

IN THE SUPREME COURT OF UTAH

No. 20240346-SC

DANIELLE BARRANI; KADRI BARRANI; LIESA COVEY; SCOTT EVANS;
JIM GRISLEY; JUAN GUTIERREZ; CLOTILDE HOUCHON; DAVID
IBARRA; and RANDY TOPHAM, individuals and Utah entities,

Plaintiffs/Appellants,

v.

SALT LAKE CITY, a Utah municipal corporation,

Defendant/Appellee.

On Appeal from the Third Judicial District Court
Hon. Andrew H. Stone, Judge No. 230907360

**BRIEF OF AMICI CURIAE DISABILITY RIGHTS
EDUCATION AND DEFENSE FUND AND
DISABILITY LAW CENTER IN SUPPORT OF
DEFENDANT/APPELLEE**

Maria Michelle Uzeta*
DISABILITY RIGHTS EDUCATION
AND DEFENSE FUND
3075 Adeline Street, Ste. 210
Berkeley, CA 94703
muzeta@dredf.org

Laura Henrie
DISABILITY LAW CENTER
960 South Main Street
Salt Lake City, Utah 84101
lhenrie@disabilitylawcenter.org

* *Pro hac vice motion forthcoming*

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NOTICE AND CONSENT PURSUANT TO RULE 25(e)

Counsel for the parties received timely notice of this brief. All parties consented to the brief's filing.

INTEREST OF AMICI CURIAE¹

Amici are nonpartisan, national and Utah-based non-profit disability rights organizations that promote and advance the rights of disabled people to participate fully and equally in all aspects of society, and to live with dignity, free from discrimination.

The **Disability Rights Education and Defense Fund (“DREDF”)** is a national non-profit law and policy organization dedicated to protecting and advancing the civil rights of people with disabilities. Based in Berkeley, California, DREDF has remained board- and staff-led by people with disabilities since its founding in 1979. DREDF pursues its mission through education, legal advocacy, and law reform efforts, and is nationally recognized for its expertise in the interpretation of federal disability civil rights laws. DREDF has particular interest in and expertise regarding the rights of unhoused people with disabilities and has participated as *amicus* in cases before the U.S. Supreme Court and the Ninth Circuit involving those issues. *See, e.g., City of Grants Pass, Oregon v. Johnson*, 144 S. Ct. 2202, 2226 (2024) (*amicus curiae*); *Sabrina Beram v. City Of Sedona*, No. 23-15912 (9th Cir.) (appeal pending) (*amicus curiae*).

¹ No party or party’s counsel authored this brief in whole or part, and neither they nor anyone else other than the *Amici*, their members, or their counsel, contributed any money intended to fund its preparation or submission.

The **Disability Law Center of Utah (“DLC”)** is the State’s designated Protection and Advocacy Agency. The DLC is a nonprofit legal organization that provides free legal services to Utahns with disabilities, with a mission to enforce and advance the legal rights, choices, and opportunities of Utahns with disabilities. The DLC advances this mission with various tools, including individual and systemic litigation and public policy advocacy. In addition, the DLC provides legal assistance to combat housing discrimination for all protected classes in Utah and, in our experience, providing housing and related services is a more effective approach to addressing homelessness than criminalization. Given the large overlap in the unhoused population and the disability community, the DLC has a strong interest in ensuring that this population does not face criminal or civil penalties, or face discrimination, merely for existing when they have no place else to go.

Amici have long studied the disparity in poverty and homelessness between people with and without disabilities, the grossly disproportionate impact municipal prohibitions on sleeping in public spaces have on people with disabilities, and the significant harm criminalization based on housing status causes people with disabilities. In *Amici*’s experience, providing housing and support services—as opposed to adopting carceral tactics—is most successful in reducing homelessness, and is a viable alternative to criminalization. Thus, *Amici* have a strong interest in ensuring that local governments such as Salt Lake City are not mandated to

aggressively enforce anti-camping ordinances against their unhoused residents—many of whom are disabled—for existing in public spaces, particularly when they have no adequate alternative place to go.

SUMMARY OF ARGUMENT

People with disabilities are disproportionately represented within the population of people who are unhoused.² Disabled people face unique challenges and deep-rooted stigmas that increase their risk of becoming—and remaining—unhoused, including a lack of accessible housing stock, rising housing costs, and pervasive discrimination.

Salt Lake City’s ordinances penalizing activity including camping in parks or on public grounds and obstructing the sidewalks by standing, lying or sitting for more than two minutes (“the Ordinances”) subject unhoused people to fines and, ultimately, criminal prosecution for simply existing within the City’s limits. But the members of Salt Lake City’s unhoused community do not choose to be unhoused. Rather, in a city with staggeringly unaffordable housing and not enough shelter beds or services, they have no alternative but to stand, sit, lie and sleep in

² Please note that *Amici* are using the word “unhoused” instead of “homeless” throughout this brief unless directly quoting sourced materials. This term has emerged as a preferred term by many individuals who are coping with housing insecurity because it better captures their situation. The word “home” is more than a physical space, it is composed of community, memories, and family, while a “house” is the actual structure that they’re living without.

parks or on the street. And because of their increased risk for homelessness, people with disabilities are more likely to face this conundrum.

Plaintiffs/Appellants (“Plaintiffs”) bring this case demanding far-reaching relief from the court; asking it to compel the City to abate “any and all nuisances caused by the unhoused” on any City property. R26-27, 48. This overbroad and unwarranted request would require clearing and dismantling existing encampments, relocating people—forcibly and/or under threat of citation and/or arrest—who are living there, and enforcing the Ordinances against City residents—many of whom are disabled—who are not named or otherwise involved or represented in this litigation.

