

A DURABLE RIGHT TO HOUSING: THE PROMISE OF ACA 10

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TABLE OF CONTENTS

I.	INTRODUCTION	2
II.	A JUDICIALLY CRAFTED RIGHT TO SHELTER	3
III.	LITIGATION – WHY LAWSUITS FAIL	8
IV.	LEGISLATIVE SOLUTIONS ON A STATEWIDE LEVEL	11
V.	SOLUTIONS ON A CITY COUNCIL LEVEL	12
VI.	OTHER WAYS FORWARD	13
A.	NONPROFIT CONSOLIDATION AND MARKET CONDITIONS	14
B.	FEDERAL FUNDING ADVANTAGES	15
C.	ZONING	16
VII.	OTHER LIMITED APPROACHES THROUGH LEGISLATION..	17
VIII.	ACA 10 – THE BEST HOPE TO CREATE MORE HOUSING.....	20
A.	FUNDING OF ACA 10 FOR LOS ANGELES COUNTY	24
IX.	CONCLUSION.....	27

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I. INTRODUCTION

It is not hyperbole to say that homelessness is one of the biggest issues facing Americans today.¹ Nowhere is this problem more pronounced than in California. As of 2022, California's unhoused population stands at over 170,000 people.² In Los Angeles alone, over 65,000 people are currently unsheltered on the street.³ A quarter of all unhoused people in the United States currently reside in California, although California residents make up only 12% of the nation's population.⁴ While policy makers have attempted a number of approaches to counter this dramatic rise in homelessness, from criminalization to a right to temporary shelter, these solutions have been unable to counter the drastic increase in homelessness. This paper proposes an alternative strategy of implementing an amendment to the California Constitution that would establish an affirmative right to housing. A constitutional right to housing, such as the one proposed in Assembly Constitutional Amendment 10 ("ACA 10"), would establish a legal mechanism to hold municipalities, including the city of Los Angeles, accountable for ensuring that all residents are housed.⁵ By examining the history of New York City's right to shelter, judicial and policy decisions on a state and local level responding to homelessness, and solutions enacted in other parts of the United States, this paper will assert that ACA 10 is the most effective strategy to establish a lasting, durable solution to counter homelessness in Los Angeles and California overall.

This paper will first discuss New York City's right to shelter and examine its successes and failures. Following this background, it will critically address the varied policy and judicial approaches at the state and local level, including decisions from the Ninth Circuit Court of Appeals and the Los Angeles City Council. This paper will focus on establishing a right to housing throughout California, with a specific emphasis on the city of Los Angeles, and discuss how shared funding could make a right to housing varied and potentially inequitable throughout California. This paper will look at approaches taken in other parts of the country, where a right to

¹ The terms "homeless" and "unhoused" are used interchangeably throughout this article to avoid repetitive language.

² Tanya de Sousa, Alyssa Andrichik, Marissa Cuellar, Jhenelle Marson, Ed Prestera & Katherine Rush, *The 2022 Ann. Homelessness Assessment Rep. (AHAR) to Cong.*, U.S. DEPT. OF HOUS. & URB. DEV. (Dec. 2022), <https://www.huduser.gov> [<https://perma.cc/BN4Y-PY89>].

³ *Id.* at 21.

⁴ Kath Rogers, Eve Garrow, Sarah Cook, André Enriquez, Eric Tars, Emma Quinn, Rachel Fox, Sophia Newhouse Brown, Savannah Walseth, Stephano Medina, Amy Schur & Tina Rosales, *Recognizing the Right to Housing*, CAL. RIGHT TO HOUS. WORKING GRP. (APR. 24, 2023) [hereinafter CAL. WORKING GRP.], <https://wclp.org> [<https://perma.cc/R2B4-TP67>].

⁵ *Id.* at 33.

shelter has been established and whittled away by government actors. The final portion will analyze and make an affirmative case for a constitutional amendment establishing a right to housing and explain why a constitutional amendment would succeed where other approaches have failed.

II. A JUDICIALLY CRAFTED RIGHT TO SHELTER IN NEW YORK CITY

In 1981, the New York County Supreme Court established a judicially created right to shelter within the five boroughs of New York City.⁶ This right to shelter (distinct from an affirmative right to permanent housing) created a legal mandate that the city must provide emergency shelter to unhoused residents.⁷ Although New York City's right to shelter has had decidedly mixed results, examining its failures and successes are crucial to understanding why a constitutional right to housing is the best path to reduce homelessness in Los Angeles and California.

The history of New York City's right to shelter extends back to the Great Depression and Mayor Fiorello La Guardia.⁸ In 1938, Mayor La Guardia persuaded voters to pass a state constitutional amendment to address widespread poverty.⁹ This amendment, Article XVII, declared that: “[t]he aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions, and in such manner and by such means, as the legislature may from time to time determine.”¹⁰ La Guardia's amendment laid the foundation for the *Callahan* consent decree, which established a right to shelter in New York City forty-one years later.¹¹

In 1979, twenty-six-year-old lawyer Robert Hayes filed a class action lawsuit on behalf of three homeless men he met at a

⁶ Consent Decree at 1-2, *Callahan v. Carey*, No. 79-42582 (N.Y. Sup. Ct. Aug. 26, 1981), <https://www.escr-net.org> [<https://perma.cc/3JP7-6UR9>].

⁷ *Id.*; CAL. WORKING GRP., *supra* note 4, at 26.

⁸ Ian Frazier, *Hidden City*, NEW YORKER (Oct. 28, 2013), <https://www.newyorker.com> [<https://perma.cc/Z788-S84Z>].

⁹ *Id.*

¹⁰ N.Y. CONST., art. XVII, § 1.

¹¹ *Callahan v. Carey*, No. 79-42582 (N.Y. Sup. Ct. Aug. 26, 1981) (final judgment by consent decree).

Catholic mission in the Bowery neighborhood in Manhattan.¹² Hayes argued that, pursuant to Article XVII, § 1 of the New York Constitution, it was the responsibility of the government to provide adequate aid, care, and support to New York City's indigent population, which necessarily included a right to emergency shelter.¹³ The complaint also argued that by failing to make available a sufficient supply of adequate lodging to meet the needs of the plaintiffs, and by failing to provide adequate hygienic rehabilitative services, the state had violated the plaintiffs' rights under the New York Constitution.¹⁴

The New York County Supreme Court found Hayes' argument compelling and ordered a consent decree in 1981, establishing a right to shelter in New York City.¹⁵ This consent decree mandated that the city must provide shelter and board to each homeless man that applied for it, provided that the man met the need standard to qualify or the man was in need of temporary shelter by reason of physical, mental, or social dysfunction.¹⁶ In 1983, The New York County Supreme Court expanded this decision in *Eldredge v. Koch* by ruling that the *Callahan* decree must also be applied to shelters for homeless women,¹⁷ and in 1987 expanded the right to shelter to apply to families in *McCain v. Koch*.¹⁸ Following the *Callahan* decision, other jurisdictions, including Massachusetts and Washington D.C., enacted similar limited right to shelter laws.¹⁹ New York City remains the only municipality within New York State

¹² Amended Complaint at 4-5, *Callahan v. Carey*, No. 79-42582 (N.Y. Sup. Ct. Aug. 26, 1981), <https://www.coalitionforthehomeless.org> [<https://perma.cc/BK69-A6JE>].

¹³ *Id.* at 9.

¹⁴ *Id.* at 22-3.

¹⁵ Consent Decree, *Callahan v. Carey*, No. 79-42582 (N.Y. Sup. Ct. Aug. 26, 1981), <https://www.escri-net.org> [<https://perma.cc/3JP7-6UR9>].

¹⁶ *Id.* at 2.

