

August 4, 2022

Georgia State Senate Committee on Unsheltered Homelessness
Via email

Dear Sen. Carden Summers, Chair, Sen. Gail Davenport, Sen. Mike Dugan, Sen. Kim Jackson, Sen. Randy Robertson, The Honorable William H. 'Beau' McClain, Commissioner Christopher Nunn, and Commissioner Judy Fitzgerald,

We are here on behalf of national organizations with decades of experience in developing and administering homelessness policy to provide information to your Study Committee as you consider the important issues of unsheltered homelessness and homeless encampments in Georgia. Based on our experience in this area, we cannot support the approach proposed in HB713 and SB535 which offer measures to address the superficial symptoms of unsheltered homelessness without solving the underlying issues or causes of homelessness, and indeed, which will only make things worse. For the reasons set forth herein, we urge you not to endorse these bills as part of this committee's recommendations, and instead to promote the implementation of evidence-based strategies of non-coercive outreach, housing, and services that—if adequately resourced—will permanently end the *need* for encampments, rather than just temporarily shifting them from public view.

As a starting point, we can all agree that whether we're Black or white, Asian or Latino, Native or newcomer, everyone wants to see communities in Georgia free of encampments and the accompanying problems that occur when communities neglect the safety and sanitation needs of their unhoused residents. But not having a roof over your head, an address, or a place to shower -- or having to sacrifice putting food on the table in order to pay rent -- can make landing or keeping a job an impossibility. Providing housing to people who have been pushed into homelessness is a proven approach that ensures people can rebuild their lives. To make Georgia a place where all of our families can thrive, we must rewrite the rules to ensure everyone has a place to call home.

We urge the Study Committee to focus on solutions that address the [underlying cause](#) of homelessness: the severe shortage of homes affordable to people with the lowest incomes and the widening gap between incomes and housing costs. In Georgia, there are [fewer than 4](#) affordable and available rental homes for every 10 extremely low-income renter households. Without affordable options, three in four (73%) extremely low-income Georgians have no choice but to pay more than half of their limited incomes on rent. Housing costs are out of reach for many low-wage workers, seniors, and people with disabilities. A full-time worker in Georgia needs to earn \$24.85 an hour to afford a modest 2-bedroom home at fair market rent. A minimum wage worker needs to work 78 hours a week – nearly 2 full-time jobs – to afford a modest 1-bedroom home.¹ Because these households do not have access to affordable housing, they are left with few resources after paying rent to put groceries on the table, cover medical costs, or meet their other

¹ See National Low Income Housing Coalition, *Out of Reach: The High Cost of Housing* (2022), <https://nlihc.org/oor>.

basic needs. One emergency or unexpected expense could send these households into homelessness.

The communities that have actually made progress on ending street homelessness have accomplished it through outreach and adequate housing, not by using law enforcement or the threat of forced institutionalization. All Georgians deserve the inalienable rights to life, liberty, and pursuit of happiness, which can only happen if they to have a place to live with dignity. Housing ends homelessness; legalized encampments, parking lots, and emergency shelters without resources to provide residents with exits into housing will only result in permanent, under-resourced shantytowns on the peripheries of our communities, or funneling people into jail or asylums at high taxpayer expense and infringement of their personal liberty.

Outside groups like the Cicero Institute, which created the template legislation HB 713 and SB 535 are based on, want Georgians to see things simply—like homelessness is only a personal choice, and that people need to be coerced out of it through harsh law enforcement measures.² But most of us know that the rent in Georgia has been outpacing wages for decades, affordable housing is in short supply, and the economic shocks of the pandemic are forcing many more into homelessness through no fault of their own. No matter what we look like, every person deserves a safe, adequate, affordable place to live, not threats of criminal penalties for simply trying to survive in the absence of one. A 2020 study found that law enforcement approaches “systematically limit homeless people’s access to services, housing, and jobs, while damaging their health, safety, and well-being.”³ Fines and fees or time in jail make it more difficult to save enough money to exit homelessness. Any involvement in the criminal legal system makes it more difficult to get and keep employment, to qualify for housing, and/or to keep families together. Ensnaring people in interactions with the police and legal systems create barriers to exiting homelessness. In other words, criminalizing homelessness actually ensures people stay on the streets longer.

