

**U.S. Court of Appeals Case Nos. 21-55408, 21-55404, 21-55395  
(Consolidated)**

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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**LA ALLIANCE FOR HUMAN RIGHTS, et al.**  
*Plaintiff and Appellee,*

v.

**CITY OF LOS ANGELES, et al.**  
*Defendant-Appellants.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
Honorable David O. Carter, United States District Judge  
Dist. Ct. Case No. 2:20-cv-02291-DOC-KES

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**AMICUS BRIEF OF SCANPH, CSH, AND NON PROFIT AFFORDABLE  
HOUSING DEVELOPERS IN SUPPORT OF APPELLANTS**

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## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1, Mercy Housing California states that its parent corporation is Mercy Housing, Inc. SCANPH, CSH, and the other Developer *Amici* state that they do not have a parent corporation. All *Amici* state that no publicly held corporation owns 10% or more of their stock.

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## **INTEREST OF *AMICI CURIAE***

*Amicus Curiae* Southern California Association of Non Profit Housing (“SCANPH”) is a membership organization that has supported and advocated for organizations and individuals who develop and sustainably operate affordable and supportive housing since 1985. With more than 1500 organizational-based members and 4000 affiliated constituents, SCANPH works to identify, prioritize, strategize, and lead policy efforts intended to create an environment conducive to affordable housing and supportive housing. SCANPH’s members have produced tens of thousands of apartments and houses that provide housing and services to economically disadvantaged individuals. The vast majority of SCANPH’s members, and the homes they build and manage, are located in Los Angeles County. SCANPH members serve people with disabilities, people who have experienced homelessness, recently homeless, seniors on fixed-incomes and working families.

*Amicus Curiae* Corporation for Supportive Housing (“CSH”) is a community development financial institution (“CDFI”), which is a private, nonprofit organization dedicated to delivering responsible, affordable lending to help low-income, low-wealth, and other disadvantaged people and communities. CSH is a national leader in advancing supportive housing as a more equitable, cost effective and humane model for ending cycles of homelessness. For the past 30

years, CSH’s mission has been to promote solutions that use housing paired with voluntary supportive services to improve the lives of the most vulnerable people in the community, including people who have experienced homelessness. CSH advances this mission through education, consulting, and engaging government leaders and public agencies through systems reform and policy collaboration and advocacy. CSH also provides loans for projects where at least 10% of the units will be targeted to supportive housing residents.

*Amici Curiae* A Community of Friends (“ACOF”), LTSC Community Development Corporation (“LTSC”), Abode Communities, Venice Community Housing (“VCH”), Mercy Housing California (“Mercy Housing”), and Hollywood Community Housing Corp. (“HCHC”) and LA Family Housing (collectively, “Developer *Amici*”) are all non-profit organizations whose missions include the development of supportive and affordable housing for low-income and economically disadvantaged individuals, including individuals who have experienced homelessness:

- ACOF: ACOF was founded in 1988 and was the first agency to successfully implement the permanent supportive housing model through LA County. Its focus is to build housing for people experiencing homelessness with a mental health disability. ACOF has completed 51 apartment communities, all but two of which are

supportive housing developments. ACOF currently houses over 2,700 individuals and families in its buildings, and has a pipeline of 624 units of permanent housing.<sup>1</sup>

- LTSC: LTSC's focus is on promoting community control and self-determination in Little Tokyo, which is located in Downtown Los Angeles adjacent to Skid Row, and, along with its partners, continuing to provide social services to those in need. Among its other projects, LTSC builds and acquires property for rehabilitation in order to put affordable housing within reach for Angelenos.
- Abode Communities: Founded in 1968, Abode Communities is a nonprofit social enterprise that has been rooted in community development throughout California. Abode Communities' mission is to create service-enhanced affordable housing and socially beneficial community facilities. The organization owns and operates 2,712 affordable homes, including 441 supportive housing units in the County of Los Angeles. Its development pipeline includes another

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<sup>1</sup> Organizations often partner with each other on affordable and supportive housing projects. Accordingly, any numbers in this brief regarding the number of individuals housed, or units developed or funded, by any particular *Amicus*, developer, or funder could include projects involving multiple organizations, including multiple of the *Amici*.



