freddy Brown et al. v. City of Phoenix*, No. CV2022-010439, in Maricopa County Superior Court, where they have thus far successfully sued the City of Phoenix for creating and maintaining a public nuisance. The City has invoked both the *Martin v. City of Boise* and *Johnson v. City of Grants Pass* decisions as a defense to the nuisance claims. *Amici* are also intervenors in a federal court action, *Fund for Empowerment et al. v. City of Phoenix et al.*, CV-22-02041-PHX-GMS (D. Ariz.), where the plaintiffs there

---

\* In accordance with Rule 37.6, no counsel for any party authored this brief in whole or in part, and no person or entity other than *amicus* made a monetary contribution intended to fund the brief’s preparation or submission. In accordance with Rule 37.2, this brief was filed at least 10 days prior to the filing deadline, providing sufficient notice to the parties.

invoked these decisions to seek a federal injunction to prevent the relief *amici* sought in state court.

*Amici* file this brief in support of certiorari to lay before this Court the stark evidence of the negative consequences that have resulted from the *Boise* and *Grants Pass* decisions, and the havoc those decisions have wrought in cities within the Ninth Circuit and in cities elsewhere that have used those decisions as excuses to abdicate responsibility over unsheltered homelessness.

### SUMMARY OF THE ARGUMENT

1. The testimony at trial in *Brown v. Phoenix* established that *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018), amended on denial of reh’g, 920 F.3d 584 (9th Cir. 2019), and *Johnson v. City of Grants Pass*, 50 F.4th 787 (9th Cir. 2022), amended on denial of reh’g, 72 F.4th 868 (9th Cir. 2023), have directly led to increases in public encampments in Phoenix as City officials have cited those decisions in support of their complete refusal to enforce camping and sleeping bans, even though such a policy goes plainly beyond what the Ninth Circuit held. City officials also admitted that they do not distinguish between voluntarily and involuntarily homeless persons, despite the decisions being limited to the latter. Several witnesses also claimed to be “confused” by the scope of the Ninth Circuit decision.

2. The testimony and evidence at trial in *Brown v. Phoenix* demonstrated that most unsheltered (as opposed to sheltered) individuals are voluntarily homeless (that is, voluntarily unsheltered) because they prefer to live on the streets where they do not have to follow rules that they would have to follow in a tradi-

tional homeless shelter. That such individuals are nevertheless allowed to camp on the streets reveals the depth of confusion over the scope of the *Boise* and *Grants Pass* decisions, the difficulty of applying the distinction between voluntary and involuntary homelessness, or the extent to which those decisions have given cities an excuse to refuse to enforce legislatively enacted public sleeping and camping bans. The practical effect has been to increase public encampments and unsheltered homelessness.

3. The evidence in *Brown v. Phoenix* also revealed that since the *Boise* decision in 2018, both sheltered and unsheltered homelessness have increased in Ninth Circuit states generally relative to sheltered and unsheltered homelessness in other states. *Boise* had a real impact: it made Ninth Circuit states a magnet for a mobile population of unsheltered persons who seek what is effectively a low-barrier shelter on the city streets where they can do drugs and engage in other activities that would be prohibited in a homeless shelter. In Phoenix, the photographic evidence of the size and scope of the encampments that arose directly as a result of the *Boise* decision is stark.

## ARGUMENT

**I. The Court should grant certiorari because the Ninth Circuit decisions have directly led to increases in public camping as City officials used those decisions as an excuse to stop enforcing camping and sleeping bans.**

On August 10, 2022, *amici* (“Plaintiffs”) filed a lawsuit for public nuisance in Maricopa County Superior Court. Their theory was simple. The *Boise* de-

cision did not require a city to allow unsheltered persons to camp *anywhere* in the city at *any time*. *Boise*, 920 F.3d at 589 (Berzon, J., concurring in the denial of rehearing en banc) (“On the merits, the opinion holds only that municipal ordinances that criminalize sleeping, sitting, or lying in *all* public spaces, when *no* alternative sleeping space is available, violate the Eighth Amendment. Nothing in the opinion reaches beyond criminalizing the biologically essential need to sleep when there is no available shelter.”); *id.* at 617 n.8 (majority opinion) (“Nor do we suggest that a jurisdiction with insufficient shelter can *never* criminalize the act of sleeping outside. Even where shelter is unavailable, an ordinance prohibiting sitting, lying, or sleeping outside at particular times or in particular locations might well be constitutionally permissible. So, too, might an ordinance barring the obstruction of public rights of way or the erection of certain structures.”). If *Boise* did not prohibit all ordinances or enforcement efforts, then surely it did not allow, let alone require, the City of Phoenix to permit camping in such a way that would violate several state statutes respecting public nuisances.

Despite this rather obvious point about the limit of the *Boise* decision, the City routinely cited the *Boise* and *Grants Pass* decisions as a defense to the public nuisance claim—and as the reason why the City has experienced a growth in public encampments. At trial, the City’s lawyers argued, “The City has never made it a point to allow people to come into an area of town and set up shop and camp. So why is it happening? Well, let’s start with some of the most recent legal decisions that have come down out of the federal courts that are -- that are definitely giving us some guidance as to what we -- what we can and cannot



do.” Appendix A at 4a (Trial Tr. 7/10/23 at 23:9-15). The City’s lawyers added, “[T]his is not the City creating -- having some choice or some amenity to allow people to do this. We are constitutionally required based on at least the majority decision in the 9th Circuit to allow some things.” *Id.* (24:9-13).

City officials also testified at trial that the Ninth Circuit decisions precluded them from taking any action against public encampments whatsoever, even though that is an obvious overreading of the decisions. In one remarkable exchange, the Deputy Director of the City’s Office of Homeless Solutions testified that on one occasion, City officials encountered a person on the street who actually “had housing,” and when asked if the City “force[d] that person to leave and go back to their house,” he responded, “Well, the City of Phoenix can’t force anybody to go anywhere per se.” *See* Appendix A at 29a (264:14-25).

Similarly, the Director of the Office of Homeless solutions testified that even if the City of Phoenix had alternative available space in a sanctioned or structured campsite, the City would still not force anyone off the streets and require them to move into the sanctioned campsite. She testified that, as a result of the preliminary injunction in the case, the City was planning to open up a “safe outdoor space,” or regulated campground, by September. She was then asked, “And then at that point the City could—would the City remove those unsheltered in the zone to that area who are unwilling to take other shelter?” To which she responded, “That is not the plan, no.” When asked again, “[T]he City is not going to require them to either move there or be subject to arrest or . . . take other action against them?” She responded,

“The intention of the safe outdoor space is that it will be voluntary just as all of our indoor shelters, it is a voluntary option.” Appendix A at 25–26a (235:20–237:10).

Additionally, the City’s witnesses explained that they do not distinguish between voluntarily and involuntarily homeless persons, even though the *Boise* decision specifically applied only to the latter. When asked, “[I]s the City at this point categorizing individuals as involuntarily homeless?” The Deputy Director responded, “No. A person experiencing homelessness is a person experiencing homelessness.” Appendix A at 30a (266:2-8). He testified that the City does not inquire into an unsheltered individual’s means of support. *Id.* at 29–30a (265:1–266:1).

Finally, two of the City’s witnesses claimed that, at a minimum, City officials are confused by the Ninth Circuit decisions and are unclear about their legal authority. When asked whether it is illegal for an individual to erect a tent on a sidewalk (the City has an anti-camping ordinance), the police commander in charge of the downtown area testified that “[w]e get consulted by lawyers, and it’s difficult to get a straight answer on that one.” Appendix B at 33a (Trial Tr. 7/11/23 at 83:3-14). When asked whether it would help for the state court “to provide some guidance to you in your duties with regard to those who are constructing tents,” the police commander responded, “So there’s two courts, as you’re aware of. And it would help that -- if we had a -- it would help if we had a straight answer between the two courts.” *Id.* (at 83:16-22).

When asked if “[t]he reason you are not enforcing, currently enforcing the City ordinance against camp-

ing in the right of ways is at the direction of the City?,” the police commander responded that it was at the direction of a “federal judge” and the “ninth circuit ruling.” Appendix B at 34a (86:18–87:9). When asked by his own counsel how the City is able to square the state-court injunction to clear a public nuisance with a federal-court injunction applying *Boise*, the police commander testified that “It puts us in a difficult position. It’s not easy at all to reconcile the difference between the two suits. . . . [I]t just appears that one court is saying we are doing too much and the other court is saying we are not doing enough.” *Id.* at 35–36a (100:19–101:9).

Finally, the City’s own expert witness and consultant, Dr. Sheila Harris, testified that the *Boise* decision “created an era of uncertainty,” and a court order was necessary to “clarify” what the City is allowed to do. Appendix B at 42a (172:2-17). She testified “that the Boise decision has caused confusion about what are or are not legal policies and procedures.” *Id.* at 43–44a (174:1-9). She added, “[T]hat’s why we are here today. It’s not clear what that decision means.” *Id.* at 44a (174:14-15). She confirmed that “clarity from a court would be helpful.” *Id.* (at 174:23-25).

In short, the Court should grant certiorari because the underlying Ninth Circuit decisions have directly led to an increase in public encampments, at least in Phoenix, as City officials have, as a consequence of those decisions, effectively stopped enforcing public camping and sleeping bans altogether.

**II. The Court should grant certiorari because the distinction between involuntary and voluntary homelessness is difficult to apply, leading to an increase in public encampments and unsheltered homelessness.**

At trial, the evidence revealed that the vast majority of individuals on the streets in the Zone are voluntarily homeless (that is, voluntarily unsheltered) because they would refuse access to temporary shelter if offered. These individuals need other kinds of help—whether because of drug use or mental health issues—but the City believes it is precluded from requiring these individuals to remove from the streets and treat their self-destructive behaviors. The City is either confused about how to distinguish between voluntary and involuntary homelessness, or that distinction is difficult to apply, or the City is once again using the Ninth Circuit decisions as cover to stop enforcing sleeping and camping bans altogether. Either way, the Ninth Circuit decisions have in practice disabled cities from enforcing public camping and sleeping bans at all, leading to an increase in public encampments and unsheltered homelessness.

For example, the City of Phoenix’s own homelessness task force produced a report in April 2022 that included survey data of unsheltered individuals in the downtown Phoenix area. Appendix C at 56a; Appendix A at 12–13a (94:14–95:12). Less than 15 percent of those individuals cited the lack of available shelter as the reason for their being unsheltered. Appendix C at 56a; Appendix B at 50a (190:17–191:11). According to that data, approximately 50 percent of unsheltered individuals in the Zone cite having pets, property, or partners; not wanting to follow curfews

or other rules; or being mentally ill or addicted to illegal substances as the reason for their being unsheltered. Appendix C at 56a; Appendix B at 53–54a (195:7-17).

The City’s own expert, Dr. Harris, testified that some other reasons unsheltered individuals do not go into shelter is that they prefer less “confined” spaces or do not want to go through metal detectors. Appendix B at 37a, 38a, 40a (119:16-22, 128:4-10, 130:23-24). For example, some unsheltered individuals have three or four tents just to themselves. *Id.* at 39a (129:12-15). Dr. Harris admitted that individuals who cite any of the above reasons for not wanting to go into shelter are not “involuntarily homeless,” that is, involuntarily unsheltered. *Id.* at 45–49a (180:6–184:18). She confirmed that individuals who cite such reasons for not wanting to go into shelter are not “biologically compelled” to be on the streets. *Id.*

The Plaintiffs’ expert witness, Dr. Judge Glock, further testified that according to an Arizona State University study, only 25 to 41 percent of unsheltered individuals would accept services if offered. Appendix A at 8a (84:7-16). Therefore, combining the available data, the record suggests that anywhere from 60 percent to 85 percent of unsheltered individuals are typically “service resistant” and “voluntarily homeless” in the sense that they would not accept a shelter if offered to them. *Id.* at 13a (96:3-5).

Additionally, the record revealed that a significantly higher proportion of unsheltered homeless compared to sheltered homeless have substance abuse or mental health issues, sometimes as high as 75 percent of that population. Appendix A at 7–8a (82:7–83:15). Eight times as many unsheltered than

sheltered individuals cite substance abuse as the reason for their lack of housing, and three times as many unsheltered than sheltered individuals cite mental health issues as the reason for their being unsheltered. *Id.* at 8a (83:16-22). These individuals are often service resistant because shelters do not allow substance abuse. *Id.* at 9–10a (85:16-22).

The City's own expert witness explained that the presence of fentanyl has dramatically exacerbated the substance abuse crisis among unsheltered homeless. Appendix B at 40–41a (140:14-21); *id.* at 48a (183:8-13). Individuals who are unsheltered because they are addicted to fentanyl, which they cannot use in a traditional shelter, are not involuntarily homeless within the meaning of the *Boise* decision.

Despite the differences between involuntarily and voluntarily unsheltered persons, the City regularly treats them the same, demonstrating the depth of confusion over the scope of the Ninth Circuit's decisions; that the distinction between voluntary and involuntary homelessness is difficult to apply; or that the City has once again used those decisions as an excuse to abdicate responsibility over public sleeping and camping bans. The practical effect has been to increase the number and scope of public encampments.

