

No. 23-175

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

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CITY OF GRANTS PASS, OREGON,

*Petitioner,*

v.

GLORIA JOHNSON AND JOHN LOGAN,  
ON BEHALF OF THEMSELVES AND  
ALL OTHERS SIMILARLY SITUATED,

*Respondents.*

—◆—  
**On Writ Of Certiorari To The  
United States Court Of Appeals  
For The Ninth Circuit**

—◆—  
**BRIEF OF *AMICI CURIAE* LOCAL PROGRESS  
IMPACT LAB AND 156 CURRENT AND FORMER  
LOCAL ELECTED OFFICIALS IN SUPPORT OF  
RESPONDENTS SUPPORTING AFFIRMANCE**

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**STATEMENT OF INTEREST OF *AMICI CURIAE***<sup>1</sup>

*Amicus* Local Progress Impact Lab (the “Impact Lab”) is a nonprofit organization that works to advance a racial and economic justice agenda through all levels of government. The Impact Lab works with over 1,400 local elected officials in over 600 jurisdictions across nearly every state who build power with underrepresented communities, share bold ideas and policy, and fight to reshape what is possible in local government. The Impact Lab convenes local leaders, partners, and experts to build the knowledge, skills, and leadership needed to advance bold ideas and build equitable, thriving, and just communities.

The individual *Amici* listed in the appendix to this brief are 156 current and former local elected officials from across the country that share the Impact Lab’s commitment to “Housing First”—an “approach to addressing homelessness that involves quickly moving people into housing and then providing them voluntary, individually tailored services”<sup>2</sup>—rather than criminal enforcement. As a counterpoint to those cities and counties arguing that criminalization is a

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<sup>1</sup> Pursuant to Rule 37.6, *Amici* affirm that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *Amici*, their members, or their counsel made a monetary contribution to its preparation or submission.

<sup>2</sup> Urban Institute, Housing Matters, *Housing First Is Still the Best Approach to Ending Homelessness*, <https://housingmatters.urban.org/feature/housing-first-still-best-approach-ending-homelessness> (last visited March 29, 2024).

necessary tool to combat homelessness, *Amici* can offer a unique perspective about the workability of housing-first, non-enforcement, and non-criminalization approaches with a proven track record of alleviating the homelessness crises in communities across the country.

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### SUMMARY OF ARGUMENT

Petitioner and its *Amici* are wrong to argue that the Ninth Circuit’s ruling has “created a paralysis,” Pet. Br. at 6, that has “severely constrained [cities’] ability to address the homelessness crisis,” City and County of San Francisco *Amicus* Br. at 7. Nor does that ruling “effectively tie[] the hands of local governments and preclude[] their ability to craft ordinances that would protect public health, safety and welfare vis-à-vis homeless encampments.” Brentwood Comm. Council *Amicus* Br. at 6. The Court of Appeals’ ruling is no *real* barrier to the solution for the crisis of homelessness: housing people.

The root cause of the homelessness problem is no secret. There simply are not enough affordable housing options in places that experience high rates of homelessness. The only way to solve that problem is to adopt the kind of “housing-first” strategies described by *Amici* below, which have proven successful.

Contrary to what Petitioner and its *Amici* argue, cities cannot arrest their way out of homelessness. In fact, research shows that laws designed to essentially

criminalize homeless individuals are counterproductive—as the federal government acknowledges. *Amici* have seen first-hand in their own cities how the housing-first approach works, whereas the enforcement-first approach only erects more legal and practical barriers between unhoused individuals and the housing options they need.

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## ARGUMENT

### **I. Homelessness is Caused by the Lack of Affordable Housing.**

To understand why Petitioner and its *Amici* are wrong to argue that the Ninth Circuit’s ruling prevents them from addressing the crisis of homelessness, the Court first needs to understand the scope and causes of the problem. “On a single night in 2023, roughly 653,100 people—or about 20 of every 10,000 people in the United States—were experiencing homelessness.” U.S. Department of Housing and Urban Development, 2023 Annual Homelessness Assessment Report to Congress (“AHAR”), p. 2.<sup>3</sup> In many ways, the homeless population reflects the broad diversity of America: it includes married and single individuals; families with children; urban and rural; the elderly and unaccompanied youth. *Id.* However, “People who

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<sup>3</sup> Available at <https://www.huduser.gov/portal/sites/default/files/pdf/2023-AHAR-Part-1.pdf> (last visited March 29, 2024). The rate is even higher for veterans: 22 of every 10,000 veterans in America experience homelessness. *Id.* at 3.

identify as Black, African American, or African, as well as indigenous people (including Native Americans and Pacific Islanders), continue to be overrepresented among the population experiencing homelessness.” *Id.* Asian and Hispanic homeless populations grew the most in percentage and total size, respectively. *Id.* And, in some parts of the country, the fastest-growing segments of the homeless population are seniors.<sup>4</sup>

Approximately one-third of this population (143,105) reported experiencing chronic homelessness. *Id.* at 3. That total, like the overall number of unhoused individuals, is the highest recorded since HUD began tracking this data in 2007. *Id.* at 2. Indeed, the total number of people experiencing homelessness in 2023 was over 12 percent higher (roughly 70,650 people) than in 2022. *Id.*

Homelessness grew in 2023 across all categories, including families, unaccompanied youth, and even veterans (reversing declines that had been achieved in that group from 2020-2022). *Id.* at 2-3.<sup>5</sup> Notably, these surges in the homeless population occurred even as the

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<sup>4</sup> A. Ibarra, *The fastest-growing homeless population? Seniors*, <https://calmatters.org/health/2023/02/california-homeless-seniors/> (Feb. 10, 2023) (last visited March 29, 2024).

<sup>5</sup> See also C. Thornton, *The number of homeless people in America grew in 2023 as high cost of living took a toll*. USA Today (Dec. 15, 2023) (noting previous decline in veteran homelessness), <https://www.usatoday.com/story/news/nation/2023/12/15/homelessness-in-america-grew-2023/71926354007/> (last visited March 29, 2024).

supply of facility-based beds increased by seven percent. AHAR, p. 3.