1,133 affordable homes, including 599 supportive housing units in LA County. This supportive housing pipeline is very reliant on HHH funding to reach fruition.

- VCH: VCH has been developing (and continues to develop) lasting, neighborhood-based solutions for low-income families and individuals for more than 28 years. VCH currently owns and manages 216 units of non-profit affordable and supportive housing throughout the Venice, Mar Vista and Del Rey neighborhoods in the City of Los Angeles, home to about 500 individuals, and has more than 200 new units in its pipeline.
- Mercy Housing: Mercy Housing is one of the nation's largest affordable housing organizations. Its mission is to create stable, vibrant, and healthy communities by developing, financing, and operating affordable, program-enriched housing for families, seniors, and people with special needs who lack the economic resources to access quality, safe housing opportunities. Mercy Housing has developed over 23,000 affordable homes that currently serve over 34,000 people.
- HCHC: Founded in 1989, HCHC was among the first affordable housing developers to recognize the importance of combining

supportive services with housing. It has developed and operates 31 properties, creating more than 1,153 units of safe, affordable housing serving over 2,500 people throughout Los Angeles County.

- LA Family Housing: LA Family Housing helps people transition out of homelessness through a continuum of housing enriched with supportive services. LA Family Housing's current portfolio includes 27 properties, which provide housing for thousands of people each year. It also has 13 properties currently in the pipeline, which will create more supportive homes for vulnerable groups, including transition age youth, veterans and their families, and single women experiencing homelessness.

As *Amici* are among the organizations primarily responsible for building the affordable and supportive housing necessary to end cycles of homelessness in Los Angeles, *Amici* have a strong interest in ensuring that the conditions for continued (and expanded) development of affordable and supportive housing<sup>2</sup> are in place.

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<sup>2</sup> For ease of reference, this brief will refer to both affordable housing and supportive housing as “permanent housing.” Affordable housing, under widely accepted federal and state standards, is housing for households earning less than 60 percent of area median income for which the household is not required to spend more than 30 percent of its income on rent. Supportive housing, as noted above, is housing for individuals and families who have been homeless and whose affordable housing is combined with services, such as mental health or case management services.

The District Court’s injunction, however, threatens to shift the resources that the City and County of Los Angeles have chosen to devote to the building of permanent housing toward the building of temporary shelters instead.<sup>3</sup> The injunction sets up a false dichotomy between temporary shelter and permanent housing, both of which are important in addressing homelessness. It has also created great uncertainty among the affordable housing community (including organizations that provide services to individuals experiencing homelessness, affordable and supportive housing developers, contractors, architects, financial institutions, and other public and private funding agencies) regarding their ability to depend both on funding and land transfers from the City and County of Los Angeles. *Amici’s* experience both directly building and lending for over 130,000 permanently affordable housing units in the County that are home to those who have experienced homelessness and those who would otherwise be at risk of homelessness will aid the Court in evaluating whether the District Court abused its discretion in entering an injunction that will likely require Los Angeles to divert resources from permanent housing.

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<sup>3</sup> For the purpose of this brief, “temporary shelter” shall be used to refer to all interim solutions that are time limited being discussed in this case, including permanent shelter sites, temporary shelter sites such as the A Bridge Home program, safe camping, tiny homes, etc.

All parties have consented to the filing of this brief. No part of this brief was authored by counsel to any party, and no person other than *Amici Curiae* or their counsel made a monetary contribution to the preparation or submission of this brief.

## **ARGUMENT**

*Amici* agree with the District Court about the magnitude of the humanitarian crisis unfolding on the streets of Los Angeles. As organizations devoted to the development and preservation of supportive and affordable housing, *Amici* are well aware of the obstacles to the construction of the permanent housing that is crucial to ending homelessness in LA—they confront those obstacles every day. But the District Court’s injunction is not a solution to the problem. To the contrary, by privileging quick but temporary measures to address homelessness (without any plan for transitioning people out of those temporary solutions), it threatens to set Los Angeles back on the very real progress the affordable housing community has made in advancing permanent solutions to end homelessness.