Criminalizing people for existing in public spaces when they cannot afford housing and have no adequate, alternative place to go to is an ineffective approach to homelessness and a poor use of public funds. In the case of unhoused people with disabilities it may also violate their legal rights under longstanding anti-discrimination laws; rights that are not represented in this action and have not been meaningful considered. There are simply better ways to address homelessness in Salt Lake City than green-lighting mass sweeps, citations, and arrests—most notably, through the provision of housing and services.

ARGUMENT

1. People With Disabilities Are Disproportionately Represented In The Population Of People Who Are Unhoused.

According to the U.S. Department of Housing and Urban Development (“HUD”), nearly one in three unhoused individuals nationwide experience a chronic pattern of homelessness, “meaning that they have experienced homelessness for extended periods of time and have a disability.”³ Tanya de Sousa et al., U.S. Dep’t Hous. & Urban Dev., *The 2023 Annual Homelessness Assessment Report (AHAR) to Congress* 26 (Dec. 2023) (“HUD Report”). This is undoubtedly an *under-estimate*, as not all disabled people who are unhoused experience “chronic” patterns of homelessness or meet HUD’s definition of disability, which is more restrictive than that used in the Americans with Disabilities Act, the Rehabilitation Act, or the Fair Housing Amendments Act, among other anti-discrimination statutes.

Mental health conditions are prevalent. A 2018 survey of unhoused people found that 78% of respondents reported having mental health conditions. Jess Hallam, *Mental Health Disabilities and the Criminalization of Homelessness: Challenging Municipal Sit-Lie Ordinances as Disparate Impact Discrimination*

³ HUD defines an “individual experiencing chronic homelessness” is a person “with a disability who has been continuously experiencing homelessness for one year or more or has experienced at least four episodes of homelessness in the last three years where the combined length of time experiencing homelessness on those occasions is at least 12 months.” HUD Report 4.

Under the Americans with Disabilities Act of 1990, 45 N.Y.U. Rev. L. & Soc. Change 632, 643 (2022). Yet another study found that 25% of unhoused individuals reported a lifetime history of psychiatric hospitalizations. Margot B. Kushel et al., *Revolving Doors: Imprisonment Among the Homeless and Marginally Housed Population*, 95 Am. J. Pub. Health 1747, 1748 (2005).

Research also indicates that approximately 30-40% of people experiencing homelessness have a cognitive impairment, including Autism and/or Intellectual/Developmental Disabilities, and become unhoused later in life, most often due to death of the family caregiver. Michael Brown & Edward McCann, *Homelessness and people with intellectual disabilities: A systematic review of the International Research Evidence*, 34 Journal of Applied Research in Intellectual Disabilities 390–401 (2020).

Many unhoused people with disabilities are older adults, which is one of the fastest growing age groups among people experiencing homelessness. Kathryn A. Henderson et al., *Addressing Homelessness Among Older Adults: Final Report 4* (2023). The growth of this older group means that more of the unhoused population have geriatric conditions and chronic health problems. *See id.* at 5–6 (finding that, “[c]ompared to their housed counterparts,” older adults who are unhoused have a higher prevalence and severity of memory loss, falls, difficulty performing daily tasks, cognitive impairments, functional impairments, and higher

rates of mental health and substantive use disorders) (citations omitted). As compared to younger adults who are unhoused, those over 50 years of age have higher rates of chronic illnesses, cognitive impairments, high blood pressure, arthritis, and functional disability. *Id.* at 6. Worse still, the population of older adults who are unhoused is rapidly growing and is expected to triple by 2030 in several major U.S. cities. *Id.* at 14 (citing Dennis Culhane et al., *The Emerging Crisis of Aged Homelessness* 2–5 (2019), <https://aisp.upenn.edu/wp-content/uploads/2019/01/Emerging-Crisis-of-Aged-Homelessness-1.pdf>).

Disabled people are overrepresented among the unhoused in Salt Lake County at rates similar to, if not higher than, these national rates. In Salt Lake County’s 2023 Point-in-Time count, 32.8% of individuals experiencing homelessness were identified as being chronically homeless, which again, refers to people who have experienced homelessness for at least a year—or repeatedly—and have a disabling condition.⁴ End Utah Homelessness Salt Lake Valley, *Salt Lake County CoC Point-In-Time (PIT) Count Summary* (2023), <https://endutahhomelessness.org/wp-content/uploads/2023/06/Salt-Lake-County-CoC-Point-In-Time-PIT-Count-Summary.pdf>.

⁴ Like the federal statistic—this is undoubtedly an *under-estimate*, as not all disabled people who are unhoused experience “chronic” patterns of homelessness.

2. Disabled People Are Disproportionately At Risk Of Homelessness.

The relationship between homelessness and disability exists because disabled people face unique challenges and deep-rooted stigmas that present persistent challenges in accessing and navigating foundational systems for basic survival, including housing, employment, financial security, and healthcare. As a result, they are more susceptible to homelessness.

a. Lack of Accessible Housing.

The lack of physically accessible housing is a barrier to disabled people. Less than 5% of housing in the United States is accessible for individuals with moderate mobility disabilities. U.S. Dep't of Hous. & Urban Dev., *Accessibility of America's Housing Stock: Analysis of the 2011 American Housing Survey* 24 (2011). Less than 1% is wheelchair accessible. *Id.* Now in a nationwide housing shortage of more than 7 million units, there are even fewer accessible and affordable housing options. Jaboa Lake et al, *Recognizing and Addressing Housing Insecurity for Disabled Renters*, Cent. Am. Prog. (2021), <https://www.americanprogress.org/article/recognizing-addressing-housing-insecurity-disabled-renters/>. A landmark study of homelessness in California illustrates this point; 24% of participants reported being unable to find housing that met their needs “due to a physical disability.” Kushel, *Toward a New Understanding*, *supra*, at 79. Fourteen percent reported that this “impacted their

ability to find housing a lot.” *Id.* These statistics reflect the harsh realities for millions of disabled people nationwide, including many Utahns.

