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ESTABLISHING A CLIMATE-CONSCIOUS BILL OF RIGHTS FOR CALIFORNIA'S HOMELESS

Gabriel Greif

ABSTRACT

California's growing unhoused population, alongside the increasingly devastating impacts of climate change, necessitates action by California's state and local governments to protect unhoused communities from the current and anticipated impacts of climate change. Despite the public discourse surrounding both climate change and homelessness in California, policy-makers have frequently treated the two as separate and unrelated issues, failing to acknowledge how each issue interacts with the other.

This failure has allowed unhoused persons' unique vulnerability to water insecurity, heat-related illness, and the spread of disease to remain divorced from policy discussions on how California must adapt to a new and harsher climate. In addition, sea level rise and wildfires will further contribute to California's housing shortage and overall unhoused population. The collective failure of California's state and local decision-makers to address this intersection has led to a patchwork of laws and regulations that do not adequately confront existing or future climate burdens on unhoused persons in California. This Comment recommends that the state of California pass a climate-conscious Homeless Bill of Rights, a statutory mandate on California's municipalities to adopt specific climate adaptation strategies designed to protect unhoused persons in California. The muddled and incomplete protections contemplated by current approaches suggest that a climate-conscious Homeless Bill of Rights may provide a more complete and proactive approach to ameliorating climate burdens for unhoused Californians.

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INTRODUCTION

In 2016, Arizona’s Maricopa County recorded the fourth hottest summer on record, with afternoon highs in Phoenix averaging 106 degrees Fahrenheit.¹ That same summer, Maricopa County experienced a 25 percent increase in the rate of unsheltered homelessness.² The result was devastating for Arizona’s unhoused populations. Between 2015 and 2016, the proportion of unhoused persons represented within Arizona’s total heat-related deaths more than doubled, from 13 to 33 percent.³ This has coincided with an increase in overall heat-related deaths; for example, 2016 saw two-and-a-half times more heat-related deaths than 2014.⁴

1. Christopher Flavelle & Nadja Popovich, *Heat Deaths Jump in Southwest United States, Puzzling Officials*, N.Y. Times (Aug. 26, 2019), <https://www.nytimes.com/2019/08/26/climate/heat-deaths-southwest.html> [https://perma.cc/VU67-XHXS].

2. Paul Chakalian, *When You Can’t Find Shelter From the Heat*, Slate (June 18, 2018), <https://slate.com/technology/2018/06/climate-change-related-heat-waves-will-be-deadly-for-people-who-are-homeless.html> [https://perma.cc/FL2G-J7LN].

3. *Id.*

4. Priscilla Totiyapungprasert, *Heat Deaths in Phoenix Reached a Record High in 2018*, Ariz. Cent. (May 7, 2019), <https://www.azcentral.com/story/news/local/phenix/2019/05/07/>

Further, since 2016, rates of unsheltered homelessness in Arizona have climbed at an annual rate of close to 25 percent, with a corresponding increase in the number of heat-related deaths in the county.⁵ Meanwhile, temperatures continue to rise—it is estimated that by 2060, Phoenix will have over 132 days above 100 degrees Fahrenheit.⁶

In 2017, shortly before Hurricane Irma made landfall in Miami, Ron Book, chairman of the Miami-Dade Homeless Trust, spoke to the Associated Press about unhoused people who resisted the city's mandatory evacuation orders: "I am not going to sign suicide notes for people who are homeless in my community. I am just not going to do it."⁷ Soon after, police, social workers, and psychiatrists offered a choice to the unhoused people who remained in the evacuation zone: come willingly to a storm shelter, or be held against their will for a mental health evaluation.⁸ The legal justification for this choice was the Florida Mental Health Act of 1971 (Baker Act), which allows for the involuntary commitment of individuals that (1) possibly have a mental illness and (2) are a danger of becoming a harm to themselves or others.⁹ The use of the Baker Act to confine people experiencing homelessness in the anticipation of Hurricane Irma has attracted controversy on a number of counts, especially because no housed people who chose to defy evacuation orders were involuntarily committed.¹⁰ With the anticipated effects of climate change leading to a significant increase in the strength and impact of tropical storms, hurricanes, and other natural disasters, cities across the United States will soon face similar choices.¹¹

heat-deaths-phoenix-arizona-reached-record-high-2018/2539975002 [https://perma.cc/8J5A-39B4].

5. Flavelle & Popovich, *supra* note 1.

6. Heidi Cullen, *Think it's Hot Now? Just Wait*, N.Y. Times (Aug. 20, 2016), https://www.nytimes.com/interactive/2016/08/20/sunday-review/climate-change-hot-future.html?mcubz=0 [https://perma.cc/N6PF-9PAR].

7. *Miami's Homeless Held Against Their Will Ahead of Hurricane Irma*, CBS News (Sept. 8, 2017), https://www.cbsnews.com/news/hurricane-irma-homeless-held-against-will [https://perma.cc/Y73R-3DEB].

8. *Id.*

9. Baker Act, Fla. Stat. §§ 394.451–394.463 (2020).

10. In addition, homeless advocates argue that this sets a dangerous precedent for sweeping homeless people off of the streets without sufficient due process, and that these actions are indicative that all other protective systems (particularly in housing and mental health) have failed. Book has asserted that the choice to remain behind after hurricane evacuation orders are issued is *prima facie* evidence of mental illness. Advocates have objected to this, arguing that the desire to protect personal belongings in the face of a storm does not necessarily indicate that a person is mentally ill. David M. Perry, *No, We Should Not Involuntarily Commit the Homeless During Hurricanes*, Pac. Standard Mag. (Sept. 12, 2017), https://psmag.com/social-justice/we-should-not-involuntarily-commit-the-homeless-during-hurricanes [https://perma.cc/G4JL-JJCQ].

11. *Hurricanes and Climate Change*, Ctr. for Climate & Energy Solutions, https://www.c2es.org/content/hurricanes-and-climate-change [https://perma.cc/3D7N-GVFW].

The preceding situations provide examples of the endemic and serious shortcomings in how United States policy has evolved to address the intersection between climate change and homelessness. Homeless communities are among the most vulnerable to the negative effects of climate change.¹² In addition, climate change will exacerbate the rates of homelessness within the United States by causing economic strain, climate migration, and the destruction of existing housing.¹³ Given these realities, it is imperative to examine the patchwork of protections and rights afforded to people experiencing homelessness at the state, local, and federal level. Like the invocation of the Baker Act to involuntarily commit people experiencing homelessness in advance of Hurricane Irma, decisionmakers often create these policies on an *ad hoc* basis without the benefit of a unified or cohesive mandate. This paper critically examines these different protections and ultimately creates a recommendation for a climate-conscious Homeless Bill of Rights in California: a comprehensive, state-level guarantee of rights to people experiencing homelessness, with explicit attention paid to the impacts of anthropogenic climate change on homeless populations.

Part I of this paper explores the aspects of climate change that pose the greatest danger to unhoused populations. Part II of this paper examines how state, federal, and local laws ameliorate or exacerbate these dangers. Finally, Part III of this paper synthesizes a policy recommendation for a climate-conscious homeless bill of rights based on existing and proposed homeless bills of rights, and successful state and local policies.

I. CURRENT AND ANTICIPATED EFFECTS OF CLIMATE CHANGE ON HOMELESS POPULATIONS IN CALIFORNIA

The effects of climate change are likely to create significant burdens for people experiencing homelessness in California. This Part discusses several areas where the burdens of homelessness and climate change intersect. In particular, it focuses on: (1) how the increased length and severity of heat waves will create unique health risks for people experiencing homelessness; (2) how climate change-related drought will exacerbate existing water scarcity for people experiencing homelessness; and (3) how climate change will worsen California's housing shortage, leading to strained social services and disease due to overcrowding within shelters and encampments. These dangers

12. Some of the effects of climate change that disproportionately impact people experiencing homelessness include heat stroke, heat-related illness, greater exposure to pollutants, and greater exposure to extreme weather events. Brodie Ramin & Tomislav Svoboda, *Health of the Homeless and Climate Change*, 86 J. Urb. Health 654, 655–57 (2009).

13. See *Homelessness and the Climate Crisis*, The Climate Reality Project (Oct. 16, 2019), <https://www.climateRealityProject.org/blog/homelessness-and-climate-crisis> [<https://perma.cc/FA5T-D8M2>].

are especially relevant in California, given the dangerous levels of heat and drought and the severity of California's housing shortage.¹⁴

A. *Increased Length and Severity of Heat Waves*

Since the 1960s, cities have experienced an increased frequency of extreme heat events (EHEs).¹⁵ According to the Environmental Protection Agency (EPA), the average U.S. city has triple the number of heat waves per year, and the average heat wave season¹⁶ is 47 days longer than in the mid-1960s.¹⁷ The average global temperature has gone up as well—by 1.8 degrees Fahrenheit since the late 1800s.¹⁸ This warming effect has not been distributed evenly; major Californian cities like Los Angeles and San Diego have warmed by 5 degrees.¹⁹ San Francisco and Sacramento have each seen a temperature increase of over 2 degrees.²⁰ This temperature increase likely comes from a combination of global warming and the urban heat island effect. The urban heat island effect refers to the phenomenon of urban areas retaining more heat than their surroundings due to heat-retaining asphalt and concrete, lack of vegetation, and the heat-generating activities related to human activity.²¹ In many cities, marginalized communities, shelters, and major homeless encampments tend to be concentrated in urban industrial zones, where the urban heat island effect is at its strongest.²²

The effects of global warming, exacerbated by the urban heat island effect, stand to increase city temperatures by a significant amount by mid-century.

14. See *infra* Subpart I.C.

15. Kristina Dahl et al., *Increased Frequency of and Population Exposure to Extreme Heat Index Days in the United States During the 21st Century*, 1 *Env'tl. Res. Comm.* 1, 1 (2019). EHE is a broad term, describing a period of unusually hot or stagnant weather for the geographical area and time of year. Ashley M. Gregor, *Toward A Legal Standard of Tolerable Heat*, 44 *Colum. J. Env'tl. L.* 479, 485 (2019); see also George Luber & Michael McGeehin, *Climate Change and Extreme Heat Events*, 35 *Am. J. Preventive Med.* 429, 429–30 (2008).

16. A heat wave season refers to the period of days between the first and last EHE of the year. U.S. Env'tl. Prot. Agency, *Heat Waves*, Global Change, <https://www.globalchange.gov/browse/indicators/us-heat-waves> [<https://perma.cc/NS4J-L53A>].

17. *Id.*

18. *American Warming: The Fastest-Warming Cities and States in the U.S.*, Climate Central (Apr. 17, 2020), <https://www.climatecentral.org/news/report-american-warming-us-heats-up-earth-day> [<https://perma.cc/KZ3K-6KCF>].