¹⁷ *Eldredge v. Koch*, 118 Misc. 2d 163 (N.Y. Sup. Ct. Feb. 7, 1983).

¹⁸ *McCain v. Koch*, 70 N.Y.2d 109 (N.Y. App. Div., 1986).

¹⁹ See D.C. CODE ANN. § 4-754.11 (West 2022) (establishing a right for unhoused residents in Washington D.C. to access shelter in "severe weather conditions"); MASS. GEN. LAWS ANN. ch. 23B, § 30 (West 2023) (stating provisions for administration of "emergency housing assistance" to families in the state, including "pregnant woman [sic] with no other children").

required to enforce an obligation to provide unhoused residents with shelter.²⁰

Despite the guarantee of shelter in *Callahan*, the “need” standard remains difficult to meet for many unhoused residents. Every applicant for shelter must present original valid identification and proof of their recent place of residence.²¹ Additionally, New York’s Department of Homeless Services requires shelter clients to gain employment and connect to work support to be eligible for shelter.²² These requirements, for both non-U.S. citizens lacking identification (and subsequently work authorization) as well as for unhoused residents with disabilities unable to meet work obligations, remain difficult to meet for many seeking shelter.

Notably, there is no *explicit* right to either shelter or housing enshrined in the New York Constitution. The right to shelter in New York relies largely on Article XVII, §1, but a right to shelter is not enumerated within the New York Constitution. While it is unknown what New York would look like with an enumerated right to shelter in its constitution, many of the legal challenges facing *Callahan* (discussed below) could potentially have been avoided with an explicit constitutional statewide right to shelter.

Unfortunately, the right to shelter has not led to a general decrease in homelessness in New York City. While the progress won by Hayes and other housing advocates in New York is certainly admirable, numbers paint a much starker picture of homelessness within the five boroughs. In 2022, New York City had the highest number of unhoused people in the United States, with around 50,000 people lacking permanent housing.²³ The Western Center on Law and Poverty has noted that while “[f]ifty-seven thousand people stay in New York City shelters each night, . . . only around two hundred people move to permanent housing each week.”²⁴ Largely, this is because New York City has prioritized investments in temporary

²⁰ Consent Decree, *Callahan v. Carey*, No. 79-42582 (N.Y. Sup. Ct. Aug. 26, 1981), <https://www.escri-net.org> [<https://perma.cc/3JP7-6UR9>]. See also Annie McDonough, *Could New York City’s Right to Shelter Apply Statewide?*, CITY AND STATE N.Y. (Aug. 15, 2023), <https://www.cityandstateny.com> [<https://perma.cc/ZPX2-K2SA>].

²¹ *Frequently Asked Questions*, NYC DEP’T HOMELESS SERVS., <https://www1.nyc.gov> [<https://perma.cc/RR2S-9N4Y>].

²² *Id.*

²³ CAL. WORKING GRP., *supra* note 4, at 26.

²⁴ *Id.*

shelters while neglecting large-scale investments in affordable housing for over forty years.²⁵

While New York City has frequently tried to skirt its *Callahan* responsibility since its enactment, the city has recently attempted to fully suspend the mandate.²⁶ Under Mayor Eric Adams, the city has argued that, in light of the recent migrant crisis, it has reached the limit of its sheltering ability after opening 210 emergency sites and spending more than \$2 billion on temporary housing.²⁷ On October 3, 2023, Adams formally requested that the city be allowed to temporarily abdicate its *Callahan* obligation.²⁸ New York Governor Kathy Hochul has enthusiastically embraced New York City's request to suspend its right to shelter, and a spokesman of hers has noted that "flexibility is imperative to address the surge of migrant arrivals."²⁹ Despite courts having consistently upheld the *Callahan* right to shelter, housing advocates have been understandably worried about the potential gutting of a right to shelter within the city.³⁰ While no decision has been made yet regarding Adams's most recent request for a temporary suspension, the city continues to face ongoing protests for its attempt to abdicate its decades-old legal obligation.³¹

Despite the *Callahan* decision stemming from New York's Constitution, New York City remains the only city within New York obligated to provide unhoused residents with shelter.³² Some have argued that although the *Callahan* case created a right to shelter solely in New York City, this mandate should be expanded throughout the

²⁵ *Id.*

²⁶ Letter from Daniel R. Perez, Assistant Corp. Couns., N.Y.C. L. Dep't., to the Honorable Erika Edwards, N.Y. Sup Ct. Just. (Oct. 3, 2023), <https://www.nyc.gov> [<https://perma.cc/KD2N-TGQM>]. See Gina Bellafante, *New York's Right to Shelter Is Under Attack. Again.*, N.Y. TIMES (Oct. 6, 2023), <https://www.nytimes.com> [<https://perma.cc/HDP6-9PTG>].

²⁷ Letter from Daniel R. Perez, Assistant Corp. Couns., N.Y.C. L. Dep't., to the Honorable Erika Edwards, N.Y. Sup Ct. Just., (Oct. 3, 2023) <https://www.nyc.gov> [<https://perma.cc/KD2N-TGQM>].

²⁸ *Id.*

²⁹ Governor Hochul's spokesperson seems to be implying that because the city was not dealing with a migrant crisis at the creation of right to shelter in New York City, extenuating circumstances necessitate "flexibility" with the policy. Greg B. Smith, *Gov. Hochul Backs Adams' Call to Suspend 'Right to Shelter' During Asylum Crisis*, CITY (Oct. 11, 2023), <https://www.thecity.nyc> [<https://perma.cc/9ZMT-SHDF>].

³⁰ Bellafante, *supra* note 26.

³¹ CBS New York, *Homeless Advocates Rally to Defend Right to Shelter in New York City*, YOUTUBE (Dec. 7, 2023), <https://www.youtube.com> [<https://perma.cc/V5G8-8BNQ>].

³² McDonough, *supra* note 20.

state. In August 2023, several months before his abdication request, Mayor Adams petitioned for an executive order that would have *extended* the right to shelter across the entire state of New York to alleviate the pressure put on New York City.³³ In the face of the legal challenges from Mayor Adams, New York civil rights attorney Norman Siegel has proposed that the entire state should be responsible for New York City's right-to-shelter legal mandate.³⁴ Siegel notes that the initial *Callahan* decision, prior to the consent decree, explicitly stated that there was no reason why the plaintiffs could not have been lodged and fed at institutions wherever available in the state.³⁵ Not only would this open up much-needed resources for unhoused New York City residents, but it could also eventually aid unhoused residents in upstate cities, such as Albany and Rochester. Siegel argues that the state should be required to provide a plan to hold the other fifty-seven counties in New York responsible for unhoused residents in New York City, and a court could expand the decision and apply *Callahan* to all counties in the state of New York.³⁶ Governor Hochul, on the other hand, has made it very clear that *Callahan* is strictly an obligation of the five boroughs, and that because New York State was not a party in the original decision, the right to shelter does not extend outside New York City.³⁷

New York's right-to-shelter history illustrates several important lessons for other jurisdictions. Most importantly, cities cannot solely rely on temporary shelters to end homelessness. Large investments in affordable housing are crucial to ending homelessness and not simply shuffling unhoused residents from temporary shelter to temporary shelter.³⁸ In the face of right-to-shelter's inadequacy, municipalities would be better served by focusing on establishing a right to permanent housing. Additionally, New York illustrates that government actors on both the state and local levels will attempt to

³³ Mayor Adams' request was not granted by Governor Hochul. *See also* Press Release, Eric Adams, Mayor Adams' Statement on Right to Shelter Hearing Held Today (Aug. 4, 2023), <https://www.nyc.gov> [<https://perma.cc/STU8-WGPD>].