Accessibility issues are not just the result of older housing stock, but also reflect the widespread failure of developers to comply with accessibility requirements when constructing new housing, as illustrated by numerous Department of Justice (DOJ) settlements. In 2023, for example, the DOJ filed or settled five cases challenging the inaccessible design and construction of residential properties subject to the requirements of the Fair Housing Act and American with Disabilities Act. Lindsay Augustine et al., *Fair Housing Trends Report*, Nat’l Fair Hous. Alliance 19 (2024).

b. Lack of Affordable Housing.

The primary cause of current levels of homelessness is the unaffordable housing market. Riordan Frost, *Record Homelessness Amid Ongoing Affordability Crisis*, Joint Center for Housing Studies of Harvard University (February 12, 2024), <https://www.jchs.harvard.edu/blog/record-homelessness-amid-ongoing-affordability-crisis>. The United States has a shortage of 7.3 million rental homes affordable and available to renters with extremely low incomes – that is, incomes at or below either the federal poverty guideline or 30% of their area median income, whichever is greater. Nat’l Low Income Hous. Coal., *The Gap: A Shortage of Affordable Homes* (March 2024) at 6. Only 34 affordable and available

rental homes exist for every 100 extremely low-income renter households. *Id.* Extremely low-income renters face a shortage in every state and major metropolitan area. *Id.* at 2.

In Utah specifically, there is an estimated 62,625 extremely low-income households and only 31 affordable and available rental homes for every 100 of these households. *Id.* at Appendix A. The State of Utah Office of Homeless Services reported in January 2024 a need for 77,140 affordable and deeply affordable housing units statewide, and 34,935 in Salt Lake County. State of Utah Office of Homeless Services, *Report on Homelessness* (January 2024), <https://endutahhomelessness.org/3d-flip-book/the-state-of-utah-report-on-homelessness-2024/>. It also reported Salt Lake County to have a housing affordability gap of \$700/month—the highest of any county in the State. *Id.*

The lack of affordable and available rental housing presents a particularly onerous barrier to people with disabilities, a community that experiences poverty and unemployment at rates higher than non-disabled people, as discussed below.

c. High Rates of Poverty.

People with disabilities disproportionately live in poverty,⁵ which serves as a significant barrier to their ability to secure and maintain housing. Many disabled

⁵ Ctr. Rsch. on Disability, *Section 6: Poverty*, <https://www.researchondisability.org/ADSC/compendium-table-contents/section->

people—over 4 million nationwide—rely on Supplemental Security Income (SSI) benefits to meet their basic needs. Tech. Assistance Collaborative, *Priced Out: The Housing Crisis for People with Disabilities*, <https://www.tacinc.org/resources/priced-out/> (last visited September 17, 2024). In an ongoing study of the housing market for people living on SSI, the Technical Assistance Collaborative found that “there is no United States housing market in which a person living solely on [SSI] can afford a safe, decent apartment without rental assistance.” *Id.*

The situation in Utah illustrates the problem. In 2024 in Utah, a person with a disability receives SSI benefits equal to \$943.00 per month. *Id.* Statewide, this is equal to 14.9% of the area median income. *Id.* A person with a disability receiving SSI in Utah would have to pay 110% of their monthly income to rent an efficiency unit and 124% of their monthly income for a one-bedroom unit. *Id.* In Salt Lake City specifically, the numbers are even more dismal. A person with a disability receiving SSI would have to pay 119% of their monthly income in order to rent an efficiency unit in Salt Lake City, and 142% of their monthly income for a one-bedroom unit. *Id.*

[6-poverty](#) (last visited September 16, 2024) (in 2022, 24.9% of disabled people living in poverty compared to 10.1% of people without disabilities).

d. Low Rates of Employment.

The rate of unemployment for disabled people is twice as high as for those without disabilities. Press Release, Bureau of Labor Stats. (Feb. 22, 2024), <https://www.bls.gov/news.release/pdf/disabl.pdf>. Only 22.5% of people with a disability were employed in 2023, compared to the 65.8% of those without a disability. *Id.* The reasons for this employment gap are many. “Even under ideal conditions of accessibility and social acceptance, most disabilities require specific kinds of planning, equipment, and physical and emotional endurance that non-disabled people simply don’t need to worry about. And these resources aren’t always readily available.” Andrew Pulrang, *Why Is The Employment Gap For People With Disabilities So Consistently Wide?*, Forbes (Oct. 31, 2022), <https://www.forbes.com/sites/andrewpulrang/2022/10/31/why-is-the-employment-gap-for-people-with-disabilities-so-consistently-wide/?sh=20a73324276b>. Moreover, because many disabilities “fluctuate or are progressive,” accommodations often need to be flexible. *Id.* “Physical accessibility and standard accommodations often aren’t enough. [Many disabled people need] flexible jobs that can more easily accommodate fluctuating disabilities . . . [including] work from home opportunities, varied work schedules, more generous, creative time off provisions, and a wider variety of seasonal and part-time jobs.” *Id.*

e. Mental Illness.