**III. The Court should grant certiorari because the Ninth Circuit decisions have created a humanitarian crisis in Ninth Circuit states where both sheltered and unsheltered homelessness have increased dramatically relative to other states.**

The Supreme Court should also take this case because of its societal importance. In particular, the record in the *Brown v. Phoenix* litigation establishes that in states within the U.S. Court of Appeals for the Ninth Circuit, homelessness and the number of unsheltered have gone up dramatically since that court's *Boise* decision. According to the evidence, there has been a 25 percent increase in homelessness (sheltered and unsheltered) in Ninth Circuit states since *Boise*, while homelessness decreased in other states. Appendix A at 22a (117:24–118:16). Studies also show that unsheltered homelessness specifically increased 28 percent in Ninth Circuit states while increasing only 8 percent in other states. Appendix D at 72a.

Part of the reason that unsheltered homelessness increased as a result of the *Boise* decision is that individuals who would otherwise be in shelters can now choose to live on the street. Specifically, where public camping is an available option, cities see significantly increased numbers of unsheltered homeless. Appendix A at 13–14a, 15–18a, 20–21a (96:13–97:22, 99:22–102:13, 105:9-18). These same cities often see at the same time a *reduction* in *sheltered* homeless. For example, when Austin, Texas, repealed the City's camping ban in 2019, the unsheltered homeless population jumped by about 45 percent within that year, while

the population of sheltered homeless *dropped* by 20 percent. *Id.* at 14a (97:3-11).

Additionally, the testimony revealed that the unsheltered population is generally mobile, and many move to cities with more permissive camping policies. Appendix A at 15–16a (98:13–99:16). Evidence from comparable cities shows that anywhere from one-third to one-half of unsheltered individuals became homeless in another city. *Id.* (99:1-16).

The consequences for Phoenix—and surely for other jurisdictions—have been stark. The Plaintiffs personally took several photographs of the conditions of downtown Phoenix since the *Boise* decision came down, all in the trial court record. *See* Appendix E at 74a–78a. They paint a picture of an American crisis—one caused in no small part by the decision of the U.S. Court of Appeals for the Ninth Circuit now under review by this Court.

### CONCLUSION

The decisions in *Martin v. City of Boise* and *Johnson v. City of Grants Pass* have caused widespread confusion and uncertainty over what cities can and cannot do to tackle the growing crisis of unsheltered homelessness. Those decisions have directly led to a dramatic increase in both sheltered and unsheltered homelessness in states within the Ninth Circuit relative to states elsewhere. This case is of tremendous societal importance, and the Court should grant certiorari.



Respectfully submitted,

ILAN WURMAN\*  
STEPHEN W. TULLY  
MICHAEL BAILEY

Tully Bailey LLP  
11811 N. Tatum Blvd.  
Suite 3031  
Phoenix, AZ 85028  
(480) 965-2245  
iwurman@tullybailey.com

*\*Counsel of Record*

SEPTEMBER 11, 2023

## **APPENDIX**

## APPENDIX TABLE OF CONTENTS

Page

### APPENDIX A:

Freddy Brown et al. v. City of Phoenix, CV2022-010439 (Maricopa County Superior Court), Trial Transcript 7/10/23 (excerpts)..... 1a

### APPENDIX B:

Freddy Brown et al. v. City of Phoenix, CV2022-010439 (Maricopa County Superior Court), Trial Transcript 7/11/23 (excerpts)..... 31a

### APPENDIX C:

Freddy Brown et al. v. City of Phoenix, CV2022-010439 (Maricopa County Superior Court), Trial Exhibit 53 ..... 55a

### APPENDIX D:

Freddy Brown et al. v. City of Phoenix, CV2022-010439 (Maricopa County Superior Court), Trial Exhibit 54 ..... 57a

### APPENDIX E:

Freddy Brown et al. v. City of Phoenix, CV2022-010439 (Maricopa County Superior Court), Trial Exhibits 1, 2, 18, 21, 22, 24, 26, 28, 30, 31..... 74a

1a

**APPENDIX A**

[1] IN THE SUPERIOR COURT OF  
THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

---

CV2022-010439

---

FREDDY BROWN, *et al*,  
*Plaintiff*,

vs.

CITY OF PHOENIX,  
*Defendant*.

---

Phoenix, Arizona

July 10, 2023

---

BEFORE THE HONORABLE SCOTT A. BLANEY

---

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
TRIAL DAY 1 - BENCH TRIAL

---

PREPARED FOR:

COPY

KRISTINE M. MAYO, RPR, CRR, CRC  
Certified Court Reporter #50958  
kristine.mayo@JBAZMC.maricopa.gov

---

## [2] APPEARANCES

## FOR THE PLAINTIFFS:

BY: Stephen W. Tully  
 Ilan Wurman  
 Attorney at Law

## FOR THE DEFENDANT:

BY: Justin Pearce  
 Aaron D. Arnson  
 Trish Stuhan  
 Attorney at Law

## [3] INDEX

WITNESS	PAGE
IAN FRANCIS LIKWARZ	
Direct Examination by Mr. Tully	36
Cross-Examination by Mr. Pierce	43
Redirect Examination by Mr. Tully	54
FREDDY H. BROWN, JR.	
Direct Examination by Mr. Tully	61
Cross-Examination by Ms. Stuhan	68
Redirect Examination by Mr. Tully	73
JUDGE GLOCK	
Direct Examination by Mr. Wurman	77
Cross-Examination by Mr. Arnson	121
Redirect Examination by Mr. Wurman	173
RACHEL MILNE	
Direct Examination by Mr. Arnson	192
Cross-Examination by Mr. Tully	226
Redirect Examination by Mr. Arnson	239

## SCOTT HALL

Direct Examination by Mr. Arnson	250
Cross-Examination by Mr. Tully	258
Redirect Examination by Mr. Arnson	267

\* \* \*

[22] THE COURT: Good morning.

MR. PIERCE: I'm going to see if I can hook this in.

MR. WURMAN: I think they have to turn it back on for you.

## OPENING STATEMENT

MR. PIERCE: And, your Honor, I did share this with the Plaintiffs' Counsel after we – after we met to make sure that they were aware of the PowerPoint that I would share with you.

Thank you for allowing us to be here today. We're here today primarily because this Court has asked for the City to update it as to what it is doing to address the issues from the preliminary injunction. I will not spend much time discussing the legal issues that we believe continue to exist. We have briefed those as to why – I will mention at times why – why we will request that the Court exercise judicial restraint, but I don't want to cover in significant detail all of the legal issues that we think are complicated other than to point out that the City of Phoenix has made, since your preliminary injunction in March, in fact, even prior to that, if we go back to the date of the hearing in October, steps have been taken all along the way and we have seen [23] some significant progress, even as the Plaintiffs have – have noted in their opening, in parts of the area downtown near the Human Services Campus. The City has made extensive efforts, but what we do need to address is what – what counsel

indicated in the opening of this – this alleged amenity that the City is providing, this right to pitch a tent on public property, this choice to allow public camping, that is simply not the evidence.

The City has never made it a point to allow people to come into an area of town and set up shop and camp. So why is it happening? Well, let's start with some of the most recent legal decisions that have come down out of the federal courts that are – that are definitely giving us some guidance as to what we – what we can and cannot do.

You may have seen – and I don't know, your Honor, this is just last week, the grants passed, the 9th Circuit issued and amended decision on it. I've never really seen – it is 200 pages long, and I don't know that I have seen judges go after each other quite as hard as in that – in that case. But it does inform the Court here as to the challenges the City faces in this proposition.

I included up here some language from the dissent where Judge O'Scannlain says that this is what the majority is doing to cities and towns. It's the Circuit's [24] jurisprudence that effectively guarantees a personal Federal Constitutional right for individuals to camp or to sleep on sidewalks and parks, playgrounds, and other public places in defiance of traditional health, safety, and welfare laws, a dubious holding premised on a fanciful interpretation of the Eighth Amendment.

I bring that up and I'm glad I had this slide in light of what was presented in the opening because this simply is not – again, this is not the City creating – having some choice or some amenity to allow people to do this. We are constitutionally required based on at least the majority decision in the 9th Circuit to allow some things.

Now, again, we're going to get to what the City has been doing in light of this, but I think it would be – it is overly simplistic to conclude that this is just something the City can set aside. A couple of points, because guess what, in that – I don't know if the Court has had a chance to read those decisions but in footnote, too, of that dissent, the City of Phoenix made a cameo, your Honor, they even cited to the City of Phoenix case, the federal case as one of the victims of the jurisprudence.

While our mistaken jurisprudence – this is again the dissent – in this area has some limits, we [25] should not pretend that the jurisprudential experiments started by Boise and expanded by grants passed, which effectively strikes down the anti-camping and anti-sleeping ordinances of countless, if not all cities within our jurisdiction is narrow.

The judges that are on the dissenting side of this are saying that that's what the majority's decision are effectively doing. And, again, here is another dissent from Judge Smith where the City of Phoenix is specifically brought up as a city that is suffering a similar fate based on the majority's reasoning. In other words, what the City is able to do is constrained significantly by these decisions whether – whether we like it or not.

But here is – and I won't read all of these. I mean, I put up here significant language from these courts to show simply that we are – we're walking a very tight – we're walking a legal tightrope when we seek to clean up the area around the Human Services Campus and anywhere else for that matter. In fact, as this Court is aware, there's a companion case in federal court, the one that the judge cited in dissent, and we



faced an order to show cause recently by the Plaintiffs in that case.

Now, as meritless as we felt that was – and the Judge agreed with us that it had no merit – it

\* \* \*

[81] who is living in a place not fit for human habitation. So that means people on the street, in parks, or in cars, or in uninhabitable locations of any sort. It is about 40 percent of the national homeless population is unsheltered.

MR. WURMAN: Your Honor, I would move to qualify Dr. Glock as an expert under Rule 702?

THE COURT: Any objection?

MR. ARNISON: Your Honor, we have already stipulated to both experts, so...

THE COURT: I just want to put on the record.

MR. ARNISON: Yes.

THE COURT: The Court finds the witness qualified to give expert testimony pursuant to Rule 702. Go ahead and continue.

MR. WURMAN: Thank you, your Honor.

BY MR. WURMAN:

Q. Okay. Dr. Glock, I want to start, you said the first thing you were asked to opine about is the causes of unsheltered encampments. Are substance abuse and mental illness two factors that attract unsheltered individuals to encampments?

A. Absolutely.

Q. Can you explain more about that, please?

[82] A. Yes. So, as I mentioned before, there's a division of course among the homeless population between the sheltered –

Q. Judge – Dr. Glock, can I ask you to slow down just a little bit more the court reporter.

A. Thank you very much. Much appreciated.

Yes. So there is a division, of course, between the sheltered, who is living – largely living inside sheltered transitional housing. About half of that population, a little less, is families with children. The unsheltered are overwhelming individuals, disproportionately male. When they have surveys of the – of the unsheltered homeless, you have different rates of self-reported drug abuse, substance abuse use, and mental health issues.

Q. Can you describe for the Court some of those studies and the rates of substance abuse and mental illness among those population?

A. Yes.

So one study by the UCLA California Policy Lab looked at the unsheltered in 15 states, largely in the west, and their opinions – or sorry, their self-reported problems on what's called a VISPDAT, which is a regular survey given to the homeless when they make contact with service providers.

[83] THE COURT: Sir, can you spell that?

THE WITNESS: VISPDAT. And please don't ask me to remember the entire acronym. It is vulnerability index service provider – I can't remember every part of it, but yes, the VISPDAT.

And they looked at self-reported rates of severe substance use and mental illness among the sheltered

and unsheltered. They found for the unsheltered about 75 percent supported – reported a severe mental illness – or a substantial mental illness issue, about 75 percent reported a severe substance use issue, about 50 percent of the population reported that substance use led to their loss of housing, and about 50 percent reported that mental illness led to their – was one of the causes of their loss of housing.

Now that rate was about – for the substance use issue, it was about eight times for the unsheltered. They reported substance use was an issue in their loss of housing relative to the sheltered population, and about three times the rate of the unsheltered population reported that mental health issues led to their loss of housing, relative, yes.

Q. So – so – let me stop you there. And you mentioned loss of housing, and now I want to ask about unsheltered versus sheltered homeless, so we can all agree [84] they have lost housing. What about the unsheltered, the high rate of unsheltered?

Let me put it this way, what about the unsheltered having substance abuse issues or mental illness issues, those of them that have those issues, why are they not in shelters?

A. Well, there are fairly high rates of self-reported what's called service resistance among the unsheltered population. I mentioned – well, I mentioned the expert report, but I – there is an ASU, Arizona State University Center Problem Orienting Policing, which cited two different surveys which showed just 25 percent to 41 percent said they would go willingly into shelters if they were offered, and in many cities in other locations that have ample shelter room available, you

still see large numbers of unsheltered out on the streets.

Q. So if I'm understanding that part of the re – it is part of the reason the unsheltered population, part of the unsheltered population that is service resistant is because they use substances or have mental health issues?

THE COURT: Let me jump in just for a second, I need you both just to slow down a little bit.

THE WITNESS: Of course.

MR. WURMAN: Sorry, your Honor.

In that case we will not finish quite [85] before lunch, but we could go a little bit after.

THE COURT: Go ahead and re-ask your question, if you would, please. A little slower.

MR. WURMAN: If the Court Reporter got it, can I ask her to read back if she caught the warp speed at which I was speaking.