19. *Id.*

20. *City Time Series*, Nat'l Oceanic & Atmospheric Admin., <https://www.ncdc.noaa.gov/cag/city/time-series> (set time period, state and city information, and select plot to see average temperatures in U.S. cities over time).

21. 1 U.S. Glob. Change Research Program, *Climate Science Special Report: Fourth National Climate Assessment 290* (Donald J. Wuebbles et al. eds., 2017), https://science2017.globalchange.gov/downloads/CSSR2017_FullReport.pdf [<https://perma.cc/TBM6-UZKB>].

22. Christine DeMyers et al., *Urban Water Insecurity: A Case Study of Homelessness in Phoenix, Arizona*, 10 *Env'tl. Just.* 72, 73 (2017).

Studies suggest that throughout the United States, the number of days exceeding an apparent temperature²³ of 100 degrees Fahrenheit will double.²⁴

Even more concerning is the expected increase in the frequency and intensity of heat waves. There is evidence that the intensity and frequency of heat waves stands to outpace the escalation in ambient temperatures due to a greater volatility in weather patterns and humidity during periods of extreme heat.²⁵ The number of days above 95 degrees Fahrenheit through much of the California coastline is expected to triple by the middle of the century. Further, by the year 2100, the number of days above 100 degrees Fahrenheit is likely to increase between four- and eight-fold in Southern California.²⁶ While EHEs already cause more deaths, on average, than any other natural disaster, this future increase in temperature stands to significantly increase the danger of EHEs.²⁷

It is intuitive that exceptionally strong heat waves are responsible for most heat-related illness and death. There are several temperature thresholds that trigger different heat-related illnesses, with heat stroke setting in when the body temperature reaches 106 degrees Fahrenheit.²⁸ For this reason, while it is important to note the increase in average ambient temperature, special attention must be paid to periods of particularly hot weather.

The 2006 North American Heat Wave, which hit California in July, is a cautionary tale. This EHE, which has "faded quickly from public consciousness,"²⁹ reached temperatures of 119 degrees in parts of Los Angeles and killed between 140 and 466 people.³⁰ Under half of the deaths occurred in people over the age of 70, and many of the deaths occurred outdoors.³¹ Unsurprisingly, the most aggravating risk factors of heat-related illness intersected with traits that are overrepresented in homeless communities. Even controlling for other aggravating factors, mental illness, physical infirmity, and lack of access to

23. This value, also known as the heat index, is used to express what the temperature feels like to the human body, accounting for humidity and ambient heat. *What is the Heat Index?* Nat'l Weather Serv., <https://www.weather.gov/ama/heatindex> [<https://perma.cc/CH7Y-2V77>].

24. Arbi Tamrazian et al., *Heat Waves in Southern California: Are They Becoming More Frequent and Longer Lasting?* 70 *Ass'n Pac. Coast Geographers* Y.B. 59, 62 (2008).

25. See generally Nat'l Oceanic & Atmospheric Admin., *California Heat Waves* (2015).

26. *Id.* at 1.

27. Ctr. for Disease Control, *Climate Change and Extreme Heat Events* 4, <https://www.cdc.gov/climateandhealth/pubs/ClimateChangeandExtremeHeatEvents.pdf> [<https://perma.cc/W934-AFVC>].

28. Nat'l Inst. for Occupational Safety & Health, *Climate Change and Extreme Heat Events*, Ctrs. for Disease Control, https://www.cdc.gov/niosh/topics/heatstress/heatrelillness.html#_Heat_Exhaustion [<https://perma.cc/3LKC-QK92>] (last updated June 6, 2018).

29. Ann E. Carlson, *Heat Waves, Global Warming, and Mitigation*, 26 *UCLA J. Envtl. L. & Pol'y* 169, 171 (2008).

30. *Id.*

31. *Id.* at 177.

air conditioning all played heavily into morbidity and mortality rates.³² For this reason, unhoused people account for a disproportionately large share of heat-related death and injury.

B. *Reduced Access to Water*

Another problem that climate change will worsen is California's water shortage. California's water reserves will become increasingly strained through five interrelated processes: warmer temperatures, less snowpack, shorter wet seasons, increasingly volatile precipitation, and sea-level rise.³³ As temperatures increase, water evaporation increases. Much of this evaporated water is carried to the Pacific Ocean, where it is released as precipitation into the sea, thus reducing water availability. Additionally, higher temperatures increase the capacity of ambient air to hold water. Accordingly, California will experience more intense, but less frequent, rainstorms. These increasingly intense storms are likely to overwhelm California's water capture resources, which are not built to capture and channel water during periods of severe flooding.

Further, sea level rise will bring more saltwater into Californian reservoirs, like the Sacramento–San Joaquin Delta, which supplies water for 25 million Californians and millions of acres of prime farmland. To keep the saltwater out, more freshwater will need to be pushed through the Delta, diverting it from other beneficial uses. Rising sea level also creates coastal flood hazards from storm surges, leading to saltwater intrusion and groundwater contamination in coastal aquifers.³⁴ Finally, the Sierra Nevada snowpack, which California uses as a major reservoir, has seen a notable reduction in snow depth in recent years.

These factors will lead to a significant water shortage in the coming years, which will be worsened by an aging water grid that is not equipped to handle a changing climate. Much of California's water storage comes in the form of above-ground reservoirs, which have a lower carrying capacity than underground alternatives.³⁵ These reservoirs are also more susceptible to evaporation than California's vulnerable groundwater basins.

In addition, as climate change increases the scarcity of water, it will also increase demand: to accommodate for higher temperatures, more water will be needed for drinking and agricultural production.³⁶ California's state government may also have to reallocate fresh water to ecosystems that depend

32. *Id.* at 178.

33. Jeffrey Mount et al., *Climate Change and California's Waters*, Pub. Pol'y Inst. Cal. (Sept. 2019), <https://www.ppic.org/publication/climate-change-and-californias-water> [<https://perma.cc/WXY2-HW4M>].

34. *Climate Change and Water*, Cal. Dep't Water Resources, <https://water.ca.gov/Programs/All-Programs/Climate-Change-Program/Climate-Change-and-Water> [<https://perma.cc/7JLV-RX58>].

35. Mount et al., *supra* note 33.

36. Cal. Dep't Water Res., *supra* note 34.

on streams depleted by evaporation or over-appropriation.³⁷ Taken together, these factors will contribute to an imminent and significant water shortage for California, and increase California's reliance on groundwater.

In times of water crisis, water law traditionally prioritizes access to potable water for sanitary and drinking purposes over agricultural purposes.³⁸ In fact, in 2012, the California legislature passed a statute that stated, "every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes."³⁹ The state also considers many of its water sources to be a public commodity, which balances the public benefits of water with the state's environmental and economic objectives.⁴⁰ However, as a response to increasing water scarcity in California, water law has trended towards an increasing commodification of water rights in recent years, which further promotes water insecurity for vulnerable populations, particularly for people experiencing homelessness.⁴¹ The privatization of water rights seriously undermines the principle that all people in the United States should have access to sufficient water for hydration, sanitation, and preparation of food.⁴² Here, public control of water rights acts as a vanguard in preserving society's ethical and moral choices surrounding consumption, availability, and stewardship of water.⁴³ During water shortages, privatization of water rights leads to water insecurity for vulnerable populations, especially those experiencing homelessness. As discussed in greater depth in Part III, these problems (combined with issues in implementation) have rendered California's statutory right to water largely illusory.⁴⁴

37. Ronald K. Craig, *Adapting Water Law to Public Necessity: Reframing Climate Change Adaptation as Emergency Response and Preparedness*, 11 Vt. J. Envtl. L. 709, 736–737 (2010).

38. Dan Tarlock, *How Well Can Water Law Adapt to the Potential Stresses of Global Climate Change?*, 14 U. Denv. Water L. Rev. 1, 14 (2011).

39. Cal. Water Code § 106.3 (2020).

40. Under California's Reasonable Use doctrine, all water rights must conform to uses that are in the public interest of efficient use and allocation of water resources. Ellen Hanak et al., Pub. Pol'y Inst. of Cal., *Managing California's Water: From Conflict to Reconciliation* 347 (2011), https://www.ppic.org/content/pubs/report/R_211EHR.pdf [<https://perma.cc/3MPN-F5QG>].

41. "Increasing water scarcity, stress on watersheds, and competition for water have prompted growing pressures for clear water quantification and scarcity management rules, as well as private and public markets in water rights and supplies. The conditions in most states—for a long time in the West, but even more so now, and also now for the first time in the East—are characterized by growing demand for water and decreasing supply of available water for human consumption. The demand growth is a result of increases in population, land development sprawl, and consumption patterns." Craig A. Arnold, *Water Privatization Trends in the United States: Human Rights, National Security, and Public Stewardship*, 33 Wm. & Mary Envtl. L. & Pol'y Rev. 785, 810 (2009).

42. *Id.*

43. *Id.*

44. *See infra* Subpart III.B.I.A.2.

Further, as climate change reduces water supplies, California has increasingly mandated that cities cut their water usage or face harsh fines.⁴⁵ Accordingly, many public water sources that have provided refuge from dehydration have been closed or otherwise curtailed.⁴⁶ In addition, areas that are more likely to house homeless encampments are also more likely to be impacted by reductions in publicly available water sources.⁴⁷ Smaller water systems in rural areas are even more likely to be vulnerable to drought conditions: a smaller customer base produces less income for infrastructural improvements or emergency water imports. In addition, areas that are more likely to house homeless encampments are also more likely to be impacted by reductions in publicly available water sources.⁴⁸

Water insecurity has serious health and social implications for unhoused people. Insufficient access to water leads to a host of medical issues, such as heat stroke, dehydration, kidney disease, and dental problems.⁴⁹ Because people experiencing homelessness have poor access to adequate medical care, medical issues are more likely to lead to further complications. Further, a lack of access to water leads to poor hygiene and cleanliness, which has negative effects on overall mental and physical health.⁵⁰ Adverse hygiene effects may also result in social problems and difficulty finding employment.⁵¹ Therefore, consistent access to clean water for hydration, food preparation, and hygiene maintenance is essential for the physical and mental well-being of people experiencing homelessness.

Unhoused populations face varying degrees of water scarcity depending on individual circumstances,⁵² but dehydration and water insecurity are common amongst all segments of the homeless population. The primary water sources for homeless populations include public water fountains and donated or purchased water bottles. Those living in temporary housing or shelters may receive much of their water from the tap.⁵³ As mentioned previously, unsheltered homeless communities are often concentrated in urban-industrial areas.

