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Mental Health and Homelessness in the Wake of COVID-19: The Path to Supportive and Affordable Housing

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ABSTRACT

The COVID-19 pandemic has shone a bright light on the public health crisis faced by people experiencing homelessness, and particularly those with mental illnesses. The lack of clean, safe, and affordable housing in the United States's largest cities, and the limited access to supportive care for people experiencing symptoms of mental illness, is emblematic of not just this current crisis, but of the longstanding inadequacies in our housing policies and the need for swift, long-term action to address them. While cities are stuck responding to this emergency with temporary measures to protect residents of their emergency shelter systems by moving them away from crowded congregate care settings to other forms of temporary housing, advocates are pushing for more comprehensive plans which appear to be gaining some political traction. In turn, many of these emergency solutions may have planted the roots of a healthier and more humane model of temporary housing, one that better addresses the needs of the chronically homeless and those suffering from mental illnesses. Now is the time to create a model for addressing our homelessness crisis that is based on affordable, stable, and supportive housing and, more importantly, on a human right to guarantee that it is permanent and available to all.

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INTRODUCTION

The number of households experiencing homelessness across the United States has increased steadily since 2015.¹ As of September 2019, the United States Department of Housing and Urban Development (HUD) estimated that more than half a million people experience homelessness on any single night in the United States.² Approximately 65 percent of those individuals and families experiencing homelessness are in shelters and 35 percent are living on the streets; almost half of all unsheltered individuals in the United States live in California.³ Adults with severe mental illness constitute one of the largest subpopulations of homeless communities.⁴ The Treatment Advocacy Center estimated in 2016 that as many as 30 percent of people experiencing homelessness nationwide have serious mental illnesses, and a more recent study conducted by the *L.A. Times* found that over 50 percent of those experiencing homelessness in Los Angeles County may be experiencing symptoms of a mental disorder.⁵ For comparison, in 2017 the Substance Abuse and Mental Health Services Administration found that only 4.5 percent of the general United States population experienced serious mental illnesses and approximately 18.9 percent experienced a mental illness of any severity.⁶

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1. See U.S. DEP'T OF HOUS. & URB. DEV., HUD 2019 CONTINUUM OF CARE HOMELESS ASSISTANCE PROGRAMS HOMELESS POPULATIONS AND SUBPOPULATIONS (2019) [hereinafter HUD 2019 REPORT], https://files.hudexchange.info/reports/published/CoC_PopSub_NatlTerrDC_2019.pdf [<https://perma.cc/6EFE-84SR>]; U.S. DEP'T OF HOUS. & URB. DEV., HUD 2015 CONTINUUM OF CARE HOMELESS ASSISTANCE PROGRAMS HOMELESS POPULATIONS AND SUBPOPULATIONS (2015), https://files.hudexchange.info/reports/published/CoC_PopSub_NatlTerrDC_2015.pdf [<https://perma.cc/53BU-F8KE>].
 2. HUD 2019 REPORT, *supra* note 1.
 3. *Id.*
 4. *Id.*
 5. OFF. OF RES. & PUB. AFFS., TREATMENT ADVOC. CTR, SERIOUS MENTAL ILLNESS AND HOMELESSNESS 3 (2016) [hereinafter SERIOUS MENTAL ILLNESS & HOMELESSNESS], <https://www.treatmentadvocacycenter.org/storage/documents/backgrounders/smi-and-homelessness.pdf> [<https://perma.cc/3ZQG-3SXC>]; Doug Smith & Benjamin Oreskes, *Are Many Homeless People in L.A. Mentally Ill? New Findings Back the Public's Perception*, L.A. TIMES (Oct. 7, 2019), <https://www.latimes.com/california/story/2019-10-07/homeless-population-mental-illness-disability> [<https://perma.cc/FL8D-KPG3>].
 6. *Mental Illness*, NAT'L INST. MENTAL HEALTH, <https://www.nimh.nih.gov/health/statistics/mental-illness.shtml> [<https://perma.cc/3VV2-YA24>] (last visited Aug. 10, 2020); see also JONAKI BOSE, SARRA L. HEDDEN, RACHEL N. LIPARI & EUNICE PARK-LEE, SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., KEY SUBSTANCE USE AND MENTAL HEALTH INDICATORS IN THE UNITED STATES: RESULTS FROM THE 2017 NATIONAL SURVEY ON DRUG USE AND HEALTH 1, 38 (2018), <https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHFFR2017/NSDUHFFR2017.pdf> [<https://perma.cc/PS8A-4SVT>].