³⁴ *Id.*

³⁵ *Callahan v. Carey* at 2, 3, No. 79-42582 (N.Y. Sup. Ct. Dec. 5, 1979), <https://www.coalitionforthehomeless.org> [<https://perma.cc/Z5WM-964K>].

³⁶ McDonough, *supra* note 20.

³⁷ *Id.*

³⁸ *See* CAL. WORKING GRP., *supra* note 4, at 26.

abdicate their obligations to unhoused residents, despite decades of case law supporting a right to shelter. Just because a right to shelter (or housing) is established does not mean that it will be preserved, and the tenacity of homeless advocates, voters, and policy makers is essential to keeping a right to housing intact.

Although New York City's right to shelter has had decidedly mixed results, its failures and successes are crucial to examine in order to establish a right to housing in Los Angeles and California. The following examination of Ninth Circuit case law on homelessness and shelter only strengthens the argument for a constitutional right to housing throughout California.

III. LITIGATION – WHY LAWSUITS FAIL

As early as the 1970s, litigators have fought to establish a right to shelter.³⁹ These arguments have been squarely defeated at the Supreme Court, as Justice White noted that “the assurance of adequate housing” was exclusively a legislative function, and not a question for the judiciary.⁴⁰ With the exception of West Virginia (which recognizes a right to temporary emergency shelter in limited circumstances), New York City is the only place to have established a right to shelter through litigation and not legislation.⁴¹

While the Ninth Circuit has struck down punitive anti-homeless ordinances recently, case law suggests that impact litigation is not the most effective path forward to establish a right to housing in California. The two cases analyzed below are tangential to a right to shelter/housing because the Ninth Circuit has not heard recent cases where localities have brought direct challenges to the affirmative right to shelter/housing ordinances and have instead focused on laws that punish homeless residents. The following two cases nearly ensure that cities and states are not responsible for sheltering unhoused residents.

In 2019, the Ninth Circuit heard arguments for *Martin v. City of Boise*, which examined Boise, Idaho's “Camping Ordinance”

³⁹ See *Lindsey v. Normet*, 405 U.S. 56, 58 (1972).

⁴⁰ *Id.* at 74.

⁴¹ See W. VA. CODE § 9-6-4. *But see* Ben A. McJunkin, *The Negative Right to Shelter*, 111 CAL. L. REV. 127, 151 (Mar. 6, 2023).

(Boise City Code § 9-10-02) (making it a misdemeanor to use any street, sidewalk, park, or public place for camping at any time), as well as its “Disorderly Conduct Ordinance,” (Boise City Code § 6-01-05) (banning occupying or sleeping in a building without the permission of the owner).⁴² Boise had far more unhoused people experiencing homelessness than shelter beds in the city.⁴³ The court considered whether the Eighth Amendment’s prohibition on cruel and unusual punishment barred the city’s government from prosecuting homeless residents for sleeping outside on public property when they had no other place to go.⁴⁴ The court found that the ordinances violated the Eighth Amendment by imposing criminal sanctions against unhoused individuals for sleeping outdoors on public property when no alternative shelter was available.⁴⁵

More recently, in the 2022 case of *Johnson v. City of Grants Pass*, the Ninth Circuit heard challenges to five municipal code provisions enacted in Grants Pass, Oregon.⁴⁶ The court described the provisions as one “anti-sleeping” ordinance, two “anti-camping” ordinances, one “park exclusion” ordinance, and one “park exclusion appeals” ordinance.⁴⁷ Similar to *Boise*, Grants Pass had far more unhoused residents than it had shelter beds.⁴⁸ Using the same reasoning as *Boise*, the circuit ruled that the Eighth Amendment’s Cruel and Unusual Punishment Clause barred the anti-camping laws.⁴⁹ One of three amici briefs filed by the National Law Center on Homelessness & Poverty revealed that enforcement of these laws wasted limited resources by citing that Los Angeles spent \$50 million policing criminal and civil “quality of life” laws compared to its \$13 million on services to its unsheltered population.⁵⁰ Unsurprisingly, the

⁴² *Martin v. Boise*, 920 F.3d 584, 603 (9th Cir. 2019).

⁴³ *Id.* at 604.

⁴⁴ *Id.* at 603.

⁴⁵ *Id.* at 604.

⁴⁶ *Johnson v. City of Grants Pass*, 50 F.4th 787, 793 (9th Cir. 2022) *cert. requested*.

⁴⁷ *Id.* at 792-94.

⁴⁸ *Id.* at 795.

⁴⁹ *Id.* at 798.

⁵⁰ Amicus Brief of the National Law Center on Homelessness & Poverty in Support of Plaintiffs’ Motion for Summary Judgment, *Johnson v. City of Grants Pass*, 50 F.4th 787 (Ninth Cir. 2022).

Supreme Court granted a writ of certiorari in an appeal to this case, and struck down the Ninth Circuit's ruling.⁵¹

How do these cases, focused on municipal ordinances that criminalize the behavior of unhoused people, relate to establishing a right to housing? More importantly, why do they show that impact litigation is an ineffective tool for establishing this right? Despite positive developments striking down laws against unhoused people, these decisions explicitly ensure that they are not used as a justification for a right to shelter, much less a right to housing. The opinion in *Boise* went out of its way to cite the panel in the vacated opinion of *Jones v. City of Los Angeles*, declaring that their decision does not dictate that a city *must* provide sufficient shelter for the homeless.⁵² *Grants Pass* similarly cites *Jones*, ensuring that the Ninth Circuit, while perfectly capable of creating a right-to-shelter in either case, will only declare unconstitutional the most punitive anti-homeless ordinances.⁵³ While there has not been a lawsuit directly challenging a city to impose a right to shelter in the Ninth Circuit, the court has had multiple opportunities to craft a right to shelter with these two cases. Ultimately, the court has gone out of its way to absolve municipalities of their obligation to provide shelter. Even if the Ninth Circuit were to create a judicially constructed right to housing, this solution would essentially be at best a stopgap that Congress could eliminate by shifting the Ninth Circuit's ideological makeup through the appointment of judges fixated on dismantling the administrative state.

Looking past the Ninth Circuit to the Supreme Court following *Grants Pass*, while the Court has not heard a right-to-shelter case, an influx of judges that are skeptical of the administrative state herald an uphill battle in creating a judicially-created right to shelter.⁵⁴ While the temptation of a quick-fix, judicially-created right to shelter is certainly tempting, the same reasons for its creation are also the reasons that make it incredibly precarious: even if the Ninth Circuit were to create a right to shelter,

⁵¹ *City of Grants Pass v. Johnson*, 144 S. Ct. 2202 (2024).

⁵² *Martin*, 920 F.3d 584 at 617.

⁵³ *Jones v. City of Los Angeles*, 444 F.3d 1118 (9th Cir. 2006).

⁵⁴ Recent appointees to the Supreme Court have been skeptical of the American administrative state and have been more willing to hear challenges to various programs. *See Oral Argument, Consumer Fin. Prot. Bureau v. Cmty. Servs. Assoc.*, No. 22-448 (2022).

a judicially created right to shelter can be judicially undone.⁵⁵ While it does have certain advantages, using the courts as a way to establish a right to housing is not feasible.