COURT REPORTER: Let me find it –

THE COURT: Mr. Wurman, just go ahead and re-ask your question.

MR. WURMAN: Sure.

BY MR. WURMAN:

Q. Let me – let me ask a different one. Would those who – those who use – those among the unsheltered who have substance abuse issues or mental illness issues, will going into a shelter even help them?

A. It can help them. Certainly depending on the individual and the shelter's rules. Large numbers of the unsheltered do report that the rules and

restrictions in shelters are one of the main reasons they avoid them, and rules against drug abuse, substance use is one of the most important rules in those shelters which can deter the unsheltered.

Q. So let me ask the question this way: Does the lack of available shelter beds have anything to do with why these particular individuals with these substantial [86] abuse issues and mental health issues are on the streets as opposed to in a shelter?

A. I would say maybe the lack of available shelter beds combined with the ability to sleep out on the streets can be an issue, but if there are available shelter beds in and of itself, large numbers of the unsheltered will still not take them as we see in many other cities.

Q. Dr. Glock, for individuals with substance abuse or mental health issues, do they experience high rates of crime? Are they victims of crime at high rates?

A. Yes. One of the most unfortunate aspects of contemporary public encampments is that beyond the high rates of overdose, which is the leading cause of death, just about in any city that reports homeless death for homeless individuals, violent crime is usually one of the top causes of death.

Most cities don't report separate crime statistics for the homeless or for unsheltered, but if you look at Los Angeles, where the homeless are about one percent of the entire population, they constitute, according to police statistics, about 15 percent of all of the violent crime in the city involves a homeless person either as a perpetrator or a victim. And the most common victims of those perpetrators are other homeless people. And the most recent stats that I saw that 24 percent of

[93] Q. That's ASU, Arizona State University?

A. That is correct.

Q. Go ahead.

A. And that is the 25 percent to 41 percent who say they would not go willingly into a shelter. We also know that when they have encampment cleanups in many places, usually you see a large majority that still refuse to go into a shelter.

I mentioned in my report a case sort of in Burien, Washington, where it was around 50 to 100 unsheltered individuals, and I believe it was less, significantly less than 10 willingly went into shelter. Other cities such as Colorado Springs also see minorities, substantial minorities, but still minorities of all of those that cleared from encampments that decide to go willingly into a shelter.

Q. And I may have misheard, so that ASU study you said 25 to 41 percent would accept shelter, would willing go in, or –

A. According to their surveys, would willing go into shelter.

Q. Okay.

A. Now, I – if I could clarify the service resistance, some people would claim this population is not service resistant, and they propose a lot of hypotheticals [94] to say, well, if XYZ and any other number of other factors were taken care of, would then you go into – would you go into shelter.

So it certainly depends on the shelter's offer, but certainly if you have rules around, again, sobriety or

others, that's going to reduce the number of people who would go willingly into those shelter situations.

Q. Okay. So just so I'm doing my math correct, that would mean anywhere from 59 percent to – or yes, 59 percent to 75 percent would not accept services willingly without some sort of mandate?

A. According to those surveys, yes.

Q. Have you seen a survey of unsheltered individuals in the zone specifically and what data does that show?

A. Yes. There was a survey of 100 individuals by Andre House, I believe was the name.

COURT REPORTER: Andre?

THE WITNESS: What?

MR. WURMAN: Andre House.

THE WITNESS: Andre House.

Yes, thank you, my apologies.

THE COURT: And slow it down just a little bit please.

THE WITNESS: My apologies, yes, of course, [95] sir.

BY MR. WURMAN:

Q. The first time in court it is okay to be a bit nervous.

A. That's okay.

Yes. So by – a survey by Andre House that was conducted in 2018 to '19, and that was about 100 individuals, and I believe it was less than 15 percent said lack of a shelter bed was the reason they remained out on the streets. Other majorities said

issues with substances, criminal records, problems with partners, again, or pets or property.

Q. Okay. And we're just going to invert the math again to figure out the percentage of those who would then – who are service resistant as you have defined it. So if we combine the Andre House study and the ASU study, is it fair to say the range, at least according to those two studies, is 59 to 85 percent of individuals in public encampments are service resistant?

MR. ARNISON: Objection, leading.

THE COURT: Sustained. If you could ask it again.

BY MR. WURMAN:

Q. Could you combine those studies to me and give the Court a clear range for how many individuals in these [96] encampments – and again, understanding it is an estimate – tend to be service resistant?

A. Yeah. So the number that would not go willingly into normal shelters, according to most of these surveys, ranges from around 60 to up to 85 percent.

Q. Thank you.

Dr. Glock, when these studies show that, as you have just said, 60 to 85 percent are service resistant, is that if there's no mandate of any kind?

A. Yes.

Q. And what do you – can you explain to the Court what I'm – well, what you understand by a mandate?

A. Yes. It depends – most of these surveys and other sort of analysis of the unsheltered and service resistant involve a situation where the option of public camping is available, and we do know from a fair amount of evidence of different cities and elsewhere



where the option of public camping is available you are more likely to have people out on the streets and less likely to take up that shelter or other services.

Q. So if there is an anti-camping prohibition that's enforced, do more of these unsheltered individuals who would otherwise be service resistant go into shelter?

A. Yes, that's what it seems like.

So in my hometown of Austin, Texas, if I [97] could give an example.

Q. Sure.

A. The – in 2019, the City repealed its camping ban and allowed people to publicly camp on the streets and the sidewalks, and what you saw, according to the next year's survey, what's called the point in time count, the unsheltered homeless jumped about 45 percent within that year. Many people said that was because it was more visible out on the streets, but they couldn't explain entirely why the unsheltered homeless – or sorry, the sheltered homeless dropped by 20 percent.

So you saw a very substantial increase in the people out on the streets and you saw a substantial decrease in the number of people in shelters, and I would say when the ban was then enforced again in Austin, Texas, after a vote in, I believe, 2021, we saw another increase again in the number of people in shelters, I believe it was about 900 to about 1,100 people were in the shelters and a corresponding decrease in the number of people out on the streets, actually a more than corresponding decrease. So enforcing mandates moved some but not all of the people outside into shelters.

Q. Great.

Dr. Glock, moving to a related topic, is another factor that leads to public encampments the [98] mobility of the unsheltered population?

MR. ARNISON: Objection, leading.

THE COURT: Sustained.

MR. WURMAN: Your Honor, I'm not sure how that was leading, I'm asking an open-ended question.

THE COURT: You still suggested the answer in the question. You can rephrase it.

MR. WURMAN: Sure.

BY MR. WURMAN:

Q. Dr. Glock, can you describe the impact of mobility of the unsheltered population on the growth, if any, of public encampments?

A. Yes. Among the factors that have been studied to look at the size of the unsheltered population in cities, one factor is very clear and it is temperature, which cities that have higher temperatures tend to have a lot higher numbers of unsheltered homeless, even holding constant the number of shelter beds, et cetera.

So that would one to believe that the homeless are, of course, attracted to areas that have more amenable circumstances. When cities survey the homeless about where they first became homeless or where they last were housed, as only some cities do, you see substantial proportions say they came from outside of the city they were located in.

[99] So, again, my hometown of Austin, Texas, you see a little over a third of the homeless population became homeless outside of the city and then moved in. Similar rates for San Francisco, about a third. For

Los Angeles, again, about a third of the unsheltered population in that case came from outside of the city, and Seattle did a study in 2016, I believe, where it was the majority of the entire population – homeless population was homeless outside of the city before they moved in, and that proportion seems to be higher among the unsheltered population.

So the unsheltered again more likely to be single, more likely to have these other issues, seems to be more mobile than the sheltered population and substantial parts of them, sometimes even the majority can come from outside of the city.

Q. Thank you.

Dr. Glock, in light of everything you've just said, what, if any, role, does a municipality's policy choices have to do with the rise or growth of public encampments in that municipality?

A. So, yes, so similar to the issues I described with temperature, we know that a municipality that is more welcoming to public encampments is going to see more public encampments, that explains why many of the cities I [100] have discussed which were open to public camping and did not take enforcement action were more likely to see that influx of population.

Most of the people reporting it reported – those homeless who reported moving to the city reported moving from other cities around the area often that didn't have as many services and stricter laws and so forth.

Q. So I'll stop you there, can you describe some of the evidence for that proposition that a municipality's policy choices contribute to the rise of encampments? I think you mentioned – I'm not trying to be repetitive,

but I think you mentioned Austin, can you explain that again and the evidence?

A. Yes.

So Austin is one example where you saw both people leave from the sheltered situations to the streets after camping was – bans were no longer enforced, but you also saw an increase in the total number of homelessness which seems to clearly indicate an influx.

You also have some cities that when they have enforcement campaigns, they seem to see substantial reductions in unsheltered homelessness in general.

Q. Can you give an example of those cities –

A. Yes.

Q. – other than Austin?

[101] A. Other than Austin, so Los Angeles conducted a program called the Safer Cities initiative in 2006 I believe it started, and what you saw there is substantial reductions in homelessness in the city. It was focused on moving people off the streets, enforcing laws against camping and sleeping, et cetera, quality of life laws and so forth. And over the next few years you saw about a 50 percent decline in overall homelessness.

You also saw substantial improvements actually in the situations of those neighborhoods that people remained.

Q. Did Los Angeles abandon that initiative at some point in time?

A. Yes, they did.

Q. And what were the results?

A. Yes.

So around 2014, 2013, '14, with new – with new leadership the city stopped the former safer cities initiative or enforcement along skid row. You saw the number of homeless people increase, I believe double or triple, and you saw, I think, even more concerningly the number of homeless deaths, which hit a nadir of about or a bottom of about 500 homeless deaths increase to over 2,000 homeless deaths a year.

Q. And is Colorado Springs another example –

[102] A. Yes.

Q. – demonstrating your point?

And can you tell the Court about Colorado Springs?

A. Yes.

So Colorado Springs in 2010 decided to start enforcing its anti-camping ordinance. They had around 600 unsheltered individuals according to their own surveys, and what they found is after a year, they had about 2/3 move either into shelters, into families, into jobs, into treatment of some sort, and to some permanent housing that was provided and saw substantial drops in unsheltered homelessness within a year.

Q. Thank you.

Dr. Glock, in light of the foregoing discussion about the causes of public encampments, can you summarize – I know we have testified a little bit about this, so just – can you summarize for the Court your opinion about whether a housing first policy will eliminate such encampments?

A. Yes.

So, as I said before, there's clearly a space for a housing first unit for some individuals, but one of the things we know probably even more certainly than the

lack of strong health effects for the homeless by [103] giving these – these PSH units is the lack of connection between a city which builds a lot of housing first units and reductions in homelessness in that city.

So there was a Journal of Housing Economics study from 2017 that said you needed to build about 10 of these units to remove a single homeless person off the street. If you just looked at cities that had built large numbers of these units and you tried to see the correlation between who built more and who built less and how did they affect the homeless population, you saw a very minor decrease, again, one to ten to even the upper range of maybe even 20 units per single individual that was moved off the streets.

Q. So can you explain why that is? I mean, I know I asked you to summarize it and now I'm learning new things, this journal study. So if you bring 10 supporting – permanent supportive housing units online, you're saying that only reduces one unsheltered person on the street, and why would the numbers not align?

A. Yeah.

According to the study – and they couldn't entirely identify the reason, but some of the ones they speculated were ones that would make sense. That the mobility of homeless is a factor. If you have a city that builds a large number of these units, of course more [104] people are going to want to live in the city that builds a lot of free or heavily subsidized housing units, attracting people from outside of the homeless system into it or keeping them in it longer with the hope of getting one of these free units seems to be an issue.

And so – I mean, one other issue which I should mention is that a lot of homeless individuals when put in these units can't stay in them because of their

demons, the problems they have with mental illness, with substance use. They will still leave the units even provided to them.

In San Francisco, I believe it was 11 percent of the entire homeless population in the city was previously – their last location was in one of these subsidized housing units. So they get a substantial portion of the entire population in San Francisco was already put in a unit, and they could not stay inside of it.

Q. Okay. Dr. Glock, in light of the foregoing discussion about the causes of public encampments, can you summarize for the Court your opinion about whether the lack of available shelter is responsible for such public encampments?

A. The lack of available shelter would certainly affect the number of people out on the streets.

[105] As I mentioned, there are numbers of people that say they would go into shelter, it is minority of the whole unsheltered population in most places, but it is – it is a factor but not the main factor it seems.

Q. So in light of the foregoing discussion, can you summarize for the Court your opinion about what is the main factor of encampments – of the public encampments here in the zone?

A. I would say the main factor, and perhaps not surprising, is that cities and places that allow public encampments and provide extensive services attract extensive encampments, that seems to be the case across numerous different cities, numerous different times, and numerous different places.

Those cities that enforce laws against public encampments see reduction in them, those cities that don't see

increases in them, and that goes across time and that goes across different cities.

Q. So that takes me to the next thing I wanted to talk to you about which is solutions. So can you tell the Court more about enforcement and what role enforcement plays in eliminating public encampments?

A. So, as I mentioned with both the LA Safer Cities example, the Colorado Springs example, and the Austin, Texas example, you have numerous examples even beyond

\* \* \*

[117] Q. Would more unsheltered individuals move into a sanctioned site that's low barrier than into a higher barrier shelter?

MR. ARNISON: Objection, it calls for speculation.