Thus, as with the existing racial disparities among homeless populations, those who have serious mental illnesses are grossly overrepresented among people experiencing homelessness.⁷

People with mental health conditions also experience homelessness for longer periods of time.⁸ Thus, those who are considered “chronically homeless,” meaning that they have been homeless for one year or more, are far more likely to experience mental health issues and involvement with the justice system than those who experience homelessness on a transitional or episodic basis.⁹ Being chronically homeless also means that people with mental illnesses are more likely to experience catastrophic health crises requiring medical intervention or resulting in institutionalization within the criminal justice system.¹⁰ Finally, they are also most at risk during a major health crisis, such as the COVID-19 pandemic.¹¹

The most worrying news is that recent studies indicate homelessness amongst people with mental illnesses could spiral even further out of control. A recent policy brief from the United Nations highlighted the likelihood of a worldwide “mental health crisis” resulting from the economic stress, isolation, and disruption in mental health services caused by COVID-19 and the need for social distancing.¹² Furthermore, a survey of data on evictions and unemployment insurance claims during the pandemic estimated that, in Los Angeles County alone, between 36,000 and 120,000 additional households may soon be at risk of homelessness as a result of loss of income caused by the COVID-19 pandemic.¹³ This would represent a monumental increase in

7. Taking the data from these same U.S. Department of Housing and Urban Development (HUD) annual surveys, the National Alliance to End Homelessness determined, for instance, that people of Pacific Islander descent are fifteen times more likely to be homeless than white people; similarly Native American and Black people are six and five times more likely, respectively, than white people to be homeless. See Nat'l All. to End Homelessness, *State of Homelessness: 2020 Edition*, END HOMELESSNESS, <https://endhomelessness.org/homelessness-in-america/homelessness-statistics/state-of-homelessness-2020> [https://perma.cc/LH4Q-JDG3] (last visited July 8, 2020).

8. *About Homelessness: Mental Health*, HOMELESS HUB, <https://www.homelesshub.ca/about-homelessness/topics/mental-health> [https://perma.cc/Q8NJ-CGJH] (last visited July 8, 2020).

9. *Id.*

10. *Id.*

11. *Id.*

12. UNITED NATIONS, POLICY BRIEF: COVID-19 AND THE NEED FOR ACTION ON MENTAL HEALTH 2 (2020).

13. GARY BLASI, UCLA LUSKIN INST. ON INEQ. & DEMOCRACY, UD DAY: IMPENDING EVICTIONS AND HOMELESSNESS IN LOS ANGELES 3, 6 (2020).

homelessness in Los Angeles County, dwarfing the increase of approximately 6000 people¹⁴ over the year before the outbreak.

Through newspaper headlines and court battles, COVID-19 has brought to the public eye the unique problems confronting people experiencing homelessness: Those who are sheltered face overcrowding and the risk of spreading the virus through shared bathrooms and common areas,¹⁵ whereas those who are unsheltered, on the streets or in encampments, face unsanitary conditions caused by close quarters, lack of facilities, and lack of access to medical care.¹⁶ As described in this Article, immediate solutions that seek to protect the homeless community in light of COVID-19 have included expanding emergency shelters and government partnerships with hotels and motels to provide rooms for people experiencing homelessness, programs which on their own are both inadequate and financially precarious. In the end, however, these programs may provide a roadmap to permanent solutions to homelessness because they foreground what homelessness advocates have been saying for years: A durable solution must include providing safe, affordable, and permanent housing. More specifically, these temporary programs represent the roots of a more humane model of temporary housing that prioritizes dispersing people from crowded shelters, and providing them instead with both a stable home and the services they need to maintain their homes. The need for support services is particularly acute for the outsized proportion of people who experience homelessness that also experience mental illness. Now, through