IV. LEGISLATIVE SOLUTIONS ON A STATEWIDE LEVEL AB 2405

While the most seemingly straightforward way to establish a right to housing would be through the statewide legislative process, attempts to pass a bill enacting a right to housing have tried and failed in California. On September 28, 2020, Governor Newsom vetoed Assembly Bill 2405, which would have established that “every individual in California has the right to safe, decent, and affordable housing.”⁵⁶ In his justification for ending a bill that would have improved the lives of the most at-risk Californians, Governor Newsom said that the cost of AB 2405 was too high to gain his support.⁵⁷

While AB 2405 was a truly laudable attempt to establish a statewide right to housing, traditional bills that require passage through the California Assembly and Senate are not the best path forward to achieve a right to housing in Los Angeles and California. Even if a new governor were elected in California, there is no guarantee that a bill, especially a bill without enumerated constitutional backing, would survive judicial review. While no case has been brought regarding a right to housing in the United States recently, the Supreme Court has been more than willing in recent years to strike down laws that run into conflict with conservative orthodoxy (even laws backed up by decades of established case law).⁵⁸ Policy that is not backed by an enumerated right in a constitution has a far greater chance of being challenged, and while AB 2405 was a noble attempt, bills are not the path forward to establish a right to housing.

⁵⁵ See *Roe v. Wade*, 410 U.S. 113 (1973), *overruled by* *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215 (2022).

⁵⁶ Veto Letter from Gavin Newsom, Cal. Governor, to Cal. State Assembly (Sept. 28, 2020), <https://lede-admin.cal.streetsblog.org> [<https://perma.cc/8NDF-WQ38>].

⁵⁷ *Id.*

⁵⁸ See, e.g., *Roe*, 410 U.S. 113 (1973) *overruled by* *Dobbs*, 597 U.S. 215 (2022). See also *West Virginia v. EPA*, 597 U. S. 697 (2022).

V. SOLUTIONS ON A CITY COUNCIL LEVEL

While local politicians in Los Angeles have attempted to establish not just a right to shelter, but a right to housing throughout the city, efforts on a city council level have been insufficient. On March 3, 2021, the Los Angeles City Council (“LACC”) unanimously approved a motion authored by Councilmember Mark Ridley-Thomas to create a framework for a right to housing in Los Angeles (“Council File 20-0102”).⁵⁹ Unfortunately, Council File 20-0102 has faced a number of setbacks, following LACC’s suspension of Ridley-Thomas after his indictment on federal bribery and conspiracy charges.⁶⁰ Currently, Council File 20-0102 appears to be indefinitely halted, with LACC last acting on the bill (by taking no action) on June 4, 2021.⁶¹

Ultimately, a local ordinance establishing a right to housing is unlikely to pass on a city-wide level given the current ideological makeup of the LACC. Certain LACC members have been unwilling to adopt even the most tepid housing reforms. Take, for example, Councilmember Tracy Park, who assured her constituents, in response to potential plans of building multi-level affordable housing in her constituency’s westside neighborhood of Westchester, “I just want to let you know, there’s going to be a lot of meetings.”⁶²

While it’s not impossible to imagine a city-wide ordinance establishing a right to housing with a new city council at an unspecified point in the future, LACC’s current political makeup and lack of initiative to move forward Council File 20-0102 indicate that a city-wide approach is not the most effective path for establishing a right to shelter or housing in Los Angeles. Additionally, a city council ordinance encounters the same problem as a statewide bill

⁵⁹ L.A. CITY COUNCIL, Council File 20-0102 (Feb. 5, 2020).

⁶⁰ Mark Ridley-Thomas is currently serving a prison sentence after being convicted of federal bribery and conspiracy charges. See Tom Tapp, *L.A. City Council Suspends Mark Ridley-Thomas After Federal Bribery and Conspiracy Indictment - Update*, DEADLINE (Oct. 20, 2021), <https://deadline.com> [<https://perma.cc/8Q7F-YV95>].

⁶¹ L.A. CITY COUNCIL, Council File 20-0102 (Feb. 5, 2020).

⁶² Traci Park seemed to be referring to the prospect of holding up the new housing development by holding endless amounts of administrative meetings. See Jory Rand, *Hundreds of Westchester Residents Say No to City’s High-Rise Plans*, ABC (Aug. 29, 2023), <https://abc7.com> [<https://perma.cc/X2SE-LCMT>].

establishing a right to housing. Without an enumerated right in the California Constitution, judicial review can easily strip an ordinance of its power regardless of who voters elect, and enforcement remains at the discretion of the LACC. It is clear that a city council ordinance, statewide bill, or judicially created right to shelter cannot effectively create a right to housing. Los Angeles, as well as the rest of California, can look elsewhere to see how other places have ameliorated a nationwide crisis.

VI. OTHER WAYS FORWARD: WHAT LOS ANGELES CAN LEARN FROM HOUSTON

Not every city in the United States has encountered such extreme difficulty in sheltering unhoused people. Houston, for example, has been held up as a model for addressing homelessness in the United States. Not only has Houston made significant strides in getting people off the street, but it has done so in a more economically efficient manner compared to peer cities. While it is true that the U.S. Department of Housing and Urban Development (“HUD”) contributes \$42 million annually to Houston’s centralized homelessness nonprofit (up to \$45 million by 2021)⁶³, the state government of Texas pays significantly less than California per unhoused person (\$806 versus \$10,786 per person per year), and Houston’s county government (Harris County) contributes a mere \$2.6 million dollars per year.⁶⁴ Among Harris County’s nearly 5 million residents, data collected shows a total of 3,270 people experiencing homelessness throughout the entire county.⁶⁵ While it’s true that the population of Los Angeles County is significantly larger than Harris County (9.83 million to 4.728 million), there are a number

⁶³ Sam Russek, *Houston is Hailed as a National Success for Fighting Homelessness. But The Reality Isn’t Quite as Rosy*, NEW REPUBLIC (Feb. 24, 2022), <https://newrepublic.com> [<https://perma.cc/6VQG-7N47>].

⁶⁴ Alan Greenblatt, *How Houston Cut Its Homeless Population by Nearly Two-Thirds*, GOVERNING (Aug. 30, 2023), <https://www.governing.com> [<https://perma.cc/X5ZS-2R4P>].

⁶⁵ Catherine Troisi, *The Way Home Continuum of Care 2023 Homeless Count & Survey Analysis*, COAL. FOR THE HOMELESS (Mar. 2023), <https://irp.cdn-website.com> [<https://perma.cc/9JMB-273Z>].

of lessons to learn from Houston's approach in tackling homelessness.⁶⁶

A. NONPROFIT CONSOLIDATION AND MARKET CONDITIONS

In 2012, a web of nonprofits partnered with Harris County to consolidate their data and leadership under a nonprofit organization known as Coalition for the Homeless ("CFTH").⁶⁷ CFTH currently works with over one hundred other nonprofits to speed up the process of matching unhoused people with open apartments owned by partner landlords.⁶⁸ All of these nonprofits created a network of homelessness advocacy groups known as The Way Home.⁶⁹ This consolidation proved to be beneficial, as CFTH now claims a 54% decrease in homelessness in Harris County from its creation in 2012 to 2021.⁷⁰

Consolidation is but one part of a multifaceted effort to stop homelessness in Houston. Market conditions and the relatively low real estate prices have allowed Houston to dramatically reduce its homeless population.⁷¹ A study from economists working at Zillow found that homelessness tends to increase in communities once rents exceed 22% of a resident's income.⁷² This rate climbs exponentially once rents exceed 32%.⁷³ Figure 2 displays a 2017 study showing the relationship between rent and homelessness in major American cities.

⁶⁶ *Economy at a Glance - April 2023*, GREATER HOUSTON PARTNERSHIP (Apr. 3, 2023), <https://www.houston.org> [<https://perma.cc/F23Q-RUTG>].

⁶⁷ Russek, *supra* note 63.

⁶⁸ *Id.*

⁶⁹ *About Us*, COAL. FOR THE HOMELESS (2024), <https://www.homelesshouston.org> [<https://perma.cc/S5KZ-Q3U3>].

⁷⁰ Russek, *supra* note 63.