THE COURT: Sustained. There's another way to ask it.

BY MR. WURMAN:

Q. Based on your experience, do unsheltered individuals accept sanctioned campgrounds – a space in a sanctioned campground at a higher rate than they do at higher barrier shelters?

A. Yes.

The number of barriers is a big determinant of how many people accept sanctioned camping, or shelters for that matter, as opposed to the streets.

Q. Okay. Thank you.

Dr. Glock, in the last few minutes, I just want to ask you about the City of Boise decision.



Could you describe for the Court what impact the Boise decision appears to have had on homelessness in the states in which that decision applies?

A. So – yes.

According to the – the national numbers, these point in time count surveys as they're known, where [118] people go out and they count the number of people in shelters and out on the streets once a year, you saw since 2018, when the Boise decision was decided, about a 25 percent – over a 25 percent increase in homelessness in the 9th Circuit states and you actually saw a decrease in homelessness in the non-9th Circuit states.

You actually also saw an even more substantial increase in unsheltered homelessness among those 9th Circuit states after the Boise decision from 2018 to 2022 relative to the rest of the country which saw I believe it was low single digits, around a 6 to 8 percent increase in unsheltered homelessness.

So since 2018, you've just seen unprecedented increases in homelessness in the 9th Circuit and specifically even higher increases in unsheltered homelessness.

Q. Dr. Glock, are there examples of cities in the 9th Circuit that have been able to or shown that they can enforce anti-camping laws notwithstanding the Boise decision?

A. Yes.

The city of Las Vegas actually strengthened its anti-camping ordinance in 2020, so about two years after the Boise decision, and one of the things they do is they keep a running tally of the available shelter beds to

\* \* \*

[233] Q. And those 120, they are – that you brought on this year, they are all full?

A. No, one just opened today. So it will be full over the next week. We incrementally invite people to come there.

Q. Are you involved in the City's recent announcement that it was going to open a – what we have been referring to as a structured campground, I don't know if you refer to that, but do you know what I'm talking about?

A. Yes, we refer to it as a safe outdoor space.

Q. A safe outdoor space, okay.

In October, when we had the hearing and the City was asked about constructing something like that, the City personnel testified that it was not something that the City was interested in doing at that time.

Do you recall that?

A. I recall mentioning that it was in our strategies to address homelessness plan, but it was – our focus at that time was truly indoor locations, knowing that indoor locations are the safest place for people to be.

Q. All right. The safest for someone who is unsheltered, that's the safest place for them to be, correct?

A. It is the safest place for anyone to be, [234] especially when it is 116 degrees out. You would want to be in an indoor air-conditioned location.

Q. Sure, sure. But it is not – it is not safer to be on the street than to be in a structured campground. Do you agree with me?

A. It is not safer to be on the street. No, I believe a structured campground would be a safer place than on the street, yes.

Q. Sure. And the street, leaving people on the street, that doesn't abate the nuisance, you would agree with me about?

MR. ARNISON: Objection, it calls for a legal conclusion.

THE COURT: Sustained. If you can just rephrase it.

MR. TULLY: Sure.

BY MR. TULLY:

Q. Yeah. All right. If you – if you build – well, let me ask you this, let me ask you some other questions about this.

The safe outdoor space you're – the City is contemplating, what barriers are this – is the City anticipating employing for those who would stay at that area?

A. I'm not sure I understand the question, but I'll [235] try. So –

Q. Well, let me – no, no, I want you to answer a question that you understand.

Is the – is the City planning on putting a fence around the lot?

A. The safe outdoor space that we are looking at is fenced, yes.

Q. All right. And does the City anticipate having security or police that are there 24/7?

A. The City's plan is to get a nonprofit operator to operate the site and to have that operator on site 24/7, as well as security on site 24/7.

Q. And does the City anticipate requiring the operator to enforce any restrictions on the behavior of those who are in the safe outdoor space?

A. The safe outdoor space will have a code of conduct that people must agree to when they – if they choose to move into that space.

Q. And where are we in that process?

A. So the city council voted to approve the licensing agreement and sale of the property on June 28th, and our plan is to execute that by August 1st, and then move into the property, if all goes as planned, sometime hopefully at the beginning of September.

Q. And then at that point the City could – would [236] the City remove those unsheltered in the zone to that area who are unwilling to take other shelter?

A. That is not the plan, no.

Q. What is the plan?

A. The plan is to continue our block-by-block efforts and offer indoor places where we can, but we want to have an alternative location for the people who aren't ready to go to an indoor location. If they won't be able to remain camping on the block where they are, this will be an alternative location where they can go camp, a safer location than the block they are currently on.

In the three efforts that we've had where we have closed down streets to camping, we have had 25 individuals say no thank you and not move to an indoor location. So this alternative is for those 25 and the people that we anticipate encountering as we proceed with our block-by-block effort.

Q. All right. But – I'm not sure you were here, but at the beginning of the day, counsel for the City got up

and said that you planned every three weeks to clear a street, and by their estimate, it would be done in about – if they did it every three weeks, in about nine months.

The first of September is – my math is not great. But we're in July, so July, August, oh, September. [237] It is like two months, right? So in two months you've got this area, right, but the City is not going to move all of these people that are surrounding my clients' buildings and living in tents and shelters, you know, homemade shelters, the City is not going to require them to either move there or be subject to arrest or – or – or take other action against them?

A. The intention of the safe outdoor space is that it will be voluntary just as all of our indoor shelters, it is a voluntary option.

Q. So as you sit here today, the only plan that you are aware of that might abate the nuis – or might remove the individuals who are – who are illegally living on the streets in and around the zone is your plan to continue this every-three-week effort?

A. That is the best way, yes, that we found having 80 percent of the individuals that we're working with move into an indoor location and having an alternative for those 20 percent that aren't ready for that.

Q. So far though, I mean, I know there's – there's – there's always multiple factors, right? I mean, in life, people are complicated, true?

A. Agreed.

Q. Okay. And so you have done all of these shelter

\* \* \*

[262] there was a lot of nuances of that reasoning that I wasn't the end all be all on that, but all of those situations came in place.

The Boise decision, making sure that we had legal standing to be able to do that, while also getting the cleanups going again without having a bunch of issues with clients, because client safety was important to us and we didn't want to just do a huge disruption and pace into it, so – I apologize. Thank you.

So to be specific on all of that, I don't know if I could answer that right here without notes in front of me but that was some of the nuance within that.

Q. It took the Court's order for the City to actually clean a street and keep it clean, true?

A. I would say that was – that was a factor in it, absolutely.

Q. Yeah. Sure.

Now, I just – I want to ask you a question. You had mentioned in response to questioning that when you – well, strike that.

Let me ask you this foundational question. Are you – during these enhanced engagements, are you personally out there talking to the homeless folks?

A. Most of them. There was, I believe, two that I couldn't be at because of other work-related issues, but [263] most of the time I am the one out there from beginning to end coordinating.

Q. And have you developed any relationships with any of what we have been calling today during the course of this hearing unsheltered individuals who are living out there?

A. Yes, sir.

Q. So you know some of these folks?

A. Yes, sir.

Q. So they have been there awhile?

A. Yes, sir.

Q. All right. Have some of them have been there more than six months?

A. Yes, sir.

Q. More than a year?

A. Yes, sir.

Q. All right. And so when you – now, you testified I thought that virtually all of them have no other – is it no other place to go or they just – or – I just wasn't clear whether you were testifying that they had no other place to go or whether they were not currently enrolled in a shelter someplace?

A. The question I believe I answered was whether or not they had already had an alternative location to stay other than other than a shelter in Phoenix. So I answered [264] that my engagements with people that didn't have an alternative place that they already could stay at, that they needed assistance in getting placement to stay someplace.

Q. Okay. So by that, you've – you're investigating whether they have access to funds?

A. Whether or not they were already in a shelter and just staying out there on their own or whether or not they were in some other program.

Q. Okay. And how about – and so – and that occasionally occurs, people will be – they will be qualified for a shelter but they live on the street anyway?

A. Yeah. It has happened where someone has actually had housing and been out there, but again, that was anomaly and one-offs.

Q. All right. Did you force that person – did anyone from the City force that person to leave and go back to their house?

A. Well, the City of Phoenix can't force anybody to go anywhere per se. But when we're working with individuals and they do have a place, yes, we would make that connection and try to reestablish where they were at or if that thing wasn't working for a particular reason, try to do a new placement or a new referral.

[265] Q. The – all right. And so – and when you say that those percentages in your opinion, is that – that includes investigating whether they have funds to rent a place?

A. Well, funds is all self-reported. So during an assessment of an individual's needs, we do ask about income, but it is all self-report by that individual. The HMIS system I referred to earlier, we don't track or mandate people's income, that's a self-report from an individual.

Q. Okay. So as far as you know, the City is – doesn't know whether some of these individuals who are living in the zone actually have the means to pay for their own housing?

A. Correct. It could be found out when they do their application for housing and then that income kind of verification, but yes, our outreach teams and our homeless team doesn't do income verification, that's something a housing project would do once they apply for housing or something of that sort.



Q. And is the same true for whether they have relatives that might house them?

A. Sure. So, again, that's self-report from an individual, and if they tell us they have family members, we try to make those connections, that's part of our [266] process is family reunification.

Q. And then is the City at this point categorizing individuals as involuntarily homeless?

A. No. A person experiencing homelessness is a person experiencing homelessness, the nuance caricatures people like to put on them, that's not something we do. If someone is experiencing homelessness, we work on trying to resolve that for the individual.

Q. All right. And that's what your job is?

A. Yes, sir.

Q. And your job is not to clean – it is not to clean the streets of the tents in and around the zone?

A. No, I wouldn't say that. Because our office is holistic. It is not only the individual we're trying to assist that's experiencing homelessness, it is also our communities. So we're very ingrained in our community groups and issues as it relates to, you know, debris left over by homelessness or the negative impact of homelessness.

Q. All right. Since you have been at the City, statistically have the number of – well, of unsheltered homeless in the city and in the zone, have they – has that decreased or increased?

A. Our – I'm sorry, our regional data, HMIS data has shown that our inflow of people experiencing

\* \* \*

31a

**APPENDIX B**

[1] IN THE SUPERIOR COURT OF  
THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF MARICOPA

---

CV 2022-010439

---

FREDDY BROWN, *et.al.*,

Plaintiffs,

vs.

CITY OF PHOENIX,

Defendants.

---

Phoenix, Arizona

July 11, 2023

---

BEFORE THE HONORABLE SCOTT A. BLANEY

---

REPORTER'S TRANSCRIPT OF PROCEEDINGS

(Bench Trial)

---

PREPARED FOR:

COPY

MICHELE KALEY, CSR, RPR  
Certified Court Reporter #50512  
(480) 558-6620

---

[2] APPEARANCES

FOR THE PLAINTIFF:

BY: Stephen W. Tully  
stully@tullybailey.com  
Ilan Wurman  
ilan.wurman@tullybailey.com  
TULLY BAILEY LLP  
11811 North Tatum Boulevard Unit 3031  
Phoenix, Arizona 85028

FOR THE DEFENDANT:

BY: Justin S. Pierce  
Justin@piercecoleman.com  
Aaron D. Arnson  
Aaron@piercecoleman.com  
Trish Stuhan  
Trish@piercecoleman.com  
PIERCE COLEMAN PLLC  
7730 East Greenway Road Suite 105  
Scottsdale, Arizona 85260

[3] INDEX

WITNESS	PAGE
JEREMY HUNTOON	
Direct Examination by Mr. Pierce	7
Cross Examination by Mr. Tully	23
BRIAN FREUDENTHAL	
Direct Examination by Mr. Arnson	31
Cross Examination by Mr. Tully	80
Redirect Examination by Mr. Arnson	95
SHEILA HARRIS	
Direct Examination by Ms. Stuhan	103
Cross Examination by Mr. Wurman	160

Redirect Examination by Ms. Stuhan	220
GINA MONTES	
Direct Examination by Mr. Pierce	228

\* \* \*

[83] way to ask it.

MR. TULLY: Sure.

Q. Is it against the City Code for an individual to erect a tent on the sidewalk within the city limits?

A. Depends on who you ask.

Q. Really? Does it violate a code provision to do so?

A. I think that's the question, and that's why we are here today. I – you –

Q. Okay.

A. We get consulted by lawyers, and it's difficult to get a straight answer on that one. So is it – is it – is there a law on the books that involves camping? Yes.

Q. Okay. So it would help for the Court here, this Court to provide some guidance to you in your duties with regard to those who are constructing tents on the, in the right of ways in the Zone?

A. So there's two courts, as you're aware of.

And it would help that – if we had a – it would help if we had a straight answer between the two courts.

Q. Okay.

A. For me and my team.

Q. Right. Because, I mean, you mentioned that

\* \* \*

[86] True?

MR. ARNISON: Your Honor, I don't want this to turn into attorney/client privilege territory, so I'm going to object.

THE COURT: Give me a second. What's your response to that?

MR. TULLY: Well, he's admitted that there's a city ordinance.

THE COURT: I'll tell you what. I'm going to cut you off –

MR. TULLY: Sure.

THE COURT: – because I think it's easier.

If you change your question and take the lawyers out of it and say that's the direction you got from the City, I think it's less offensive. So – not offensive, but it doesn't offend attorney/client privilege.