While all parties to this case seem to appreciate the scale of the homelessness crisis, Petitioner and its *Amici* minimize the primary cause of chronic homelessness; thus, they advocate for the wrong solutions. The root of homelessness in the United States is not the lack of tools for *criminalizing* those without appropriate shelter to force them into housing options. Instead, it is that our nation lacks those affordable housing options in the first place.

While homelessness is on the rise across most of the country, cities with the highest housing costs and lowest supply are experiencing the brunt of the crisis. As the 19-member U.S. Interagency Council on Homelessness (USICH) put it: “The areas with the most unsheltered homeless . . . are also the most expensive housing markets.” USICH, *All In: the Federal Strategic Plan to Prevent and End Homelessness* (Dec. 2022) at 45.<sup>6</sup> That is not a coincidence. A leading analysis of the rates of homelessness across the 30 cities and counties in the U.S. that account for nearly half of the population experiencing homelessness concluded that neither poverty nor unemployment nor drug use drove the rate of homelessness.<sup>7</sup> Rather, “housing costs explain far

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<sup>6</sup> [https://www.usich.gov/sites/default/files/document/All\\_In.pdf](https://www.usich.gov/sites/default/files/document/All_In.pdf) (last visited March 29, 2024).

<sup>7</sup> See G. COLBURN & C.P. ALDERN, HOMELESSNESS IS A HOUSING PROBLEM: HOW STRUCTURAL FACTORS EXPLAIN U.S. PATTERNS (2022), <https://homelessnesshousingproblem.com/> (last visited March 29, 2024).

more of the difference in rates of homelessness than variables such as substance use disorder, mental health, weather, the strength of the social safety net, poverty, or economic conditions.”<sup>8</sup>

In fact, areas with relatively higher rates of poverty and unemployment, like Detroit and Philadelphia, have lower rates of homelessness than otherwise prosperous counties, like San Francisco,<sup>9</sup> which has a below-average unemployment rate<sup>10</sup> and approximately one-third of the poverty rate of Detroit.<sup>11</sup>

Tellingly, the cities that have filed *amicus* briefs arguing that criminalization is an essential tool to solve the homelessness crisis are some of the same localities with the most expensive housing markets and/or acute housing shortages.<sup>12</sup> In L.A., for example,

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<sup>8</sup> Pew Charitable Trusts, *How Housing Costs Drive Levels of Homelessness*, <https://www.pewtrusts.org/en/research-and-analysis/articles/2023/08/22/how-housing-costs-drive-levels-of-homelessness> (last visited March 29, 2024).

<sup>9</sup> See Colbern & Aldern, *supra* n. 7, at 76-82.

<sup>10</sup> Compare United States Unemployment Rate, Trading Economics, <https://tradingeconomics.com/united-states/unemployment-rate> (last visited March 29, 2024) with U.S. Bureau of Labor Statistics, San Francisco-Oakland-Fremont, CA, [https://www.bls.gov/eag/eag.ca\\_sanfrancisco\\_msa.htm](https://www.bls.gov/eag/eag.ca_sanfrancisco_msa.htm) (last visited March 29, 2024).

<sup>11</sup> U.S. Census, Quick Facts San Francisco County, California; Detroit City, Michigan <https://www.census.gov/quickfacts/fact/table/sanfranciscocountycalifornia,detroitcitymichigan/PST120221> (last visited March 29, 2024).

<sup>12</sup> The following *Amici* are all within one of the 20 least affordable housing markets in the country, according to the USICH: Brentwood, Chino, Fillmore, Fountain Valley, Garden Grove, Glendora, Hesperia, Huntington Beach, Murrieta, Newport

at least half of the County renters are paying more than 30% of their income on rent, a level the federal government defines as “rent burdened.”<sup>13</sup> Likewise, in Oregon, which also is home to one of the nation’s least affordable housing markets (Bend-Redmond) according to USICH (*ALL IN*, p. 54), a person would have to work 70 hours a week at the state’s minimum wage just to afford a modest 1-bedroom rental home at fair-market rent.<sup>14</sup>

Conversely, in the places where homelessness is declining in the United States, the decrease can be attributed to prioritizing investments in affordable and permanent supportive housing. In Minnesota, for example, homelessness declined slightly over the past five years.<sup>15</sup> This decrease came after the state legislature tripled funding for youth homelessness programs

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Beach, Orange, San Bernadino, San Clemente, San Diego, San Francisco, Santa Ana, and Santa Clarita. See USICH, *All In*, p. 54; see also Federal Reserve Bank of Atlanta, *Home Ownership Affordability Monitor*, <https://www.atlantafed.org/center-for-housing-and-policy/data-and-tools/home-ownership-affordability-monitor.aspx> (last visited March 29, 2024).

<sup>13</sup> See Colbern & Aldern, *supra* n. 7, at 123-144. Some groups are more burdened than others; for example, Black and Latino renters are more likely to fall into this category. See Latino Data Hub, <https://latinodatahub.org/#/research/facts-about-latino-renters-in-los-angeles-county> (last visited March 29, 2024).

<sup>14</sup> National Low Income Housing Coalition, *Out of Reach*, <https://nlihc.org/oor/state/or> (last visited March 29, 2024)

<sup>15</sup> K. Smith, *Homelessness declines in MN*, Minneapolis Star Tribune (March 20, 2024), available at <https://www.startribune.com/homelessness-in-minnesota-declined-slightly-in-2023-according-to-new-study/600352692/> (last visited March 29, 2024).

and doubled funding for transitional housing while dedicating significant amounts to build and expand shelters.<sup>16</sup> Similarly, a recent study by the Brookings Institution confirms that homelessness declined in cities like New York, Chicago, and Philadelphia as local leaders enacted policies to help bring down the average inflation-adjusted rent per unit price and pursued the kind of housing-first policies outlined below.<sup>17</sup>

Viewed in light of its true root causes, the best solution to the homelessness crisis becomes clear: pursue housing-first policies that work to create more housing options and make them available to those experiencing homelessness. As explained below, the cities that have taken this path, instead of criminalization, have seen great success in doing so.