A criminal law is not necessary in order to get unhoused people into housing and access to services that will help support them to maintain shelter. Social workers are more effective at achieving these outcomes and cost communities half to a third as much as criminalization. Milwaukee County’s housing first initiative costs \$2 million a year, but reduces Medicare costs by \$2.1 million a year, mental health costs to the county by \$715,000 a year, and costs to the legal system by \$600,000 a year—a net savings to Milwaukee County of \$1.4 million.⁴ Through this approach, Milwaukee has reduced its homeless population by 70 percent, down to only 17 unsheltered persons at the last count.⁵ If measures like SB 535 are implemented, Georgia’s

² Cicero Institute, *Reducing Street Homelessness Model Bill*, <https://ciceroinstitute.org/research/reducing-street-homelessness-model-bill/>.

³ Chris Herring, Dilara Yarbrough, Lisa Marie Alatorre, Pervasive Penalty: How the Criminalization of Poverty Perpetuates Homelessness, *Social Problems*, Volume 67, Issue 1, February 2020, Pages 131–149, <https://doi.org/10.1093/socpro/spz004>.

⁴ Matthew Braunginn, *Housing on the brink; Milwaukee County’s ‘housing first’ success and the crisis of affordability*, Daily Kos, July 27, 2022, <https://www.dailykos.com/stories/2022/7/27/2112026/-Housing-on-the-brink-Milwaukee-County-s-housing-first-success-and-the-crisis-of-affordability>.

⁵ *Housing First: Milwaukee County recognized with lowest unsheltered homeless population in America*, Milwaukee Independent, Apr. 12, 2022, <https://www.milwaukeeindependent.com/articles/housing-first-milwaukee-county-recognized-lowest-unsheltered-homeless-population-america/>.

taxpaying constituents will want an explanation as to why Georgia decided to spend *more* money on *worse* outcomes.

Indeed, the proposed laws do nothing to address homelessness and the need for additional housing; rather, it exacerbates the problem by further criminalizing homelessness. Criminalizing people who sleep or shelter in public places threatens their health and their lives. Displacing encampment residents and tearing down their “makeshift housing”⁶ threatens the life and health of encampment residents. People experiencing homelessness are especially vulnerable to the loss of even temporary shelter because they have heightened risks of serious illness, hospitalization, and early morbidity compared with the general population.⁷

The disruption caused by losing important belongings and medicine, by having sleep regularly interrupted, or by having to move frequently, can be very detrimental to physical and mental health. That is why the American Medical Association and the American Public Health Association have both condemned the criminalization of homelessness generally and evictions, or “sweeps” of encampments specifically.

During the COVID-19 crisis, the Centers for Disease Control specifically issued guidance directing communities to cease sweeps of homeless encampments and ensure adequate sanitation was provided on site unless individual housing options could be provided.⁸ Federal courts have found that removing and forcing encampment residents into sanctioned areas “flies in the face of this CDC guidance and [constitute efforts] undertaken for no good reason.” *Sausalito/Marin Cty. Chapter of the Cal. Homeless Union v. City of Sausalito*, 522 F. Supp. 3d 648, 650 (N.D. Cal. 2021). Public health concerns such as trash, human waste, or used needles can all be addressed through constructive measures such as regular sanitation pick ups, portable toilets, or sharps containers without needing to resort to punitive measures that harm the health of people experiencing homelessness and negatively impact their ability to become housed and employed in the future.

The U.S. Interagency Council on Homelessness (“USICH”) also released guidance on June 15, 2022 that includes principles for addressing unsheltered homelessness.⁹ The guidance specifically notes that approaches that use law enforcement to criminalize homelessness “result in adverse health outcomes, exacerbate racial disparities, and create stress, loss of identification and belongings, and disconnection from much-needed services. 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.**”¹⁰ Among other principles and suggestions, the guidance urges communities to engage encampment residents to develop

⁶ When people lose their housing, “their decisions about where to stay represent pragmatic choices among the best available alternatives, based on individual circumstances at a particular moment in time. Encampments form in response to the absence of other, desirable options for shelter.” Rebecca Cohen, et al., HUD Office of Policy Development and Research, *Understanding Encampments of People Experiencing Homelessness and Community Responses* 4 (2019).

⁷ Nat’l Health Care for the Homeless Council, “Homelessness & Health: What’s the Connection?” (2019), available at <https://nhchc.org/wp-content/uploads/2019/08/homelessness-and-health.pdf>.

⁸ See [Interim Guidance on People Experiencing Unsheltered Homelessness](#).

⁹ USICH, “7 Principles for Addressing Encampments,” June 2022, available at [Principles for Addressing Encampments.pdf \(usich.gov\)](#)

¹⁰ *Id.* (emphasis added).

solutions, conduct comprehensive and coordinated outreach, address basic needs of unhoused people and provide storage for personal belongings, ensure access to shelter, develop pathways to permanent housing and supports, and create a plan for what will happen to encampment sites after residents are evicted and displaced.