Mental illness is an independent risk factor for homelessness. The two are linked by what some psychiatrists call a “never-ending loop” in which the two reinforce each other. Lilanthi Balasuriya et al., *The Never-Ending Loop: Homelessness, Psychiatric Disorder, and Mortality*, 37 *Psychiatric Times* 12, 12 (2020). For instance, having a psychiatric disability increases a person’s risk of eviction for a variety of compounding reasons. Mental illness can make it challenging to keep track of logistics like the date when rent is due. Ashley C. Bradford & Johanna Catherine Maclean, *Evictions and Psychiatric Treatment*, *J. Pol. Analysis & Mgmt.* 5 (2024). Certain mental illnesses may result in “hallucinations or other sensory distortions” that may be misinterpreted by both landlords and other tenants as aggressive or threatening, resulting in a lease violation. *Id.* The eviction process itself poses further challenges. “[A] person with a psychiatric disorder may be less able to attend a court hearing or hire an attorney . . . or to adequately defend their case.” *Id.* at 6.

Consistent with the above, 44.7% of the individuals counted in Salt Lake County’s 2023 Point In Time Count reported having a mental illness. *Salt Lake County CoC Point-In-Time (PIT) Count Summary, supra.*

f. Housing Discrimination.

People with disabilities face rampant discrimination which prevents and deters them from accessing housing. A recent report issued by the National Fair

Housing Alliance revealed that discrimination based on disability accounted for the majority (52.61%) of complaints filed with private non-private fair housing organizations, HUD, and Fair Housing Assistance Program in 2023. *Fair Housing Trends Report, supra*, at 9. Discrimination occurs, among other situations, “when developers build units that are inaccessible to people with disabilities and when housing providers deny requests for reasonable accommodations and/or modifications which impedes the ability of a person with a disability to use and enjoy their home.” *Id.* at 6.

In just over the past year, HUD has had to intervene in a variety of housing discrimination offenses based on disability. For example, in July 2024, HUD charged the owners of a duplex in Wisconsin with violating the Fair Housing Act by refusing to grant a tenant with a disability a reasonable accommodation allowing her to live with her assistance animals.⁶ Months earlier, in February 2024, a similar charge was filed by HUD on behalf of a service dog owner in Georgia.⁷ In May 2024, HUD charged the homeowners association for a condominium in San Juan, Puerto Rico, with violating the Fair Housing Act by refusing to allow an owner with a disability to power a self-installed elevator in her 3-story unit with an

⁶ Press Release, HUD Pub. Affs. (July 19, 2024), https://www.hud.gov/press/press_releases_media_advisories/HUD_No_24_186.

⁷ Press Release, HUD Pub. Affs. (Feb 29, 2024), https://www.hud.gov/press/press_releases_media_advisories/HUD_No_24_-43.

external generator as a reasonable modification for her disabilities.⁸ In January 2024, HUD entered into a Voluntary Compliance Agreement with housing providers in Tennessee when a tenant was denied repeated requests for multiple reasonable accommodation and reasonable modifications requests.⁹ And in September 2023, HUD charged a condominium owner and the owner's realtor, in San Juan, Puerto Rico with violating the Fair Housing Act by refusing to renew a tenant's lease based on disability, making discriminatory statements, and interfering with the tenant's fair housing rights.¹⁰

Amicus Disability Law Center's experience with regard to rental housing discrimination within Salt Lake City mirrors these national statistics. Through paired testing¹¹, the Center has uncovered verified cases of rental housing discrimination directed toward numerous protected classes. In the Center's

⁸ Press Release, HUD Pub. Affs. (May 30, 2024), https://www.hud.gov/press/press_releases_media_advisories/HUD_No_24_131.

⁹ Press Release, HUD Pub. Affs. (Jan. 25, 2024), https://www.hud.gov/press/press_releases_media_advisories/HUD_No_24_016.

¹⁰ Press Release, HUD Pub. Affs. (Sept. 27, 2023) https://www.hud.gov/press/press_releases_media_advisories/HUD_No_23_228.

¹¹ Fair housing testing is an investigative technique using impartial individuals as prospective tenants to expose evidence of housing discrimination based on a protected status under federal or state civil rights laws. The United States Supreme Court approved the process in a case called *Havens Realty Corp. v. Coleman*, (1982) 455 U.S. 363.

experience, discrimination based on disability is one of the most common forms of rental housing discrimination in Salt Lake City.¹²

Discrimination against individuals receiving federal rental assistance, including those participating in the Section 8 Housing Choice Voucher Program (“Section 8”), has a particularly devastating impact on the ability of disabled people to secure housing.¹³ At least 25% of people receiving federal rental assistance have a disability. Ctr. on Budget & Pol. Priorities, *United States Federal Rental Assistance Fact Sheet* (2022), <https://www.cbpp.org/sites/default/files/atoms/files/12-10-19hous-factsheet-us.pdf>. Without rental assistance—and a housing provider’s willingness to accept rental assistance—the prospect of renting housing for these people is unlikely.

Federal law does not explicitly prohibit discrimination based on source of income,¹⁴ and while cities and states are increasingly passing laws to prevent such discrimination, including Utah,¹⁵ enforcement is lacking. Molly Bolan, *Why it’s tough to stamp out housing voucher discrimination*, *Route Fifty* (January 31,

¹² Salt Lake City Housing Stability Division, *Fair Housing Facts*, <https://www.slc.gov/housingstability/fair-housing/#:~:text=The%20Disability%20Law%20Center%20has,toward%20protected%20classes%20in%20SLC> (last visited September 19, 2024).

¹³ Source of Income discrimination is the most common form of discrimination based on an “other” protected class. *Fair Housing Trends Report, supra*, at 10 (reporting 2,178 complaints in 2023).

¹⁴ See 42 U.S.C. § 3604.