45. Ian Lovett, *Stingy Users Fined in Drought, While the Rich Soak*, Orange County Reg. (Nov. 22 2015), <https://www.oregister.com/2015/11/22/stingy-users-fined-in-drought-while-the-rich-soak> [<https://perma.cc/R5AQ-J46Q>].

46. Cal. State Water Resources Control Board, Drought Preparedness, Water Conservation and Water Supply Emergency Response, http://web.archive.org/web/20200421135745/https://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/DroughtPreparedness.html [<https://perma.cc/XMP4-WM7J>].

47. *Id.*

48. *Id.*

49. DeMyers, *supra* note 22, at 76.

50. *Id.* at 78.

51. *Id.* at 76.

52. *Id.* at 80.

53. Researchers have documented that people experiencing homelessness, like other marginalized populations, tend to express mistrust for tap water more frequently than the population at large. In homeless populations, a stigma has been found to exist around using tap water for hydrating. *Id.*

Such locations lack adequately maintained parks where homeless populations can find water fountains or public restrooms.⁵⁴ Further, public water fountains suffer from a serious lack of maintenance, with an increasing number being broken, dirty, or otherwise unusable.⁵⁵ This lack of access leads not only to water insecurity for the purpose of staying hydrated, but also for cooking and sanitation.

A person will face different degrees of water insecurity depending on whether they are living in a shelter or transitional housing, an encampment, or with no roof. Those in homeless shelters or transitional housing generally experience the lowest degrees of water insecurity because they have access to indoor tap water. Still, residents of transitional housing may experience water scarcity resulting from an inability to afford utility bills, dirty or unsafe tap water, or a mistrust of tap water. Residents of daytime shelters or transitional housing have reported perceptions that tap water is less healthy or clean than bottled water. This perception partially results from a generalized distrust of publicly available resources but may also result from the fact that accessible indoor water sources are not adequately maintained and are prone to dirtying or breaking from overuse.⁵⁶

Individuals in encampments and without roofs face even greater difficulties in accessing consistent water sources. Lack of consistent access to tap water is coupled with inconsistent and uncertain access to sanitary services stemming from social and physical isolation. This isolation is largely due to police clearing visible homeless encampments and leaving only hidden or difficult-to-access encampments.⁵⁷ Physical and social isolation make targeted outreach and services challenging, as it is difficult for service providers to find and access encampments, while simultaneously increasing distance from public water fountains, restrooms, or businesses that may provide water to people that need it.⁵⁸ In fact, the UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation found that unhoused people with disabilities in California were often forced to walk miles for accessible water, or to use unsafe sources, like river water.⁵⁹ Further, the isolation of homeless encampments has barred access to water services provided by municipalities. For example, after

54. *Id.* at 73–74.

55. Frances Anderton, *A Campaign to Revive Public Water Fountains Aims to Reduce Use of Bottled Water*, KCRW (Nov. 12, 2013), <https://www.kcrw.com/culture/shows/design-and-architecture/a-campaign-to-revive-public-water-fountains-aims-to-reduce-use-of-bottled-water> [<https://perma.cc/PJQ9-6K5S>].

56. DeMyers, *supra* note 22, at 80.

57. *Id.* at 79.

58. Safe Water Alliance et al., *Barriers to Access to Safe and Affordable Water for Disadvantaged Communities in California: Submission to the United Nations Universal Periodic Review of United States of America 7* (2015).

59. See Catarina de Albuquerque (Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation), *Mission to the United States of America*, ¶ 7, U.N. Doc. A/HRC/18/33/Add.4 (Aug. 2, 2011).

Pasadena, California, rolled out its mobile shower program, participation was significantly lower than expected. Authorities cited difficulty locating isolated encampments and lack of time to conduct effective outreach to homeless communities as reasons that the program did not meet its participatory goals.⁶⁰

C. *Reduced Availability of Housing and Shelter, Overwhelmed Service Providers, and Spread of Disease*

Since about 1970, California has experienced a serious housing shortage, which has only become more severe over time.⁶¹ This housing shortage, currently estimated to be at 3.5 million homes, has made housing increasingly unaffordable. In 2015, an average home in California cost about two-and-a-half times the national average, and the average rent was 50 percent higher than the rest of the country.⁶² This gap is even more pronounced in major urban centers like Los Angeles and the Bay Area.⁶³ The lack of affordable housing has contributed to California leading the nation in the total number of people experiencing homelessness, as well as the rate of homelessness.⁶⁴ As of January 2019, California accounts for 13 percent of the nation's overall population, but contains over 24 percent of its homeless population.⁶⁵

The high homelessness rates, coupled with the overall lodging shortage, has seriously strained California's ability to provide shelter and services to people experiencing homelessness. In fact, California has the highest rate of people that are experiencing homelessness without shelter in the country. When considering only the number of homeless people that are unsheltered, California's share of the homeless population jumps from 24 to 47 percent.⁶⁶

A number of factors have caused California's housing shortage, including local parties resisting new development, restrictive zoning laws, an increase in people coming to California for work, and state-wide gentrification brought on by increasing land values (leading to a developer preference for high-end businesses and lower-density housing). Complicating these factors is Proposition

60. Nina Agrawal, *L.A. to Expand Mobile Shower Program for Homeless People*, L.A. Times (Aug. 14, 2018), <https://www.latimes.com/local/lanow/la-me-ln-shower-trailers-20180814-story.html> [<https://perma.cc/U8LW-C2S7>].

61. Mac Taylor, Cal. Legis. Analyst's Office, *California's High Housing Costs: Causes and Consequences* 7 (2015).

62. Jonathan Woetzel, et al., McKinsey & Co., *A Tool Kit to Close California's Housing Gap: 3.5 Million Homes by 2025*, at 4 (2016), https://www.mckinsey.com/~/_/media/McKinsey/Industries/Public%20and%20Social%20Sector/Our%20Insights/Closing%20Californias%20housing%20gap/Closing-Californias-housing-gap-Full-report.pdf [<https://perma.cc/R2XR-UHWB>].

63. Meghan Henry et al., U.S. Dep't of Housing & Urb. Dev., *The 2018 Annual Homeless Assessment Report to Congress* (2018), <https://www.huduser.gov/portal/sites/default/files/pdf/2018-AHAR-Part-1.pdf> [<https://perma.cc/8EU4-S6HN>].

64. *California Homelessness Statistics*, U.S. Interagency Council on Homelessness, <https://www.usich.gov/homelessness-statistics/ca> [<https://perma.cc/YYN9-4ERY>].

65. *Id.*

66. Henry et al., *supra* note 63, at 14.

13, a 1978 amendment to the California Constitution that caps property taxes on homes and businesses until they are sold or renovated. The cap disincentivizes landowners from converting properties to multi-family housing by decreasing holding costs, and incentivizes municipalities to zone towards business land uses to compensate for lost property taxes.⁶⁷

Climate change is positioned to become another significant driver of homelessness in California. In this Part, I will discuss two of climate change's major effects that are likely to contribute to homelessness: (1) increasing frequency and intensity of wildfires; and (2) rising sea levels.⁶⁸

California has historically had a great deal of experience with wildfires. While wildfires often play an integral part in maintaining forest ecosystems by removing dead or decaying matter, enriching soil, and propagating new growth, they have recently increased in intensity, frequency, and destructive power. Seven out of the ten most destructive fires in California's recorded history have occurred over the last five years.⁶⁹ This is attributable, at least in part, to a more arid and hotter climate. For example, an extended period of drought directly led to the 2018 Camp Fire, which destroyed almost 10,000 homes.⁷⁰ These periods of extended drought are likely to worsen as the effects of climate change intensify. One study predicted, under certain climate models, that by 2039 the average annual acreage burned within California would increase by up to 500 percent.⁷¹ Increasing numbers and intensity of wildfires, combined with increasing population density in high "fire-risk" areas, will contribute to California's housing shortage in the near future.⁷²

Climate-related sea level rise (SLR) also threatens to intensify California's housing crisis.⁷³ According to California's Legislative Analyst's

67. Matt Levin, *Too Few Homes: Is Proposition 13 to Blame for California's Housing Shortage?*, KQED (Oct. 24, 2018), <https://www.kqed.org/news/11700683/too-few-homes-is-proposition-13-to-blame-for-californias-housing-shortage> [<https://perma.cc/2ZRP-KAK7>].

68. Climate migration is another major factor that may exacerbate California's housing crisis. However, I will not go into detail on this subject in this paper, as the effects of climate migration are dependent on social factors and high-level policies that are difficult to predict.

69. Top Twenty Most Destructive California Wildfires, CALFire https://www.fire.ca.gov/media/5511/top20_destruction.pdf [<https://perma.cc/552D-SD2A>] (measuring destructiveness as a measure of how many structures are destroyed).

70. Kendra Pierre-Louis, *Why Does California Have So Many Wildfires?*, N.Y. Times (Nov. 9, 2018), <https://www.nytimes.com/2018/11/09/climate/why-california-fires.html> [<https://perma.cc/JZN3-WUDV>].

71. Thomas Kitzberger et al., *Direct and Indirect Climate Controls Predict Heterogeneous Early-Mid 21st Century Wildfire Burned Area Across Western and Boreal North America*, 12 PLOS One 1, 14 (2017).

72. See generally Michael Mann et al., *Modeling Residential Development in California from 2000 to 2050: Integrating Wildfire Risk, Wildland and Agricultural Encroachment*, 41 Land Use Pol'y 438 (2014) (finding that the number of houses in 'very high' wildfire severity zones is likely to increase by 1 million by the year 2050).

73. Elizabeth Castillo, *Without Urgent Action, California's Sea-Level Rise a Threat to Housing, Economy, Report Says*, CalMatters (Dec. 10, 2019), <https://calmatters.org/>

Office, SLR is projected to be about 6 inches by 2030, and up to 7 feet by 2100.⁷⁴ Considering a six-foot scenario, the Legislative Analyst's office predicted that SLR will directly impact 480,000 California residents and cause \$120 billion in property damage.⁷⁵ Further, much of the impact is likely to fall on vulnerable populations like renters, people who are not proficient in English, and those with fewer resources.⁷⁶ These populations are the ones that are in the greatest danger of becoming homeless, as compared to home owners and native English speakers. Moreover, adapting to climate change inherently conflicts with California's goal to build additional affordable housing. Many of the parcels that currently seem like viable options for new affordable housing are vulnerable to inundation, even under optimistic SLR scenarios. To further exacerbate this conflict, existing and currently planned affordable housing projects are often disproportionately susceptible to flooding, as a response to an identified need for greater affordable housing in coastal communities.⁷⁷

With climate change threatening even greater housing scarcity, there are serious concerns about California's capacity to handle the increased burden on its already strained homeless services. Displacement caused by natural disasters often overwhelm shelter systems. In the wake of a disaster, new and existing homeless populations will sometimes come into conflict over scarce housing and medical resources.⁷⁸ Also, during and after fires or storm surges, when demand for shelter is at its highest, there are unique health risks for unsheltered people. This includes severe rain and flooding during storms and poor air quality during fires.