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14. L.A. HOMELESS SERVS. AUTH., 2019 GREATER LOS ANGELES HOMELESS COUNT – LOS ANGELES COUNTY (2019), <https://www.lahsa.org/documents?id=3423-2019-greater-los-angeles-homeless-count-los-angeles-county.pdf> [<https://perma.cc/B77Q-2CPJ>].
 15. See, e.g., Nikita Stewart, *‘It’s a Time Bomb’: 23 Die as Virus Hits Packed Homeless Shelters*, N.Y. TIMES (Aug. 18, 2020), <https://www.nytimes.com/2020/04/13/nyregion/new-york-coronavirus-homeless.html> [<https://perma.cc/W9ME-3QXN>]; Thomas Fuller, *Coronavirus Outbreak Has America’s Homeless at Risk of ‘Disaster’*, N.Y. TIMES (Aug. 18, 2020), <https://www.nytimes.com/2020/03/10/us/coronavirus-homeless.html> [<https://perma.cc/4SNH-ARCX>]; Jesse Bedayn & Brett Simpson, *Inside the Bay Area’s Geriatric Homeless Shelter*, N.Y. TIMES (Apr. 23, 2020), <https://www.nytimes.com/2020/04/23/us/coronavirus-california-homeless-population.html> [<https://perma.cc/UTH5-3YGG>].
 16. See, e.g., Marissa J. Lang, Justin Wm. Moyer & Nitasha Tiku, *Cities Struggle to Protect Vulnerable Homeless Populations as Coronavirus Spreads*, WASH. POST (Mar. 20, 2020), https://www.washingtonpost.com/local/cities-struggle-to-protect-vulnerable-homeless-populations-as-coronavirus-spreads/2020/03/20/1144249c-67be-11ea-b5f1-a5a804158597_story.html [<https://perma.cc/PG7E-FEQJ>]; Gale Holland, *L.A. Is Getting a Government-Run Tent City. All It Took was 40 Years and a Pandemic.*, L.A. TIMES (Apr. 14, 2020), <https://www.latimes.com/homeless-housing/story/2020-04-14/coronavirus-homeless-safe-campground-veteran-affairs-los-angeles-campus> [<https://perma.cc/CAL6-CZ9N>]; Robert Jablon, *Judge Orders Los Angeles to Move Thousands of Homeless*, ASSOCIATED PRESS (May 22, 2020), <https://apnews.com/a19fa8471953a1192a0dc314a834b58d> [<https://perma.cc/GP5C-AMGE>].

the relentless push of housing and homelessness advocates, bills that would declare access to housing a human right have been introduced in both the U.S. Congress and California legislature. As a result, with the pandemic bringing to the public eye the dire health risks faced by people experiencing homelessness, the dream of a comprehensive solution to homelessness—one that addresses the need for affordable, stable, and supportive housing and recognizes it as a human right to guarantee that it is permanent and available to all—has never felt closer.

I. MOVEMENTS ADDRESSING COVID-19 AND HOMELESSNESS

Advocates have long organized around expanding critical services for people experiencing homelessness and especially those experiencing the confluence of homelessness and mental illness. In the wake of the COVID-19 pandemic, their efforts have gained new urgency.

Efforts to balance keeping beds available to people experiencing homelessness in Los Angeles County with incorporating social distancing measures in the shelter system have taken two forms. The first is an expansion of the existing shelter network. Los Angeles County typically relies on 7300 beds, which are available year round for interim shelter.¹⁷ In order to accommodate the loss of many of these beds because of social distancing, the County has opened an additional twenty-four temporary shelters intended to house a total of 900 or more people.¹⁸ This does not seem to make up fully for the lost beds, however, with at least one shelter estimating in early May that they were housing only between one quarter and one half of their pre-COVID-19 capacity.¹⁹ Indeed many homeless encampments remain in the City of Los Angeles, which led a federal judge to enjoin the City to relocate as many as three to four thousand people living in such camps to temporary

17. L.A. HOMELESS SERVS. AUTH., FACT SHEET—L.A. COUNTY COVID-19 RESPONSE & HOMELESSNESS 2 (2020), [https://www.lahsa.org/documents?id=4374-fact-sheet-on-covid-19-response-homelessness&utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=\[https://perma.cc/PM5Q-4LNB\]](https://www.lahsa.org/documents?id=4374-fact-sheet-on-covid-19-response-homelessness&utm_content=&utm_medium=email&utm_name=&utm_source=govdelivery&utm_term=[https://perma.cc/PM5Q-4LNB]).