¹⁵ See Utah Code Ann. § 57-21-5.

2024), <https://www.route-fifty.com/management/2024/01/why-its-tough-stamp-out-housing-voucher-discrimination/393805/>. See also, Andrew Khouri, *California Outlawed Section 8 Housing Discrimination. Why It Still Persists*, L.A. Times (Nov. 19, 2022) (“More than two years after a law in California made it illegal for landlords to refuse to rent to people who pay through Section 8 and other subsidies, leasing agents routinely reject tenants because of their vouchers or illegally discourage their applications[.]”).

3. Plaintiffs Seek To Punish Unhoused People For Existing In The Community When They Have No Alternative.

Plaintiffs ask the court to compel Salt Lake City to abate “any and all nuisances caused by the unhoused” on any City property. R26-27, 48. Such sweeping relief would require the clearing and dismantling of existing encampments, the forced relocation of people who are living there, and the aggressive enforcement of Ordinances against City residents—many of whom are disabled and in need of disability-related accommodations—who are not named or otherwise involved or represented in this litigation. The penalties attached to the Ordinances—including civil penalties that inevitably become criminal penalties—will have the effect of punishing unhoused people for existing in the community when they have no alternative.¹⁶ A different, more humane approach is necessary.

¹⁶ The lack of alternatives is no secret. In its January 2024 Report on Homelessness, the State of Utah Office of Homeless Services explicitly identified

Like many municipalities, Utah has an insufficient number of beds to accommodate its unhoused residents. Utah’s 2024 Point in Time count reported a deduplicated total of 10,804 unhoused individuals in the state, while also reporting a total bed count of 8,837—which includes emergency shelter beds, permanent supportive housing beds, transitional housing beds, rapid rehousing beds, and beds earmarked for survivors of domestic violence, youth, veterans and people with HIV. Utah Department of Workforce Services, *Homelessness Annual Report Dashboard* (2024) (“2024 Dashboard”), <https://jobs.utah.gov/homelessness/hard.html>. This leaves nearly 2,000 Utahns without any possibility of finding shelter, even before considering other barriers that may exist—particularly for disabled people (*e.g.*, shelters that have barriers like stairs or bunk beds; that lack accessible showers or restrooms; or that utilize discriminatory policies like bans on assistance animal bans or caregivers of the opposite-sex). See Corey McDonald, *Why Aren’t Homeless Shelters Accommodating of People Who Have Disabilities*, Shelterforce (July 19, 2023).

In Salt Lake County specifically, there were 2404 individuals reported as unhoused in the 2024 Point In Time County, 654 of them identified as

the following as barriers for unhoused people in the state: the “absence of affordable and deeply affordable housing”; “poverty”; “absence of emergency shelter/lack of capacity”; and “unmet service needs” including “mental health services.” See State of Utah Office of Homeless Services, *Report on Homelessness, supra*.

“chronically” homeless (and therefore disabled). 2024 Dashboard, *supra*. At the same time, emergency shelter beds are limited (1966). *Id.*

Rather than use criminal and civil penalties to punish unhoused residents of their community, these mismatches must be addressed by increasing the availability of emergency and permanent housing and services. The provision of housing and services has been demonstrated to be successful in reducing homelessness. *See* Section 5.d., below. It would be unconsidered and inhumane to compel Salt Lake City to make criminalization its primary, frontline response to homelessness as Plaintiffs demand.

4. Utah’s Ordinances Are Reminiscent Of “Ugly Laws” - Unfettered Enforcement Would Be A Cruel Affront To Human Dignity.

The manner in which Plaintiffs seek to weaponize Utah’s ordinances, and the effect court-sanctioned weaponization will have on unhoused people with disabilities, are reminiscent of the infamous “Ugly Laws.” These archaic laws, in effect in some cities from the 1860s to the 1972, targeted and punished disabled people simply for existing in their own communities. Also referred to as the “unsightly beggar ordinances,” these laws made it illegal for people with “unsightly or disgusting” disabilities to appear in public.

The most commonly cited “ugly law,” passed in Chicago, provided:
No person who is diseased, maimed, mutilated or in any way deformed so as to be an unsightly or disgusting object or improper person to be allowed in or on the public ways or other public places in this city, or shall therein

or thereon expose himself to public view, under a penalty of not less than one dollar nor more than fifty dollars for each offense.

Chicago Mun. Code § 36034 (1881). The Chicago Tribune attributed these laws to “[t]he idea of a thoroughfare being obstructed by the hideous monstrosities, which are only half human, begging piteously for alms is disgraceful.” Adrienne Phelps Coco, *Diseased, Maimed, Mutilated: Categorizations of Disability and Law in Late Nineteenth-Century Chicago*, 44 J. Soc. Hist. 23, 31–32 (2010). Another story warned that seeing a person with a “repulsive deformity” might present serious danger to “a lady in delicate health.” *Id.*

Chicago was not alone in passing—and enforcing—these disgraceful ordinances. The first law of its type was passed in San Francisco in 1867. *Id.* at 1. Portland also had an early model: “If any crippled, maimed or deformed person shall beg upon the streets or in any public place, they shall upon conviction thereof before the Police Court, be fined not less than five dollars nor more than one hundred dollars.” Charter of the City of Portland, as Amended Together With the General Ordinances by the Order of the Common Council, No. 2959, § 23 (1881). A Portland woman known as “Mother Hastings” was subject to this ordinance when law enforcement told her she was “too terrible a sight for the children to see” because she had “crippled hands.” Susan Schweik, *Kicked to the Curb: Ugly Law Then and Now*, 46 Harv. C.R.-C.L. L. Rev. 1, 1–2 (2011) (citing *Love Blooms on Sidewalk*, L.A. Times, Jan. 14, 1917, at II2). She relocated to Los Angeles only to

discover that the city’s leaders were discussing enacting a version of the same type of ordinance. *Id.*

The Salt Lake City Ordinances, which Plaintiffs seek to have aggressively enforced against all unhoused people within the City’s limits—including those lacking access to adequate alternative housing—are alarmingly similar to the Ugly Laws. In both cases, “violators” are being punished for something that they cannot avoid and subjected to perpetual criminalization unless they leave the City limits. If every city is compelled to treat its unhoused residents as a “nuisance” for purposes of enforcing laws like this, without reasonable restraint and compassion, unhoused people will have nowhere they can lawfully exist, outside of jails, prisons, or other institutions.