It is also important to note that while these bills will affect all Georgians, they will have a discriminatory impact on Georgia's most marginalized populations. A leading report illustrates that unhoused Black and Latinx people are 9.7 and 5.7 times more likely to be cited under laws criminalizing homelessness than white people.¹¹ Black Americans represent 40% of people experiencing homelessness nationally, despite constituting only 13% of the overall population. There is also overrepresentation of Indigenous people and other people of color, and overrepresentation based on gender identity, sexual orientation, and disability status amongst unhoused persons.¹² People with multiple marginalized identities, such as LGBTQ+ people of color, are even more vulnerable to homelessness, to criminalization, and to the ensuing collateral consequences.¹³

While relying on images of more successful sanctioned encampments in other communities that have been developed by people experiencing homelessness, the bills actually set Georgia up for situations with little to no recourse for homeless persons, placed in potentially dangerous encampments or shelters by eliminating accountability for all but "intentional or grossly negligent conduct." Simply put, this provides state and local actors with zero accountability, while undermining the very programs that have demonstrated real and proven success in reducing homelessness.

Moreover, by taking away funding from permanent housing to put into legalized encampments, these bills would hinder communities' ability to provide exits for people experiencing homelessness into permanent housing, thereby making the encampments permanent features of our cityscapes. In contrast, communities such as Gainesville, FL, adopted a planned phase out of an unregulated 222 person encampment which, thorough a process with deep involvement of the directly-impacted encampment residents, was moved to a temporary site adjacent to the main shelter and service provider, who then worked to house every person living in the encampment, eventually closing the camp altogether. This program was closely monitored and evaluated, and succeeded in closing the encampment without a single arrest, less than a 10% dispersal rate into the community, and 150 successful placements into permanent housing in less than two years.¹⁴

¹¹ 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.

¹² SPARC, *Phase One Study Findings* (Mar. 2018), <https://c4innovates.com/wp-content/uploads/2019/03/SPARC-Phase-1-Findings-March-2018.pdf>; HUD Exchange, *LGBTQ Homelessness*, <https://www.hudexchange.info/homelessness-assistance/resources-for-lgbt-homelessness/#resources-for-homeless-lgbtq-individuals-in-crisis>; USICH, *Homelessness in America: Focus on Individual Adults* (Nov. 2018), https://www.usich.gov/resources/uploads/asset_library/HIA_Individual_Adults.pdf.

¹³ See, Heartland Alliance for Human Rights and Human Needs, *Never Fully Free: The Scale and Impact of Permanent Punishments on People With Criminal Records in Illinois* (2020), <https://www.heartlandalliance.org/heartland-alliance-2020-poverty-report/>.

¹⁴ See, Jon DeCarmino and Joseph S. Jackson, *A TALE OF TWO TENT CITIES: THE CRITICAL ROLE OF HOUSING ENGAGEMENT IN ADDRESSING HOMELESS ENCAMPMENTS*, *forthcoming*, Georgetown

The only way to permanently end encampments is to end the *need* for encampments—because these bills take away funding from permanent housing, they will only lay the path for permanent encampments.

In addition to establishing bad policy that doesn't address the actual issue of homelessness and encampments, the proposed laws would immediately be at risk of litigation because they are unconstitutional.

First, federal courts have found that anti-camping laws – like the ones being considered here – violate the Eighth Amendment when there is inadequate shelter for unhoused individuals. In *Martin v. City of Boise*, for instance, the Ninth Circuit held that “the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter.” 920 F.3d 584, 616 (9th Cir. 2019). “That is, as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.” *Id.* at 617. Nor is it “enough under the Eighth Amendment to simply allow sleeping in public spaces; the Eighth Amendment also prohibits a City from punishing homeless people for taking necessary minimal measures to keep themselves warm and dry while sleeping when there are no alternative forms of shelter available.” *Blake v. City of Grants Pass*, No. 1:18-CV-01823, 2020 WL 4209227, at *6 (D. Or. July 22, 2020). Here in the 11th Circuit, a district court applied *Martin* in *McArdle v. City of Ocala*, enjoining an anti-camping law in the City of Ocala, Florida, after finding that because the City of Ocala's law punished unhoused people for sitting, lying, or sleeping in public without first inquiring whether alternative shelter was meaningfully available, it likely violated the Eighth Amendment. 519 F. Supp. 3d 1045, 1052 (M.D. Fla. 2021).