18. Eric Garcetti, Mayor of L.A., COVID-19 Public Briefing 4 (May 4, 2020), <https://corona-virus.la/sites/default/files/inline-files/Mayor%20Update%20050420.pdf> [https://perma.cc/JVT3-6RD4]. As of May 2, 2020, those additional beds were already at 87 percent capacity. *Id.*

19. Benjamin Oreskes, *Coronavirus Testing Has Come to Skid Row. But What Happens When Infected Patients Disappear?*, L.A. TIMES (May 8, 2020), <https://www.latimes.com/homeless-housing/story/2020-05-08/coronavirus-homeless-testing-skid-row-los-angeles> [https://perma.cc/XV58-4H4Q].

shelters that provide hygiene facilities, nursing staff, and the ability to maintain social distancing guidelines.²⁰

Another effort to cover the gap in available beds is a program that has counterparts in other major cities worldwide: Project Roomkey. Project Roomkey is a partnership that uses funds from the Federal Emergency Management Agency (FEMA) and the State of California, along with city and county funds, to secure hotel and motel rooms for people experiencing homelessness.²¹ By redirecting funds towards the County of Los Angeles Homeless Services Authority, Los Angeles has thus far been able to secure over 4000 rooms for homeless individuals.²² Given the serious risks of spread of the virus in congregate care shelters, the benefits of private hotel rooms are welcome and obvious.²³ The drawbacks of this model, however, are also apparent. First, these rooms are not permanent and may well disappear after the pandemic subsides. Second, the number of rooms is not nearly enough to meet the needs of all people experiencing homelessness. Homeless rights and housing justice advocates such as the National Low Income Housing Coalition have argued that it would take \$11.5 billion to fund a nationwide

20. LA All. for Hum. Rts. v. City of Los Angeles, No. 2:20-cv-02291, 2020 WL 2615741, at *5 (C.D. Cal. May 22, 2020), *vacated*, 2020 WL 3421782 (C.D. Cal. June 18, 2020).

21. See Press Release, Off. of Governor Gavin Newsom, At Newly Converted Motel, Governor Newsom Launches Project Roomkey: A First-in-the-Nation Initiative to Secure Hotel & Motel Rooms to Protect Homeless Individuals from COVID-19 (Apr. 30, 2020), <https://www.gov.ca.gov/2020/04/03/at-newly-converted-motel-governor-newsom-launches-project-roomkey-a-first-in-the-nation-initiative-to-secure-hotel-motel-rooms-to-protect-homeless-individuals-from-covid-19> [<https://perma.cc/4ZTL-7ECL>]. For more information about the Project Roomkey initiative in Los Angeles County, see *COVID-19: Project Roomkey*, CNTY. L.A., <https://covid19.lacounty.gov/project-roomkey> [<https://perma.cc/AG6A-5PW6>] (last visited June 28, 2020). Other locales that have experimented with similar programs include major cities such as Seattle, New York, and London. For further information about the program in London, see Press Release, Rt. Hon. Robert Jenrick & Ministry of Hous., Cmty., & Loc. Gov't, 6,000 New Supported Homes as Part of Landmark Commitment to End Rough Sleeping (May 24, 2020), <https://www.gov.uk/government/news/6-000-new-supported-homes-as-part-of-landmark-commitment-to-end-rough-sleeping> [<https://perma.cc/2KWT-D8MY>].

22. L.A. CNTY. EMERGENCY OPERATIONS CTR., COVID-19 UPDATE (July 24, 2020), https://covid19.lacounty.gov/wp-content/uploads/7.24.20_COVID-19_Update_FINAL.pdf [<https://perma.cc/CL4N-9Z6J>].

23. COLETTE AUERSWALD ET AL., BERKELEY PUB. HEALTH, FOR THE GOOD OF ALL OF US: ADDRESSING THE NEEDS OF OUR UNHOUSED NEIGHBORS DURING THE CORONAVIRUS PANDEMIC 20 (2020), <https://publichealth.berkeley.edu/wp-content/uploads/2020/04/For-the-Good-of-Us-All-Report.pdf> [<https://perma.cc/QRN6-RNFH>] (noting that even maintaining six feet of distance still leaves many unaddressed risks when sharing living spaces, such as shared bathrooms, the ability of respiratory droplets to spread as many as twenty-seven feet and remain in the air for over three hours, or the infeasibility of requiring people to wear masks twenty-four hours per day).