5. Criminalization Perpetuates A Cycle Of Homelessness And Incarceration.

It has been repeatedly established that criminalizing homelessness is not effective. Research shows that criminalization does not alleviate homelessness, but rather perpetuates a cycle of homelessness and incarceration. Chris Herring et al., *Pervasive Penalty: How the Criminalization of Poverty Perpetuates Homelessness*, 67 Soc. Problems 131 (2019). An examination of policing practices of admonishments and citations in public spaces found “the laws largely ineffective, as most banished subjects did not end up leaving the neighborhoods from which they were excluded. These exclusions also added barriers to accessing

work and housing.” *Id.* at 133. An examination of move-along orders in the wake of a camping ban in Denver likewise showed that criminalizing homelessness was “ineffective at reducing street homelessness.” *Id.* Subjecting unhoused people to criminal penalties creates a criminal record, making it that much more difficult to find a job or housing. Michael Massoglia & Brianna Remster, *Linkages Between Incarceration and Health*, 134 *Pub. Health Rep.* 8S, 10S (2019). Indeed, citations under these types of laws create “collateral consequences that last long after the initial policing event and lock people with mental health disabilities out of the mainstream more permanently: criminal records create barriers to employment, housing, public benefits, and social support systems.” Hallam, *supra*, at 645. And fines worsen the financial circumstances of unhoused people and creates financial barriers to unhoused people getting themselves back on their feet. Herring et al., *supra*, at 142-43.

Incarceration may also precipitate homelessness by disrupting family and community contacts and exacerbate existing health conditions. Without consistent access to healthcare while incarcerated or upon release, people with mental and physical disabilities “face compounding barriers to navigating . . . necessary social services.” Madeline Baily et al., Vera Inst. Just., *No Access to Justice: Breaking the Cycle of Homelessness and Jail* 11 (2020), <https://www.safetyandjusticechallenge.org/wp->

content/uploads/2020/08/homelessness-brief-web.pdf. Incarcerated people are disproportionately affected by health problems that persist for years after their release. *Id.* One study found that “[a]mong inmates with a persistent medical problem, 13.9% of federal inmates, 20.1% of state inmates, and 68.4% of local jail inmates had received no medical examination since incarceration.” Andrew Wilper, et al., *The Health and Health Care of US Prisoners: Results of a Nationwide Survey*, 99 Am. J. Pub. Health 666, 669 (2009), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2661478/pdf/666.pdf>. Moreover, between 7% and 25% of inmates are not seen by medical personnel even after suffering a serious injury. *Id.*

Incarcerated people also face issues accessing long-term medications. In fact, 26% to 42% of inmates who were taking prescription medication before they were incarcerated stopped once they were imprisoned. *Id.* Those with mental illness face an even greater barrier—40% to 50% of inmates who took medication for mental health at the time of incarceration did not receive medication in prison. Jennifer M. Reingle Gonzalez and Nadine M. Connell, *Mental Health of Prisoners: Identifying Barriers to Mental Health Treatment and Medication Continuity*, 104 Am. J. Pub. Health 2328 (2014). Beyond the medication, mental healthcare resources are lacking. A substantial portion of the prison population does not receive treatment for mental health conditions. *Id.* This treatment

discontinuity has the potential to affect both recidivism and health care costs on release from prison. *Id.*

Research also shows that mental illness is more prevalent among incarcerated people, and as discussed above, mental illness is an independent risk factor for homelessness. Massoglia & Remster, *supra*, at 9S. Reintegration into the community—particularly after long period of inadequate care—can exacerbate these problems “because of the economic marginalization incarcerated persons face and because of the stress and challenges to social integration caused by this economic marginalization.” *Id.* These barriers inject even more complication into the already difficult search for housing and employment.

A lack of post-carceral access to healthcare and social services exacerbates the problem. At the most basic level, those exiting prison “have difficulty obtaining medical, mental health, and substance abuse treatment after their release.” Kushel, *Revolving Doors*, *supra*, at 1750. A 2010 study of Los Angeles County health data showed that the formerly incarcerated “were significantly less likely to have a regular source of medical care, . . . less likely to have visited a doctor for a routine check-up in the past year, . . . and more likely to have not had visited a doctor for a routine check-up in more than 5 years.” Sonali P. Kulkarni et al., *Is Incarceration a Contributor to Health Disparities? Access to Care of Formerly Incarcerated Adults*, 35 J. Comm. Health 268, 270 (2010).

But a criminal conviction also creates other issues, leading to “a range of collateral consequences involving the loss of political, civil, and economic rights that can contribute to homelessness.” L. Hafetz, *Homeless Legal Advocacy: New Challenges and Directions for the Future*, 30 Ford. Urban L.J. 1215, 1229 (2003). Those with a criminal record face decreased employment opportunity, including “exclusion from jobs, many requiring a professional license,” and exclusion from federal housing programs. *Id.*

6. Alternatives To Criminalization.

As discussed above, the lack of affordable accessible housing and poverty are primary drivers of homelessness, particularly for people with disabilities. Providing adequate housing and services thus addresses homelessness more effectively than criminalization. It’s what unhoused people need and want, and it works.

a. The “Housing First” Approach.