The District Court ordered the City and County of Los Angeles (collectively, “Los Angeles” or “LA”) to offer shelter or housing to every resident of LA’s Skid Row, conduct an audit of all funds intended to help alleviate homelessness, and place \$1 billion in escrow. The injunction also froze the sale and transfer by lease

of thousands of City and County properties.<sup>4</sup> Temporary shelter, in the District Court's view, can address the immediate crisis; long-term housing can come later.

While temporary shelters provide an immediate and short-term solution to providing shelter, they do not address the root causes of homelessness that the District Court itself raised. Individuals living in temporary shelters still do not have a permanent home; they are still experiencing homelessness. Temporary shelter, without a permanent housing exit, is a false solution: It purports to solve the problem, but actually does not. That is why the City and County need to continue to invest in permanent solutions—alongside investment in services and temporary shelters.

Permanent housing offers an apartment with a lock and key for security, a kitchen, a bathroom, privacy, and appropriate health and life services to ensure future stability and health. Without permanent housing, individuals will be merely cycling through shelter—stuck in limbo indefinitely or eventually back on the street. Permanent housing is a proven housing intervention to end homelessness. While *Amici* agree wholeheartedly that there is an important role for the City and County to play in the provision of shelter, such temporary shelter cannot come at the expense of permanent homes: We need both.

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<sup>4</sup> While the District Court has stayed the escrow requirement and the land-transfer freeze, it has not removed them from the injunction.

In a world of limited resources, however, the injunction reinforces the zero sum game. *Amici* strongly believe that, by requiring the City and County to immediately offer housing or shelter to thousands of Skid Row residents, the injunction will pull away land, financial, and human resources that the City and County have chosen to devote to the construction of permanent affordable and supportive housing. This redirection is inconsistent with the voters' mandate in passing Proposition HHH, the primary intent of which was to facilitate the construction of permanent supportive housing. The injunction's call for an audit of, and new procedures for, the funding of permanent housing has also created confusion regarding what City and County money will remain available to fund both current and future permanent housing projects. *Amici* depend on funding from the City and County not only to fund their (and for SCANPH, its members') efforts, but also to leverage *other necessary* sources of funding.

The District Court's injunction has shrouded the future availability of City and County land and funds in uncertainty. *Amici*, their lenders, and their investors simply do not know whether they will be able to depend on City and County funding or land—not only for projects planned for the future, but also for those already underway. This uncertainty has real consequences: While *Amici* are doing what they can to hasten the pace of development, there is no type of housing that can be built overnight. Permanent affordable and supportive housing requires

multiple sources of funding, and it always requires long-term planning—planning that the injunction has made more difficult to do.

In attempting to solve one set of problems, the District Court has created another. *Amici* therefore respectfully request that this Court vacate the injunction.

**A. *Amici* Agree With The District Court That Homelessness Is A Rapidly Escalating Crisis, With Its Roots In More Than A Century Of Systemic Racism.**

The District Court called the homelessness crisis in Los Angeles an “ever-worsening public health and safety emergency [that] demands immediate, life-saving action.” (1-ER-99). *Amici* completely agree. *Amici* are organizations devoted to facilitating or developing the supportive and affordable housing that has been proven to help lead people out of homelessness. In fact, studies have reinforced supportive housing as an evidence-based practice to ending homelessness. *Amici* have witnessed firsthand the tragic consequences when individuals are denied access to safe, affordable, permanent housing—for the individuals experiencing homelessness, for their families, and for the broader community. But LA’s homelessness and affordable housing crisis cannot be fixed overnight, or by replacing permanent solutions with temporary ones when LA needs both.

It is impossible to understate the magnitude of LA’s homelessness crisis. The number of LA residents who are experiencing homelessness has increased

dramatically in the past decade, and, as the District Court explained in depth, communities of color are suffering the most, particularly Black people. LA's homelessness crisis did not develop overnight; it grew out of more than a century of entrenched, institutional systems of racialized exclusion and displacement, including discrimination in housing and mortgage lending. The result is that while only eight percent of Angelenos are Black, **42 percent** of Angelenos experiencing homelessness are Black.<sup>5</sup>

*Amici*, like the District Court, are deeply troubled by the ever-worsening homelessness and affordable housing crisis in Los Angeles, and by the disproportionate impact of that crisis on Angelenos of color. But such a complex problem cannot be solved with an order like the District Court's injunction. *Amici* and other members of the housing community have long been working to facilitate the construction of permanent housing—as well as to provide temporary shelter and services to those who need them. The District Court's injunction disrupts this process, and threatens to undermine *Amici*'s and others' efforts to facilitate the construction of the permanent housing that the City and County desperately need to end the cycle of homelessness.