Q. BY MR. TULLY: The reason you are not enforcing, currently enforcing the City ordinance against camping in the right of ways is at the direction of the City?

A. I disagree.

Q. All right. Who – whose direction are you –

A. The federal judge.

Q. Okay. Okay. Now let me ask you, the Zone [87] proceeded – the growth of the Zone, right, all those tents, proceeded – when you say the federal judge, you're talking about Judge Snow's order?

A. That's part of it.

Q. Okay. Well, I mean, are you referring to a different judge?

A. Well, I think – well, I’m also referring to the 9th Circuit ruling which Judge Snow utilize in his ruling, right.

Q. All right. Well, let me ask you – let me ask you this question. You’ve been working, not as the commander, but as an officer or lieutenant in and around the area that’s now called the Zone for – for a fairly long time, correct?

A. That’s correct.

Q. And how long?

A. The majority of my career.

Q. All right. And was there a time when there was no tent city in that area?

A. There was.

Q. All right. And during that time, did you enforce the City Camping Ban?

A. We – there were times when we issued that citation, but – yeah, there were times we issued that one, along with the lying/sitting in a public right of

\* \* \*

[100] A. Yes.

Q. Okay. You mentioned the *Martin v. Boise* case, and you also mentioned the federal case. Do you recall that?

A. Yes.

Q. Okay. You talked a little bit about Mr. – with Mr. Tully about tents.

Do you remember that?

A. Yes.

Q. Okay. So for tents, do you know whether tents can simply be removed without advising someone first?

A. Can you rephrase?

Q. Sure, I can.

A. Can you repeat that question.

Q. I can. Can the City simply remove a tent without advising the individual that a tent is going to be removed?

A. No.

Q. So all these court orders that have been flying back and forth between the state court proceeding and the federal court proceeding, how easy is that for you – are they for you to reconcile?

A. It puts us in a difficult position. It's not easy at all to reconcile the difference between the two suits.

[101] Q. Why not?

A. Because they appear to conflict, to me.

Q. I'm only asking for your – for your read.

A. Yeah.

Q. Okay. In what respects do they appear to conflict?

A. In – I believe it just appears that one court is saying we are doing too much and the other court is saying we are not doing enough.

MR. ARNISON: Okay. I understand.

I don't have any further questions, your Honor.

THE COURT: All right. Thank you. Do the defendants believe this witness should be available for recall?

MR. ARNISON: No, your Honor.

THE COURT: Plaintiffs?

MR. TULLY: No, your Honor.

THE COURT: All right. Thank you for your time, Commander. You can step down.

You can either remain or leave. It's up to you.

MR. PIERCE: Your Honor, can we get a – how much time we've got left for our witnesses?

THE COURT: You've got three hours, 27

\* \* \*

[119] coordination of those efforts. At the same time, have them be very outcome driven, which hasn't necessarily been the focus of all the agencies working on the campus.

Q. Okay. And so we've talked a little bit about working on the campus. I'd like to break down a little bit what that means. So what type of work happens? If you're doing an enhanced engagement, what is the type of work that you have seen?

A. What I have seen is, not only City of Phoenix staff going out prior to the engagement opportunity – we are human people trying to assess where they would like to live, if they would like to move, do they have pets, are they a couple, what are some of the challenges that they have in trying to secure housing.

Some of the people that are around the campus – I would say the vast majority – don't like to go on to the campus because they don't like to be in a confined area. So that makes it really challenging when you are trying to find someone a place to live that's perhaps used to not having four walls around them.



So it's not just what happens on the day of the engagement. It's what's happening with the agencies that are working on the campus, as well as

\* \* \*

[128] street, maybe we don't keep the shelters alive forever. But we are having them so people can get out of the heat, they can start to get services.

There is all kinds of barriers that people don't think about, quite frankly, that sort of enter into this equation. One of the challenges at the campus, for instance, is some people won't go into the CASS Shelter because they have to go through a metal detector. They don't want to do that, so they would rather sleep someplace else.

Q. And so another place they could sleep is a campground, right?

A. Uh-huh.

Q. Is that a yes?

A. Yes.

Q. I'm sorry. She's taking down everything we say, so I need yeses?

A. Yes.

Q. Or nos or I dont knows.

So let's talk a little bit on strategies. Did campgrounds have any consideration in the strategies that the City Council adopted?

A. I can't remember if it was mentioned specifically in the report, but I do know there have been discussions about campgrounds being an option. [129] And I believe the City is pursuing that at this point in time.

Q. Do you think campgrounds are a viable option for some people?

A. Yes.

Q. Walk me through your assessment of the utility of a campground for the City of Phoenix?

A. For one thing, it could be in a more controlled environment. And I know some of the challenges are people tend to get a lot of possessions.

And I know some of the encampment areas look like they were probably three or four tents. It is actually one person who combined three or four tents to be where they were living. So it also reduces – it can be – there can be screening for people to make sure that there are adequate people there to work with them; that they are not just put into a place and left.

So it's – it's not like you just build a campground and you put every little place where you want people to stay and then you close the door and go away. It still will need supervision, and I do believe that's in the City's plan.

Q. You've been out, you said, and observed five [130] of the – or three of the five cleanings?

A. Five of the seven.

Q. Five of the seven. Me and numbers. So have you observed some of the interactions with the engagement team with the homeless population?

A. Uh-huh, yes.

Q. And also, in your experience as Department of Housing and Human Services, have you had discussions and interactions with homeless people?

A. Yeah.

40a

Q. Do you think that all of the people located in the area around the Human Services Campus could be able to live in a structured campground outside?

A. I don't know about all of them, but I think some of them can.

One of the things we found in my observation of one of the cleanups is, sometimes people have really severe health issues, and they don't realize how ill they are; and they do need medical attention. So there have been people that have been transported to hospitals and other healthcare has been provided to them.

Some people also like more space than the 12-by-12 area that has proposed. It's going to have to happen, unfortunately, and – not unfortunately,

\* \* \*

[140] potentially.

You've seen some of this trial, discussions about substance abuse and addiction, correct?

A. Yes.

Q. Can you describe to me, have you seen any changes in the addiction in the State of Arizona during the time you have served from the Director of Housing all the way to the current?

A. Yes. The drugs are becoming much more plentiful and much cheaper. For instance, when I was at the campus, we were having more problems with crack cocaine. It was more expensive. It was harder to get.

Today, I have been told you can buy a pill, a fentanyl – what everybody hears about and how incredibly addictive it is – for 20 cents. So the price of the drugs have become a lot cheaper and a lot more plentiful.

41a

Q. Has that impacted the number of homeless on the streets in the city of Phoenix?

A. Yes.

Q. What about the nation?

A. Yes.

Q. Let's talk a little bit about the role of addressing those types of substance abuse and

\* \* \*

[171] A. I have not.

Q. Okay. Is it fair to say, looking at the Washington Street shelter, that it's possible to have a shelter and homelessness services in a particular space without having encampments surrounding it?

Is that fair to say?

A. Yes.

Q. That's possible. So would you agree with me that the existence of shelter or services does not necessarily lead to the existence of other public encampments surrounding those services or shelters, correct?

A. Yes.

Q. Thank you. Dr. Harris, you're familiar with the City of *Boise* decision, correct?

A. Yes.

Q. That decision first came down in the middle of September of 2018, correct?

A. Uh-huh.

Q. And I say, "first came down." I don't know if you know there was a modified decision yet. But mid

September 2018, the first *Boise* decision came down, to the best of your knowledge, correct?

A. Yeah.

Q. Your time at HSC had just ended, correct?

[172] A. Yes.

Q. Okay. But despite that, you've written that you noticed that the *Boise* decision greatly affected and changed how providers and cities provide services to those experiencing homelessness, correct?

A. Yes.

Q. Can you explain to the Court exactly how the *Boise* decision affected and changed how providers and cities provide services to those experiencing homelessness?

A. It's created an era of uncertainty. And I think that's probably why we are here today is to try and clarify, what is that.

Q. Okay. So if we weren't here today and we didn't receive any guidance from the Court, would there still be that state of unclarity in the future if we weren't here today?

A. To the best of my knowledge, yes.

Q. To the best of your knowledge, as a result of the *Boise* decision – let me ask that another way.

To the best of your knowledge, did the *Boise* decision affect the City of Phoenix's policies with respect to enforcing anti-camping laws?

A. I don't know what their policies are on anti-camping laws.

[173] Q. Okay.

A. I can't respond.

Q. Well, let me ask the question another way. You testified that the situation got worse during COVID in the Zone, correct?

A. Yes.

Q. Between when the Boise decision came down and when COVID began, were there tents in the Zone? In other words, were there tents in the Zone prior to COVID, to the best of your knowledge?

A. I believe there were a few. I could not guesstimate or remember how many.

Q. Okay. So you don't know one way or another when the proliferation of tents occurred, correct?

A. Yes.

Q. You testified that things got worse during COVID, but things – the tents could have come to the zone or arisen in the zone just after the Boise decision.

For all you know, that could be the case, correct?

A. Not to the extent that they are there now.

Q. Because as you testified, it fluctuates all the time, correct?

A. Right.

[174] Q. Okay. Now you also wrote – you know, this goes a bit into what you already said about uncertainty. But you wrote in your report that the *Boise* decision has caused confusion about what are or are not legal policies and procedures.

Do you remember that?

A. Uh-huh.

Q. That's a yes?

A. Yes, I do. Excuse me. Yes.

Q. Can you explain to the Court what you meant by that? What confusion has it caused, to the extent – and I mean, you wrote that in your report.

Can you tell the Court what you meant by that?

A. I think that's why we are here today. It's not clear what that decision means.

Q. Okay.

A. It's not.

Q. To your knowledge – or in your opinion, is the City of Phoenix currently confused as to what is or is not legal as a result of that decision?

A. I think they are working through to create their policies to align with the decision.

Q. All right. Do you think clarity from a court would be helpful?

A. Yes.

\* \* \*

[179] So go ahead and continue.

MR. WURMAN: Thank you, your Honor.

Q. Dr. Harris, that means you can answer the question. And the question is, simply, is someone who won't accept an available bed because they would have to part with a pet to do so, to accept that bed, is that person involuntarily homeless under the definition we just agreed on?

A. I believe so.

Q. You believe that that person is involuntarily homeless still?

A. It's hard for me to honestly absorb what you said.

Q. Yeah, there is some double negatives maybe –

A. Yes.

Q. – that I'm trying not to do?

A. Yes.

Q. Let me ask –

A. That's the problem.

Q. Let me ask the question another way. A person who has a shelter bed available, but refuses it because that shelter has a pet policy that they can't comply with, that person nevertheless has access to shelter, correct? They just have to part with their pet.

[180] Isn't that true?

A. That is the condition.

Q. So, yes, they have access to shelter?

A. They have access to shelter, but not with their belongings.

Q. Correct, okay. Let me put it another way then. And you're welcome to qualify, you know, as much as you feel is appropriate.

The person who refuses to give up a pet and therefore stays on the street, rather than goes into shelter, that person has a choice, correct?

They can choose to stay on the street with their pet, or they can choose to part with their pet and go into shelter, correct?

A. They have a choice. But I would say people that make those kinds of decisions may have some challenges in their logic, if you're –



Q. In their logic?

A. Yes. From that – to them, it's much more important to be with their pet. To you, it might not be

–

Q. Right, okay.

A. – that important to be with your pet.

Q. Okay.

A. That's their choice.

[181] Q. One more way of asking. Having a pet is not biologically compelled, correct?

A. Not that I'm aware of.

Q. Okay. An unsheltered person with personal property, who can obtain shelter if that person gives up that personal property, is not biologically compelled to keep their property, rather than going into the shelter, correct?

It's a choice?

A. Could you rephrase that?

Q. Sure. Choosing to stay on the street with one's property, rather than going into shelter without property, that's not a biologically-compelled choice. That's a choice that you can choose to part with your property or – or not, correct?

A. Yes.

Q. Okay. So it's not biologically-compelled to choose your property over the shelter bed, correct? That's a yes?

A. Yes.

Q. Now this question might sound callous, but an unsheltered person with a partner who has a shelter

bed available, but must part with their partner, is not biologically compelled to choose their partner – to choose staying with their partner over going into [182] the shelter bed, correct?

A. Uh-huh, yes.

Q. Okay. I don't know if you heard the testimony from Mr. Hall yesterday, but this question is inspired by his testimony.

If someone has a house that they could stay in, but they choose to stay on the street, that person is not involuntarily homeless, correct?

A. According to what you have told me, yes.

Q. Okay. Now you testified earlier today that some individuals in the Zone don't go into shelter because they prefer more space or they don't like a confined space, correct?

A. Yes.

Q. An individual who refuses to go into a shelter because he prefers to have more space is not biologically compelled to choose more space over going into a shelter, correct?

A. Not biologically compelled.

Q. Okay. So according to our definition, that person is not involuntarily homeless, correct?

A. Given all the caveats we've discussed, yes.

Q. Okay. I think you've testified earlier today that an individual – excuse me – that some individuals in the Zone don't want to go into shelter [183] because they don't want to go through metal detectors. Do you remember that?

A. Yes.

Q. Is it fair to say that not wanting to go through a metal detector is not a biologically-compelled action or inaction?

A. I think that's reasonable.

Q. Okay. You described for the Court earlier today that many individuals experiencing homelessness in the Zone use illegal drugs, correct?