One well-established approach to homelessness— “Housing First”—prioritizes providing immediate permanent housing to people experiencing homelessness. Housing First focuses on providing necessities like food and shelter first—before attending to anything less critical, like getting a job, budgeting properly, or attending to substance use issues. It is a flexible and adaptable service model that addresses homelessness by quickly placing individuals and families

with children experiencing homelessness into housing without any preconditions or barriers and offering voluntary supportive services to meet individuals' needs. HUD, Office of Policy Development and Research, Housing First Works (2023), <https://www.huduser.gov/portal/periodicals/em/spring-summer-23/highlight1.html>. In this way, it serves as a “platform from which [individuals] can pursue personal goals and improve their quality of life.” Nat’l Alliance to End Homelessness, *Housing First* (August 2022), <https://endhomelessness.org/resource/housing-first/>.

There are two common Housing First models: permanent supportive housing and rapid re-housing. *Id.* Permanent supportive housing pairs long-term rental assistance with supportive services, and targets individuals and families with chronic illnesses, disabilities, mental health issues, or substance use disorders experiencing long-term or repeated homelessness. *Id.* Supportive services (i.e., health care, behavioral health services, substance use disorder treatment, employment/education supports, etc.) are designed to foster independent living skills, connecting people to community-based healthcare, treatment, and employment services. Nat’l Alliance to End Homelessness, *Permanent Supportive Housing* (April 2023), <https://endhomelessness.org/ending-homelessness/solutions/permanent-supportive-housing/>. Rapid re-housing programs, which provide short-term limited rental assistance and services, aim to

help people obtain housing quickly. *Id.* Rapid re-housing programs have three core components: (i) housing identification, finding housing that is decent, safe, and affordable after assistance ends, (ii) rent and move-in assistance, flexible in amount and duration based on individual needs, and (iii) case management, connecting people to various services and support. Nat'l Alliance to End Homelessness, *Rapid Re-Housing Works*, <https://endhomelessness.org/rapid-re-housing-works/> (last viewed on September 18, 2024).

The Housing First approach has shown to be cost effective for communities because people with permanent housing are less likely to rely on emergency services and emergency shelter. Nat'l Alliance to End Homelessness, *Housing First, supra*. In fact, one study found an average cost savings on emergency services of \$31,545 per person housed over the course of two years. *Id.* Another study showed that housing first could cost \$23,000 less per consumer annually than a shelter program. *Id.*

b. Community-Based Policies and Alternatives.

A number of localities have adopted other community-based policies and alternatives, aspiring to shift away from criminalization. For example, Portland, Oregon created a position of “homeless community liaison” within the police department. Nat'l Alliance to End Homelessness, *Alternatives to Criminalization* (2021), <https://endhomelessness.org/blog/alternatives-to-criminalization/>. This

person is intended to serve as the “primary contact between local homeless service providers, social service agencies, and the police.” *Id.* She is charged with creating a “strategic response plan” to respond to Portland’s homeless crisis, including collaborating with the Portland’s police training to “ensure ground officers are properly trained in providing services to unhoused people.” *Id.*

In Connecticut, service providers work directly with prosecutors to ensure that homeless people in the community will not be prosecuted for minor offenses. *Id.* “This reduces the likelihood that police officers and other system officials will attempt to arrest, harass, or institutionalize unhoused people, and may reduce interactions between police and people experiencing homelessness altogether.” *Id.* Other cities are taking similar approaches. Denver started diverting police funding and replacing officers with mental health response teams; Minneapolis “reallocated millions of dollars to fund alternatives to policing”; and Austin has cut nearly half its police budget. *Id.*

Localities can also successfully address and prevent homelessness by reducing bolstering tenant protections to reduce evictions and discrimination based on source of income, credit history and housing status. And work-training programs aimed at increasing earning potential, in addition to work support programs that provide childcare and transportation, can also be impactful.

c. Addressing Health and Safety Concerns.

Salt Lake City has tools it can utilize to address its purported public health and safety concerns without resorting to criminal punishment. Criminalization is not the only, or best, solution.

For example, providing greater access to public toilets would ameliorate Plaintiffs' expressed concerns about public urination and defecation. R15. Similarly, arranging access to handwashing and shower facilities—whether stationary or mobile—can address Plaintiffs' complaints about unhoused people using their hoses to wash their bodies and clothes. *Id.*

Salt Lake City remains free to enforce its ordinances, including criminal punishment for *dangerous conduct*. What they cannot do, however, is criminalize the very existence of people within the City limits borders who cannot afford housing and have nowhere else to go. Criminalization of the status of involuntary homelessness—as Plaintiffs request here— is ineffective and a poor use of public funds.

d. Effectiveness in Reducing Homelessness.

Decades of research and evidence demonstrate that providing housing and services reduces homelessness. *See, e.g.,* Nat'l Alliance to End Homelessness, *Data Visualization: The Evidence on Housing First* (May 25, 2021), <https://endhomelessness.org/resource/data-visualization-the-evidence-on-housing-first/>. For example, researchers analyzing four major randomized controlled trials

to measure housing stability, among other factors, found that housing stability, measured either by the proportion of total days reported as stably housed or a proportion of the population in stable housing at the end of the trial period, was greater among those who received housing and services, when compared to those in the control group. See Jack Tsai, *Is the Housing First Model Effective? Different Evidence for Different Outcomes*, 110(9) *Am. J. Pub. Health* 1376, 1376–77 (2020). In addition, those receiving housing and services were two and half times more likely to be stably housed after 18–24 months. See Andrew Baxter, *Effects of Housing First Approaches on Health and Well-Being of Adults Who Are Homeless or At Risk of Homelessness: Systematic Review and Meta-Analysis of Randomised Controlled Trials*, 73(5) *J. Epidemiol. Cmty. Health* 379, 379–87 (2019).