## **II. A Housing-First Approach to Tackling Homelessness is the Most Effective Way to Address the Problem.**

*Amici* are at ground zero to respond to homelessness in their communities; they know first-hand what approaches work. The best, most effective, and longest-term solution to homelessness is simple: the “housing-first” approach the U.S. Interagency Council on Homelessness describes as “a proven solution that leads to

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<sup>16</sup> *Id.*

<sup>17</sup> H. Love and T. Hadden Loh, Brookings Institution, *Homelessness in U.S. Cities and Downtowns* (Dec. 7, 2023) (“Brookings”), <https://www.brookings.edu/articles/homelessness-in-us-cities-and-downtowns/> (last visited March 29, 2024).

housing stability as well as improvements in health and well-being.” USICH, *All In*, p. 45. This approach encourages local governments to “align their long-term housing, land use, and homelessness plans to increase the supply of all types of housing, [and] remove barriers to affordability and shelter construction (such as single-family-only zoning, parking minimums, and parcel shape regulations).”<sup>18</sup> Particularly when paired with policies that connect individuals with wrap-around services such as mental health counseling, substance use disorder treatment, and routine medical care, this “housing-first” approach to homelessness works.

New York pioneered this practice over three decades ago. As explained by New York City’s Comptroller Brad Lander (an *amicus* here, and one of the founders of the Impact Lab): “Housing First is an evidence-based practice that prioritizes providing permanent housing without first requiring individuals to enter shelter or graduate through a series of programs or services,” which “originated in New York City three decades ago and has since been adopted by dozens of localities and states across the United States and by other countries around the world.”<sup>19</sup> The program has worked: it “has a 70% to 90% success rate in

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<sup>18</sup> *Id.*

<sup>19</sup> NY City Comptroller, *Housing First: A Proven Approach to Dramatically Reduce Street Homelessness* (June 28, 2023), <https://comptroller.nyc.gov/reports/housing-first/> (last visited March 29, 2024).

maintaining stable housing for participants over two to three years, outperforming traditional housing programs.”<sup>20</sup>

Houston has been at it for a while, too. Beginning in 2012, Houston adopted a “continuum of care” approach to homelessness, which it named “The Way Home.” The Way Home is a collaborative effort among philanthropy, nonprofits, local government, and public safety groups to address homelessness. The coalition works to provide permanent housing and wrap-around supportive services such as case management, healthcare, substance use counseling, and income coaching. As a result of the effort, homelessness in the area has decreased by over 60% overall and more than 30,000 families and individuals have been housed.<sup>21</sup>

When Houston, like other cities, experienced an uptick in individuals experiencing homelessness during the COVID-19 pandemic, the city built on the existing coalition effort by conducting coordinated outreach and offering vouchers to people experiencing homelessness to move into housing. For those who were not able to obtain a voucher, the city opened a “housing navigation center,” a transitional housing center where people could stay short-term as they continue the process to find and move into available

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<sup>20</sup> Love & Loh, *supra* n. 17.

<sup>21</sup> Coalition for the Homeless, *The Way Home Partner Portal—About the Way Home*, <https://www.homelesshouston.org/thewayhome> (last visited March 29, 2024).

housing.<sup>22</sup> In the meantime, the housing navigation center offers three meals a day, transportation, job training classes, health care, one-on-one intensive case management, and other services.

Oklahoma City saw the success Houston had with its coalition approach to homelessness and worked to replicate it with a program called the Key to Home Partnership. In 2023, the Key to Home Partnership set a goal to pair housing with wrap-around services to house 500 people by 2025, reducing Oklahoma City's unhoused population by 75%. The program hit the ground running: the city recently moved 17 people into apartments that were furnished with necessities, and each newly housed person has a case manager that will work with them over the next year.<sup>23</sup>

Denver is another city that has implemented housing first policies with success. Beginning in 2016, Denver enacted a five-year supportive housing program that demonstrated a better way to address chronic homelessness by choosing to invest in housing and services rather than arresting people who will then cycle in and out of jails. The Denver Supportive

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<sup>22</sup> A. Brown, *Houston council votes to move forward with transitional housing center for homeless*, <https://www.houstonpublicmedia.org/articles/housing/2022/09/15/433137/city-votes-to-move-forward-with-transitional-housing-center-for-homeless/> (Sept. 15, 2022) (last visited March 29, 2024).

<sup>23</sup> News Release, *Key to Home Partnership houses 17 people living under I-44 and Pennsylvania Avenue bridge* (Dec. 11, 2023), <https://www.okc.gov/Home/Components/News/News/4652/140> (last visited March 29, 2024).

Housing Social Impact Bond Initiative provided supportive housing—a permanent housing subsidy and intensive services—to help participants stay housed.<sup>24</sup> After three years in the supportive housing program, 77% of participants remained in stable housing, and participants avoided police contacts, arrests, and jail stays. Participants also decreased their visits to emergency departments—often the only available health care service for people experiencing homelessness—and increased their use of office-based care and access to prescription medication. *Id.*

For its part, the City of Chicago’s Departments of Housing and Family and Support Services partnered to employ a housing-first strategy in conducting a robust outreach program that led to hundreds of individuals experiencing homelessness accessing and staying in stable housing. Between November 2020 and May 2022, DFSS led 14 “accelerated moving events” throughout Chicago, serving 238 individuals experiencing homelessness—224 of those individuals, or 94.1% of the total number served, entered housing. Months later, 78.6% of the total number served remained in stable housing.<sup>25</sup>

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<sup>24</sup> Urban Institute, *Housing First Breaks the Homelessness-Jail Cycle* (July 15, 2021), <https://www.urban.org/features/housing-first-breaks-homelessness-jail-cycle> (last visited March 29, 2024).

<sup>25</sup> Office of Inspector General, *Audit of DFSS Outreach to Encampments of People Experiencing Homelessness* at 3, <https://igchicago.org/wp-content/uploads/2023/08/Audit-of-DFSS-Outreach-to-Encampments-of-People-Experiencing-Homelessness.pdf> (last visited March 29, 2024).