effort to increase social distancing in existing shelters and provide enough beds for unsheltered persons, a charge which has been incorporated by federal legislators into the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act—a still-pending pandemic relief bill that is unlikely to pass in the U.S. Senate.²⁴

Nevertheless, the Governor of California has indicated his intent to make many of these hotel rooms permanent housing for people experiencing homelessness by purchasing them from their private owners.²⁵ And on June 24, 2020, he signed a state budget act providing \$600 million to local governments to do just that, under a project named “Homekey.”²⁶ This is a one-time grant of money that comes almost entirely from the federal Coronavirus Relief Fund created by the Coronavirus Aid, Relief, and Economic Security (CARES) Act and is intended to help local governments to convert existing housing, hotels, motels, and care facilities into permanent housing.²⁷ Providing housing is the first step. Advocates for homelessness have long fought to preserve this Housing First model for transitioning people out of homelessness.²⁸ As described below, such a model prioritizes placing people into a stable and safe home first and then surrounding them with the health and treatment services they need to maintain their home. For people with mental illnesses, stability is just as important for success as it is for any other homeless individual; therefore, getting into safe and stable shelters must

24. See Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act, H.R. 6800, 116th Cong. § 110301(a)(1) (2020); *Responding to Coronavirus: Ensuring Housing Stability During a Crisis*, NAT'L LOW INCOME HOUS. COAL. (May 14, 2020), <https://nlihc.org/responding-coronavirus> [<https://perma.cc/63VK-F8LQ>].

25. GOVERNOR GAVIN NEWSOM, FULL BUDGET SUMMARY: MAY REVISION 79 (2020), <http://www.ebudget.ca.gov/2020-21/pdf/Revised/BudgetSummary/FullBudgetSummary.pdf> [<https://perma.cc/5VVK-QJG5>].

26. Press Release, Off. of Governor Gavin Newsom, Governor Newsom Signs 2020 Budget Act (June 29, 2020), <https://www.gov.ca.gov/2020/06/29/governor-newsom-signs-2020-budget-act/#:~:text=SACRAMENTO%20%E2%80%93%20Governor%20Gavin%20Newsom%20today,by%20the%20COVID%2D19%20recession.> [<https://perma.cc/3RNJ-JSGC>]; CAL. DEP'T OF FIN., CALIFORNIA STATE BUDGET 2020–2021: HOMELESSNESS AND LOCAL GOVERNMENT 65–66 (2020) [hereinafter CALIFORNIA BUDGET 2020–2021], <http://www.ebudget.ca.gov/2020-21/pdf/Enacted/BudgetSummary/HomelessnessandLocalGovernment.pdf> [<https://perma.cc/4YJ3-EHVD>].

27. See CALIFORNIA BUDGET 2020–2021, *supra* note 26, at 65–66.

28. For instance, twenty-two advocacy groups recently signed on to a letter to key members of the California government demanding their commitment to Housing First in legislation addressing homelessness. See Letter from Sharon Rapport, Corp. for Supportive Hous. et al., to Gavin Newsom, Governor of Cal. et al. (June 3, 2020), https://12a82d75-5432-57c9-fd00-8a7ce445e299.filesusr.com/ugd/87bdf3_500defa4a24d413e865d0e07b9cec9e2.pdf [<https://perma.cc/2WLL-6QKG>] [hereinafter Letter to Governor Newsom].

be the first priority. But the second step is ensuring that people who have been homeless are able to maintain their home. For instance, access to the necessary mental health and social services, as provided by supportive housing or community treatment teams, has been successful in achieving long-term housing stability for the 30 percent or more of the people experiencing homelessness who are estimated to also be experiencing symptoms of a mental illness.²⁹ Achieving this will require a commitment to fund social support services to help people transitioning out of homelessness, for example, maintain their public benefits, pay their bills on time, and deal with legal or health issues. It may also require changing the way that Medicaid health insurance is provided to integrate social services and health benefits, allowing for easier access to these services for people experiencing homelessness. These secondary changes are either not required or lacking in the new budget. Thus, while the success of the Homekey funding is still yet to be seen, Project Roomkey is at least a model for how California can expand its stock of temporary housing for people experiencing homelessness and move away from crowded congregate care shelters.