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<sup>5</sup> See Jugal K. Patel, *et al.*, *Black, Homeless and Burdened by L.A.'s Legacy of Racism*, N.Y. TIMES (Dec. 22, 2019), available at <https://www.nytimes.com/interactive/2019/12/22/us/los-angeles-homeless-black-residents.html> (cited in 1-ER-36).



**B. LA’s Homelessness And Housing Affordability Crisis Cannot Be Ameliorated Without Permanent Affordable Housing Solutions.**

The District Court found that the “deliberate, political choice to pursue the development of long-term supportive housing at the expense of interim shelters to get people off the streets in the near-term” was “[t]he strongest evidence for a state-made danger[.]” (1-ER-106). But there is no evidence in the record to support the conclusion that constructing permanent housing “affirmatively places [people] in a position of danger” or “exposes an individual to a danger which he or she would not otherwise have faced.” *Johnson v. City of Seattle*, 474 F.3d 634, 639 (9th Cir. 2007) (internal quotation marks and alterations omitted). To the contrary, permanent housing has been repeatedly shown to *improve* the well-being of individuals experiencing homelessness. The District Court therefore abused its discretion in finding LA created a state-made danger by choosing to devote resources to permanent housing. *See Garcia v. Google, Inc.*, 786 F.3d 733, 739 (9th Cir. 2015) (en banc) (preliminary injunctions are reviewed for abuse of discretion).

## **1. Only Permanent Homes Can End The Cycle Of Homelessness.**

Temporary shelter helps address some individuals' immediate needs.<sup>6</sup> But temporary shelters can only do so much. There must be permanent affordable housing available for people to live in once they leave those shelters—and to prevent people from slipping into homelessness in the first place.

Permanent supportive housing is a proven housing intervention that ends homelessness. Investment in permanent housing can be both more effective than investment in temporary shelters, and less costly. Formerly homeless people benefit from living in permanent supportive housing—and decrease public health costs. Multiple studies, for example, have found that permanent supportive housing and housing first interventions reduce psychiatric and medical inpatient hospitalizations, and lower emergency room visits, for chronically homeless individuals.<sup>7</sup>

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<sup>6</sup> The construction phase of building temporary shelter may be faster than that of permanent housing, but temporary shelter still takes time to build, and often faces political opposition. For example, a site for temporary shelter in Koreatown had to be moved following protests about the original location. See Victoria Kim, *After Protests and Talk of a Recall, Wesson and Korean American Community Agree on Shelter Site*, Los Angeles Times, (Aug. 3, 2018), available at <https://www.latimes.com/local/lanow/la-me-koreatown-homeless-20180803-story.html>.

<sup>7</sup> Hail Toros, *et al.*, *LA County's Homeless Initiative: Annual Performance Evaluation Year 4 Outcomes* (Jan. 2012) (4-ER-715 & n.17).

As a result, while people residing in shelters or living on the streets incur significant public costs, *people living in supportive housing are able to reduce public costs*. For example, one study found that the permanent supportive housing program that was the subject of the study had stably housed more than 96 percent of program participants.<sup>8</sup> And even after accounting for the cost of providing permanent supportive housing, the net public cost to the county per resident was 20 percent lower on average in the year after a resident was housed than the prior year.<sup>9</sup> Similarly, the Family Options Study, commissioned by the U.S. Department of Housing and Urban Development (“HUD”), showed that temporary shelter interventions were far more expensive than subsidies for permanent housing.<sup>10</sup> Housing subsidies through rental vouchers to private market landlords provided significant benefits to families as compared to emergency shelter interventions.<sup>11</sup> Families connected to shelter repeatedly fell into homelessness over the three-year

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<sup>8</sup> Sarah B. Hunter, *Housing for Health: Los Angeles County’s Department of Health Tackles Homelessness with an Innovative Housing Program That Saves Money*, The Rand Blog (Jan. 18, 2018), available at <https://www.rand.org/blog/2018/01/housing-for-health-los-angeles-countys-department-of.html> (cited at 8-ER-1720 n. 42).