Philadelphia, too, implemented a housing-first approach in 2016 through the “Pathways to Housing PA” program, which began with a pilot project targeting chronically homeless individuals with opioid addiction. Within one year, 100% of participants remained stably housed and 52% received medicated-assisted treatment or were sober. The program has since expanded and now “house[s] more than 600 people in regular apartments across the community, with an unprecedented 86% housing retention rate for participants.”<sup>26</sup>

In 2020, the Charlotte-Mecklenburg area of North Carolina implemented a Housing First program that sought to direct those on a list of chronically homeless individuals to available housing options. The program was a huge success—73% “of housed participants retained their housing and either remained continuously housed in the same program or had a positive exit to another permanent housing setting during the study period.”<sup>27</sup> The program participants were arrested or incarcerated 60% less than before the program, saving the city significant money. *Id.*

Big cities are not the only ones adopting the housing-first approach, either. In Hennepin County, MN, officials launched a program to purchase struggling

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<sup>26</sup> Pathways to Housing PA, *Our Mission and History*, <https://pathwaystohousingpa.org/our-mission-history> (last visited March 29, 2024).

<sup>27</sup> Housing First Charlotte-Mecklenburg, *Research & Evaluation Project Final Report* (Nov. 2020), <https://socialwork.charlotte.edu/wp-content/uploads/sites/597/2023/07/HFCM-Final-Outcomes-Report-2020-Final.pdf> (last visited March 29, 2024).

motels and converted them into permanent, affordable single-occupancy housing. These properties will create nearly 200 units “affordable to people making 30% of the area median income.”<sup>28</sup>

These cities’ successful embrace of housing-first initiatives demonstrates that Petitioner and its *Amici* are wrong to suggest that the Ninth Circuit’s holding prevents municipalities from addressing public health or safety concerns associated with homelessness, including encampments. As Respondents explain, nothing about the Ninth Circuit’s narrow ruling prohibits cities from regulating “unsanitary encampments, fires, illegal drug use, violent behavior, refusal of shelter options, and obstructed sidewalks and roads.” Resp. Br. at 2; *see also id.* at 18, 33, 41. And, cities like Charlotte, Chicago, Denver, Houston, New York, Oklahoma City, and Philadelphia prove that housing-first solutions can be used to address these problems with long-term success. Local governments do not need the threat of criminalization to tackle homelessness.<sup>29</sup> On the

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<sup>28</sup> Hennepin County Housing, *Hotels to Housing: new tenants moving in*, <https://www.hennepin.us/housing/hennepin-county-housing-stories/hotels-to-housing> (last visited March 29, 2024).

<sup>29</sup> *See, e.g., DFSS Audit, supra* n. 25 at 9, 13 (City of Chicago does not clear encampments except in limited circumstances); Denver Auditor, *Multi-Agency Homeless Encampments* (Apr. 2023), <https://denvergov.org/files/assets/public/v/2/auditor/documents/audit-services/audit-reports/2023/homeless-encampments-april-2023-final.pdf> at 8 (Denver Police has a “small group of police officers focused on addressing issues related to people experiencing homelessness . . . Although these officers make arrests when necessary, their aim is to offer services to people and they seek voluntary compliance instead of enforcement.”); *see also* NYC

contrary, criminal enforcement-based strategies “are ineffective, expensive, and actually worsen the tragedy of homelessness.” USICH, *Collaborate, Don’t Criminalize: How Communities Can Effectively and Humanely Address Homelessness* (Oct. 2022) (“Collaborate”).<sup>30</sup>

The impact of these housing-first programs is not only quantitative, however; housing-first initiatives have a real impact on each person involved. One of these individuals served by Chicago’s accelerated moving events was a woman named Rosa, who worked closely with Chicago Alderwoman Rossana Rodriguez (an *amicus* here) to move from a tent beneath an underpass into a one-bedroom apartment leased by the City. Alderwoman Rodriguez describes Rosa’s health and mental well-being as significantly improved after obtaining a safe and stable place to live.

Houston’s effort to connect people with vouchers for long-term housing allowed one woman experiencing homelessness to be reunited with her daughter, who had been staying with her sister, in a one-bedroom apartment that was stocked with basic supplies including furniture and household items.<sup>31</sup> And Houston City

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Comptroller, *supra* n. 19 (concluding that sweeps of encampments carried out by new Mayor are ineffective and counterproductive).

<sup>30</sup> <https://www.usich.gov/news-events/news/collaborate-dont-criminalize-how-communities-can-effectively-and-humanely-address> (last visited March 29, 2024).

<sup>31</sup> M. Kimmelman, *How Houston Moved 25,000 People From the Streets Into Homes of Their Own*, *New York Times* (June 14, 2022), available at <https://www.nytimes.com/2022/06/14/headway/houston-homeless-people.html> (last visited March 29, 2024).

Councilwoman Tiffany Thomas (also an *amicus* here) identifies the city’s recent housing navigation center as a resource that could have greatly helped her late uncle, a Vietnam war veteran who struggled with drug use and was homeless at the time he died. If he had access to a resource like the navigation center, he could have better utilized his VA benefits and received supports to help him stabilize.

Petitioner and its *Amici* may counter that housing-first policies are too expensive for localities to implement. But that’s simply incorrect. As the federal government notes, “[d]ecades of research prove how effective and cost-effective Housing First can be.”<sup>32</sup> In fact, “[s]tudies show that 9 out of 10 people remain housed a year after receiving Housing First assistance, and that housing can be *three times cheaper than criminalization*.” *Id.* (emphasis added).<sup>33</sup> One recent study, the government noted, found that “Housing First pays for itself within 1.5 years and can reduce homelessness and government reliance—all while getting people back to work.” *Id.*

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<sup>32</sup> USICH, *Data & Trends*, <https://www.usich.gov/guidance-reports-data/data-trends> (last visited March 29, 2024).