When shelters are overwhelmed with new arrivals, the spread of infectious diseases common in homeless populations worsens.⁷⁹ Following the 2018 Camp Fire, eight temporary shelters experienced a severe outbreak of norovirus, a highly infectious gastrointestinal virus.⁸⁰ Other common infectious diseases in homeless populations, such as tuberculosis, pneumonia, and hepatitis, spread rapidly when encampments and shelters are overcrowded.⁸¹

environment/2019/12/californias-sea-level-rise-a-threat-to-housing-economy-lao-report-says [https://perma.cc/F6KU-9KB4].

74. Gabriel Petek, Cal. Legis. Analyst's Office, *Preparing for Sea Level Rise: How the State Can Help Support Local Coastal Adaptation Efforts* 4 (2019).

75. *Id.* at 6.

76. *Id.*

77. *Id.* at 9.

78. Alexandra S. Levine, *After a California Wildfire, New and Old Homeless Populations Collide*, N.Y. Times (Dec. 3, 2018), <https://www.nytimes.com/2018/12/03/us/california-fire-homeless.html> [https://perma.cc/4T2A-XRUS].

79. Gerard Gallagher, *Norovirus Outbreak Sickened Hundreds at California Wildfire Shelters*, Healio (May 2, 2019), <https://www.healio.com/infectious-disease/gastrointestinal-infections/news/online/%7B4f2a713d-0de8-4098-a87c-c2840555eb24%7D/norovirus-outbreak-sickened-hundreds-at-california-wildfire-shelters> [https://perma.cc/GW74-WJPD].

80. *Id.*

81. Sékéné Badiaga et al., *Preventing and Controlling Emerging and Reemerging Transmissible Diseases in the Homeless*, 14 *Emerging Infectious Diseases* 1353, 1354 (2008).

Overcrowding, and the lack of sanitation that comes with it, also tends to exacerbate chronic medical conditions, like asthma, and lead to infestations, like bedbugs and lice.⁸² These same problems are present for those living in overcrowded encampments.

II. EXISTING PROTECTIONS FROM CLIMATE BURDENS FOR PEOPLE EXPERIENCING HOMELESSNESS UNDER FEDERAL, STATE, AND LOCAL LAW

In response to the burdens discussed above, federal, state, and local governments have created a patchwork of funding, services, and rights for people experiencing homelessness. This Part discusses what measures different governmental bodies have taken to address the climate burdens on unhoused populations. Specifically, this Part will examine (1) constitutional protections (or lack thereof) for people experiencing homelessness, along with federal policies relevant to the intersection of homelessness and climate change; (2) the way laws in different states treat issues surrounding homelessness and climate change; and (3) how municipalities use their power to provide a supportive framework to people experiencing homelessness.

A. Federal Protections and Rights

The federal government guarantees few positive rights for homeless populations. People experiencing homelessness are not afforded any protections under the Constitution's Equal Protection Clause solely on the basis of their housing status.⁸³ Any laws that are explicitly or implicitly directed at people experiencing homelessness must only be rationally related to a legitimate governmental objective.⁸⁴ The "rational relationship" standard is extremely deferential to the government in upholding laws that target people experiencing homelessness.⁸⁵ This standard has been somewhat tempered by a recent Ninth Circuit decision in *Martin v. City of Boise*, which held that the Eighth Amendment prohibits criminalizing "unavoidable consequences of being human."⁸⁶ Unavoidable consequences of being human include sitting, lying, or sleeping outside, but only if there is no room available at shelters. However, neither *Martin* nor any other case law affords positive constitutional protections

82. Corinne A. Carey, *No Second Chance: People with Criminal Records Denied Access to Public Housing*, 36 U. Tol. L. Rev. 545, 565 (2005); Nat'l Health Care for the Homeless Council, *Shelter-Based Care for Homeless Populations*, Healing Hands, Summer 2018, at 1, 4.

83. See *D'Aguzzo v. Gallagher*, 50 F.3d 877, 879 n.2 (11th Cir. 1995) (stating that people experiencing homelessness are not a suspect class); see also *Kreimer v. Bureau of Police for Town of Morristown*, 958 F.2d 1242, 1269 n.36 (3rd Cir. 1992) (same); *Davison v. City of Tucson*, 924 F. Supp. 989, 993 (D. Ariz. 1996) (same); *Joel v. City of Orlando*, 232 F.3d 1353, 1357 (11th Cir. 2000).

84. *D'Aguzzo*, 50 F.3d at 879 n.2.

85. *Id.*

86. 920 F.3d 584, 617 (9th Cir. 2019) (quoting *Jones v. City of Los Angeles*, 444 F.3d 1118, 1136 (9th Cir. 2006), *vacated*, 505 F.3d 1006 (9th Cir. 2007)).

for people based on their housing status. Under Supreme Court case law, there is also no constitutional right to shelter or homeless services.⁸⁷

Instead, federal protections of homeless people are mainly statutory and take the form of funding to state or locally managed programs and non-governmental organizations (NGOs). For example, the Health Centers Consolidation Act of 1996 provides targeted funding to federally qualified health centers that treat people experiencing homelessness.⁸⁸ The Health Resources and Services Administration (HRSA) administers these grants to healthcare providers that serve low-income communities, with an emphasis on in-shelter health centers and free clinics. In addition to primary and preventative care, HRSA-funded institutions provide substance-abuse treatment, case management, and transportation services.⁸⁹

The McKinney-Vento Homeless Assistance Act provides federal funding to states and non-profit organizations. In 2020, Congress appropriated \$2.77 billion in funding through the Act, which the Department of Housing and Urban Development (HUD) administers as grants.⁹⁰ These grants are allocated to state and local governments to create new shelters, fund existing shelters, and provide housing relocation services.⁹¹

On the other hand, several federal agencies have policies that explicitly discriminate against people experiencing homelessness. This discrimination is particularly evident in disaster relief efforts. For example, the Federal Emergency Management Agency (FEMA) expressly denies housing assistance to pre-disaster homeless applicants. In FEMA's 2019 Individual Assistance Policy Guide, FEMA states that it does not provide housing assistance because these applicants' need for housing was "not caused by disaster."⁹² Critics of this stance argue that such a policy ignores the fact that disasters frequently exacerbate existing hardship for unhoused populations, including loss of personal property, overcrowding of shelter systems, and increased competition for habitable housing.⁹³ In practice, these policies have had a harmful effect on

87. See Kevin P. Sherburne, *The Judiciary and the Ad Hoc Development of a Legal Right to Shelter*, 12 Harv. J.L. & Pub. Pol'y 193, 203 (1989) ("In *Lindsey v. Normet*, the Supreme Court explicitly rejected recognition of a constitutional right to housing. The Court acknowledged the importance of housing, but stated that the Constitution did not empower courts to remedy every social and economic malady.").

88. Public Health Service Act § 330, 42 U.S.C §§ 254b–254c-19 (2020).

89. *Id.* at 254b(o).

90. *Federal Funding for Homelessness Programs*, Nat'l Alliance to End Homelessness, <https://endhomelessness.org/ending-homelessness/policy/federal-funding-homelessness-programs> [<https://perma.cc/5TNX-GZCE>].

91. 42 U.S.C. §§ 11372, 11374 (2021).

92. Fed. Emergency Mgmt. Agency, Individual Assistance Program and Policy Guidelines 71 (2019) [hereinafter "IAPPG"].

93. Eric Tars, Nat'l Law Ctr. on Homelessness & Poverty, *Violations of the Human Rights of Persons Experiencing Homelessness in the United States: A Report to the Special Rapporteur on Extreme Poverty & Human Rights* 3–4 (2017).

homeless communities after disasters, when people experiencing homelessness are at their most vulnerable.⁹⁴ As disasters like wildfires and storms increase in intensity and frequency with climate change, federal housing policies' disparate impact on people who were homeless prior to disasters will only increase.

B. *State-Level Protections*

State laws afford different degrees of climate protection depending on each state's legal landscape. For example, New York is the only state that has recognized a right to shelter created by its state constitution.⁹⁵ The efficacy of these rights is contested, but in 2018, HUD found that New York had the third lowest ratio of unsheltered homelessness compared to the total population of people experiencing homelessness, which may be a testament to the utility of a constitutional right to shelter.⁹⁶ Moreover, several other states have created a similar right to shelter and other services created by statute.⁹⁷ Puerto Rico, the first US state or territory to pass a homeless bill of rights, recognizes in its constitution that unhoused people are a suspect class for the purposes of equal protection laws.⁹⁸ Neither the California Constitution nor any California statute establishes a right to shelter, and the California Assembly Appropriations Committee blocked a recent bill that attempted to codify this right.⁹⁹

Instead, California, like many other states, has a patchwork of laws meant to provide shelter and services to people experiencing homelessness. Currently, Assembly Bill 3300 proposes a \$2 billion appropriation for homeless assistance that would be allocated to cities, counties, and continuums of care.¹⁰⁰ Recently, Governor Newsom called for laws that would make it easier

94. See generally Peter Henderson, *Storm Pits Houston's Homeless Against the Newly Displaced*, Reuters (Sept. 2, 2017), https://www.reuters.com/article/us-storm-harvey-homeless/storm-pits-houstons-homeless-against-newly-displaced-idUSKCN1BD0SP?utm_source=34553&utm_medium=partner [<https://perma.cc/5KAG-YYEL>].

95. See *Callahan v. Carey*, No. 79-42582 (Sup. Ct. N.Y. County, Cot. 18, 1979), *aff'd*, 118 A.D.2d 1054, 499 N.Y.S.2d 567 (N.Y. App. Div. 1986) (stating that New York Constitution mandates right to shelter for people experiencing homelessness).

96. See Henry et al., *supra* note 63, at 15; see also *The Callahan Legacy: Callahan v. Carey and the Legal Right to Shelter*, Coalition for the Homeless, <https://www.coalitionforthehomeless.org/our-programs/advocacy/legal-victories/the-callahan-legacy-callahan-v-carey-and-the-legal-right-to-shelter/> [<https://perma.cc/X24U-J4SK>] ("In the four decades since the Callahan consent decree was entered, numerous violations of the decree have been documented and several have resulted in court action.")

97. See *Hodge v. Ginsberg*, 303 S.E.2d 245, 251 (W. Va. 1983) (ordering state to provide shelter under state welfare statute); *Williams v. Dept. of Human Services*, 116 N.J. 102 (1989) (interpreting a state statute to require provision of shelters for people experiencing homelessness). See also Deborah L. Parker, *Right to Shelter for the Homeless: The Use of Decision Analysis in Fashioning A Remedy*, 81 Geo. L.J. 829, 832 (1993).