⁷¹ Vanessa Brown Calder & Jordan Gygi, *In Houston, Housing Affordability Helps Reduce Homelessness*, CATO INST. (Feb. 15, 2023), <https://www.cato.org> [<https://perma.cc/KR6B-PNHS>].

⁷² Zillow Research, *Homelessness Rises Faster Where Rent Exceeds a Third of Income*, ZILLOW (Dec. 11, 2018), <https://www.zillow.com> [<https://perma.cc/T8UD-M4NJ>].

⁷³ *Id.*

Homelessness Is Especially High in More Expensive Rental Markets

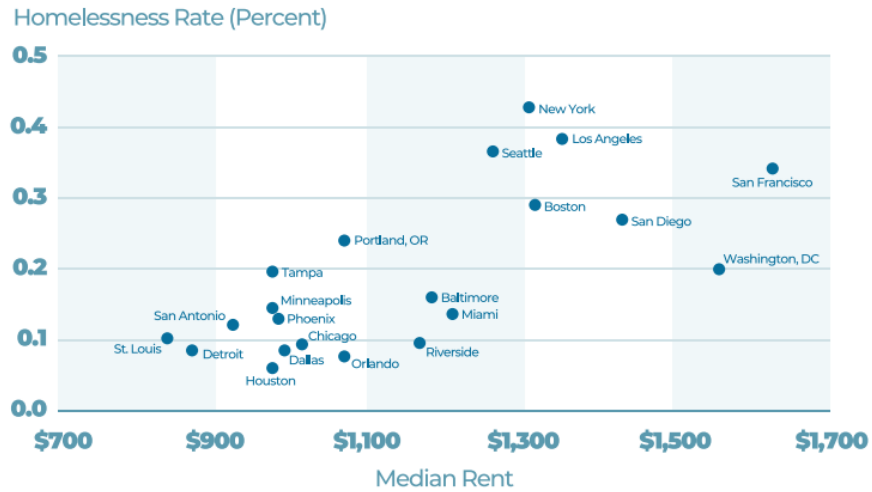


Figure 2

Harvard Joint Center for Housing Studies, *America's Rental Housing*, 2017, www.jchs.harvard.edu. All rights reserved.

74

B. FEDERAL FUNDING ADVANTAGES

Houston's effective utilization of federal funding, combined with its low-cost rental market as well as nonprofit consolidation, have led the city to an effective strategy for housing unsheltered residents. With a smaller population than Los Angeles, Houston can more effectively utilize federal funding to decrease homelessness.⁷⁵ Houston currently has a population of around 2.3 million people, while Greater Houston currently has around 7.3 million residents.⁷⁶ In 2021, HUD awarded Houston \$45.2 million to combat

⁷⁴ President and Fellows of Harvard Coll., *America's Rental Housing 2017*, JOINT CTR. FOR HOUS. STUDIES OF HARVARD UNIV., 34 (2017), <https://www.jchs.harvard.edu> [<https://perma.cc/GJX7-HKST>].

⁷⁵ *City and Town Population Totals: 2020-2022*, U.S. CENSUS BUREAU (June 13, 2023), <https://www.census.gov> [<https://perma.cc/VVZ7-U4S6>].

⁷⁶ *Id.*; Greater Houston Partnership, *supra* note 66.

homelessness (averaging around \$13,822 per unhoused resident).⁷⁷ In comparison, Los Angeles County received \$155.8 million from HUD in 2022, which equated to a little over \$2,400 per unhoused resident.⁷⁸ Why the federal government gives significantly more money to Houston than to Los Angeles is unknown, but the effect is clear. This fraction of money received per person, along with the significantly higher cost of housing in Los Angeles compared to Houston indicates that among other changes, a substantial increase in federal funding is needed to attain a significant decrease in homelessness.

C. ZONING

Most states delegate through statutes the authority to local governments to plan land-use development, otherwise known as zoning.⁷⁹ An interesting exception to this is Houston, which currently does not have a city-wide comprehensive zoning ordinance.⁸⁰ Instead, the city has enacted extremely limited restrictions in certain areas near the city's airports to comply with federally regulated airspace.⁸¹ While Houston still has a number of private covenants to take the place of zoning, the lack of a comprehensive zoning plan makes pushing affordable housing significantly easier than in cities with comprehensive zoning plans, such as Los Angeles.⁸² In a recent UC Berkeley study, a staggering 78% of residential land in the Greater Los Angeles area is zoned exclusively for single family homes.⁸³

⁷⁷ Press Release, Coalition for the Homeless, HUD Announces \$46 million in Annual Funding for Partners of The Way Home (Mar. 29, 2023), <https://www.homelesshouston.org> [<https://perma.cc/JW5E-YC2U>].

⁷⁸ U.S. DEP'T OF HOUS. AND URBAN DEV., 2022 COC DASHBOARD REPORT CA-600: LOS ANGELES CITY AND COUNTY COC 2 (Aug. 21, 2023), <https://files.hudexchange.info> [<https://perma.cc/V47C-4UJL>].

⁷⁹ Molly Rockett, *Addressing Challenges to Affordable Housing in Land Use Law: Recognizing Affordable Housing as a Right*, 135 HARV. L. REV. 1104, 1107 (Feb. 2022), <https://harvardlawreview.org> [<https://perma.cc/2QV9-NWVG>].

⁸⁰ *Id.* at 1107, n. 22.

⁸¹ Letter from Margaret Wallace Brown, Dir., City of Hous. Plan. & Dev. Dep't (Jan. 1, 2022), <https://www.houstontx.gov> [<https://perma.cc/TKT9-XM9A>].

⁸² See Lee Anne Fennell, *Homes Rule*, 112 YALE L.J. 617, 624 n. 29 (Nov. 19, 2022), <https://www.yalelawjournal.org> [<https://perma.cc/SZBC-7JK6>].

⁸³ Stephen Menedian, Samir Gambhir, & Chih-Wei Hsu, *Single-Family Zoning in Greater Los Angeles*, OTHERING & BELONGING INST. (Mar. 2, 2022), <https://belonging.berkeley.edu> [<https://perma.cc/DH3U-7QNE>].

While it's clear that many factors, including nonprofit consolidation, market conditions, and federal money have led Houston to becoming a leader in housing residents, its zoning laws are unambiguously better for sheltering people than those in Los Angeles. The fact that 78% of land in Greater Los Angeles is reserved for single family homes, when the Los Angeles housing element reports that the city is lacking over 450,000 units, is a colossal failure.⁸⁴ Unfortunately, due to reasons mentioned above regarding Los Angeles City Council dysfunction, zoning laws in Los Angeles will likely stay until voters elect a majority of the city council truly dedicated to building affordable housing throughout the city.

Los Angeles and Houston are different cities. Ultimately, the most important takeaway from Houston is how crucial federal money can be in alleviating poverty. While nonprofit consolidation and zoning have been essential in addressing the needs of unhoused residents in Houston, there is no denying that the substantially larger amount of federal aid towards Houston has been a large reason as to why the city has had so much success, given the limited funding from the state, county, and local level. Although a constitutional amendment like ACA 10 can and should be enacted, enacting this law is not going to be the end of homelessness in the United States. Without a significant influx of money from the federal government, any legislation will be well-intentioned but ultimately toothless—an acknowledgement of California's deep-seated poverty with no mechanism to improve the lives of its citizens.

VII. OTHER LIMITED APPROACHES THROUGH LEGISLATION: MASSACHUSETTS

Several other municipalities, including Washington D.C. and Massachusetts, also recognize a right to shelter (like New York) in limited varying circumstances. While none of these states recognize a constitutional right to shelter, these limited legislative approaches demonstrate severe shortcomings and show why a constitutional right to housing is the best path forward for California.