<sup>33</sup> One scholar noted, for example, that: “San Francisco spent \$20.6 million sanctioning homeless people under anti-homeless laws, including the arrest of 125 individuals, in 2015”; “six Colorado cities spent more than five million dollars enforcing fourteen anti-homeless ordinances between 2010 and 2014”; and “Seattle and Spokane, Washington spent at least \$3.7 million on enforcing their criminalization ordinances over a five year period.” J. Kim, *The Case Against Criminalizing Homelessness*, 95 NYU Law Rev. 1151, 1189 (Oct. 2020).

New York is a perfect example; its housing-first program “has proven to be a cost-effective strategy that reduces public expenditures in the criminal justice and health care systems associated with homelessness.”<sup>34</sup> Similarly, a study from several counties in Central Florida analyzed the costs of “arrest, incarceration, medical and psychiatric emergency room use and inpatient hospitalizations” for a cohort of chronically homeless individuals in each county. It found that it costs taxpayers \$31,065 a year to criminalize a single person suffering from homelessness; in contrast, the cost of providing them supportive housing is just \$10,051 per year.<sup>35</sup> Yet another, more recent study found that permanent supportive housing can generate gross savings of over \$46,000 per person per year compared to leaving people on the streets.<sup>36</sup>

### **III. Criminalization Only Makes Homelessness Worse.**

The problem is not just that criminalizing homelessness isn’t the most effective way to solve the problem; in fact, it makes the problem worse. The United States’ brief makes that clear: “A substantial body of

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<sup>34</sup> Love & Loh, *supra* n. 17.

<sup>35</sup> G. Shinn, *The Cost of Long-Term Homelessness in Central Florida* (2014), <https://shnny.org/uploads/Florida-Homelessness-Report-2014.pdf> (last visited March 29, 2024).

<sup>36</sup> L. Staten and S. Rankin, *Penny Wise But Pound Foolish: How Permanent Supportive Housing Can Prevent a World of Hurt* (July 12, 2019), available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3419187](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3419187) (last visited March 29, 2024).

evidence developed by USICH shows that laws that effectively criminalize the inability to obtain shelter often serve only to exacerbate the problem of homelessness.” United States *Amicus* Br. at 3. “Incarceration, even for short periods, can disrupt employment, and a criminal record can make finding future employment more difficult, disqualify individuals from housing opportunities, and lead to debt from fines or other costs that the individual cannot pay, exacerbating cycles of poverty.” *Id.* at 3-4 (citing USICH, *Collaborate*).

As USICH explains in its strategic blueprint for ending homelessness through housing-first policies, “many landlords deny housing to people based on their criminal records.” *ALL IN*, p. 19. Likewise, “[m]any shelters . . . deny entry to people who . . . have criminal records.” *Id.* at 20.<sup>37</sup> And, if an individual is incarcerated for at least 90 days (if, for example, they are unable to pay cash bail), federal law removes their “chronic homelessness status,” rendering them ineligible for permanent housing. *See* 42 U.S.C. 11360(2)(b). Moreover, these arrests are often accompanied by “move on” or “stay away orders” that prohibit arrested homeless individuals from returning to the public area in which they were arrested; these stay away orders make it difficult, if not impossible, for homeless people to obtain

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<sup>37</sup> *See also* Jonathan L. Hafetz, *Homeless Legal Advocacy: New Challenges and Directions for the Future*, 30 *FORDHAM URBAN LAW JOURNAL* 1229 (2003) (individuals with arrest histories are less likely to find employment and can be removed from federal housing programs.).

services in their neighborhood without risking rearrest.<sup>38</sup>

To reiterate, nothing about the Ninth Circuit’s narrow holding prohibits municipalities from tackling the health and safety problems of homelessness, including encampments. It simply prevents cities from adopting the kind of regulations that effectively criminalize homelessness itself. But that is no *real* loss to these cities; as the federal government has warned, “strategies that use aggressive law enforcement approaches that criminalize homelessness, or . . . close encampments without offering shelter or housing options” will only worsen the problems they purport to solve.<sup>39</sup> Among other things, this approach will “result in adverse health outcomes, exacerbate racial disparities, and create traumatic stress, loss of identification and belongings, and disconnection from much-needed services.” *Id.* USICH bluntly summed it up this way: laws that criminalize merely being homeless “are ineffective, expensive, and actually worsen the tragedy of homelessness.” USICH, *Collaborate*. “There is a better way to respond to this crisis.” *Id.*

USICH released this guidance in response to “many states and communities across the United

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<sup>38</sup> National Law Center on Homelessness & Poverty, *Ending the Criminalization of Homelessness in U.S. Cities* at 12 (Dec. 2019), <https://homelesslaw.org/wp-content/uploads/2018/10/Housing-Not-Handcuffs.pdf> (last visited March 29, 2024).

<sup>39</sup> USICH, *7 Principles for Addressing Encampments* (June 2022), [https://www.usich.gov/sites/default/files/document/Principles\\_for\\_Addresssing\\_Encampments\\_1.pdf](https://www.usich.gov/sites/default/files/document/Principles_for_Addresssing_Encampments_1.pdf) (last visited March 29, 2024).

States enacting laws that fine and arrest people for doing activities in public that are otherwise legal in the setting of a home: sleeping, sitting, eating, drinking.” *Id.* While acknowledging that “Mayors and other local officials are under pressure to do something, anything” in response to the homelessness crisis, the inter-agency group warned local leaders not to cave to the pressure of ineffective, short-term solutions like criminalization. Indeed, USICH cautioned that “[i]t can cost three times more to enforce anti-homeless laws than to find housing for people who don’t have it.” *Id.* And, most importantly, **criminalization does not reduce the number of people experiencing homelessness.**” *Id.* (emphasis in original). Instead, “[i]t breaks connections people had made with providers trying to help and exacerbates homelessness and the conditions that lead to it—such as health problems and racial disparities.” *Id.*

“While these efforts may have the short-term effect of clearing an encampment from public view, without connection to adequate shelter, housing, and supportive services, they will not succeed.” USICH, 7 *Principles*. “When people’s housing and service needs are left unaddressed, encampments may appear again in another neighborhood or even in the same place they had previously been.” *Id.*

*Amici* have seen these negative consequences of criminalization first-hand. Miami provides a useful case study in the dangers of a criminalization-focused approach. For more than 20 years, the City of Miami was under a federal consent decree that prohibited

criminalizing homeless individuals for performing life-sustaining activity on public property when no other shelter was available. *See Pottinger v. City of Miami*, 810 F. Supp. 1551 (S.D. Fla. 1992).<sup>40</sup> Like the Ninth Circuit in this case, the “*Pottinger* Agreement” effectively forbid the City of Miami from criminalizing the mere existence of homeless individuals. Rather, if a homeless person was observed committing a life sustaining misdemeanor, a police officer could only warn the person to stop the unlawful activity if there was available shelter (of which the officer could advise the person). If the homeless person accepts the offer of shelter, no arrest can be made. Only if the person refused the offer of available shelter could an arrest be made.