98. Sara K. Rankin, *A Homeless Bill of Rights (Revolution)*, 45 Seton Hall L. Rev. 383, 400 (2015).

99. Agrawal, *supra* note 60. See also Assemb. B. 22, 2019-2020 Leg., Reg. Sess. (Cal. 2019).

100. See Assemb. B. 3300, 2019-2020 Leg., Reg. Sess. (Cal. 2019). Continuums of care

to force people experiencing homelessness into mental health treatment programs. Despite this, no California law guarantees treatment for physical health conditions or has a minimum standard for access to water or sanitation. While California's Assembly Bill 685 states that access to clean, drinkable water is a human right, there is no enforcement mechanism to incentivize compliance with this declaration. In fact, a report by UC Berkeley found that California was failing to provide water in accordance with either Assembly Bill 685 or established international law.¹⁰¹

California's homeless policy largely revolves around a "housing first" model, which recognizes that the stability provided by permanent housing is key to solving chronic homelessness.¹⁰² This model has historically worked, securing better long-term outcomes for people that are placed in permanent housing.¹⁰³ However, implementing bodies have strayed towards allocating the vast majority of their homelessness resources towards housing, in accordance with this model.¹⁰⁴ This has led to a serious gap in the provision of services to those who are fortunate enough to be placed in housing and those who remain unsheltered or in temporary shelters.

C. *Local Protections and Procedures*

Municipalities govern many of the prosaic tasks surrounding the delivery of services and shelter for homeless populations, including the establishment and zoning of shelters, the provision of medical services, and housing services. These tasks fall under municipalities' established police power to "enact regulations in the interest of public safety, health, welfare, or convenience."¹⁰⁵ This authority includes the use of zoning for and against the creation of shelters or encampments.¹⁰⁶ While zoning and local ordinances have often been used to restrict the placement and availability of shelters or encampments,

are regional housing and service providers for people experiencing homelessness, funded in part by HRSA through the McKinney-Vento Act. See *Continuums of Care*, L.A. Homeless Serv. Admin., <https://www.lahsa.org/coc> [<https://perma.cc/3S66-6R2R>].

101. U.C. Berkeley Envtl. Law Clinic & Envtl. Coalition for Water J., *Basic & Urgent: Realizing the Human Right to Water & Sanitation for Californians Experiencing Homelessness* 31 (2018), https://www.law.berkeley.edu/wp-content/uploads/2018/08/FINAL_EJCW.ELC_.Basic_.UrgentReportonAccesstoWaterandSanitationbyHomelessCalifornians.8.8.18.docx.pdf [<https://perma.cc/ZQ6X-KC7D>].

102. *Id.* at 2–3.

103. *Housing First*, Nat'l Alliance to End Homelessness, (Apr. 20, 2016), <https://endhomelessness.org/resource/housing-first> [<https://perma.cc/L3SS-MLY6>].

104. Corp. for Supportive Housing, *Dimensions of Quality Supportive Housing* (2013), http://www.csh.org/wp-content/uploads/2013/07/CSH_Dimensions_of_Quality_Supportive_Housing_guidebook.pdf [<https://perma.cc/7PTG-QL4J>].

105. See *Schneider v. New Jersey*, 308 U.S. 147, 160 (1939).

106. Zoe Loftus-Farren, *Tent Cities: An Interim Solution to Homelessness and Affordable Housing Shortages in the United States*, 99 Calif. L. Rev. 1037, 1064 (2011).

cities occasionally use permits and local ordinances specifically to accommodate shelters.¹⁰⁷

Several municipalities and counties have developed extreme heat procedures and task forces, with specific policies regarding the safety of vulnerable populations, including people experiencing homelessness. Both homeless advocates and the EPA have praised Phoenix, Arizona—a city that recorded 128 days with temperatures above 100 degrees in 2018—for its Extreme Heat Event (EHE) task force.¹⁰⁸ In conjunction with programs to incentivize tree planting, cool pavement, and green building projects (all of which reduce the urban heat island effect in low-income areas), Phoenix has launched HeatReady, a heatwave notification and response system that draws from hurricane and flood preparedness plans in other cities.¹⁰⁹ HeatReady involves collaboration with homeless outreach programs to provide wellness checks and emergency daytime shelter hours, and to establish emergency cooling shelters.¹¹⁰ Phoenix also donates bottled water to homeless encampments and people on the street during EHEs. Finally, Phoenix's EHE team collaborates with local NGOs and mutual aid groups that provide services and shelter for homelessness to locate and provide water and medical services to homeless communities.

The cities of Toronto, Ontario, and Philadelphia, Pennsylvania, have also developed effective EHE programs for aiding people experiencing homelessness.¹¹¹ Both programs have proactive and reactive measures for providing protections during EHEs and pay special attention to vulnerable populations, including people experiencing homelessness. In fact, Toronto's EHE program can trace its existence to the Mayor's Task Force on Homelessness, when the task force found that the homeless population needed increased outreach during EHEs. A city ordinance requires Toronto's Shelter, Support, and Housing Administration to provide street outreach to the homeless during heat waves and allocates funding to local NGOs through the agency's administration team. Further, Toronto's Parks, Forestry, and Recreation Administration encourages all people to use public pools during EHEs, emphasizing the need for extended hours and greater access. In addition, the Parks, Forestry, and Recreation Administration conducts outreach visits to public parks to inform people experiencing homelessness about the location and contact information of cooling centers. Community centers and municipal parks also offer

107. *Id.*

108. See *Env'tl. Prot. Agency*, EPA 430-B-16-001, *Excessive Heat Events Guidebook 32-33* (2006), https://www.epa.gov/sites/production/files/2016-03/documents/eheguide_final.pdf [<https://perma.cc/3R47-G4WK>].

109. Keridwen Cornelius, *How Phoenix is Working to Beat Urban Heat*, *Sci. Am.* (Feb. 13, 2019), <https://www.scientificamerican.com/article/how-phoenix-is-working-to-beat-urban-heat> [<https://perma.cc/VY98-PLYK>].

110. *Ariz. Dep't. of Health Serv.*, *Extreme Heat Incident Annex 4-5* (2018).

111. See *Toronto Hot Weather Response Committee*, *The City of Toronto's Hot Weather Response Plan* (2017); *Env'tl. Prot. Agency*, *supra* note 108, at 26-31.

extended hours and encourage homeless populations to remain there during extreme heat events. Toronto also provides transportation to cooling shelters, operates informational phone lines, and deputizes employees of other departments to assist in efforts to ensure the safety of people experiencing homelessness. Further, Toronto conducts quantitative risk assessments and broadens its criteria for identifying heat-attributable deaths during these periods to avoid undercounting heat-related mortality rates.¹¹²

Philadelphia conducts similar measures to Toronto in its notification and risk assessment responses. It also imposes a moratorium on all utility service shutoffs, which is significant for people living in shelters and transitional housing. Philadelphia also takes unique measures to reach out to vulnerable populations. These include advertising the city's heat-response phone line on the Crown Lights display system—a wraparound electronic billboard on top of Philadelphia's PECO tower.¹¹³ The billboard system is visible from most of the downtown Philadelphia area. Philadelphia also uses “block captains”—volunteers elected by residents of their neighborhood to identify high-risk individuals during EHEs. Finally, Philadelphia is notable for its use of field teams (composed of state Health Department workers) to conduct follow-up visits for at-risk individuals who had called into the heat-response phone line.¹¹⁴

Municipalities have also worked to increase water accessibility for people experiencing homelessness. In the past, municipalities have done this by administering mobile shower programs,¹¹⁵ installing temporary hand-washing and toilet systems in encampments,¹¹⁶ increasing the number of functional drinking fountains and sinks in city parks and other public areas,¹¹⁷ and distributing donated water bottles.¹¹⁸ Los Angeles funds a mobile shower program. This program follows in the footsteps of mobile shower provider LavaMae, a San Francisco nonprofit that provided mobile showers using modified city buses.¹¹⁹

Municipalities have traditionally provided medical care for people experiencing homelessness by funding or publicly operating emergency rooms,

112. See Env'tl. Prot. Agency, *supra* note 108, at 22.

113. See *id.* at 29.

114. See *id.*; Tom Avril, *Climate Change is Hurting Philadelphians' Health, and the Worst is Yet to Come*, Phila. Inquirer (Sept. 11, 2019), <https://www.inquirer.com/science/climate/climate-change-heat-death-heart-failure-20190911.html> [<https://perma.cc/KJ7N-R4QJ>].

115. L.A. Homeless Serv. Auth., 2019 Mobile Showers Program Request For Proposals 4 (2019), <https://www.lahsa.org/documents?id=3695-2019-mobile-showers-program-rfp.pdf> [<https://perma.cc/859J-2U7K>].

116. Heather Hansman, *Running Water can Ease the Effects of Homelessness*, City Lab (Dec. 14, 2017), <https://www.citylab.com/life/2017/12/running-water-can-ease-the-effects-of-homelessness/547505> [<https://perma.cc/E7FT-KMZ2>].

117. See Env'tl. Prot. Agency, *supra* note 108, at 31.

118. DeMyers et al., *supra* note 22, at 75.

119. See LavaMaeX, <https://lavamaex.org> [<https://perma.cc/2VX2-8EAH>] (describing LavaMae's operations and suite of available services).

clinics, and hospitals.¹²⁰ Shelter-based clinics are the most common form of medical care and have proven to be effective in treating conditions by taking services to the people who need them.¹²¹ However, many of the reactive measures taken in shelter-based clinics have been insufficient in quelling disease outbreaks in crowded shelters and encampments. At the recommendation of the Centers for Disease Control (CDC),¹²² municipal and county health departments have partnered with private and municipal shelters to provide vaccines for hepatitis,¹²³ tuberculosis, and influenza.¹²⁴ Successful outbreak response programs also provide vaccines via foot teams to encampments, needle exchange programs, and drug treatment programs—each of which see a high number of people experiencing homelessness.¹²⁵ While these programs often suffer from a lack of funding and a supply shortage of publicly available vaccines, the CDC has concluded that vaccination costs are much lower than the expected costs of failing to vaccinate patients.¹²⁶

Municipalities also focus on countering the spread of disease through sanitation standards in encampments and shelters. Several municipalities have followed the Department of Housing and Urban Development's disease prevention guidelines by scheduling public works departments for regular trash pickup and street medicine services near known encampments. However, these efforts are often complicated by ongoing street sweeps and encampment clearings, which make encampments more difficult to locate and disrupt the provision of services.¹²⁷

A recent example of municipalities taking greater care to prevent the spread of disease in homeless encampments and shelters is the governmental response to the COVID-19 outbreak. In a press release, Los Angeles mayor Eric Garcetti announced plans to deploy greater COVID screening, testing, and treatment for Los Angeles residents experiencing homelessness. Teams

120. Comm. on Health Care for Homeless People, Inst. of Med., *Homelessness, Health, and Human Needs* 103 (1988).

121. *Id.* at 106.