<sup>9</sup> *Id.*

<sup>10</sup> Daniel Gubits, *et. al.*, *Family Options Study: 3-Year Impacts of Housing & Services Interventions for Homeless Families* U.S. DEPT. OF HOUSING & URBAN DEV. OFFICE OF POLICY DEV. & RESEARCH, (Oct. 2016) at 111–112, available at <https://www.huduser.gov/portal/sites/default/files/pdf/family-options-study-full-report.pdf>.

<sup>11</sup> *Id.* at 45.

period of the study.<sup>12</sup> In contrast, families receiving permanent housing subsidies had less than one-half the incidence of homelessness than the families living in shelters.<sup>13</sup> Families living in permanent housing reported significantly reduced drug and alcohol use, reduced incidence of intimate partner violence, better school attendance and reduced behavioral issues among children, and greater food security than families living in emergency shelter.<sup>14</sup> Moreover, the monthly costs of housing subsidies averaged \$1,172 per month, whereas the monthly costs of shelters totaled \$4,819.<sup>15</sup>

Indeed, permanent housing is integral not only to providing permanent housing for LA's unhoused residents, but also to allow LA to more effectively use its temporary shelters: Absent a permanent housing solution, individuals will likely remain in temporary shelters longer, occupying a bed that could otherwise have gone to a different unhoused LA resident.<sup>16</sup>

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<sup>12</sup> *Id.* at 121.

<sup>13</sup> *Id.* at 122.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 112.

<sup>16</sup> See Los Angeles Housing Authority, *Homeless Services System Analysis: Envisioning an Optimal System in Los Angeles* (March 2020) at 24, available at <https://www.lahsa.org/documents?id=4311-homeless-services-system-analysis-envisioning-an-optimal-system-in-los-angeles>.

## **2. The Lack of Sufficient Permanent Affordable Housing In LA Is One Of The Primary Causes Of Homelessness.**

There is a direct link between housing affordability and homelessness:

According to a presentation by the Zillow Group, a 5% increase in the cost of rent in LA results in an additional 12,000 LA residents falling into homelessness.<sup>17</sup>

Even before the COVID-19 pandemic, which has worsened the economic conditions for those with the lowest incomes, 600,000 Los Angeles County residents living in poverty paid more than 90% of their income towards housing.<sup>18</sup>

These households are one emergency away from homelessness. There can be no real dispute that Los Angeles is in urgent need of affordable homes. The average rent for a 2-bedroom apartment in Los Angeles County is about \$2,182 per month, which is sustainable only for families with an annual income of at least \$87,276 per year.<sup>19</sup> A worker supporting a family on the local minimum wage would have to work 145 hours per week to make that much.<sup>20</sup> As of 2019, there was a 517,000

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<sup>17</sup> *Id.* at 14.

<sup>18</sup> Daniel Flaming, *et al.*, *Escape Routes: Meta-Analysis of Homelessness in LA*, Economic Roundtable, (April 24, 2018), available at <https://economicrt.org/publication/escape-routes/> (3-ER-551–664).

<sup>19</sup> SCANPH, *Local Housing Wage Report: County of Los Angeles* (2021), available at <https://static1.squarespace.com/static/58793de5f7e0abe551062b38/t/60417d2bf7a842588caa83cb/1614904619943/Local+Wage+Los+Angeles+County+2021.pdf>.

<sup>20</sup> *Id.*

unit gap between the affordable rental homes needed by renters at or below 50% of the area median income.<sup>21</sup> Temporary shelters cannot close this gap. The creation and preservation of permanent affordable housing units can.