The *Pottinger* Agreement was “hailed as the gold standard in civil litigation establishing protections for rights of the homeless.”<sup>41</sup> It not only respected homeless individuals’ constitutional rights, but it drastically reduced the number of homeless individuals within the City of Miami. While the Agreement was in effect,

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<sup>40</sup> The “*Pottinger* Agreement” 1) required that people experiencing homelessness who engage in life-sustaining activities be offered shelter by police before being arrested; 2) prevented police from arresting a homeless person for misdemeanors involving life sustaining activity; and 3) prohibited police from destroying belongings recognizable as the property of a homeless person. *See Id.*

<sup>41</sup> Alyssa Samberg, *Criminalization of Homelessness: Eleventh Circuit Affirms Dissolution of Pottinger Agreement*, UNIVERSITY OF MIAMI LAW REVIEW (Oct. 18, 2020), <https://lawreview.law.miami.edu/criminalization-homelessness-eleventh-circuit-affirms-dissolution-pottinger-agreement/> (last visited March 29, 2024).

Miami's homeless population was reduced from approximately 10,000 to 1,000 individuals. *See Pottinger v. City of Miami*, 359 F. Supp. 3d 1177, 1180 (S.D. Fla. 2019), *aff'd sub nom. Peery v. City of Miami*, 977 F.3d 1061 (11th Cir. 2020). Miami became the “best city in the country dealing with homelessness.” *Id.* at 1181.

Unfortunately, now that the Agreement has expired, Miami is reverting to criminalizing homelessness. Reports suggest that Miami's homelessness population has increased by 4% in the year since the *Pottinger* Agreement was lifted.<sup>42</sup>

Another cautionary tale comes from the City of Los Angeles, which is also an *amicus* here. For decades and in various ways, the City has criminalized homelessness based on numerous iterations of Los Angeles Municipal Code (LAMC) 41.18. For nearly half a century, the City has continued to significantly invest services and financial resources into code enforcement and criminalization to address homelessness—and the results have been devastating. From 2012 to 2022, the Los Angeles Police Department made over 36,000 arrests for violations of LAMC 41.18<sup>43</sup>—arrests that

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<sup>42</sup> *See* J. Casaverde & A. Trinidad, *Homelessness in Miami: the real effects of Miami's high living cost*, CAPLIN News (Dec. 28, 2023), <https://caplinnews.fiu.edu/homelessness-miami-rent-living/>; *see also* Miami-Dade Homeless Trust, 2023 Summer PIT Count, <https://www.homelesstrust.org/resources-homeless-library/august-pit-census-2023.pdf> (last visited March 29, 2024).

<sup>43</sup> LA Controller, *41.18 Arrests Map*, <https://controller.lacity.gov/landings/4118> (last visited March 29, 2024).

disproportionately impact Black and Brown residents.<sup>44</sup> As discussed above, this approach not only makes it harder for individuals to actually move from the streets into permanent housing, it requires the use of significant resources that would be better spent on housing-first policies (*see* Section II *supra*), addressing, for instance, the 521,596 low-income renter household shortfall in LA County.<sup>45</sup> Given this crisis, it is perhaps no wonder that since 2012, unsheltered homelessness in Los Angeles has only increased, such that on any given night in LA City there are now over 28,458 unsheltered individuals<sup>46</sup> despite (and indeed perhaps because of) the City's aggressive criminalization of homelessness. As is shown by data and LA's decades of experience, arresting unhoused individuals moves people further away from housing and uses municipal

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<sup>44</sup> This is demonstrative of broader enforcement trends. For instance, from 2017 to 2019, Black adults in Los Angeles were 3.8 times more likely to be issued non-traffic infractions—the majority of which are code enforcements designed to combat homelessness, such as loitering—sitting/sleeping, and refusal to take down tent—than white adults. Lawyers' Committee for Civil Rights of the San Francisco Bay Area, *Cited for Being in Plain Sight: How California Polices Being Black, Brown, and Unhoused in Public* (Sept. 2020), [https://lccrsf.org/wp-content/uploads/LCCR\\_CA\\_Infraction\\_report\\_4WEB-1.pdf](https://lccrsf.org/wp-content/uploads/LCCR_CA_Infraction_report_4WEB-1.pdf) (last visited March 29, 2024).

<sup>45</sup> California Housing Partnership, *Housing Need* (search parameter: Los Angeles County), <https://chpc.net/housingneeds/> (last visited March 29, 2024).

<sup>46</sup> LA Homeless Services Authority, *2023 Greater Los Angeles Homeless Count*, <https://www.lahsa.org/documents?id=7232-2023-greater-los-angeles-homeless-count-deck> (last visited March 29, 2024).

resources to enforce at the expense of investments in services and housing, and as such criminalization directly contributes to, rather than alleviates, the homelessness crisis.

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### CONCLUSION

Homelessness is caused, primarily, by a lack of affordable places to live. Criminalizing those who cannot afford rent will not solve that problem; it will only make it worse. The only solutions that will work are evidence-based housing-first approaches like those endorsed by the federal government. *Amici*, as local leaders, see the wisdom in that conclusion in the communities each day. This Court should affirm the judgment of the court below, confident that cities will still have access to all the tools they *really* need to address the problems of homelessness.