⁸⁴ *Id.*; L.A. Dep't of City Planning, *Housing Element Update*, L.A. CITY PLANNING (2024), <https://planning.lacity.gov> [<https://perma.cc/XW5K-BZEF>].

Massachusetts offers a lesson on the difficulty of creating a statewide right to shelter, and the ability of political actors to weaken this right. Massachusetts has created a right to shelter that is limited exclusively to families (and not individuals) experiencing homelessness.⁸⁵ According to the state's website, there are several conditions families must meet in order to be eligible for this right, including being a resident of Massachusetts, a required gross income of 115% or less of the Federal Poverty Level, and being pregnant or having a child under the age of 21.⁸⁶ Additionally, persons seeking shelter must have a *necessary reason* for needing shelter, such as a no-fault natural disaster, fleeing domestic violence, a no-fault eviction, or children's exposure to substantial health and safety risk.⁸⁷ Families must provide proof of identity, family relationships, proof of Massachusetts residency, documentation for a cause of homelessness, as well as financial statements for income and assets.⁸⁸

Despite being the only one of its kind in the country, the efficacy of the Massachusetts law remains questionable. Because of the onerous requirements described in the preceding paragraph, some estimate that around 50% of all applicants for shelter are turned away as ineligible.⁸⁹ This number doesn't account for the fact that many people who do qualify may not even apply because they don't believe they are eligible in the first place.⁹⁰

Notwithstanding the substantial required documentation, Massachusetts's right to shelter has effectively come to an end. In October 2023, Massachusetts Governor Maura Healey announced that the state's shelter system could no longer continue "growing indefinitely" and asked that the system be capped at assisting 7,500

⁸⁵ *An Act Further Regulating Assistance to Certain Needy Persons*, STATE LIBR. MASS. (Oct. 27, 1983), <https://archives.lib.state.ma.us> [<https://perma.cc/RR5F-P4W7>] (containing provisions establishing right to shelter via a program assisting families).

⁸⁶ Exec. Off. of Hous. and Livable Cmty's, *Apply for Emergency Family Shelter – EA*, COMMONWEALTH OF MASS. (2023), <https://www.mass.gov> [<https://perma.cc/GD4W-SZWG>] (detailing the eligibility standards for families attempting to access the shelter system).

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ Marija Bingulac, *Responses to Rising Family Homelessness in Massachusetts*, SCHOLARS STRATEGY NETWORK (July 27, 2015), <https://scholars.org> [<https://perma.cc/6JEX-K68H>].

⁹⁰ *Id.*

families in total.⁹¹ Lawyers for Civil Rights, a Boston legal nonprofit, challenged this cap on the right to shelter, arguing that the Executive Office of Housing and Livable Communities had not provided the Massachusetts Legislature with a required ninety day notice prior to implementing the proposed changes to the right to shelter law.⁹² The court rejected this challenge, holding that Lawyers for Civil Rights lacked standing and that the State is authorized to turn away people once its shelter system reaches 7,500 families.⁹³ According to Massachusetts's Emergency Assistance Family Shelter Resources and Data, currently 7,545 families are enrolled in the state's Shelter System.⁹⁴ Massachusetts currently has no obligation to shelter families past the 7,500 family limit.⁹⁵

Massachusetts's legislatively enacted right to shelter has lessons not only for California, but for New York as well. Right to shelter, even on a statewide basis, has been insufficient to provide everyone with housing. When faced with political pressure, even purportedly liberal governors and mayors will likely sacrifice the right to shelter, despite years of precedent enforcing it.

Massachusetts also offers another lesson to New York on the potential difficulty of expanding a right to shelter statewide. While no case has yet been brought arguing that the right to shelter (found within the New York Constitution) applies statewide, some believe it could expand outside of the city and apply to all state residents. Robert Hayes, the original attorney representing the plaintiffs in *Callahan*, argued that a right to shelter could potentially apply

⁹¹ Todd Kazakiewich & David Bienick, *Civil Rights Lawyers Challenge Gov. Healey's Cap on Massachusetts Emergency Shelter System*, WCVB (Oct. 31, 2023), <https://www.wcvb.com> [<https://perma.cc/3TQD-PQC5>].

⁹² Plaintiffs' Memorandum in Support of Their Emergency Motion for a Temp. Restraining Ord. and Preliminary Injunction at 9, *Alcarraz v. Exec. Office of Hous. And Livable Cmty.*, No. 2384CV02449 (Mass. Suffolk Sup. Ct. Oct. 27, 2023), <https://lawyersforcivilrights.org> [<https://perma.cc/83NA-VBN2>].

⁹³ Decision and Order on Plaintiffs' Motion for Temp. Restraining Ord. and Preliminary Injunction at 2, *Alcarraz v. Exec. Office of Hous. And Livable Cmty.*, No. 2384CV02449 (Mass. Suffolk Sup. Ct. Nov. 1, 2023), [<https://perma.cc/F3HY-QK VX>].

⁹⁴ Exec. Off. of Hous. and Livable Cmty., *Emergency Assistance (EA) Family Shelter Resources and Data*, COMMONWEALTH OF MASS., <https://www.mass.gov> [<https://perma.cc/4PQS-FFAQ>] (last visited Mar. 28, 2024).

⁹⁵ Exec. Off. of Hous. and Livable Cmty., *Apply for Emergency Assistance (EA) Family Shelter*, COMMONWEALTH OF MASS., <https://www.mass.gov>.

throughout the state of New York.⁹⁶ As Hayes describes, the *Callahan* Consent Decree was created once a judge had granted an injunction against the city and state government to provide a roof over residents' heads, and the city decided to settle the case with a Consent Decree.⁹⁷ There is no law that limits this right to shelter to the five boroughs.

While it's tempting to challenge the *Callahan* Consent Decree and ensure that it applies throughout the city, the potential consequences of impact litigation are devastating. It is possible that a court applies the right to shelter to include all counties within New York, but bringing a challenge could also potentially erase the Consent Decree. There is nothing stopping the New York Court of Appeals from simply overturning *Callahan* and declaring that the original decision was misguided. Given that Governor Hochul has been adamant on not applying the consent decree statewide, opposition at the state level would likely be formidable.

Massachusetts also provides lessons on how California can most effectively house those residing in the state. On a state and local level, political actors must be *mandated by a constitution* to provide everyone with shelter. Despite the legislatively created bill in Massachusetts, courts have allowed Governor Healey to set an arbitrary limit on the number of families taken in to ensure that they are not responsible for providing a right to shelter in the state.

Ultimately, the right to shelter's failures in Massachusetts show the necessity for a constitutional right to housing in California. This issue is too important to leave to legislatures; the best and most feasible path forward is a constitutional amendment.

VIII. ACA 10 – THE BEST HOPE TO CREATE MORE HOUSING

Passing ACA 10 is the most effective way to secure a right to housing in California because it is likely to be approved by the state's voters, is more insulated from judicial review, and would take advantage of recent funding mechanisms on real estate transfers made available by Measure ULA.

⁹⁶ Dan Rivoli, *Attorney who Created the Right-to-Shelter Pushes Back on Hochul*, SPECTRUM NEWS (Aug. 24, 2023), <https://ny1.com> [<https://perma.cc/ETY9-JR5H>].