122. See Mona Doshani et al., *Recommendations of the Advisory Committee on Immunization Practices for Use of Hepatitis A Vaccine for Persons Experiencing Homelessness*, 68 *Morbidity & Mortality Wkly. Rep.* 153 (2019).

123. *Public Health and Faith-Based Organizations Partner to Offer Food and Vaccine to the Homeless (SC, CA, FL)*, U. of Minn. Ctr. for Infectious Disease Res. and Pol'y, <https://www.cidrap.umn.edu/practice/public-health-and-faith-based-organizations-partner-offer-food-and-vaccine-homeless-sc-ca> [<https://perma.cc/BH4T-482A>].

124. Mary D. Nettleman, *Use of BCG Vaccine in Shelters for the Homeless. A Decision Analysis.*, 103 *Chest* 1087, 1087 (1993).

125. Nat'l All. of State and Territorial AIDS Dirs., *Hepatitis A Virus Outbreak Response 1–2* (2018), https://www.nastad.org/sites/default/files/HD_Success_Stories/successstories-may2019-utah.pdf [<https://perma.cc/N42C-H2SA>].

126. Doshani et al., *supra* note 122, at 154.

127. See The Cloudburst Grp., *Infectious Disease Toolkit for Continuums of Care: Preventing & Managing the Spread of Infectious Disease within Encampments 3–4* (2020) (prepared for the U.S. Department of Housing and Urban Development).

deployed by the Unified Homelessness Response Center were sent to Skid Row and other known homeless encampments to isolate and treat people infected with COVID. However, these reactive measures have done little to slow the spread of the virus. While some shelters have taken preventative measures like moving beds farther apart, this inevitably means fewer beds are available. For unsheltered people, it is nearly impossible to follow the social distancing guidelines put forward by the CDC. Further, local governments have done little to facilitate access to water for hygiene purposes. Drew Capone, a water sanitation and hygiene researcher, stated that “most open defecation happens within 400 feet of a soup kitchen” with little handwashing available due to a closure in public toilets.¹²⁸

However, there are still valuable lessons that we can take from the governmental response to the pandemic on homeless populations. For one, the government’s reactive measures to the pandemic have fallen short, and many activists and policy makers are quick to point out that portable toilets and hand-washing stations should have been installed in encampments well before the pandemic.¹²⁹ Second, many cities are converting buildings that are unused during the lockdown to housing or are leasing hotel rooms to ensure that there is adequate space between people. While government stay at home orders have increased the number of unused buildings, the average occupancy rate of hotel rooms in 2018 was 79 percent.¹³⁰ With almost 100,000 hotel rooms in Los Angeles, that occupancy rate left about 20,000 hotel rooms open on the average night. It is feasible that some portion of those hotel rooms could be repurposed to help house people experiencing homelessness.¹³¹ Doing so would ease overcrowding in shelters and encampments. Third, the pop-up clinics that have emerged around Los Angeles have been somewhat effective in responding to the pandemic. For certain diseases, pop-up clinics may be able to offer vaccines to homeless patients who have not been vaccinated against diseases common in homeless populations.

III. DEVELOPING A CLIMATE-CONSCIOUS “HOMELESS BILL OF RIGHTS”

California’s failure to address the existing and anticipated dangers of climate change for homeless populations has been a major shortfall in its climate adaptation plans. By failing to create a cohesive plan, California has

128. Emma Grey Ellis, *For Homeless People, Covid-19 Is Horror on Top of Horror*, Wired (Apr. 2, 2020), <https://www.wired.com/story/coronavirus-covid-19-homeless> [<https://perma.cc/C2WB-77MF>].

129. Catherine Kim, *It Took a Pandemic for Cities to Finally Address Homelessness*, Vox (Apr. 21, 2020), <https://www.vox.com/2020/4/21/21227629/coronavirus-homeless-covid-19-las-vegas-san-francisco> [<https://perma.cc/8RCZ-GM8M>].

130. *April 2018 Lodging Metrics*, Discover L.A. (Mar. 19, 2020), <https://www.discoverlosangeles.com/april-2018-lodging-metrics> [<https://perma.cc/R72P-CBEC>].

131. *Facts About L.A.*, Discover L.A., <https://www.discoverlosangeles.com/media/facts-about-la> [<https://perma.cc/6A42-DVV2>] (expand Accommodations bar).

left municipalities without guidance or funding for dealing with the stresses of climate change on this particularly vulnerable group. As heat, drought, and overcrowding in shelters and encampments worsen, health and economic outcomes for people experiencing homelessness—a growing segment of the population—become more dire. To respond to this crisis, this paper suggests the creation of a state-level, climate-conscious homeless bill of rights in California, which would guarantee climate protections for people experiencing homelessness.

While scholars and advocates commonly refer to these programs as “bills of rights,” they do not necessarily take the form of amendments to the state’s constitution.¹³² Instead, most contemplate a robust system of broad rights, which are effectuated through specific and proscriptive state statutes. This structure follows from factors described by scholars as conditions necessary to a successful rights revolution.¹³³ There is a recorded judicial antipathy to finding positive rights that are not explicitly declared, and when courts do find a positive right, they are reluctant to impose directives on state legislatures. Therefore, specific ministerial duties and statutory causes of action must be created in order to effectuate broad rights-based goals. However, this does not obviate the need for broad declarations of rights, such as California’s aspirational declaration of the human right to water. Indeed, Professor Jeffrey Dudas described the need for broad-based statutes that guarantee substantive rights for people experiencing homelessness:

The most frequently expressed criticism of economic and social human rights is that they are mere aspirations to which governments may pay lip-service but have no duty to secure in practice. What these critics fail to note is that this is true of virtually all human rights claims when they are first accorded formal recognition . . . Indeed, the aspirational recognition of unenforced rights may be a necessary stage in their historical development.¹³⁴

With these dual substantive and aspirational goals in mind, the proposal described below for a climate-conscious homeless bill of rights has structural parallels with many proposed homeless bills of rights that focus on criminalization and discrimination against people experiencing homelessness. Specifically, a climate-conscious homeless bill of rights would create broad statutory rights, backed by a set of directives that lay out the specific means by which those rights would be realized. These statutes would take the form of funded mandates from California onto municipalities within its jurisdiction.¹³⁵

132. See Rankin, *supra* note 98, at 422–23.

133. See Charles R. Epp, *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspectives* 2–3 (1998).

134. Philip Harvey, *Aspirational Law*, 52 *Buff. L. Rev.* 701, 717–18 (2004).

135. Article XIII B, Section 6 of the California Constitution forbids requiring a new level of service from a municipality without providing funds to reimburse the local government for the costs of the program. Cal. Const. art. XIII B, § 6.

To provide context and concrete suggestions for how a climate-conscious homeless bill of rights would function in practice, this Part will: (1) explain the history and purpose of homeless bills of rights; and (2) put forward specific proposals on how a California Homeless Bill of Rights can ensure climate protections for people experiencing homelessness.

A. *Extant and Proposed Homeless Bills of Rights*

Homeless bills of rights are a relatively new phenomenon. In 2000, the Legislative Assembly of Puerto Rico passed Act 277, a statute that recognized that people experiencing homelessness are unable to avail themselves of rights given under the Puerto Rican Constitution. Act 277 did not guarantee any new rights—the legislature designed Act 277 to impart legitimacy to the claims of people experiencing homelessness and advocacy organizations by allowing advocacy groups to act as intercessors on behalf of homeless people in legal proceedings. Shortly after, Puerto Rico passed Act 130, which enumerated several positive rights for people experiencing homelessness. These included the right to shelter, nourishment, medical attention, and “all social services and benefits for which they qualify.”¹³⁶ Several negative rights were also articulated, including free access to public spaces and protection from mistreatment by law enforcement officers. While Act 130 created a multi-sector council to effectuate the listed positive rights, the Act’s provisions were not judicially enforceable. This was followed by Act 199 and Bill 3912, which respectively required government agencies to establish and publish protocols for the provision of services to people experiencing homelessness, and to identify and treat substance abuse and health issues in homeless populations. Homeless rights advocates have applauded Puerto Rico’s history of legislation surrounding homelessness, but implementation has been less than perfect due to perceived conflicts of interest and a lack of resources.¹³⁷ Although these four laws are not based in amendments to the Puerto Rican Constitution, advocates have collectively referred to them as a “homeless bill of rights”—the first of its kind in the United States.¹³⁸

In 2012, Rhode Island became the first continental state to enact a homeless bill of rights and the first government within the United States to refer to it as such.¹³⁹ The homeless bill of rights was a part of the Rhode Island Legislature’s response to the 2008 housing crisis, which had resulted in a 24 percent increase in homelessness in Rhode Island between 2008 and 2012. The homeless bill of rights affirmed that people experiencing homelessness are an explicitly protected class under the equal protection provisions of the Rhode Island Constitution. However, rather than amending the constitution itself, the Rhode Island homeless bill of rights merely declared that basic rights applied

136. Rankin, *supra* note 98, at 401.

137. *Id.*

138. *Id.* at 401–02.

139. *Id.* at 402.

to people experiencing homelessness. In doing so, it articulated seven rights of homeless Rhode Islanders that spring from this recognition, which Professor Sara Rankin summarized as follows:

The right to (1) 'use and move freely in public spaces;' (2) 'equal treatment from all state and municipal agencies;' (3) be free from employment discrimination based on housing status; (4) receive emergency medical care without discrimination based on housing status; (5) vote; (6) non-disclosure or confidentiality of public records; and (7) 'a reasonable expectation of privacy' for personal property.¹⁴⁰

While it is judicially enforceable and contains provisions allowing for aggrieved parties to seek injunctions or money damages, this statement of rights actually grants no new rights to homeless people. Rather, it simply reaffirms rights that all residents of Rhode Island already enjoy.¹⁴¹ Still, homeless advocacy groups have applauded the bill's provisions for allowing punitive damages, injunctive relief, and attorney's fees against government agencies and private parties for violations of these rights.¹⁴² It is also an incremental piece in a larger move towards homeless rights reforms.¹⁴³ This law has served as the basis for a homeless bills of rights in both Connecticut and Illinois, as well as in four cities: Duluth, Baltimore, Madison, and Traverse City (Michigan).¹⁴⁴ Homeless bills of rights, with varying degrees of protections, are also under consideration by eight states, including California and Washington D.C.¹⁴⁵ Much like the proposed homeless bill of rights below, these bills of rights focus on specific and detailed positive rights, centered around ending the criminalization of homelessness, providing equal access to services, and affirmatively creating new housing. They also share similarities with my proposed homeless bill of rights by imposing specific directives on municipalities, such as information collecting and reporting requirements, and provision of non-emergency healthcare.¹⁴⁶

B. *Synthesis of a Climate-Conscious Homeless Bill of Rights for California*

The ultimate goal of most homeless advocacy is to provide permanent and adequate housing for people experiencing homelessness. However, even with the most proactive housing policies, California will not be able to house

140. *Id.* at 406.