A. Yes.

Q. And particularly fentanyl?

A. Yes.

Q. Using illegal drugs is not a biologically-compelled act, correct?

A. I don't know that I'm qualified to answer that.

Q. Fair enough. Not all human beings use illegal substances, correct?

A. That's true.

Q. Okay. All human beings need to sleep, correct?

A. Yes.

Q. All human beings need to eat?

A. Yes.

[184] Q. All human beings need to urinate and defecate?

A. If they want to function as a human being.

Q. Correct. Not all human beings need to use drugs, correct?

A. To the best of my knowledge. But it does help, if you've got high blood pressure, that you have medicine you can take for that.

Q. Sure. Fair enough. Let's start with illegal substances?

A. Okay.

Q. Fair to say not everyone needs to use illegal substances, correct?

A. Yes.

Q. Okay. Do shelters allow illegal drug use?

A. It occurs.

Q. But it's not permitted?

A. It's not probably in their operating procedures, shall we say.

Q. Okay. Going back to your testimony about fentanyl. Does an unsheltered person who uses fentanyl and is addicted to fentanyl willingly go into a shelter that prohibits drug use?

A. Probably not.

Q. And, in fact, if that individual went into the shelter, would that be safe for the other persons in

\* \* \*

[190] Q. Okay. And if I represent to you – you see the hyperlink to research study? If I were to – in the Task Force Report. And if I represent to you that I found this survey by clicking on the hyperlink in the Task Force Report, do you have any reason to doubt me?

A. I do not.

Q. Okay. And if we look at the first page, it says – oh.

Have you seen the study before, Dr. Harris?

50a

A. I may have.

Q. All right. Let's just – do you have – you have no recollection – it says Downtown Phoenix. Do you have any recollection as to when the study was – when the survey was conducted?

A. No.

Q. All right. Well, nevertheless, in April 2022, and on page 18 of the task force – the task force provides this data from this survey of a hundred unsheltered individuals in Downtown Phoenix, correct?

A. That's what it says on the title.

Q. Okay. So if we look at that pie chart – and you can look back at the task force report now.

A. Uh-huh.

Q. Yeah. It says that only 14.3 percent of those [191] involved in the study – those surveyed in the study – cited the lack of availability of beds as the reason for their not currently being in shelter, correct?

A. Yes.

Q. So that means that over 85 percent of unsheltered individuals surveyed in this study of Downtown Phoenix cited some reason, other than lack of available beds, as the reason for their being unsheltered, correct?

A. Yes, that's what this says.

Q. Okay. Now if we look here, a few unsheltered individuals cited their having pets as the reason for their being unsheltered, correct?

A. Yes.

Q. 2.4 percent. And let's see. We talked about personal belongings.

10.3 percent cited that as the reason for their being unsheltered, correct?

A. That's what it says on the chart.

Q. And, again, it's – you were on the task force that provided this pie chart, correct?

A. I was on the task force that included this in the report. I did not participate in this document.

Q. Okay. And this document, you mean Attachment [192] C or wherever this pie chart is appearing?

A. Right. In the unsheltered prospectus, I did not participate in –

Q. Oh, sure, sure.

A. – this document.

Q. Okay. And, in fact, you can put that away now.

A. Okay.

Q. We are not really allowed to talk to about it anymore. I was just trying to refresh your recollection. But you did – you did participate in publishing this task force update from 2022, correct?

A. Yes.

Q. Okay. And that includes this pie chart?

A. Yes, it does.

Q. Okay. Moving on to partners and spouse. It appears that 2.3 percent of the unsheltered individuals surveyed, according to pie chart, cited that as the reason that they are currently unsheltered, correct?

52a

A. That's what it says.

Q. Okay. And 20 percent – 19.8 percent cited that they did not want to follow curfew or rules as the reason for their being unsheltered, correct?

A. That's what it says.

[193] Q. Okay. 7.1 percent cited addiction, correct?

A. Yes.

Q. 5.6 percent cited mental health?

A. Yes.

Q. And 21.4 percent cited, "other." Do you see that?

A. I do.

Q. Okay. Do you have any idea what that "other" might be?

A. It's really hard to say.

Q. Okay. All right. I don't want – I read the study.

A. Uh-huh.

Q. I'm not supposed to talk about it, so I'm going to just – let's just put an asterisk around that 21.4 percent for now.

And then it says, 11.1 percent had a criminal background, correct?

A. Yes.

Q. I presume that's because some shelters don't allow individuals that have criminal backgrounds?

A. That's true.

Q. Okay. And 4.8 percent cited a disability, correct?

A. Yes.

[194] Q. I suppose, in your experience, might that be because some shelters can't provide accommodations for certain disabilities?

A. That is true.

Q. Okay. So I want to be conservative here.

Let's assume that individuals with a criminal background can't get into shelter because of rules against criminal backgrounds; those with disability can't get in because they can't be accommodated; and those who want it, cited a lack of available beds – you know, there were no available beds. So that's only 30 percent, again, understanding there's this "other" category.

To the extent we know, that's only about 30 percent of individuals in the survey who can't access shelter because of their criminal background, disability, or lack of availability, correct?

A. That's what this chart says.

Q. Okay.

A. I don't know the methodology for how the people were selected. I don't know if it was over time, who was included, where they came from. There's a whole host of information. I believe this pie chart was put into the report just to educate and be illustrative of all the different challenges. I think [195] if we were to do the same survey today, you might get completely different results.

Q. Fair enough. But these are the results we have in the task force report, which you are a member, correct?

A. That's true.

Q. Okay. And so putting aside, "other," which again was 21.4 percent, it sounds like about 50



54a

percent, right, maybe about 49 percent of individuals cited pets, property, partners, mental health, addiction, or not wanting to follow curfew and rules as the reason for their not being in shelter, correct?

A. From this particular study.

Q. Correct. Of individuals in Downtown Phoenix, correct?

A. Yes.

Q. If we assume that the 21.4 percent who selected “other” chose something, other than lack of availability, is it fair to say that that number would increase to 70 percent; cited something, other than lack of availability, criminal background or disability as the reason for their being unsheltered?

A. That’s what the math says.

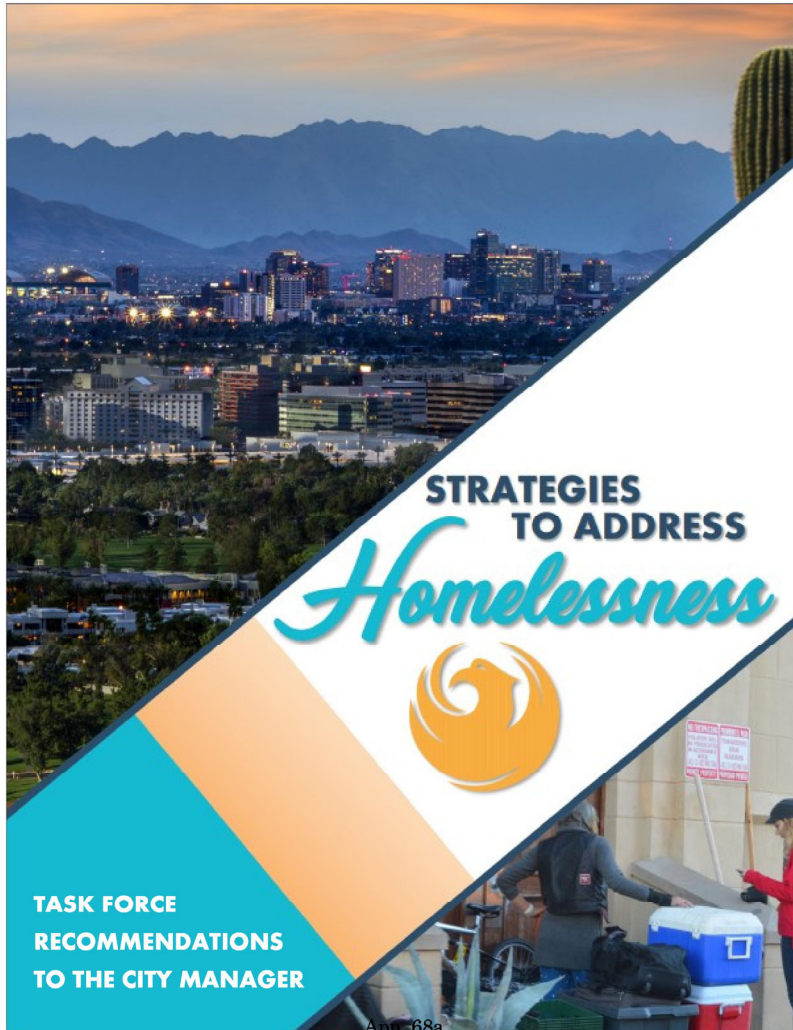
Q. Okay.

\* \* \*

55a

**APPENDIX C**

**Freddy Brown et al. v. City of Phoenix,  
CV2022-010439 (Maricopa County Superior Court),  
Trial Exhibit 53**

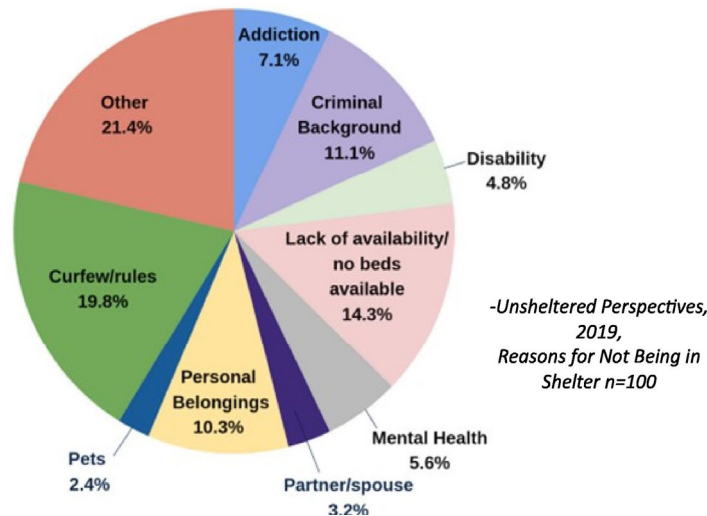


**TASK FORCE RECOMMENDATIONS TO THE CITY MANAGER**

**ATTACHMENT C:**

**UNSHELTERED HOMELESSNESS IN PHOENIX**

- According to the most recent point-in-time report for Maricopa County, there were roughly 3,767 individuals experiencing unsheltered homelessness in Maricopa County on a single night. 2,380 of those individuals were in the City of Phoenix. In a research study involving 100 unsheltered individuals in downtown Phoenix, we learned that there are diverse reasons why people are not currently in shelter:



**GOAL:** Provide guidance on an effective spectrum of supportive services to ensure new/existing shelters or sites can create environments that adopt SAMHSA Principles for trauma-informed design for their customers and the surrounding community.

**APPENDIX D**

[LOGO] Manhattan Institute

Expert Report of Judge Glock  
Freddy Brown et al. v. City of Phoenix  
Maricopa County Superior Court  
CV No. 2022-010439

1. I am the Director of Research and a Senior Fellow at the Manhattan Institute, where I focus on the intersection of economics, financing, and housing. I previously worked at the Cicero Institute where I developed and advocated for solutions to homelessness rooted in economic incentives and informed by my research in economic history. I received a Ph.D. in history, with a focus on economic history, from Rutgers University in 2016 and was a visiting professor of economics at West Virginia University from 2016 to 2018. A full list of my publications, including any testimony I have given, is included in my curriculum vitae, attached as Appendix A.

2. I am not being paid for this report or this engagement. The documents I consulted in preparing this report are cited throughout.

3. I have been asked to opine on (1) what attracts unsheltered populations to public encampments; (2) potential solutions to public encampments, focusing particularly on the experience of other cities and the use of structured campsites; and (3) the effect of *Martin v. City of Boise* on homelessness and encampments in the West Coast.

4. My overall opinions are that unsheltered populations, including the population in what is known as the “Zone” in Phoenix, have significantly higher rates of mental illness and substance abuse than does the

homeless but sheltered population. This makes the currently fashionable “housing first” and no-enforcement model ineffective because housing alone or housing without mandated treatment will not solve the underlying conditions of most of the unsheltered. This model is also ineffective because the unsheltered population is mobile, meaning many or most unsheltered individuals who are put in a “housing first” option will be replaced by other unsheltered individuals.

5. The mobility of the population and the attraction of camps for some local sheltered and even housed residents with substance use issues also explains why certain public encampments are large: unsheltered individuals are attracted to the freedom they enjoy in such encampments. That is, homeless encampments tend to arise because of a municipality’s policy choices: a refusal to enforce laws against drug use and camping bans, and a refusal to force individuals to leave if they refuse to accept services.

6. In contrast, municipalities that enforce drug laws and camping bans and that will make individuals leave or relocate to a structured campsite if they refuse services see dramatic reductions in encampments with almost no arrests. Other cities have demonstrated that a humane enforcement policy, combined with providing structured campgrounds or similar maintained sites where public camping is permitted, is effective in getting unsheltered individuals into services or into such maintained sites. Where these policies have been deployed, almost all the unsheltered individuals who do not wish to accept services or a place in the sanctioned camping area voluntarily leave. Only rarely must an unsheltered individual be arrested.