⁹⁷ *Id.*

ACA 10, an amendment to Article XXV of the California Constitution would declare that:

[t]he state hereby recognizes the fundamental human right to adequate housing for everyone in California. It is the shared obligation of state and local jurisdictions to respect, protect, and fulfill this right, on a non-discriminatory and equitable basis, with a view to progressively achieve the full realization of the right, by all appropriate means, including the adoption and amendment of legislative measures, to the maximum of available resources.⁹⁸

Introduced by Assembly Member Matt Haney on March 6, 2023, ACA 10 was referred to the Assembly Appropriations Committee on June 7, 2023.⁹⁹ While the amendment has not currently passed through the required threshold in the State Assembly and the State Senate, passage of this bill with the required threshold is somewhat likely, considering that AB 2405, which would have also established a right to housing, passed through both chambers.¹⁰⁰

A constitutional amendment, specifically ACA 10, is the best way to ensure a legal right to housing in Los Angeles because it gives power to voters (who overwhelmingly favor a right to housing).¹⁰¹ Article XVIII, § 1 of the California Constitution sets out the process for legislative amendments to the state's highest controlling

⁹⁸ Assemb. Const. Amend. 10, 2023-24 Leg., Reg. Sess. (Cal. 2023). Interestingly, the text of the constitutional amendment does not specifically define what “adequate housing” entails. This is particularly troublesome, especially if it allows individual jurisdictions within the state to create their own definitions of “adequate housing.” The final words of the text, “to the maximum available resources,” are also cause for concern due to the fact that the state might not have adequate resources to enforce this constitutional mandate. While these are certainly worrying, this bill still offers the best path forward among imperfect options in housing as many Californians as possible, specifically within Los Angeles.

⁹⁹ See Bill History, *California Assembly Constitutional Amendment 10*, LEGISCAN (2023), <https://legiscan.com/CA/bill/ACA10/2023> [<https://perma.cc/5HRF-6QN7>].

¹⁰⁰ Before being vetoed by Governor Newsom, AB 2405 passed through the California Assembly (64-8, with 7 members not voting) as well as the California Senate (30-8, with 2 members not voting). Assemb. B. 2405, 2019-20 Leg., Reg. Sess. (Cal. 2020).

¹⁰¹ Moms 4 Housing, Data for Progress, & The Justice Collaborative Institute, *The Majority of California Residents Support Housing as a Human Right*, DATA FOR PROGRESS (May 12, 2020), <https://www.filesforprogress.org> [<https://perma.cc/JCK9-ELFE>].

document.¹⁰² If both the California State Assembly and Senate pass a measure with two-thirds support, and if the electorate approves the measure at the following general election by a simple majority of the votes, the amendment becomes law.¹⁰³ Notably, a constitutional amendment does not require a governor's signature to become law.¹⁰⁴ After being approved by the Assembly and the Senate, the voters are the final arbiter on whether an amendment becomes law.

A constitutional amendment in the hands of California voters is the best option because it is likely to pass. Recent polling from Data for Progress found that 56% of all respondents would support amending the California Constitution to establish a fundamental right to housing.¹⁰⁵ Notably, 54% of those who identified as Republicans would also support this constitutional amendment.¹⁰⁶ When asked whether they would support a pending California bill that would “declare that it is the policy of the state that every child and family [has] the right to safe, decent, and affordable housing,” 79% of respondents supported this legislation, including 64% of Republicans.¹⁰⁷

The failure of AB 2405 has shown that Governor Newsom has been unwilling and unable to establish a right to housing within the state. By giving California voters the option to decide whether to establish a right to housing, the chances of its passage become significantly higher. Because it gives voters a direct say, a constitutional amendment such as ACA 10 is the best path forward to establish a right to housing.

Additionally, establishing a constitutional amendment to a right to housing, such as ACA 10, is the most protected option because this right is more insulated from government actors and courts.¹⁰⁸ The Western Center on Law and Poverty notes that “[i]n California, constitutional provisions are presumed self-executing

¹⁰² The California Constitution gives the Legislature the power to propose constitutional amendments. CAL. CONST. art. XVIII, § 1.

¹⁰³ *Id.*

¹⁰⁴ Proposed amendments must pass by a two-thirds majority in each house of the Legislature and are then placed on the ballot for majority approval by the voters. *Id.* §§ 1, 4.

¹⁰⁵ MOMS 4 HOUSING, *supra* note 101, at 3.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 4.

¹⁰⁸ See CAL. WORKING GRP., *supra* note 4, at 27.

[. . .] which means government entities are prohibited from taking official actions that contravene these provisions.¹⁰⁹ In the case of judicial review, there is no doubt that state constitutional amendments can be struck down for being unconstitutional.¹¹⁰ However, the argument that a statewide right to housing (one that does not implicate federal funds) is somehow unconstitutional is difficult to take seriously—giving residents housing does not plainly violate the U.S. Constitution.

Of course, the relatively easier chance of passage also highlights the main downside of using a constitutional amendment—an amendment to the California Constitution can be overturned by voters in the exact same process.¹¹¹ The California Constitution is a living document, and since its adoption in 1879, it has been amended over 500 times.¹¹² By no means does a constitutional amendment ensure a permanent, stable right to housing without the possibility of challenges. However, what a constitutional amendment *does* present is the most feasible pathway that is the most unlikely to be struck down by judicial review.

Additionally, there is a chance that ACA 10 never reaches California voters for the chance of approval. In February 2020, a similar proposal, Assembly Bill 3269, was introduced to amend the California Constitution to create a right to shelter.¹¹³ After several rounds of revisions, the bill was ultimately pushed to the side and left off the 2020 ballot.¹¹⁴ At the time of writing, ACA 10 has not passed either the California Assembly or Senate.¹¹⁵ Despite these downsides, ACA 10 still remains the *best* option among imperfect choices to establish a right to housing in California.

¹⁰⁹ *Id.*

¹¹⁰ See *Reitman v. Mulkey*, 387 U.S. 369 (1967).

¹¹¹ The California Constitution gives the Legislature the power to propose, as well as overturn, constitutional amendments. CAL. CONST. art. XVIII, § 1.

¹¹² Daniel Alvarez & E. Dotson Wilson, *Foreword to U.S. CONST. AND CAL. CONST.*, at i (Mar. 2017), <https://www.senate.ca.gov> [<https://perma.cc/5PS8-W58B>].

¹¹³ David Chiu, Richard Bloom, Rob Bonta, Sharon Quirk-Silva, & Miguel Santiago, A.B. 3269, 2020 Leg., Reg. Sess. (Cal. 2020).

¹¹⁴ See Cal. Legis. Info., *AB-3269 State and Local Agencies: Homelessness Plan*, CAL. LEGIS. INFO., <https://leginfo.legislature.ca.gov> [<https://perma.cc/4VL7-GCSG>].

¹¹⁵ See *California Assembly Constitutional Amendment 10*, LEGISCAN, <https://legiscan.com/CA/bill/ACA10/2023> [<https://perma.cc/5HRF-6QN7>].

A. FUNDING OF ACA 10 FOR LOS ANGELES COUNTY

The recent passage of Measure ULA also shows that a constitutional amendment is the best path to establish a right to housing because the amendment could uniquely take advantage of this new funding source, helping Los Angeles dramatically reduce its unhoused population. Measure ULA was a November 2022 ballot initiative aimed at raising money for subsidized housing development, housing acquisition and rehabilitation, rent assistance, and other housing and homelessness related purposes.¹¹⁶ Measure ULA levies a tax of 4% on properties sold for between \$5 million and \$10 million.¹¹⁷ Additionally, the proposal levies a tax of 5.5% on properties sold for more than \$10 million.¹¹⁸ While critics say that Measure ULA could potentially impact the feasibility of some privately funded housing efforts, it could raise significant tax dollars for Los Angeles.¹¹⁹ Proponents of the measure estimate that the transfer tax would generate around \$900 million in annual revenue for the city.¹²⁰ Approximately 45% (\$405 million) is reserved for below market affordable housing, which would be coupled with state and federal sources with a local contribution of \$200,000 per unit.¹²¹ At current development costs, this is enough to subsidize 2,000 units per year.¹²² Measure ULA took effect on April 1, 2022, and despite an initial decline in sales of properties above \$5 million and attempts to evade the tax, the LACC has already authorized \$150 million in

¹¹⁶ CITY OF L.A. INITIATIVE ORDINANCE ULA (Nov. 2022), <https://clkrep.lacity.org> [<https://perma.cc/YE9G-FYEF>].