As COVID-19 brings public focus to the health risks facing both sheltered and unsheltered homeless populations on a daily basis, now is the time to uncrowd congregate care shelters and think of new ways to provide safe and healthy transitional housing options to unsheltered people. Project Roomkey and Homekey contain the seeds for just such a plan. The biggest hurdle is providing solutions that are not subject to the whims of the political moment, and that are equally applicable to communities that lack the budgetary resources of larger states like California or New York.

II. LONG-TERM RESPONSES: RIGHT TO HOUSING AMENDMENT

In 1944, President Franklin D. Roosevelt introduced the “Second Bill of Rights” to encourage Congress to develop policies that would support economic security and independence for all Americans.³⁰ In this Bill of Rights, Roosevelt emphasized in particular “the right of every family to [have]

29. See, e.g., SERIOUS MENTAL ILLNESS & HOMELESSNESS, *supra* note 5, at 3; see also Sam Tsemberis & Ronda F. Eisenberg, *Pathways to Housing: Supported Housing for Street-Dwelling Homeless Individuals With Psychiatric Disabilities*, 51 PSYCHIATRIC SERVS. 487 (2000).

30. President Franklin D. Roosevelt, State of the Union Message to Congress (Jan. 11, 1944) (transcript available at http://www.fdrlibrary.marist.edu/archives/address_text.html [<https://perma.cc/7HJ9-Z42R>]).

a decent home.”³¹ This was the seed of a possible “right” to housing in America; in 1948, the United Nations went one step further and explicitly recognized that “[e]veryone has the right to a standard of living adequate for [their] health and wellbeing . . . including . . . housing.”³² President Harry S. Truman, however, quickly backtracked, stating that the right to housing was a “goal” not an enumerated right.³³ This retreat from a “right” to a “goal” shaped generations of housing policy, leading to half-measures and intractable funding gaps for affordable housing which are endemic to the homelessness crisis we are facing today.³⁴

As a result of the inequities in the housing market, stemming from a lack of sufficient construction in many major cities, skyrocketing rent and sale prices, housing segregation, gentrification of urban neighborhoods, and income inequality more generally, the political conversation has shifted back towards housing as a fundamental human right. Senator Bernie Sanders has largely highlighted grassroots movements supporting a right to affordable housing in his 2016 presidential campaign.³⁵ Sanders’s campaign, though unsuccessful, paved the way for the election of newer Congresspersons, such as Representatives Rashida Tlaib, Pramila Jayapal, and Grace Meng who earlier this year introduced a bill to officially enshrine a federal right to housing.³⁶ In California, a counterpart bill was also introduced this year—the most recent iteration of previous unsuccessful efforts to declare a right to safe and affordable housing in the state.³⁷ That bill would require policymakers to consider providing rental assistance, legal support, and connection to services that would address factors that could lead to homelessness.³⁸

31. *Id.*

32. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

33. Housing Act of 1949, Pub. L. No. 81-171, 63 Stat. 413.

34. For a general overview of the right to housing movement in the United States, see NAT’L LAW CTR ON HOMELESSNESS & POVERTY, “SIMPLY UNACCEPTABLE”: HOMELESSNESS AND THE HUMAN RIGHT TO HOUSING IN THE UNITED STATES 6 (2011), https://nlchp.org/wp-content/uploads/2018/10/Simply_Unacceptable.pdf [<https://perma.cc/R6CF-5ZHU>].

35. See, e.g., 21ST CENTURY ECONOMIC BILL OF RIGHTS, BERNIE SANDERS, <https://bernieanders.com/21st-century-economic-bill-of-rights> [<https://perma.cc/7GRB-4F27>] (last visited June 28, 2020); CBS News, *Bernie Sanders Calls for “21st Century Bill of Rights”*, YOUTUBE (June 12, 2019), <https://www.youtube.com/watch?v=nbN9OD83f5I> [<https://perma.cc/AA6H-69WS>].

36. Housing is a Human Right Act of 2020, H.R. 6308, 116th Cong. (Mar. 19, 2020).

37. Right to Safe, Decent, and Affordable Housing, A.B. 2405, 2019–2020 Reg. Sess. (Cal. 2020), http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB2405 [<https://perma.cc/3C54-ZEN6>].