7. Implementing these policies has become more necessary in the wake of the *Boise* decision. Since that

decision, homelessness has increased by 26% in states within the jurisdiction of the U.S. Court of Appeals for the Ninth Circuit, while decreasing elsewhere, and the unsheltered population in such states has increased by 28%, while increasing elsewhere by only 8%.

#### What Attracts Unsheltered Populations to Public Encampments

8. While the majority of the homeless in America are sheltered, and most of the sheltered homeless do not have severe problems with drugs, alcohol, or mental illness, the unsheltered are a distinct group where these problems are much more prevalent. One UCLA study of the unsheltered homeless in 15 states found that 78% reported a substantial mental health condition, 75% reported a substance abuse problem, and the majority reported both. 50% of the unsheltered reported that their mental health condition was a factor in their loss of housing, nearly three times the sheltered rate, and 51% reported that substance use was a factor in loss of housing, more than eight times the sheltered rate.<sup>1</sup> These problems appear to be worse among the inhabitants of large public encampments. One study of two Philadelphia homeless camps found “near ubiquitous substance use among those staying in the encampments.”<sup>2</sup>

---

<sup>1</sup> Janey Rountree, Nathan Hess, and Austin Lyke, “Health Conditions Among Unsheltered Adults in the U.S.,” California Policy Lab Policy Brief, October 2019, <https://www.capolicylab.org/wp-content/uploads/2023/02/Health-Conditions-Among-Unsheltered-Adults-in-the-U.S..pdf>

<sup>2</sup> Stephen Metraux et. Al., “An Evaluation of the City of Philadelphia’s Kensington Encampment Resolution Pilot,” City of Philadelphia, March 5, 2019, <https://www.phila.gov/media/20190312102914/Encampment-Resolution-Pilot-Report.pdf>

9. Individuals with these problems, when left without support or security in public, endure high rates of violence and death. Although many cities do not keep comprehensive statistics on homeless crime, in Los Angeles in 2020 and early 2021, 15% of all violent crime in the city involved a homeless person, the vast majority of whom are unsheltered in the city, though the homeless represent only about 1 % of the population.<sup>3</sup> The most common victims of crimes by homeless perpetrators were other homeless people. The homeless were 24% of the city's murder victims.<sup>4</sup> The city has also seen over 2,000 homeless deaths a year, a rate of death that rivals or surpasses that of soldiers in wartime, and that is comparable to homeless death rates in other large cities.<sup>5</sup>

10. While reduced housing rents can help people out of homelessness, for many unsheltered individuals cheaper market-rate rental housing or even subsidized housing is not enough. Researchers have noted that rental cost variations between cities can explain only between one quarter and a little over half of the variation in the extent of homelessness across different locations. Housing and rental prices also seem to

---

<sup>3</sup> Sophie Flay and Grace Manthey “What is really going on with homeless crime?” ABC 7 Los Angeles, <https://abc7.com/feature/homeless-crime-los-angeles-data-response/10827722/>

<sup>4</sup> Eric Leonard, “LA’s Homeless Were 24% of City’s Murder Victims,” NBC 4 Los Angeles, January 4, 2023, <https://www.nbclosangeles.com/investigations/las-homeless-were-24-of-citys-murder-victims/3066979/>

<sup>5</sup> “Mortality Rates and Causes of Death Among People Experiencing Homelessness in Los Angeles County: 2014-2021,” Los Angeles County Department of Public Health, May 2023, [http://publichealth.lacounty.gov/chie/reports/Homeless\\_Mortality\\_Report\\_2023.pdf](http://publichealth.lacounty.gov/chie/reports/Homeless_Mortality_Report_2023.pdf)

have more effect on the sheltered homeless population than the unsheltered.<sup>6</sup>

11. The remaining variation in homelessness, especially among the unsheltered, seems to be related to other issues including the ease or encouragement of outside camping. Cities that have stopped enforcement have seen sudden influxes of the unsheltered due to the option of living on the street. When Austin voted to end its camping ban in 2019, the city saw an immediate increase in unsheltered homelessness of 45% by the following year. This was likely not just due to increased visibility, since the sheltered homeless dropped by 20% in the same time period.<sup>7</sup> Los Angeles saw an almost 50% decline in unsheltered homelessness the year after it began its “Safer Cities Initiative” to enforce laws against street camping in Skid Row in 2006, and continued declines in unsheltered homelessness thereafter. But after the city moved away from street enforcement around 2014, they have seen continual increases in unsheltered homelessness, from a near nadir of 22,590 in 2014 to 45,878 in 2022.<sup>8</sup> If a city offers the option of pervasive street sleeping and

---

<sup>6</sup> Clayton Page Aldern and Gregg Colburn, *Homelessness is a Housing Problem: How Structural Factors Explain U.S. Patterns* (University of California Press 2022)

<sup>7</sup> “2020 Point-in-Time Count Results,” ECHO, <https://www.austinecho.org/wp-content/uploads/2020/07/PIT-2020-Three-One-Pagers.Revised-7.9.2020.pdf>; “2019 Austin/Travis County Point in Time Count” ECHO, <https://www.austinecho.org/wp-content/uploads/2019/07/PIT-2019-results-one-pager.pdf>

<sup>8</sup> “CoC Homeless Populations and Subpopulations Reports,” Department of Housing and Urban Development, [https://www.hudexchange.info/programs/coc/coc-homeless-populations-and-subpopulations-reports/?filter\\_Year=&filter\\_Scope=CoC&filter\\_State=CA&filter\\_CoC=CA-600&program=CoC&group=PopSub](https://www.hudexchange.info/programs/coc/coc-homeless-populations-and-subpopulations-reports/?filter_Year=&filter_Scope=CoC&filter_State=CA&filter_CoC=CA-600&program=CoC&group=PopSub)



camping, many of the formerly sheltered or housed, and many nonresidents, will take it.

12. We know that large numbers of individuals in public encampments are what is known as “service resistant,” and without some sort of mandate they will not willingly leave. In two studies of homeless encampment residents, only 25 to 41 % of residents said they would go willingly into shelter.<sup>9</sup> The mere provision of shelter alternatives, without a mandate to use them, will not get many of the unsheltered off the streets.

13. Temperature is also highly correlated with unsheltered homelessness, meaning that the ease of living outside is a significant contributor to the size of the unsheltered homeless population.<sup>10</sup>

14. The mobility of the unsheltered homeless populations is also an issue that makes mere changes in housing prices in local markets less relevant to solving unsheltered homelessness. In San Francisco and Austin, Texas, around a third of the homeless came from outside the cities, and in Los Angeles’ it was about a third of all unsheltered.<sup>11</sup> More or cheaper

---

<sup>9</sup> Sharon Chamard, “Homeless Encampments, 2010, <https://popcenter.asu.edu/content/homeless-encampments-0>

<sup>10</sup> “The State of Homelessness in America,” The Council of Economic Advisers, September 2019, <https://www.nhipdata.org/local/upload/file/The-State-of-Homelessness-in-America.pdf>

<sup>11</sup> Sarah Duzinski and Matt Mollica, “2020 Point-in-Time Count Austin/Travis County,” ECHO, <https://www.austintexas.gov/edims/document.cfm?id=340650> ASR “San Francisco Homeless County and Survey, 2022 Comprehensive Report,” San Francisco Department of Homelessness and Supportive Housing, <https://hsh.sfgov.org/wp-content/uploads/2022/08/2022-PIT-Count-Report-San-Francisco-Updated-8.9.22.pdf> “Greater Los Angeles Homeless Count 2020,” Los Angeles Homeless Services Authority,” <https://>

housing in a city cannot solve the homelessness if many of the homeless are moving into that city from elsewhere. This explains why one study estimated that it took about 10 permanent supportive housing beds to reduce the number of homeless by a one.<sup>12</sup> Additionally, many of the unsheltered homeless are not prepared for life inside. In San Francisco, 11 % of all the homeless in the city were already in subsidized housing before they became homeless, most likely for a second or third time.<sup>13</sup>

15. Mobility also explains why cities that offer permissive environments for camping and drug use tend to attract more encampments. A 2016 Seattle survey found that less than half of the homeless became homeless inside the city. Of those who came to the city almost 10% cited legal marijuana as their reason for coming, 15% cited the provision of services for the homeless, and 16% claimed they were just “traveling or visiting.”<sup>14</sup> Numerous homeless individuals state that the ease of drug use and the ability to live on the streets are a reason for attracting them and

---

[www.lahsa.org/documents?id=4558-2020-greater-los-angeles-homeless-count-presentation](http://www.lahsa.org/documents?id=4558-2020-greater-los-angeles-homeless-count-presentation)

<sup>12</sup> Kevin Corinth, “The impact of permanent supportive housing on homeless populations,” *Journal of Housing Economics* 35 (March 2017): 69-84 <https://www.sciencedirect.com/science/article/abs/pii/S11377>

<sup>13</sup> ; ASR “San Francisco Homeless County and Survey, 2022 Comprehensive Report,” San Francisco Department of Homelessness and Supportive Housing, <https://hsh.sfgov.org/wp-content/uploads/2022/08/2022-PIT-Count-Report-San-Francisco-Updated-8.19.22.pdf>

<sup>14</sup> ASR, “2016 Homeless Needs Assessment,” City of Seattle, <https://humaninterests.wpenginepowered.com/wp-content/uploads/2017/04/City-of-Seattle-Report-FINAL-with-4.11.17-additions.pdf>

other homeless individuals to the camps in cities that encourage them.<sup>15</sup>

16. The pervasive mental health and addiction problems among the unsheltered, the mobility of the unsheltered population, and the relative lack of response to increased subsidized or reduced-rate housing means that enforcement of laws against public camping and sleeping, conducted humanely with suitable alternatives, is one of the only ways to reduce the problems associated with pervasive unsheltered homelessness and public encampments.

#### Humane Enforcement as Alternative

17. Considering the problems among the unsheltered population, and the high rates of violence and death among them, it is perhaps not surprising that effective police response can help reduce the problems associated with public encampments. This response does not require widespread arrests.

18. The most extensive study of enforcement against camping and street sleeping is by Richard Berk and John MacDonald and was published in *Criminology & Public Policy* in 2010. They found significant reductions in violent and property crime as part of Los Angeles's "Safer Cities Initiative" and efforts at clearing home-

---

<sup>15</sup> Natasha Anderson, "I get paid to be homeless in San Francisco," *Daily Mail*, February 20, 2022, <https://www.dailymail.co.uk/news/article-10498607/San-Francisco-homeless-man-says-gets-paid-620-month.html>; Heather MacDonald, "San Francisco, Hostage to the Homeless," *City Journal*, Autumn 2019, <https://www.city-journal.org/article/san-francisco-hostage-to-the-homeless>; Teun Voeten, "Skid Row: Insider the epicentre of LA's homeless and crystal meth crisis," *The Independent*, October 10, 2021, <https://www.independent.co.uk/arts-entertainment/photography/skid-row-la-homeless-crystal-meth-crisis-b1934786.html>

less encampments along Skid Row. They found reductions in violent crime in the area of around 40%.<sup>16</sup> The enforcement was accompanied by significant overall reductions of homeless deaths in the first year, including an approximately 50% reduction in natural deaths and overdoses on Skid Row.<sup>17</sup> Berk and MacDonald also found no negative spillover effects of crime into other nearby communities-suggesting that enforcement does merely shift the problem elsewhere.

19. Other cities have seen similar positive results with enforcement. The city of Colorado Springs once had around 600 homeless campers according to local officials. But after it began enforcing its anti-camping laws in February 2010, they saw significant reductions in homelessness and increases in service acceptance. According to Homeward Pikes Peak, the local homeless service provider, after enforcement about 160 of the homeless went back to their families, 35 went into rehabilitation, 80 into subsidized housing, and about 150 got jobs. As the head of the organization said, “We reached out to 610 campers, and 435 didn’t return to homelessness . . . We decreased chronic homelessness by two-thirds in seven-and-a-half months.” Among those that remain on the streets, the city still offers services but also requires them to move if they refuse.<sup>18</sup>

---

<sup>16</sup> Richard Berk and John MacDonald, “Policing the homeless: An evaluation of efforts to reduce homeless-related crime,” *Criminology & Public Policy* 9 (November 2010): 813-840. <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1745-9133.2010.00673.x>

<sup>17</sup> Patrick McGreevy, “Crackdown cuts Skid Row Death Toll, Bratton Says,” *Los Angeles Times*, June 8, 2007, <https://www.latimes.com/archives/la-xpm-2007-jun-08-me-skid8-story.html>

<sup>18</sup> Jeremy P. Meyer, “Effect of camping bans debated as Denver considers ordinance,” *Denver Post*, April 12, 2012, <https://www>

20. In most places, once enforcement begins, there have been few arrests and large numbers of individuals connected to services. There were no reported arrests in Colorado Springs despite the large number of people moved into services. In Burien, Washington, after the city gave notice to around 50 to 100 unsheltered homeless to vacate, several moved on to unknown locations, several accepted services, and only 1 was arrested.<sup>19</sup> In Austin, Texas, after reinstatement of a camping ban, there were substantial reductions in public camping, and only one reported arrest after the first year.<sup>20</sup>

21. The Arizona State University Center for Problem-Oriented Policing includes “Shutting down homeless encampments” as part of their “General Principles for an Effective Strategy” for dealing with the “Problem of Homeless Encampments.” They recommend providing residents with effective notice of camp clearance, contacting homeless service providers to connect residents with services, and offering the storage of personal property. They then recommend citations of any residents who refuse to . move followed by, if necessary,

---

[denverpost.com/2012/04/21/effect-of-camping-bans-debated-as-denver-considers-ordinance/](https://denverpost.com/2012/04/21/effect-of-camping-bans-debated-as-denver-considers-ordinance/)

<sup>19</sup> Christopher Rufo, “Enforcement Works,” *City Journal*, August 23, 2019, <https://www.city-journal.org/article/enforcement-works>

<sup>20</sup> Maria Aguilera, “On year after voters reinstated the camping ban, Austin’s homeless woes continue,” *KVUE*, May 2, 2022, <https://www.kvue.com/article/news/local/homeless/austin-camping-ban-prop-b-homeless-housing-affordability/269-6ba7e3c2-e6de-4724-8839-72bed06b7105>

the “arrest any remaining” residents, along with posted signs to ensure residents do not return to the camp.<sup>21</sup>

22. In practice, camp clearings, warnings, and referrals to services are usually enough to clear camps with minimal citations and few if any arrests. The large number of residents who return to families, hometowns, or other locations that are not public camps after such clearings means that many, or most, do not require an immediate alternative location. Yet it is effective and humane to provide such alternatives for those who have nowhere else to go. It also suggests, again, that a key factor leading to homeless encampments is the policies of a municipality that attract unsheltered populations: lack of enforcement against drug use and/or camping bans, and an unwillingness to force individuals to leave if they refuse to accept services.