The voters in the City and County recognized the importance of permanent housing when they approved Proposition HHH in 2016 and Measure H in 2017, which provides funding for both temporary shelter and permanent housing. Proposition HHH was a ballot measure in the City “to finance the acquisition or improvement of real property to provide[] supportive housing for extremely low income or very low income individuals and families who are homeless or chronically homeless...; temporary shelter facilities ... [for] those who are homeless, chronically homeless or at risk of homelessness; [and] affordable housing, including veterans housing, for extremely low income, very low income and/or low income individuals and families, including those who are at risk of homelessness[.]” *See* Proposition HHH at 1.<sup>22</sup> It authorized \$1.2 billion in general obligation bonds to build “safe, clean affordable housing for the homeless and for those in danger of becoming homeless[.]” *See* Proposition HHH, Ballot Summary

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<sup>21</sup> LA County’s Homeless Initiative at 6-ER-1358.

<sup>22</sup> *Available at* <http://clkrep.lacity.org/election/final%20homelessness%20hhh%20for%20web.pdf>

at 1.<sup>23</sup> Measure H was a County ballot measure that authorized a 1/4 percent increase to the County's sales tax to provide an ongoing revenue stream to fund services for people experiencing homelessness, rental and housing subsidies, and emergency and affordable housing to combat homelessness countywide.<sup>24</sup> Together, these funding sources are historic, multi-year, voter-approved investments in the comprehensive solutions needed, including services and permanent housing, to solve homelessness.

### **3. While Constructing Permanent Affordable And Supportive Housing Takes Time And Money, Permanent Housing Is A Public Good That Will Last For Decades.**

The District Court expressed frustration with the pace of development projects that have been completed using funds from Proposition HHH. But Proposition HHH was intended as a ten-year plan, and Los Angeles is only five years in. Even so, 111 projects using Proposition HHH funds have already been approved, and another 13 projects are in the pipeline as a result of the HHH Housing Innovation Challenge.<sup>25</sup> Project HHH is on track to create almost 8,000

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<sup>23</sup> Available at <http://clkrep.lacity.org/election/final%20homelessness%20hhh%20for%20web.pdf>

<sup>24</sup> Los Angeles County Homeless Initiative, History, available at <https://homeless.lacounty.gov/history/>.

<sup>25</sup> Ann Sewill & Los Angeles Housing + Community Investment Department, Memorandum re: Possible Allocation Guidelines for Remaining HHH Funds (Jan. 7, 2021) at 1, available at <https://cao.lacity.org/Homeless/PropHHHAOC-20210225c.pdf>.

housing units over the ten-year life of the plan.<sup>26</sup> Although the number of units is below the need, with more people falling into homelessness each year, Proposition HHH is accomplishing what it was intended to accomplish—facilitating the construction of thousands of units of affordable and supportive housing.

Further, the construction of affordable and supportive housing takes time due to the involvement of multiple regulatory and funding processes. A typical project may take five or six years to complete, including several years of pre-development work before construction even begins. Typically, developers must:

1. Identify a site for the project, often in competition with other buyers, and acquire land (through sale, lease, or otherwise);
2. Conduct due diligence;
3. Secure entitlements (i.e., legal rights conveyed by approvals from various governmental entities to develop property);
4. Assemble multiple financing sources, such as Proposition HHH funding (generally between three and five), often including applying for competitive low-income housing tax credits to complete the financing;

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<sup>26</sup> *Id.*



5. Build community support and/or respond to community opposition, lawsuits and appeals;
6. Manage the design process, oversee the preparation of construction documents, and shepherd the plans through the plan check process;
7. Manage the raising construction costs to ensure project feasibility; and
8. Actually build the units.

Each step of the process takes several months, in the best-case scenario, and several of the steps must be taken sequentially, rather than concurrently.

Often, developers will seek to secure the entitlements they need prior to seeking funding, since having the entitlements in place are either required or will substantially strengthen a developer's funding application. However, this means that some developers will have taken substantial risk by investing hundreds of thousands of dollars—or more—into a project even before applying for certain public funding sources. Developers have made this investment in reliance on the continued availability of HHH funding for permanent supportive housing.

Securing funding from government sources often comes with separate regulatory requirements. Further, funding sources have different timelines and are competitive, and developers usually end up applying for different funding sources sequentially, not simultaneously. If a developer's application to a particular funding source is rejected due to competitiveness and/or limited funding

availability, a housing project's completion can be delayed significantly. The developer will have to identify new funding sources or wait for the funding round of another source to begin again.