141. *Id.* at 406.

142. Nat'l Law Ctr. on Homelessness & Poverty, *From Wrongs to Rights: The Case for Homeless Bill of Rights Legislation* 16 (2014).

143. Rankin, *supra* note 98, at 411 ("But others insist that even incremental progress is progress, and Rhode Island advocates are advancing an incremental strategy.").

144. *Homeless Bill of Rights*, Nat'l Coalition for the Homeless, <https://nationalhomeless.org/campaigns/bill-of-right> [<https://perma.cc/GG2P-KM3F>] (click "Local Homeless Bill of Rights Measures" tab).

145. *Id.*

146. Rankin, *supra* note 98, at 414.

most of its homeless residents for decades.¹⁴⁷ As of 2016, California has an estimated shortage of 3.5 million housing units, equal to 25 percent of California's total housing stock.¹⁴⁸ These development goals face challenges created by opposition from local governments and residents, the need to develop in transit and job-rich areas, and the loss of existing housing to wildfires and sea level rise.¹⁴⁹

Under these conditions, it is inevitable that California's homeless population will continue to grow alongside the climate change burdens on each individual experiencing homelessness. In accordance with this, California has a moral duty to adopt policies that protect its population from the climate dangers associated with sheltered and unsheltered homelessness. Below, I enumerate several specific suggestions that would help California increase protections for people experiencing homelessness. They do not address the systemic causes of homelessness, nor the reality that climate change will place a greater burden on people experiencing homelessness, regardless of government protections and rights. However, adopting these provisions will save lives and improve the quality of life for sheltered and unsheltered people experiencing homelessness, while also addressing some of the concatenated events that keep homeless people in poverty like chronic medical conditions, insufficient hygiene, or isolation. While most extant and proposed homeless bills of rights acknowledge the dangers of harassment by law enforcement, acute emergency conditions, and a lack of access to services, none of them explicitly mention the existing and anticipated effects of climate change. Due to the significant health effects of climate change on people experiencing homelessness, a homeless bill of rights that fails to acknowledge climate change will provide incomplete protection.

Consequently, this paper will describe rights that would fit within the scheme of a climate-conscious homeless bill of rights. These policies draw from successful local and state-level plans and would take the form of a funded mandate from California to its municipalities. The policies would also declare positive rights for people experiencing homelessness. Similar to the positive rights of the Puerto Rican homeless bill of rights, these rights will focus on providing protections in areas where people experiencing homelessness are most

147. Noah Buhayar & Christopher Cannon, *How California Became America's Housing Market Nightmare*, Bloomberg (Nov. 6, 2019), <https://www.bloomberg.com/graphics/2019-california-housing-crisis> [<https://perma.cc/7CNG-KLC6>].

148. *Id.*; see also *Annual Estimates of Housing Units for the United States, Regions, Divisions, States, and Counties: April 1, 2010 to July 1, 2017*, U.S. Census Bureau, <https://archive.vn/20200213004637/https://factfinder.census.gov/bkmk/table/1.0/en/PEP/2017/PEPANNHU#> [<https://perma.cc/X9FJ-Q7C3>] (estimating California's total housing units in 2017 at approximately 14 million).

149. Diana Williams, *Regulatory and Marketplace Red Lights Block Governor's Housing Goals*, Cal. Econ. Summit (Aug. 16, 2019), <https://caeconomy.org/reporting/entry/the-california-regulatory-red-lights-dooming-governors-housing-goals> [<https://perma.cc/77WJ-MRMA>].

vulnerable. By taking the form of a statewide program, California could create a cohesive mandate that helps provide for the present and future needs of people experiencing homelessness. Further, by allowing for local implementation, this mandate could be tailored to the homeless population's specific needs in different localities. In order to ensure that municipalities effectively administer these policies, these provisions must be judicially enforceable. Therefore, like the Rhode Island Homeless Bill of Rights, the proposed homeless bill of rights should have provisions for money damages (including punitive damages), as well as for attorney's fees and injunctions.

In addition, a climate-conscious homeless bill of rights that creates consistent obligations for municipalities within California can avoid the perverse incentives associated with providing homeless services beyond the legal minimum. Namely, municipalities may fear that more proactive homeless services will result in a migration of people experiencing homelessness into their service area. Though evidence that progressive homeless services cause migration is tenuous,¹⁵⁰ residents of cities proposing a homeless services expansion have expressed these concerns.¹⁵¹ Therefore, relying on municipalities to take potentially unpopular actions is likely to have a chilling effect on the provision of much needed services. This creates a collective action problem, where municipalities that want to expand homeless services wait on other local governments to do the same, lest they become a haven for the homeless. California can ameliorate this collective action problem by setting an adequate legal minimum at the state level.

Below, I propose several specific rights for people experiencing homelessness that may be created via statute (similar to California's A.B. 685), as well as four specific elements that a climate-conscious homeless bill of rights in California should contain. These elements are: (1) targeted outreach and assistance for people experiencing homelessness during EHEs; (2) access to public water sources for hydration and hygiene; (3) a stronger medical care system for people experiencing homelessness; and (4) guarantees of equal access to disaster relief services. I suggest changes that closely focus on homelessness. However, it is true that there are many additional infrastructural changes that are necessary to preserve the safety, economic health, and stability of Californians, including those experiencing homelessness, in the face of

150. Betsy DeGeorge, *Migration Patterns of the Homeless Population*, *Rescue Magazine*, at 1, 3 ("Twenty-seven percent of families mentioned good services or programs as a reason for coming to their current location compared with only 17 percent of single individuals.")

151. Luke Money et al., *Unsheltered, Part 3: Solving Homelessness Takes Services, Housing and Political Will, Experts Say*, *L.A. Times* (Jan. 1, 2020), <https://www.latimes.com/socal/daily-pilot/news/story/2020-01-01/part-3-solving-homelessness-puzzle-in-the-long-term-takes-services-housing-and-political-will-experts-say> [<https://perma.cc/47RM-22NX>] ("Residents worry that shelters will attract homeless people from all over who will loiter, litter, drink, use drugs, commit crimes and generally create a nuisance wherever they congregate.")

climate change. Measures like green infrastructure to reduce the urban heat island effect, or improvements to California's water capture and transportation infrastructure will help to diminish the burdens on homeless populations.¹⁵² However, I will not be suggesting these measures as part of the proposed homeless bill of rights because major infrastructural improvements that target all Californians should be part of a wider climate adaptation plan. In structuring the proposed homeless bill of rights in this way, I recognize that California must make significant structural changes outside of these enumerated rights to preserve the safety of people experiencing homelessness. On the other hand, without the targeted protections and rights articulated below, broad infrastructural improvements will be unable to provide the protections that are necessary to effectuate strong and effective climate protections for people experiencing homelessness.

1. Targeted Outreach During EHEs and Access to Cooling Centers During EHEs

The first proposed right for California's climate-conscious homeless bill of rights is the right to outreach and protective measures during EHEs. Taking lessons from the successes of the Phoenix, Toronto, and Philadelphia EHE programs,¹⁵³ California's homeless bill of rights should require, by statute, the allocation of resources towards forward-looking planning for EHEs, targeted outreach, and community involvement.

This mandate should require each municipality in California to designate emergency cooling centers when temperatures become dangerously hot. These Cooling Centers may include town halls, public school facilities,¹⁵⁴ community centers, and libraries. The centers should be supplemented by extended daytime hours for shelters¹⁵⁵ and adjusted open hours at night for public parks and pools to take advantage of cooler shaded areas. Under the proposed homeless bill of rights, each municipality would have to take measures designed to ensure that enough space is available in Cooling Centers for homeless popula-

152. Mount et al., *supra* note 33.

153. See generally *supra* Subpart II.C

154. High school gymnasiums and auditoriums often have powerful air conditioning systems. Most major school districts do not release students from schools during EHEs, but districts within California, such as the district of Coronado, do have guidelines for Heat Day Release programs. These may become more prevalent in the future as EHE frequency increases, which would free up space in schools for use as Cooling Centers. See Coronado Unified School District Heat Day Release Guidelines (2014), <https://coronadousd.net/static/media/uploads/Coronado%20Unified%20School%20District/governing%20board/Documents/Heat%20Day%20Procedures%20for%20CUSD%20revised%209-11-14.pdf> [<https://perma.cc/X5UR-JQX5>].

155. This would not only decrease competition for limited space in Cooling Centers between vulnerable groups, but it would also help people experiencing homelessness locate spaces to escape from the heat. People experiencing homelessness are more likely to know the locations of shelters than temporary cooling centers.

tions without diverting space away from other vulnerable populations, like the elderly or people in low-income housing. Cooling Centers should be located strategically, with an emphasis on accessibility. During the COVID-19 pandemic, hotels and motels have also gained increasing interest as a potential isolation shelter for people experiencing homelessness.¹⁵⁶ The same principles may be applied during EHEs, creating a system by which municipalities could purchase or lease vacant rooms as a place for people experiencing homelessness to get away from extreme heat.

Further, a climate-conscious homeless bill of rights should require municipalities to create a comprehensive plan for targeted outreach to homeless communities in advance of and during EHEs.¹⁵⁷ Municipalities should tailor these programs to the circumstances of the local homeless communities by accounting for self-isolation, lack of access to internet services, and lack of transportation to and from Cooling Centers. Therefore, while cities should, at a minimum, establish an emergency information phone line, additional measures are needed to ensure that health and safety information is appropriately spread within homeless communities. These measures may take many different forms, but municipalities can take guidance from the actions of cities like Philadelphia, Phoenix, and Toronto.¹⁵⁸ City actions could include advertising phone lines on billboards in areas with high densities of people experiencing homelessness, forming street teams composed of employees or volunteers that conduct outreach work at homeless encampments, or cooperating with local NGOs that work closely with people experiencing homelessness. Municipalities should also provide transit to and from Cooling Centers.¹⁵⁹ This may take the form of shuttles going from encampments to Cooling Centers or distribution of transit passes.