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App. 1

List of *Amici Curiae* 156 Current and  
Former Local Elected Officials<sup>1</sup>

<b>Josh Acevedo</b> Councilmember El Paso, Texas	<b>Ligia Andrade Zúñiga</b> School Board Member San Mateo Union High School District Board of Trustees, California
<b>Gina Aiuto</b> School Board Member Roseville, Michigan	<b>Azrin Awal</b> Councilmember Duluth, Minnesota
<b>Elizabeth Alcantar</b> Vice Mayor Cudahy, California	<b>Dan Aymar-Blair</b> Councilmember Beacon, New York
<b>Pious Ali</b> Councilmember Portland, Maine	<b>Valarie Bachelor</b> School Board Member Oakland Unified Board of Education, California
<b>Burkley Allen</b> Councilmember Nashville-Davidson County, Tennessee	<b>Mario Benavente</b> Councilmember Fayetteville, North Carolina
<b>Sue Anderbois</b> Councilmember Providence, Rhode Island	<b>Johana Bencomo</b> Mayor Pro Tem La Cruces, California
<b>Auontai Anderson</b> Former School Board Member Denver Board of Education, Colorado	<b>Emily Benedict</b> Councilmember Nashville-Davidson County, Tennessee
<b>Dr. Emily Anderson</b> Councilmember Eau Claire, Wisconsin	

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<sup>1</sup> All *Amici* have joined this brief in their individual capacity. Affiliations of *Amici* are provided for identification purposes only.

App. 2

**Mike Bonin**  
Former Councilmember  
Los Angeles, California

**Kendra Brooks**  
Councilmember  
Philadelphia, Pennsylvania

**Sue Budd**  
Councilmember  
St. Louis Park, Minnesota

**Kristerfer Burnett**  
Councilmember  
Baltimore, Maryland

**Tiffany Cabán**  
Councilmember  
New York, New York

**Danny Cage**  
School Board Member  
Multnomah Education  
Service District, Oregon

**Brian Calderón Tabatabai**  
Mayor  
West Covina, California

**Navarra Carr**  
Deputy Mayor  
Port Angeles, Washington

**Sophia Carrillo**  
School Board Member  
Creighton Elementary  
School Board, Arizona

**Teri Castillo**  
Councilmember  
San Antonio, Texas

**Alma Castro**  
Councilmember  
Santa Fe, New Mexico

**Tina Certain**  
School Board Member  
Alachua County, Florida

**Michael Chameides**  
Supervisor  
Columbia County, New York

**Crystal Chism**  
Councilmember  
DeSoto, Texas

**Aurin Chowdhury**  
Councilmember  
Minneapolis, Minnesota

**Ryan Clancy**  
County Supervisor  
Milwaukee, Wisconsin

**John I. Clark**  
Mayor  
Ridgway, Colorado

**Kissy Coakley**  
Councilmember  
Minnetonka, Minnesota

**Alison L. Coombs**  
Councilmember  
Aurora, Colorado

App. 3

**Becky Corran**  
Councilmember  
La Cruces, California

**Dr. Chris Cruz-Boone**  
School Board President  
Kern County, California

**Crystal Dávila**  
Trustee  
Pasadena Independent  
School District, California

**Flavia M Debrito**  
Councilmember  
Waterville, Maine

**Nick Demske**  
County Supervisor  
Racine County, Wisconsin

**Olgy Diaz**  
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Tacoma, Washington

**Michalyn Easter-Thomas**  
Councilmember  
Memphis, Tennessee

**Jeremiah Ellison**  
Councilmember  
Minneapolis, Minnesota

**Ashley Esposito**  
Commissioner  
Baltimore, Maryland

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Baldwin Park, California

**Barbara M. Foushee**  
Mayor  
Carrboro, North Carolina

**Jessie Fuentes**  
Councilmember  
Chicago, Illinois

**Vanessa Fuentes**  
Councilmember  
Austin, Texas

**Brenda Gadd**  
Councilmember  
Nashville-Davidson  
County, Tennessee

**Sarah Gallagher**  
Councilmember  
Hamden, Connecticut

**Hugo Garcia**  
Councilmember  
Burien, Washington

**Juan Geracaris**  
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Evanston, Illinois

**Ce-Ce Gerlach**  
Councilmember  
Allentown, Pennsylvania

**Willie German, Jr.**  
Commissioner  
Muskegon, Michigan

**Clark Gilman**  
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Olympia, Washington

App. 4

**Katherine Golub**  
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Milwaukee County,  
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**Nikkie Gomez-Whaley**  
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of Aldermen  
St. Louis, Missouri

**Leanne Greenberg**  
Governing Board Member  
Osborn Elementary  
School District, New York

**Jonathan Guzman**  
Vice-Chair  
Lawrence School Committee,  
Massachusetts

**Kesha Hamilton**  
Trustee  
Jackson Public Schools,  
Mississippi

**JoBeth Hamon**  
Councilmember  
Oklahoma City, Oklahoma

**Beau Harbin**  
County Legislator  
Cortland County, New York

**Nigel Herbig**  
Mayor  
Kenmore, Washington

**Eunissess Hernandez**  
Councilmember  
Los Angeles, California

**Michele Hirsch**  
Aldersperson  
Kingston, New York

**Brandon Holdridge**  
Town Supervisor  
Chester, New York

**Nate Hotchkiss**  
Councilmember  
Binghamton, New York

App. 5

<b>Stephanie Howse-Jones</b> Councilmember Cleveland, Ohio	<b>Dr. Kelly Kent</b> School Board President Culver City Unified School District, California
<b>Helen Gym</b> Former Councilmember Philadelphia, Pennsylvania	<b>Jaime Kinder</b> Mayor Meadville, Pennsylvania
<b>Shakeyla Ingram</b> Former Councilmember Fayetteville, North Carolina	<b>Korin Kirk</b> School Board Member Binghamton City School District, New York
<b>Khem Denise Irby</b> School Board Member Guilford County Board of Education, North Carolina	<b>Robin Kniech</b> Former Councilmember Denver, Colorado
<b>Rachel James</b> Councilmember Columbia Heights, Minnesota	<b>Natalya Lakhtakia</b> School Board Member Saratoga Springs City School District, New York
<b>Christopher Jaramillo</b> School Board President Norristown Area School District, Pennsylvania	<b>Brad Lander</b> Comptroller New York, New York
<b>Cheniqua Johnson</b> Councilmember St. Paul, Minnesota	<b>Chelsea Lee Byers</b> Vice Mayor West Hollywood, California
<b>Tarece Johnson-Morgan</b> School Board Member Gwinnett County School District, Georgia	<b>Jerald M. Lentini, Esq.</b> Director Manchester, Connecticut
<b>Paul Kashmann</b> Councilmember Denver, Colorado	<b>Ericka Lesley</b> Commissioner Santa Monica Rent Control Board