In addition to criticizing the amount of time it takes to build permanent housing, the District Court also decried the cost of permanent affordable and supportive housing. But the entire cost of affordable housing is not being borne by LA: Rather, for HHH projects, the City of LA pays an average \$130,000 per unit, and developers then leverage those funds to secure hundreds of thousands of dollars per unit (on average, more than \$400,000) from **other** sources (outside of LA).<sup>27</sup> Regardless, part of the reason why units built using public funding are more expensive is because governmental sources come with a complex array of different requirements.

Lastly, constructing permanent housing is more cost-effective than temporary shelters. *See* Section B.1, *supra*. If the injunction stands, and LA is forced to spend all of its money on temporary shelters (with no plan for constructing the permanent housing necessary for people to transition out of those shelters), it will be back where it started when the money runs out: Some Angelenos experiencing homelessness will have received short-term shelter, but

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<sup>27</sup> *Id.* at 2, 5.

they will not have anywhere to go in the long-term. Permanent affordable and supportive housing, on the other hand, is a public asset generally required to be affordable for at least 55 years, and a proven and necessary housing intervention for ending homelessness.

*Amici* understand the District Court’s frustration with the current time and expense of building affordable and supportive housing—they themselves are often similarly frustrated, and would welcome the opportunity to work with the City and County on ways to reduce cost and expedite the time frame for affordable housing development.<sup>28</sup> But that frustration cannot change the fact that building more permanent affordable homes—along with providing services, preserving existing permanent housing, and adopting robust policies to keep current tenants housed—is a proven way to end cycles of homelessness. These are the policy decisions that, after a robust process, the City and County—and not the District Court—must make.

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<sup>28</sup> LA is already working to streamline the process for developing permanent affordable and supportive housing. For example, in 2018, the City of Los Angeles passed a supportive housing ordinance, which amends the Los Angeles municipal code to facilitate the production of permanent supportive housing. *See* Ordinance No. 185492, *available at* [https://clkrep.lacity.org/onlinedocs/2017/17-1422\\_ORD\\_185492\\_05-28-2018.pdf](https://clkrep.lacity.org/onlinedocs/2017/17-1422_ORD_185492_05-28-2018.pdf).

**C. The District Court’s Injunction Is Causing Significant Uncertainty For The Development Of Affordable And Supportive Housing In Los Angeles.**

The District Court’s injunction has thrown the affordable housing ecosystem off balance. Building affordable housing in LA requires the cooperation of many different actors, such as: The affordable housing developers themselves; government sources of funding, including the City and County of LA, the State of California, and the federal government; and the banks and other lenders and investors who provide the remaining funds.

Funding from the City and County of Los Angeles plays a vital role. For example, one of SCANPH’s members with development projects in progress in LA that will build 442 units relies on City and County funding for all of its projects, with about 10% to 20% of each project’s budget coming from the City or County. Another of SCANPH’s members—whose current projects will create more than 200 affordable housing units in the City of Los Angeles—relies on LA funding to cover from about 30% to 80% of each project’s budget.

SCANPH’s members and Developer *Amici* have spent millions of dollars on predevelopment work (including some who have taken out loans)—such as finding and purchasing or leasing housing sites, hiring architects, hiring engineers, hiring entitlement consultants, and performing environmental testing—in reliance on the continued availability of funding from LA. Developers cannot simply or easily

replace any missing LA funds with other sources of funding. As noted above, SCANPH's members and *Amici* use LA funding, including funding provided under Proposition HHH, not only to pay some of the costs of the development of permanent housing, but also to leverage other hundreds of thousands of dollars of financing from other sources. Some smaller projects may have three to four different funding sources. A larger project may have eight. If City and County funding were not available, many of these other sources of funding would also be jeopardized. Many sources of funding are available only **after** funding from the City and or County of LA has been secured.

Many development projects built on public land also depend on a transfer of land or a lease from the City or County. For example, one of SCANPH's members currently has one out of five projects currently in pre-development or development dependent on a transfer of land or a lease from the City of Los Angeles; for one of the projects, the member needs an executed lease with the City in order to apply for other funding sources.