38. *Id.* For persons with psychiatric disabilities, federal law already requires states “to provide community based treatment . . . when the State’s treatment professionals determine that such placement is appropriate,” meaning that any state law to connect

As COVID-19 continues to spread, and our communities begin to sort out the devastation it has caused to the job market, the recognition of a right to housing is needed now more than ever.³⁹ Still, despite judicial recognition of the importance of community living and the political shift towards a right to housing, society at large still struggles with implementing that right for people with mental disabilities, as seen by the disproportionately high number of people experiencing homelessness while also having a mental illness. Thus, recent political movements addressing homelessness have focused on a Housing First model, which prioritizes providing permanent affordable housing in order to help individuals reach their treatment or medical goals, rather than requiring them to meet those goals before *earning* their right to housing.

In 2016, California passed a Housing First bill founded on the premise that homelessness can be eradicated by guaranteeing that everyone has access to safe, stable, affordable, and permanent housing.⁴⁰ This law ensures that housing is not made contingent on sobriety or engagement with any treatment or supportive services, and instead places the focus on permanent, stable housing as a foundation for any social or health services.⁴¹ This law builds on other Housing First efforts nationwide, which have been shown to decrease homelessness, particularly amongst people who have longer histories of homelessness.⁴²

In addition to Housing First, advocates have turned their attention towards developing housing that integrates services to assist chronically homeless populations, many of whom have mental illnesses.⁴³ Supportive housing incorporates support services into affordable housing so that people have access to “decent, safe, affordable, community-based housing with flexible, voluntary support services designed to help the individual or family stay housed

clients to mental health services must prioritize treatment outside of institutions. *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 607 (1999).

39. Cf. Benjamin Oreskes, *Mass Unemployment Over Coronavirus Could Lead to a 45% Jump in Homelessness, Study Finds*, L.A. TIMES (May 14, 2020), <https://www.latimes.com/homeless-housing/story/2020-05-14/coronavirus-unemployment-homeless-study-increase-45-percent> [<https://perma.cc/N3TB-PXL2>].

40. See U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, IMPLEMENTING HOUSING FIRST IN PERMANENT SUPPORTIVE HOUSING 1 (2014) [hereinafter IMPLEMENTING HOUSING FIRST], https://www.usich.gov/resources/uploads/asset_library/Implementing_Housing_First_in_Permanent_Supportive_Housing.pdf [<https://perma.cc/Z786-DJ5L>].

41. Letter to Governor Newsom, *supra* note 28, at 2.

42. See IMPLEMENTING HOUSING FIRST, *supra* note 40.

43. See, e.g., OFF. OF POL’Y DEV. & RES., U.S. DEP’T OF HOUS. & URB. DEV., THE APPLICABILITY OF HOUSING FIRST MODELS TO HOMELESS PERSONS WITH SERIOUS MENTAL ILLNESSES, at v (2007), <https://www.huduser.gov/portal/publications/hsgfirst.pdf> [<https://perma.cc/SJL9-D3Y3>].

and live a more productive life in the community.”⁴⁴ Specifically, supportive housing combines permanent housing with case management, substance abuse, mental health, counseling, and other services, to provide community-based treatment and support services. These services are similar to those envisioned by the U.S. Supreme Court in its landmark decision in *Olmstead*, in which the Court held that States are required to place persons with mental disabilities in community settings rather than in institutions when, among other things, a state’s treatment professionals have determined that community placement is appropriate.⁴⁵ There is a mountain of evidence to suggest that permanent supportive housing results in long-term housing stability, especially for people experiencing mental illnesses.⁴⁶

III. WAYS TO IMPLEMENT A RIGHT TO HOUSING

Supportive housing, and similar community-based integrated treatment models, should be the primary housing option for people with mental disabilities. Achieving sufficient supportive housing to meet the needs of the swelling homeless population will require a shift from congregate living shelters to permanent independent living that offers community support.⁴⁷ This may include partnerships with private market apartments where the rent is supported by a government subsidy and tenants have access to mobile or onsite services.⁴⁸ The units can be newly constructed or rehabilitated buildings or can be units designated within current affordable housing developments that offer tenants supportive services.⁴⁹ This may also include

44. IMPLEMENTING HOUSING FIRST, *supra* note 40, at 1.

45. *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999) (holding that under Title II of the Americans with Disabilities Act, states are required to place persons with mental disabilities in community settings rather than in institutions when the state’s treatment professionals have determined that community placement is appropriate).