#### Structured Camping and Other Alternatives to Public Encampments

23. In most places that decide to enforce laws against public camping, cities provide alternative arrangements to those who choose to take them up. Although some places have sufficient enclosed congregate ( or group) shelter space available, others have tried alternatives such as tiny home villages and structured camping facilities.

24. There have been many models of successful structured camping areas across the United States and many types of temporary homeless shelters that are improvements over unsupervised public encamp-

---

<sup>21</sup> Sharon Chamard, “Homeless Encampments: Responses to the Problem of Homeless Encampments,” ASU Center for Problem-Oriented Policing, 2010, <https://popcenter.asu.edu/content/homeless-encampments-page-3>

ments. One study from the Goldman School of Public Policy at the University of California, Berkeley examined several short-term shelter models and their cost. They estimated that tiny homes cost about \$2,200 per unit in Seattle and \$2,000 in San Francisco. In Oakland a site with tiny homes for 40 individuals cost about \$200,000 to set up, or about \$5,000 per individual, and about \$650,000 in annual operating expenses, most of which went to staffing, some of which would be provided to the homeless without the site. The study also estimated sanctioned tents cost about \$100 per unit. “Sprung Structures” or large tents, could cost \$800,000 but house up to 500 people, or about \$1,600 per individual.<sup>22</sup>

25. While some camps have more extensive structures and services and show substantially higher capital and operating costs, others have shown even lower capital and operating costs than those cited above. Another Goldman School report on sanctioned homeless encampments found that a sanctioned camp in Ontario, California, which generally served 120 people, had start-up costs of about \$100,000 and ongoing operational costs after the first year of \$300,000 per year. That amounts to approximately \$2,500 per person per year.<sup>23</sup>

---

<sup>22</sup> Rawan Elhalaby, “Housing Oakland’s Unhoused: Advanced Policy Analysis,” Dellums Institute for Social Justice at the UC Berkeley, Goldman School of Public Policy, Spring 2018, <https://static1.squarespace.com/static/55c573a9e4b014e7aace0627/t/5c05c5b9b8a04584587afacc/1543882173544/12.3.2018+FINAL+Housing+Oakland%27s+Unhoused+Oct+2018.pdf>

<sup>23</sup> Rebecca Cohen, Will Yetvin, and Jill Khadduri, “Understanding Encampments of Experiencing Homelessness and Community: Emerging Evidence as of Late 2018,” U.S. Department of Housing

26. Several cities have already tried versions of open-air shelters and the evaluations have been positive. Las Vegas opened its “Courtyard Homeless Resource Center” with covered space available 24 accompanied by extensive services, in 2017. It was expanded in 2022 after the city put in place an expanded ban on public camping and sleeping that is enforced as long as space is available in the Courtyard Center or another provider. It has space for 800 guests, and outreach teams that include law enforcement to encourage the unsheltered to move to the courtyard and has generally received favorable reports.<sup>24</sup>

27. The city of Seattle invested in six formalized homeless encampments, and, according to a city evaluation of the first three programs to open in 2017, they have “met and exceeded the contracted performance measures” and the “neighboring communities have responded positively” to the security of the camps. In 2016, 467 individuals were in the camps at some point, and of those 327 exited the camps. 61 % of those who exited went to known locations, including 26% to permanent housing, 13% to transitional housing, and 5% to shelter. The total program budget was \$755,500 for the year, meaning \$2,310 per person exited in the year, or \$1,618 per individual served.<sup>25</sup>

---

and Urban Development, January 7, 2019, <https://www.huduser.gov/portal/sites/default/files/pdf/Understanding-Encampments.pdf>

<sup>24</sup> “Homeless Services,” Las Vegas, Nevada, <https://www.lasvegasnevada.gov/Residents/Resident-Services/Homeless-Services>

<sup>25</sup> “Permitted Encampment Evaluation,” City of Seattle, June 2017, <https://www.seattle.gov/documents/departments/humanservices/aboutus/final%202017%20permitted%20encampment%20evaluation.pdf>



28. The city of Portland created a small “pop-up” encampment for women, the Kenton Women’s Village, which opened in 2017, and according to the *Portland Mercury* the camp “exceeded its founders’ cautious expectations.” Of the 23 women who lived in the village to mid-2018, 14 transitioned to permanent housing, assisted by on-site case workers. Catholic Charities manages the camp and has strict rules on open containers of alcohol, drug use, and violence. There has been no reported up tick in crime or other homeless camps in the area.<sup>26</sup> Portland has also contracted with a nonprofit to manage a larger male and female “Dignity Village” for homeless residents. These residents are responsible for security in the camp, and they are required to pay \$35 a month in rent, which makes the camp “financially self-sustained,” according to one of the Goldman School studies.<sup>27</sup>

29. The Ontario, California camp opened in 2007, and came to serve about 120 chronically homeless adults. The city enforced general laws against public intoxication and drug use at the camp, enforced a 10pm curfew, and decided to restrict the encampment to only city residents. It closed in 2014 after all but two of the adults found permanent housing.<sup>28</sup>

---

<sup>26</sup> Alex Zielinski, “A Safe Place to Sleep,” *Portland Mercury*, June 20, 2018, <https://www.portlandmercury.com/Housing/2018/06/20/20727734/a-safe-place-to-sleep>

<sup>27</sup> Justin Patrick Jones et. al., “Alternatives to Unsanctioned Homeless Encampments: A Report for the City of Oakland from the Goldman School of Public Policy, University of California, Berkeley,” May 2015, [https://gspp.berkeley.edu/assets/uploads/pa/ge/15-13160\\_-\\_Goldman\\_Student\\_Report\\_-\\_Final\\_Draft\\_-\\_May\\_11\\_2015\\_reduced\\_size.pdf.pdf](https://gspp.berkeley.edu/assets/uploads/pa/ge/15-13160_-_Goldman_Student_Report_-_Final_Draft_-_May_11_2015_reduced_size.pdf.pdf)

<sup>28</sup> Justin Patrick Jones et. al., “Alternatives to Unsanctioned Homeless Encampments: A Report for the City of Oakland from

30. In Austin, Texas, the state's clearance of unauthorized camps from state-owned land in 2019 (with no reported arrests) was accompanied by the creation of a 5-acre structured camping site now known as the Esperanza Community, which has about 150 residents.<sup>29</sup> The Other Ones Foundation, a homeless nonprofit, helps administer the site. Many residents have noted that they appreciate the increased security of the community.<sup>30</sup>

31. In my opinion, the City of Phoenix could rapidly and at low cost relative to its other homelessness initiatives establish and operate structured campsites similar to those in other cities. Such campsites will improve the conditions for the unsheltered who stay there as well as the security of the surrounding neighborhoods.

---

the Goldman School of Public Policy, University of California, Berkeley," May 2015, [https://gspp.berkeley.edu/assets/uploads/page/15-13160\\_-\\_Goldman\\_Student\\_Report\\_-\\_Final\\_Draft\\_-\\_May\\_11\\_2015\\_reduced\\_size.pdf](https://gspp.berkeley.edu/assets/uploads/page/15-13160_-_Goldman_Student_Report_-_Final_Draft_-_May_11_2015_reduced_size.pdf)

<sup>29</sup> "The Other Ones Foundation, "Esperanza Community," <https://toofound.org/esperanza-community/>

<sup>30</sup> Andrew Weber, "As Camp Gets Demolished, New Shelters Are Built for Austinites Experiencing Homelessness," KUT, <https://www.kut.org/austin/2021-04-16/as-camp-gets-demolished-new-shelters-are-built-for-austinites-experiencing-homelessness>; Alyssa Goard, "'Esperanza Community': Residents Elect New Vision for State Homeless Camp in Austin," KXAN, November 13, 2020, <https://www.kxan.com/news/local/austin/esperanza-community-residents-elect-new-vision-for-state-homeless-camp-in-austin/> Fred Cantu, "More Shelters Arrive at former TxDot yard now providing transitional housing," CBS Austin, November 30, 2022, <https://cbsaustin.com/news/local/more-housing-arrives-at-former-txdot-yard-now-providing-transitional-housing-austin-homeless-camp-esperanza-community-the-other-ones-foundation-shelter>

Results of the *Boise* Decision

32. Since humane enforcement of laws and rules against public encampments is essential for responding to their growth and the negative effects of such camps, the pull-back in recent years of such enforcement that has accompanied a narrow reading of the *Martin v. City of Boise* decision in the 9th Circuit Court of Appeals has exacerbated the problems of homelessness.

33. According to public data, the *Boise* decision does not seem to have had a positive effect on homelessness in the 9th circuit. From early 2018, the last time for which data is available before the *Boise* decision, to 2022, the most recent year for which data is available, homelessness in the 9th circuit states increased by 26%, while in the rest of the United States it decreased by 6%. The unsheltered homeless increased in the 9th circuit states by 28%, while in the rest of the country the number of unsheltered increased by only 8%.<sup>31</sup> In many of the largest cities in the circuit, including Los Angeles, Seattle, San Francisco, and Portland, we have seen 50% or greater increases in annual homeless deaths in some years since the *Boise* decision, largely driven by increases in overdoses, with few or none attributed to COVID.<sup>32</sup>

---

<sup>31</sup> “2022 AHAR: Part 1 – PIT Estimates of Homelessness in the U.S.,” Department of Housing and Urban Development, December 2022, <https://www.huduser.gov/portal/datasets/ahar/2022-ahar-part-1-pit-estimates-of-homelessness-in-the-us.html>

<sup>32</sup> Thomas Fuller, “Death on the Streets,” *New York Times*, April 25, 2022, <https://www.nytimes.com/2022/04/25/us/homeless-deaths-los-angeles-new-york.html>. Anna Patrick, “More homeless people died in King County in 2022 than ever recorded before,” *The Seattle Times*, January 16, 2023, <https://www.seattletimes.com/seattle-news/homeless/more-homeless-people-died-in-king-county->

34. Whatever the goal or intention of the *Boise* decision, when it has been accompanied by a refusal to enforce laws against street camping or a refusal to provide alternatives to residents, there has been only increases in homeless suffering and death.

### Conclusion

35. Homelessness is a multifaceted problem whose causes are in many ways as diverse as the number of people experiencing it. Providing everyone with subsidized housing or waiting decades for a city to build enough market-rate housing are not sufficient solutions for large numbers of the unsheltered.

36. Humane enforcement of laws against public camping and sleeping, accompanied by sufficient alternatives, such as expanded shelters, structured camping, and tiny home villages, can make a material difference in the lives of homeless people and in the cities of which they are residents.

DATED: May 23, 2023.

/s/ Judge Glock

Judge Glock

---

in-2022-than-ever-recorded-before/ Caroline Cawley, Hernal Kanzaria, Berry Zevin, et. al., "Mortality Among People Experiencing Homelessness in San Francisco During COVID-19 Pandemic," *JAMA Network Open*, <https://jamanetwork.com/journals/jamaneetworkopen/fullarticle/2789907>; ; "Substances Fuel Record Homeless Deaths in Portland, Oregon," Associated Press, February 15, 2023, <https://www.usnews.com/news/best-states/oregon/articles/2023-02-15/substances-fuel-record-homeless-deaths-in-portland-oregon>.

74a

**APPENDIX E**

**Freddy Brown et al. v. City of Phoenix, CV2022-010439 (Maricopa County Superior Court),  
Trial Exhibits 1, 2, 18, 21, 22, 24, 26, 28, 30, 31**

**The Zone Photo 1**



**The Zone Photo 2**



75a

**The Zone Photo 18**



**The Zone Photo 25**





76a

**The Zone Photo 26**



**The Zone Photo 28**



77a

**The Zone Photo 30**



**The Zone Photo 32**





78a

**The Zone Photo 34**



**The Zone Photo 35**