But the District Court's injunction bars the City from transferring or leasing thousands of City-owned properties for future projects. (1-ER-107). It also requires the City to put **\$1 billion** in escrow, conduct an audit of how housing funds have been spent, and develop new procedures for HHH funding in the future. (*Id.* at 106–107). And it orders LA to offer shelter or housing to thousands of Skid

Row residents on extremely short timelines. Because of the timelines, LA will likely have no choice but to offer only temporary shelter to the vast majority of Skid Row residents—with no guarantee the residents will accept that shelter, and no plan for transitioning those residents to permanent housing or ensuring that the enormous amount of resources dedicated to providing such temporary shelter does not come at the expense of permanent solutions. (*Id.* at 108–109).

The injunction has therefore created significant uncertainty in the affordable and supportive housing community regarding developers’ ability to depend on the City and County both to provide the required land and funding for projects to which the City and County have already committed funds, and future projects. Some of *Amici* and SCANPH’s members have been fielding questions from their investors and lenders about the organizations’ ability to meet their financial commitments, including commitments on projects that are already underway.

Development projects take years to complete, and millions of dollars are invested even before construction begins.<sup>29</sup> This uncertainty is therefore both a short-term and a long-term problem. In the short-term, *Amici* do not know what effect the order may have on their current projects.

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<sup>29</sup> This is true for most development projects, not just affordable and supportive development projects.

The long-term effects could be much worse. By forcing the City and County to focus solutions on shelter and potentially slow down development of permanent housing, the District Court’s order risks existing land and funding resources being used for other purposes. It is not clear what the District Court intends to happen with the \$1 billion that it has ordered the City of LA to put in escrow. It is not clear what the District Court intends to happen with the audit of “all funds received from local, state, and federal entities” to aid LA in solving or alleviating the problem of homelessness, the “investigations and report” it has ordered into all developers currently receiving funds from Proposition HHH, or the “revised procedures” for evaluating future applications in connection with that report.<sup>30</sup> It is not clear how long the District Court’s ban on sales or transfer of City properties (once the stay is lifted) will last. And it is not clear where the District Court expects the City and County to find the resources to offer temporary shelter or housing to all residents of LA’s Skid Row—although *Amici* strongly suspect that it would require a significant diversion of resources (and limited land) away from new permanent housing.

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<sup>30</sup> Indeed, Proposition HHH already requires an annual financial audit, *see* Proposition HHH, Ex.1 at 3, and other funding sources often have their own documentation or audit requirements, *see, e.g.*, California Code of Regulations, Title 4, Division 17, Chapter 1 § 10322(i).

What is clear is that if developers, lenders, and investors believe that they cannot rely on the City and County of Los Angeles, they may be more reluctant to pursue or fund affordable housing projects in Los Angeles. How can a nonprofit developer or an investor commit the dollars and person-hours needed before construction even begins, if it is not sure whether it can count on the City and County to deliver the funding and/or land needed to get that project across the finish line? It is already difficult to build affordable housing in Los Angeles. Any added uncertainty threatens to set the construction of permanent housing back even further.

The real danger of this injunction is therefore not only to existing housing development projects. The real danger is that future projects may not even get started, and those that do get started may take even longer to complete. The injunction would force the City and County to shift resources indefinitely away from permanent solutions and toward interim solutions primarily, resulting in a costly shelter system and the same (or greater) levels of homelessness that LA has now. That is a risk that LA—and the tens of thousands of Angelenos that do not have access to safe and affordable housing today—cannot afford.

## **CONCLUSION**

The construction of more permanent affordable and supportive housing, along with providing services and other preservation and tenant protection policies,



is a proven long-term housing intervention to end LA’s homelessness crisis. While *Amici* recognize that *safe, short-term, high-quality* shelter is superior to living on the street, it does not represent a solution to the homelessness crisis if the production of permanent housing is sacrificed for a temporary band aid. *Amici* are working to find ways to responsibly increase funding and reduce existing barriers to such construction. The injunction, however, threatens to do the opposite. It creates significant uncertainty regarding whether City and County funds and land will continue to be available for permanent affordable and supportive housing projects—whether because the funds are required to be held in escrow or because they must be diverted to comply with the order’s mandates regarding Skid Row. *Amici* respectfully request that the Court vacate the injunction.

DATED: June 10, 2021

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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