Second, the proposed law may violate the Fourth and Fourteenth Amendments to the extent it results in the unlawful seizure and destruction of an unhoused person's property. An unreasonable deprivation of an unhoused person's property is unconstitutional under the Fourth Amendment. *See Lavan v. City of Los Angeles*, 693 F.3d 1022, 1027–30 (9th Cir. 2012). And the Supreme Court has held that merely providing some advance notice, without any meaningful opportunity to dispute the seizure and destruction of a person's home, does not satisfy the requirements of due process under the Fourteenth Amendment. *See United States v. James Daniel Good Real Property*, 510 U.S. 43, 53 (1993) (pre-deprivation hearing and notice is required except in the “extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event”) (quotation marks and citation omitted).

Third, the proposed law may violate the Fourteenth Amendment's Equal Protection Clause. The proposed law discriminates against persons experiencing homelessness, who are the only people who have no choice but to sleep or camp outside and have personal belongings with them in the public places where they live. *See McArdle*, 519 F. Supp. 3d at 1055 (denying City's motion for summary judgment and concluding that it would violate equal protection “if no inquiry of the availability of shelter space is made prior to an individual's arrest” for camping on public property).

Fourth, the proposed camping law likely violates the Fourteenth Amendment’s Due Process Clause. Substantive due process protects a person from arbitrary, wrongful government action regardless of the fairness of the procedures used to implement them. Courts have suggested that it may violate substantive due process to outlaw sleeping in public where—as is likely here—there are insufficient alternatives. *See, e.g., McArdle v. City of Ocala*, 418 F. Supp. 3d 1004, 1008 (M.D. Fla. 2019) (denying City’s motion to dismiss plaintiffs’ substantive due process claim that the City was using the law to arrest and incarcerate unhoused people for sleeping or resting while awake because they were homeless).

Last, but not least, implementing measures like HB 713 and SB 535 would deny Georgia the ability to take advantage of federal funding. Just this June, the White House and the U.S. Department of Housing and Urban Development (HUD) launched the Initiative for Unsheltered and Rural Homelessness, a package of resources aimed at helping communities implement coordinated approaches for solving unsheltered homelessness. The Initiative provides \$365 million in funding towards Continuum of Care grants and new Housing Choice Vouchers to be set aside specifically for people experiencing or at risk of experiencing homelessness and people fleeing or attempting to flee domestic violence or sexual assault. The competitive grant will prioritize proposals that incorporate persons with lived experience of homelessness in planning and implementation, and which take an evidence-based, Housing First approach. HUD Secretary Marcia Fudge said of the Initiative’s launch, “We have a responsibility to ensure that people sleeping in their vehicles, in tents, or on the streets, including in rural areas, have access to decent, stable housing and services, like health care and treatment, to live with dignity and safety.” These resources offer a more constructive, evidence-based approach to unsheltered homelessness, and these bills would harm communities by preventing them from benefiting from them because they require prioritizing non-Housing First based measures. HUD is also offering technical assistance and peer-community resources through its [House America](#) program to help communities take advantage of CARES Act and American Rescue Plan dollars, including State and Local Fiscal Recovery Funds, which Augusta and East Point, GA are both participating in already. Criminalization will not end homelessness. It will merely use taxpayer money to shift the homeless population to the edges of our communities, or worse, to jail or modern-day asylums. Constructive approaches like the HUD Initiative offer promise of a lasting solution, which can only come with provision of adequate, affordable housing in our communities.

We all want to end homelessness in our communities and the choices this Committee makes will help define our community, and whether we make progress to achieving that goal or instead perpetuate homelessness and its harms. The template legislation that the Cicero Institute is trying to promote in Georgia would make it a crime to be homeless, with police forced to arrest those who simply don’t have a place to live and local communities penalized with the loss of funds for opting not to enforce criminal ordinances. No matter your race or background, people don’t choose to be homeless. Criminalizing unhoused people who are trying to shelter themselves on public property without providing additional housing units just displaces people experiencing homelessness, risks the destruction of property, and inevitably leads to subsequent encampments. Criminalizing homelessness likewise contradicts CDC guidance, controlling federal precedent, and the U.S. Constitution. Arresting or institutionalizing people experiencing homelessness isn’t the answer. So we hope this Committee will take the bold steps needed to make sure all Georgians will have a place to call home, so that they aren’t on the streets in the first place, and we welcome

any further inquiries from the Committee. Please contact Eric Tars, Legal Director, National Homelessness Law Center, etars@homelesslaw.org, 202-464-0034 with additional questions.

Submitted respectfully,

National Homelessness Law Center
National Coalition for the Homeless
National Health Care for the Homeless Council
Corporation for Supportive Housing
National Alliance to End Homelessness
Fundors Together to End Homelessness
National Low Income Housing Coalition
A Way Home America
National Coalition for Homeless Veterans