46. See, e.g., OFF. OF POL’Y DEV. & RES., *supra* note 43.

47. See JUDGE DAVID L. BAZELON CTR. FOR MENTAL HEALTH L., SUPPORTIVE HOUSING: THE MOST EFFECTIVE AND INTEGRATED HOUSING FOR PEOPLE WITH MENTAL DISABILITIES 5 (2017) [hereinafter SUPPORTIVE HOUSING], <http://www.bazelon.org/wp-content/uploads/2017/04/supportive-housing-fact-sheet.pdf> [<https://perma.cc/6AHL-E8BJ>].

48. Cf. U.S. DEP’T OF HOUS. & URB. DEV., HOUSING FIRST IN PERMANENT SUPPORTIVE HOUSING 3 (2014), <https://files.hudexchange.info/resources/documents/Housing-First-Permanent-Supportive-Housing-Brief.pdf> [<https://perma.cc/PD86-ZYLZ>]. The Housing First approach is intended to connect individuals and families experiencing homelessness to permanent supportive housing without imposing traditional barriers such as sobriety or active mental health treatment. One way to implement the model is through partnerships with private organization that give the individual access to onsite or mobile medical health treatment.

49. *Id.*

a scatter-site model, where the services are not sponsored by the housing provider, but are brought to the resident as part of a coordinated government health or social services program.⁵⁰ A participant should have the option to pick when and what type of services they receive rather than worry about losing their housing if they choose not to participate in treatment.⁵¹

Even though studies show that Housing First models are affordable in that the money saved in the justice and public health systems outweigh the cost of housing, a common misconception is that providing sufficient supportive housing is expensive.⁵² One method to combat this misperception that has gained traction with homelessness advocacy groups is the use of community land trusts. This model involves placing land into the ownership of a nonprofit or similar entity committed to preserving affordable housing.⁵³ The buildings on the land, however, are either sold or leased to the residents.⁵⁴ Rules incorporated into the deed of trust restrict resale or rental prices so that they are, for instance, tied only to the building, not the land, and are therefore protected from fluctuations in the real estate market.⁵⁵ There are few rules for how a community land trust should interact with its residents, and the effectiveness of such trusts may depend largely on how well they incorporate the voices of their residents and adapt over time.⁵⁶ Nevertheless, community land trusts have been expanding in many major cities in California, as well as nationwide, and they provide another pathway to permanent affordable or supportive housing.⁵⁷

50. Cf. SUPPORTIVE HOUSING, *supra* note 47, at 3.

51. *Id.* at 5.

52. OFF. OF POL'Y DEV. & RES., *supra* note 43.

53. See *Community Land Trusts and Stable Affordable Housing*, HUDUSER.GOV (Nov. 4, 2019), <https://www.huduser.gov/portal/pdredge/pdr-edge-featd-article-110419.html#:~:text=The%20Oakland%20Community%20Land%20Trust,priced%20out%20of%20their%20neighborhoods> [<https://perma.cc/Z93U-SSTM>].

54. *Id.*

55. *Id.*

56. See, e.g., Oksana Mironova, *How Community Land Trusts Can Help Address the Affordable Housing Crisis*, JACOBIN (July 6, 2019), <https://www.jacobinmag.com/2019/07/community-land-trusts-affordable-housing> [<https://perma.cc/Y7ED-68GY>].

57. The California Community Land Trust Network is one coalition helping to support these trusts statewide. A recent bill passed in the California state legislature also helped reduce the tax burden on these trusts to allow more affordable development. See CAL. REV. & TAX. CODE § 214.18 (West 2019).

CONCLUSION

Homelessness among people with mental illnesses, augmented by limited affordable housing stock and access to supportive care, has been a longstanding issue in America, particularly in California. The COVID-19 pandemic has highlighted the inadequacies in our housing policies and the need for swift, long-term action. While cities are stuck responding to this emergency with temporary measures to protect our homeless population by moving them away from crowded congregate care settings to other forms of temporary housing, advocates are pushing for more comprehensive plans that appear to be gaining some political traction. The pandemic has brought to the public eye the dire health risks faced by people experiencing homelessness, and emergency solutions have paved the way for a healthier and more humane model of temporary housing, one that better addresses the needs of the chronically homeless and those suffering from mental illnesses. Now is the time to trumpet the need for affordable, stable, and supportive housing and a human right to guarantee that it is permanent and available to all.