2. Access to Showers and Sources of Drinking Water

The difficulty experienced by California's homeless population in accessing water is illustrative of the need for an effective homeless bill of rights to include both broad-based rights as well as specific statutes for giving force to those rights. While A.B. 685 enshrines the human right of access to water, there are no substantive measures to actually guarantee access to water.¹⁶⁰ Reports have detailed disabled residents of homeless encampments walking miles just to get to a water source.¹⁶¹ Further, access to water in industrial areas with high

156. Ellis, *supra* note 128.

157. See generally Env'tl. Prot. Agency, *supra* note 108.

158. See *id.* at 31.

159. Notably, the Toronto EHE program provides transit tokens to street outreach teams during EHEs to be distributed to people experiencing homelessness during heat waves. See *id.* at 26–32.

160. U.C. Berkeley Env'tl. Law Clinic & Env'tl. Coalition for Water J., *supra* note 101, at 6.

161. Special Rapporteur, *supra* note 59, at ¶ 7.

populations of people experiencing homelessness (like Los Angeles's Skid Row) is poor, and dehydration is extremely common. While a declared human right serves as a good baseline for creating new and protective laws, the laws that spring from that right must actually be effective in protecting people.

Therefore, a climate-conscious homeless bill of rights should also include specific provisions for actualizing the aspirational human right to water declared by Assembly Bill 685. This should include dedicated maintenance of public water resources, such as drinking fountains.¹⁶² It should also prioritize increased placements of public water fountains, targeted towards areas with high densities of people experiencing homelessness. California should also mandate that cities place these water fountains in areas that are available at all hours of the day, rather than in parks, which generally close after sundown.

Under a climate-conscious homeless bill of rights, California should further recognize that demand for water is not static. In times when demand exceeds availability (like during EHEs or when available sources of water are unusable), California should also require that cities install new water sources, such as temporary drinking fountains or restrooms.¹⁶³ Due to the risks associated with dehydration and heat stroke, having water to meet demand during EHEs is necessary to preserve the health of people experiencing homelessness. Cities should also provide donations of bottled water in recognition of the fact that people experiencing homelessness may be unable to access stationary water sources.

Finally, a climate-conscious homeless bill of rights must address the severe isolation and resulting water insecurity of large homeless encampments in response to harassment by private parties and law enforcement officers. In the past, cities like Tacoma, Washington, have addressed this issue by installing water lines in homeless encampments, which supply water for sanitation and hydration.¹⁶⁴ If California were to create statutory requirements for localities based on this model, then cities could prevent the spread of disease, ensure proper hydration, and combat the other effects of water insecurity. California should also mandate that its municipalities provide access to sanitary

162. U.C. Berkeley Env'tl. Law Clinic & Env'tl. Coalition for Water J., *supra* note 101, at 10.

163. The Los Angeles Department of Water and Power has, in the past, installed temporary drinking fountains in and around Skid Row in Los Angeles because drinking fountains in public parks are not available after the park closes. Jessica Roy, *DWP Installs Temporary Sidewalk Drinking Fountains in Skid Row*, L.A. Times (July 5, 2016), <https://www.latimes.com/local/california/la-me-ln-skid-row-drinking-fountains-20160701-snap-htmlstory.html> [<https://perma.cc/H5MH-LCM6>].

164. "[M]embers of the city's public works department went to a homeless encampment on the edge of the Puyallup River known as the Compound, where 40 people were living on an overgrown strip of unused public land. The officials dug a water line into the site, drilled in a spigot, and brought in hand-washing stations and portable toilets." Hansman, *supra* note 116.

services—specifically, showers and hand washing stations—through mobile shower programs and temporary hand-washing stations in encampments.

3. Comprehensive Medical Care

Given the prevalence of infectious disease in homeless encampments and shelters and the risk of a further increase as homeless populations rise due to the effects of climate change, a climate-conscious homeless bill of rights must provide for disease treatments. Following in the footsteps of successful vaccination programs, this proposed bill of rights suggests that California should mandate local governments to administer vaccination and treatment programs. These programs would take the form of in-shelter medical care and street medicine teams¹⁶⁵ as well as regularly scheduled pop-up clinics.¹⁶⁶ Just like the pop-up clinics created in response to the COVID pandemic, these clinics would travel to known homeless encampments and areas with high densities of people experiencing homelessness. In addition, these clinics tend to be cost-effective by preventing more acute medical emergencies that result from untreated medical conditions.¹⁶⁷

4. Equal Access to Disaster Relief Services

Finally, an effective climate-conscious homeless bill of rights must ensure that homeless communities have the right of equal access to disaster relief services following wildfires, flooding events, disease outbreaks, and other disasters. In enacting this statute, California should take care to acknowledge the increased frequency of natural disasters due to climate change and the greater strain on services that this brings.

These disaster relief efforts stand in direct contrast to FEMA's policy of denying emergency housing services to people experiencing homelessness, municipalities' practices of segregating people experiencing homelessness from the rest of the population, and policies denying them disaster relief like

165. HUD has suggested that municipalities oversee an increase in the number and activity of street medicine teams as a response to the COVID pandemic. U.S. Dep't of Housing & Urb. Dev., *Protecting Health and Well-being of People in Encampments During an Infectious Disease Outbreak 2 (2020)* <https://files.hudexchange.info/resources/documents/COVID-19-Essential-Services-for-Encampments-During-an-Infectious-Disease-Outbreak.pdf>.

[<https://perma.cc/KC9X-BWNC>]. Municipalities may be more willing and able to develop better street medical care in the long-term after the procedures have been developed by municipalities during the pandemic.

166. University-sponsored pop-up clinics have been used to treat HIV/AIDS in people experiencing homelessness in San Francisco with good results. *See generally POP-UP: Helping Homeless and Unstably Housed People with HIV*, U.C.S.F., Div. of HIV, Infectious Diseases, and Glob. Med., <https://hividgm.ucsf.edu/pop-up> [<https://perma.cc/37JL-DKXC>].

167. Daniel G. Garrett, *The Business Case for Ending Homelessness: Having a Home Improves Health, Reduces Healthcare Utilization and Costs*, 5 *Am. Drug Health Benefits* 17, 18 (2012) (conducting cost-benefit analysis in the context of providing people experiencing homelessness preventative care as part of a suite of the benefits of housing).

pecuniary aid, medical services, or temporary housing.¹⁶⁸ By mandating that municipalities provide equal access to these services, California would be acknowledging the property loss, injury, and increased competition for necessary services that often come with large-scale disasters.

Further, California should mandate that municipalities conduct targeted outreach to homeless communities prior to and during disasters. Because encampments and people living outdoors are often self-isolated and lack the access to information that the general population enjoys, disasters present an even greater risk due to homeless communities having a shorter preparation time and fewer resources to respond to risk. An effective disaster outreach program would follow a similar structure to the proposed notification system detailed in my Part on outreach during EHEs,¹⁶⁹ including the use of phone lines, outreach teams, and collaborations with local NGOs.

CONCLUSION

While effectuating a climate-conscious homeless bill of rights would likely carry a significant price tag, California has several potential sources of funding. First, California Governor Gavin Newsom has recently proposed adding \$1.4 billion to the California budget for housing and homeless services.¹⁷⁰ In addition, the 2020–2021 California budget has over \$3.5 billion in funding for climate adaptation and mitigation programs.¹⁷¹ California's Legislative Analyst's Office has offered several suggestions on how this funding may be allocated between adaptation and mitigation, but there is no statutory guidance on how this funding is to be appropriated.¹⁷² It is feasible that a portion of this funding could be allocated towards the provision of services required by a climate-conscious homeless bill of rights. Federal funding can also be secured through climate adaptation grant programs as well as the McKinney-Vento Act.¹⁷³

Presenting a climate-conscious homeless bill of rights as a response to the seriousness of both climate change and homelessness may also be a politically prudent move. Public concern surrounding homelessness and housing

168. *See supra* Subpart II.A.

169. *See supra* Subpart III.A.2.

170. Erin Baldassari, *California Gov. Newsom Lays Out Framework to Address Homelessness*, Nat'l Pub. Radio (Feb. 21, 2020), <https://www.npr.org/2020/02/21/808016586/calif-gov-newsom-lays-out-framework-to-address-homelessness> [https://perma.cc/6BHW-WPC2]; Ben Christopher, *Newsom's Big Move on Homelessness May be Just in Political Time, Poll Says*, CalMatters (Jan. 15, 2020), <https://calmatters.org/housing/homeless/2020/01/newsom-homelessness-poll-ppic-primary-presidential-approval-school-bond> [https://perma.cc/KK82-DEFB].

171. Gabriel Petek, Cal. Legis. Analyst's Office, *The 2020–21 Budget: Climate Change Proposals 4* (2020).

172. *Id.* Much of this funding is secured through California's emissions trading auctions. Edna Sussman et al., *Climate Change Adaptation: Fostering Progress Through Law and Regulation*, 18 N.Y.U. Envtl. L.J. 55, 136 (2010).

173. *See supra* note 90 and accompanying text.

availability has surged in recent years. In 2015, one survey found that only 2 percent of respondents considered homelessness to be the most important issue in California. In 2020, the same survey found that 20 percent of respondents consider homelessness to be the most serious issue in California, with another 10 percent citing housing availability as the most important issue.¹⁷⁴ On the climate change side, a majority of Californians have stated that it is “very important” for California to be a leader in climate change, with 50 percent of Californians stating that they would support action on climate change even if it carried increased costs to them.¹⁷⁵ By framing a climate-conscious homeless bill of rights as a synthesis between these two issues, there is a potential for this measure to be politically viable in California despite the costs.

Former Vice President Hubert Humphrey once said: “The moral test of government is how that government treats those who are in the dawn of life, the children; those who are in the twilight of life, the elderly; those who are in the shadows of life, the sick, the needy and the handicapped.”¹⁷⁶ The global community is in the midst of a watershed moment in how it responds to the realities of climate change. As we usher in a world transformed by global warming, will we leave behind those in the shadows of life? The proposals in this paper will not be cheap or easy, nor will they fully remedy the many challenges that global warming will thrust upon people experiencing homelessness. Yet, the way that we treat the most vulnerable in our society is a measure of our own values. By planning and executing measures to protect people experiencing homelessness, California has an opportunity to show where its values lie.

174. Christopher, *supra* note 170.

175. Mark Baldassare, *Californians' Views on Climate Change*, Pub. Pol’y Inst. of Cal. (Sep. 2018), <https://www.ppic.org/publication/californians-views-on-climate-change/> [<https://perma.cc/8FE8-23BH>].

176. Joan Alker, *Children in the Dawn and Shadows of Life Should be a Top Priority in Budget Talks*, Geo. Univ. Health Pol’y Inst. (July 14, 2011), https://ccf.georgetown.edu/2011/07/14/children_in_the_dawn_and_shadows_of_life_should_be_a_top_priority_in_budget_talks [<https://perma.cc/G4UL-MMAB>].