App. 6

**Shontel M. Lewis**  
Councilmember  
Denver, Colorado

**Daisy Lomeli**  
Councilmember  
Cudahy, California

**Mary Lupien**  
Councilmember  
Rochester, New York

**Dillon Mader**  
Supervisor  
La Crosse County, Wisconsin

**Rachel Miller**  
Council President  
Providence, Rhode Island

**Sarah Moore**  
Councilmember  
Fayetteville, Arkansas

**Joseph Morrison**  
Deputy Mayor  
Bozeman, Montana

**Teresa Mosqueda**  
Councilmember  
King County, Washington

**Juan Muñoz-Guevara**  
Councilmember  
Lynwood, California

**Arnetta Murray**  
Councilmember  
Iowa Colony, Texas

**A'Dorian Murray-Thomas**  
Commissioner  
Essex County, New Jersey

**Julie Ann Nitsch**  
Trustee  
Austin Community  
College District, Texas

**Sandy Nurse**  
Councilmember  
New York, New York

**Freddie O'Connell**  
Mayor  
Nashville-Davidson  
County, Tennessee

**Sarah Parady**  
Councilmember  
Denver, Colorado

**Sean Parker**  
Councilmember  
Nashville-Davidson  
County, Tennessee

**Maia Pearson**  
Vice President  
Madison Board of  
Education, Wisconsin

**Isabel Piedmont-Smith**  
Councilmember  
Bloomington, Illinois

**Veronica D. Pillar**  
Legislator  
Tompkins County Board,  
New York

App. 7

**Natalie Pinkney**  
Councilmember  
South Salt Lake, Utah

**David Plotts**  
School Board Member  
Wicomico County Board  
of Education, Maryland

**Delishia Danielle  
Porterfield**  
Councilmember  
Nashville-Davidson  
County, Tennessee

**Jeff L Preptit**  
Councilmember  
Nashville-Davidson  
County, Tennessee

**Zo Qadri**  
Councilmember  
Austin, Texas

**Jasmin Ramirez**  
Vice President  
Roaring Fork School  
District, Colorado

**Odette Ramos**  
Councilmember  
Baltimore, Maryland

**Carl Rist**  
Councilmember  
Durham, North Carolina

**Rossana Rodríguez  
Sánchez**  
Aldersperson  
Chicago, Illinois

**Kim Roney**  
Councilmember  
Asheville, North Carolina

**Dr. Brian Rowland**  
Former Mayor  
Prairie View, Texas

**Jess Royer**  
Supervisor  
Spring Township,  
Pennsylvania

**Shawn Rush**  
Aldersperson  
East Spencer, North Carolina

**Miguel Sanchez**  
Councilmember  
Providence, Rhode Island

**Alana Sanders**  
Commissioner  
Newton County, Georgia

**Gabriela Santiago-  
Romero**  
Councilmember  
Detroit, Michigan

**Lindsey Schromen-  
Wawrin**  
Councilmember  
Port Angeles, Washington

App. 8

**Jessica Schwinn**  
Director  
Centennial Independent  
School District, Minnesota

**Sandra Sepulveda**  
Councilmember  
Nashville-Davidson  
County, Tennessee

**Byron Sigcho Lopez**  
Alderman  
Chicago, Illinois

**Kim Smith**  
Councilmember  
Rochester, New York

**Jivan Sobrinho-Wheeler**  
Councilmember  
Cambridge, Massachusetts

**Alisha Sonnier**  
Alderman  
St. Louis, Missouri

**Jody Spencer**  
County Board Member  
Racine County, Wisconsin

**Kim Stokes**  
Commissioner  
Lake Worth Beach, Florida

**David Stout**  
Commissioner  
El Paso County, Texas

**Laurie Sweet**  
Councilmember  
Hamden, Connecticut

**Allison Terracio**  
Councilmember  
Richland County,  
South Carolina

**Tiffany D. Thomas**  
Councilmember  
Houston, Texas

**Caroline Torosis**  
Councilmember  
Santa Monica, California

**Jamie Torres**  
Councilmember  
Denver, Colorado

**Katie Valenzuela**  
Councilmember  
Sacramento, California

**Donna Vanhook**  
Soil and Water Conservation  
District Supervisor  
Alamance County,  
North Carolina

**Andre Vasquez**  
Alderman  
Chicago, Illinois

**Terry Vo**  
Councilmember  
Nashville-Davidson  
County, Tennessee

App. 9

**Arti Walker-Peddakotla**

Former Trustee  
Oak Park, Illinois

**Adrian Webber**

Councilmember  
Hamden, Connecticut

**Ginny Welsch**

Councilmember  
Nashville-Davidson  
County, Tennessee

**Jen Westmoreland**

School Board Member  
Hopkins Public School  
District, Minnesota

**T. Christopher Wharton**

Councilmember  
Salt Lake City, Utah

**Dr. Kimberly Wilburn**

Councilmember  
Minnetonka, Minnesota

**Robin Wilt**

Councilmember  
Brighton, New York

**Michael Wood**

Councilmember  
Athens, Ohio

**Thomas E. Wood Jr**

Councilmember  
Pittsburgh, Pennsylvania

**Vance D. Wyatt**

Treasurer  
North Chicago, Illinois

**Nelsie Yang**

Councilmember  
St. Paul, Minnesota

**Gregory D. Young**

Supervisor  
Fulton County, New York

**Estevan J. (Chuy) Zárate**

School Board Trustee  
Round Rock Independent  
School District, Texas

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