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ Shane Phillips & Maya Ofek, *How Will Measure ULA Transfer Tax Initiative Impact Housing Production in Los Angeles?*, UCLA LEWIS CENTER FOR REGIONAL POLICY STUDIES 1, 13 (Oct. 2022), <https://www.lewis.ucla.edu> [<https://perma.cc/Z3G2-JK7H>].

¹²⁰ *Id.*

¹²¹ *Id.* at 13-14. It's unknown whether using federal funds for affordable housing would create allocation problems. Los Angeles might be using it for a different purpose than what HUD is recommending. While these concerns are certainly real, it would be best to ensure that funding is given broad latitude in order to avoid potential construction delays.

¹²² *Id.* at 14.

funding for short-term emergency rental assistance, eviction defense, tenant outreach and other affordable housing measures.¹²³

Measure ULA has not been without its challenges.¹²⁴ On December 21, 2022, the Howard Jarvis Taxpayers Association and the Apartment Association of Greater Los Angeles filed a lawsuit seeking to halt the implementation of Measure ULA, arguing that the transfer tax is prohibited by Proposition 13 of the California Constitution.¹²⁵ In a tentative ruling, the court rejected the challenge brought against Measure ULA, pending a judge’s consideration of the final arguments presented by both plaintiffs and defendants in the weeks following the completion of this paper.¹²⁶ As of the writing of this paper, Measure ULA has been upheld by the courts.¹²⁷

Unfortunately, Measure ULA faces significant challenges in the future. While unsuccessful, the “Taxpayer Protection and Government Accountability Act,” which was on the November 2024 ballot in California, would have declared that no local government may impose a special tax unless that tax is submitted to the electorate and approved by a two-thirds vote.¹²⁸ This initiative would have also declare that any tax adopted after January 1, 2022 *not* in compliance with the act (i.e., not approved by a two-thirds vote) is void.¹²⁹ While voters approved Measure ULA by a margin of 57%, this new ballot initiative would have effectively overturned Measure ULA because it would not meet the required two-thirds threshold.¹³⁰ This would have had the potential to eviscerate much-needed funding for affordable

¹²³ Dolores Quintana, *Court Rejects Challenges to Controversial Measure in Contentious Lawsuit*, WESTSIDE TODAY (Oct. 23, 2023), <https://westsidetoday.com> [<https://perma.cc/E757-N2Q4>].

¹²⁴ A challenge was also brought in federal court. *See* Newcastle Courtyards v. City of Los Angeles, No. 2:23CV00104 (C.D. Cal. Oct. 2, 2023). After dismissal in favor of the city, Newcastle Courtyards is currently appealing to the Ninth Circuit. It is still unclear when this appeal will be decided.

¹²⁵ Complaint at 2, Howard Jarvis Taxpayers Ass’n v. City of L.A., No. 22STCV39662 (Cal. Sup. Ct. filed Dec. 12, 2022).

¹²⁶ Quintana, *supra* note 123.

¹²⁷ *Id.*

¹²⁸ Taxpayer Protection and Government Accountability Act (Jan. 2022), <https://oag.ca.gov> [<https://perma.cc/P6MY-TVX7>].

¹²⁹ *Id.*

¹³⁰ *LA County Election Results*, L.A. CNTY. CLERK (Dec. 5, 2022), <https://results.lavote.gov> [<https://perma.cc/565Q-36T4>] (click on “Jump to contest/measure” drop down menu; then scroll down and click “LOS ANGELES CITY GENERAL MUNICIPAL ELECTION – MEASURE ULA”).

housing and emergency shelter in Los Angeles. Despite these challenges, ACA 10 is uniquely positioned to take advantage of funding sources, considering that Measure ULA is still valid in California.

The imminency of Measure ULA further supports the contention that a constitutional amendment is the best path forward to ensure a right to housing, not just in Los Angeles, but throughout California. ACA 10 specifically states that funding must be a shared obligation between state and local jurisdictions, ensuring that the burden of creating thousands of new units is not put on one municipality exclusively.¹³¹ A constitutional amendment specifying that cost obligations are shared would allow jurisdictions to use both state and local funds to build as many housing units as possible. The passage of Measure ULA gives Californians a monumental opportunity to use hundreds of millions of dollars toward affordable housing.¹³² This capital influx, combined with an enumerated right to housing in the state's constitution, has the potential to drastically improve housing in the city of Los Angeles by mandating in the California Constitution that this funding be used not just for temporary shelters, but affordable housing.

While Measure ULA has the potential to house hundreds of thousands of people in Los Angeles and California, it is by no means a perfect solution. The chasm between funding in Los Angeles and other cities that enact taxes on property transfers versus funding in municipalities without the tax base to raise revenue has the potential to be vastly unequal. ACA 10 partially addresses this inequality by specifically enumerating that “[i]t is the shared obligation of state and local jurisdictions to respect, protect, and fulfill this right, on a non-discriminatory and equitable basis [. . .].”¹³³ Municipalities like Los Angeles could potentially receive a smaller proportion of state funds because of this cost-sharing arrangement, despite having significantly more unhoused people living in the city. Similar to ACA 10, while Measure ULA is not a *perfect* solution, it remains the best choice among imperfect options.

¹³¹ Assemb. Const. Amend. 10, 2023-24 Leg., Reg. Sess. (Cal. 2023).

¹³² LOS ANGELES, CAL., INITIATIVE ORDINANCE ULA (2022), https://clkrep.lacity.org/election/Initiative_Ordinance_ULA.pdf [https://perma.cc/YE9G-FYEF].

¹³³ Assemb. Const. Amend. 10, 2023-24 Leg., Reg. Sess. (Cal. 2023).

IX. CONCLUSION

There is no easy fix to housing. If there were, Americans would not be in the position that they are in today, with rising homelessness and gridlocked governments that are unable to address this critical need. What is most needed, above all, is a flexible approach to housing. Ultimately, this is a political battle that extends well beyond the passage of a right to housing. A coordinated pressure campaign, from a local to a federal level, will help to ensure the true enactment of a right to housing, rather than its eventual peel back.

What do constitutions do? Aside from laying out the highest laws of the land, they are ultimately an expression of the most important values that we have and a blueprint for the country we are looking to create. California has always been a state filled with potential, and before this state is the opportunity to reshape not just the law, but its values for years to come. Voters have the chance to shift the history of California from the austerity politics and real estate speculation of the 1980s to a radical vision that could extend across the United States.

While there are many challenges ahead for housing advocates, there is good reason to be optimistic. The housing crisis has reached a point in California where it can no longer be ignored and pushed to the side. Now is the time for monumental change that will help the people of Los Angeles and all Californians for years to come. Building on the legacy of *Callahan*, voters in California can support an amendment that could radically reshape the housing landscape not just in Los Angeles, but throughout the state. As shown above, establishing an amendment to the California Constitution, such as the one proposed in ACA 10, is the most effective path to achieve not only a right to shelter, but a right to housing in Los Angeles and California. Establishing a right to housing will not be the end of the fight, and there will certainly be government actors and potentially courts that resist the will of voters. Ultimately, the hope is that establishing a right to housing will begin a mobilization of existing homeless advocacy organizations, voters, and elected officials to defend this right and ensure that Californians can live with dignity in their homes for years to come.