Another report reviewing twenty-six studies found that housing programs decreased homelessness by 88 percent and improved housing stability by 41 percent, as compared to Treatment First programs, which required persons to undergo psychiatric treatment and be substance free. See Yinan Peng et al., *Permanent Supportive Housing with Housing First to Reduce Homelessness and Promote Health among Homeless Populations with Disability: A Community Guide Systematic Review*, 26(5) *J. Pub. Health Mgmt. Prac.* 404, 404–11 (2020).

Simply put, evidence of the effectiveness of providing housing and services to reduce homelessness spans decades.¹⁷

Utah’s experience underscores the effectiveness of utilizing Housing First principles. Utah’s Office of Homeless Services has acknowledged that “permanent housing projects with supportive services are highly effective in keeping the most vulnerable in housing.” Utah Office of Homeless Services, *Annual Report Dashboard on Homelessness: Key Findings* (2024)

<https://jobs.utah.gov/homelessness/hkey.pdf>. And the 2024 Annual Data

Dashboard on Homelessness—Utah’s comprehensive yearly analysis of the state's homeless system and the individuals experiencing homelessness—revealed that 93% of people housed by long-term housing projects maintained their housing or obtained permanent housing outside the project. 2024 Dashboard.

¹⁷ See, e.g., Debra Rog et al., *Permanent Supportive Housing: Assessing the Evidence, Psychiatric Services*, 65(3) *Psychiatric Servs.* 287 (2014) (Review of seven randomized controlled trials and five quasi-experimental studies between 1995 and 2012 found that permanent supportive housing “reduced homelessness, increased housing tenure over time, and resulted in fewer emergency room visits and hospitalization.”); Laura Kurtzman, UCSF, *Study Finds Permanent Supportive Housing is Effective for Highest Risk Chronically Homeless People* (Sept. 17, 2020) (a randomized trial in Santa Clara, California found that 86 percent of the group receiving permanent supportive model remained housed for several years, compared to only a third of the control group, most of whom received housing and supportive services through the County when it implemented permanent housing programs during the study).

7. The City Owes An Affirmative Duty to Disabled People Who Are Unhoused.

Amici agree with the lower court’s dismissal of Plaintiffs’ action and conclusion that Plaintiffs failed to show that the City owed them a specific duty. R763. Although the City does have a legally recognizable duty in this situation, it is a duty owed to its disabled unhoused residents. Under federal statutes including Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12132, the City has an affirmative obligation to avoid discrimination in the provision of its services, programs and activities, including its encampment clearing and management programs. *See, e.g., Where Do We Go Berkeley v. California Department of Transportation*, 32 F.4th 852, 861 (9th Cir. 2022) (which, in finding that the clearing of an encampment constituted a program under the ADA, explained: “the ADA’s prohibition on discrimination in public programs ‘brings within its scope anything a public entity does,’” including the way that government entities enforce their laws, citing *Barden v. City of Sacramento*, 292 F.3d 1073, 1076 (9th Cir. 2002)). Plaintiffs’ demand for overbroad and aggressive enforcement of the City’s Ordinances fails to appreciate or address these affirmative duties, which include a duty to provide reasonable modifications to the way a public entity’s laws are applied and enforced (28 C.F.R. § 35.130(b)(7)); a duty to provide disabled people “equal opportunity” to comply with orders and avoid citation, arrest or other harm (28 C.F.R. § 35.130(b)(1)); and an obligation to

avoid methods of administration that discriminate against or unduly burden disabled people (28 C.F.R. § 35.130(b)(3)).

CONCLUSION

For the foregoing reasons, *Amici* urge the Court to affirm the lower court's order.

Dated: September 23, 2024.

DISABILITY LAW CENTER

By: /s/Laura Henrie
Laura Henrie
Attorneys for Amici Curiae Disability
Rights Education and Defense Fund and
Disability Law Center

DISABILITY RIGHTS EDUCATION AND
DEFENSE FUND

By: /s/ Maria Michelle Uzeta
Michelle Uzeta
Attorneys for Amici Curiae Disability
Rights Education and Defense Fund and
Disability Law Center
(*Pro hac vice motion forthcoming*)

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with Rule 25(f), because it contains 6881 words, and that it complies with Rule 21, governing public and non-public information, as it contains no non-public information.

CERTIFICATE OF SERVICE

I certify that on September 23, 2024, a copy of the Brief of *Amicus Curiae* Disability Rights Education and Disability Law Center in Support of Defendant / Appellee was filed by using the Court's electronic filing system and that the following were served via email:

Katherine R. Nichols: katherine.nichols@slcgov.com

Michael M. Lee: Michael.lee@slcgov.com

Eric Vogeler: eric@vogeler.org

John Nielsen: jnielsen@schaerr-jaffe.com

Stephen Tully: stully@tullybailey.com

Ilan Wurman: iwurman@tullybailey.com

Dated: September 23, 2024.

DISABILITY LAW CENTER

By: /s/ Laura Henrie

Laura Henrie

Attorneys for Amici Curiae Disability
Rights Education and Defense Fund and
Disability Law Center