



RECOGNIZING THE RIGHT TO HOUSING

Why We Need a Human Right to Housing in California



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KEY TERMS USED IN THIS REPORT

The language we use matters. Language not only describes the world around us but also helps to shape it. Our word choices affect the well-being of the people around us, as well as how people perceive themselves and the world. While language is always evolving, we can strive to use words that are empowering rather than harmful to individuals and communities.

Houseless/Unhoused: The terms *houseless* and *unhoused* acknowledge that people can become unhoused at different periods of time, and the concept of home is different for everyone. A home can be more than a physical space. A home can be a personal idea or location that a person feels belongs to them. The word “homeless” can be part of a toxic narrative, and it can be seen as derogatory or othering.

Latine: *Latine* is a gender-neutral form of the word Latino, created by gender non-binary and feminist communities in Spanish-speaking countries. The objective of the term is to remove gender bias from Spanish, by replacing male dominant words with the gender-neutral Spanish letter E, which can already be found in words like *estudiante*.

Housing First Policies: People need access to dignified and safe housing as an immediate and first response. Supports and services such as nonemergency medical attention and other resources should follow. The *Housing First* model is based on decades of empirical studies demonstrating that houselessness is most effectively solved by providing access to permanent, stable housing without restrictions or barriers that can make programs inaccessible.

People Centered Language: *People centered language* emphasizes the personhood of individuals and demonstrates respect for each person’s basic humanity. It highlights people’s unique traits, strengths, and worth; it also avoids words that create stigma. For example, phrases that group people together by the condition of their housing status, such as “the homeless,” are seen as dehumanizing.



EXECUTIVE SUMMARY

California is at the epicenter of houselessness crisis in the United States. Over half of the nation’s unsheltered people and a quarter of all unhoused people live in California, despite the fact that California residents make up only 12% of the nation’s population. This is largely due to the state’s skyrocketing housing costs, lack of affordable housing, and stagnating wages. The burdens of California’s affordable housing shortage and resulting houselessness crisis raise grave humanitarian concerns and fall disproportionately on Black and Brown residents.

As this report demonstrates, enshrining a fundamental right to housing in the California Constitution is a necessary step to effectively address the growing housing crisis at the state level. Guaranteeing every person the right to housing provides an important government obligation and legal tool to ensure that Californians have access to affordable and adequate housing. This rights-based approach is supported by a rich body of international human rights law and will bolster California’s existing Housing First policy, based on decades of empirical evidence that houselessness is most effectively remedied by access to permanent and stable housing, with minimal requirements for entry.

The report notes that the notion of housing as a fundamental human right is not new. President Roosevelt introduced the idea of a right to a “decent home” in his 1944 State of the Union address, and in 2020, President Biden ran on a platform that “[h]ousing should be a right, not a privilege.” At the international level, the United Nations (“UN”) recognizes housing as a human right that is essential to human dignity and to maintaining an adequate standard of living. Finland’s approach to houselessness provides an illuminating case study; the country

enshrined a right to housing in its constitution over twenty years ago and has seen a steady decline in the number of people experiencing houselessness and an increase in the availability of affordable housing. This report draws from these international principles and models upon which California can build to realize a meaningful right to housing.

California legislators have introduced constitutional amendment proposals that would enumerate the right to housing in the state constitution. As detailed in the report, a constitutional right to housing would establish a legal mechanism to hold local and state governments accountable for ensuring that all Californians have access to affordable and adequate housing. Modeled after international law, a constitutional amendment would establish a government obligation to:

- (1) *respect the right to housing by not interfering with the right;*
- (2) *protect the right to housing by shielding the enjoyment of affordable and adequate housing from third-party threats; and*
- (3) *fulfill the right to housing by affirmatively enacting policies and budgetary allocations to ensure that all Californians have secure housing.*

A right to housing is not limited to merely having a roof over one’s head. Among other things, housing should be permanent, affordable, safe, healthy, and accessible to resources like grocery stores, jobs, and schools. Under international law, housing must be “adequate,” which consists of seven elements:

- (1) *security of tenure;*
- (2) *availability of services;*
- (3) *affordability;*
- (4) *accessibility;*
- (5) *habitability;*
- (6) *location; and*
- (7) *cultural adequacy.*

Under this model, the right to housing obligates our state and local governments to work “progressively” toward that goal by enacting relevant policies and budgetary allocations to the “maximum available resources.” This means the government must make all possible efforts to raise as many resources as possible for housing, without undermining the long-term viability of the economy. Further, the right to housing must be implemented *equitably* and without discrimination on the basis of race, color, religion, sex/gender, gender identity, sexual orientation, national origin, ancestry, disability, economic status, or other protected categories.

Drawing from this framework, the report provides concrete policy recommendations that state legislators and local officials can take to ensure that every Californian has access to adequate housing as a human right. It is clear that Californians support this approach.

A 2020 poll showed that 66% of all Californians support a state constitutional amendment guaranteeing the human right to housing, similar to the recently enumerated constitutional rights to reproductive autonomy.

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California voters have approved more than 500 constitutional amendments, including adding new fundamental civil rights, and legislators have enacted new rights-based laws in a variety of areas. For example, under California's right to education, the government must provide equal access to public education and the right requires state and local governments to fund public schools. Another comparable right is California's right to water statute, which requires consideration of the human right to water by government agencies when making decisions related to water access. These rights provide important precedents for a right to housing.

Rights are different from policies because they receive more protection from courts and are harder to take away. Recognizing a right to housing is essential to meaningfully address the housing crisis. Such a right is a *guarantee* that Californians' housing security is protected from the whims and uncertainties of politics, the charitable sector, or the private market.

In order to address the humanitarian crisis of homelessness in our state, California must recognize a constitutional right to housing. Policy that is not backed by an enumerated right has long proven insufficient, and Californians experiencing housing insecurity and homelessness suffer daily injustice without the protection of a right to housing. International bodies and American politicians alike have acknowledged that a rights-based framework is an essential step, and it is time for the state of California to lead the nation in recognizing a human right to housing.

INTRODUCTION

Adequate housing is fundamental to health, wellbeing, and life. An affordable home should not be a luxury commodity available only to those who are well-off, nor should anyone be priced out of their home or community and left to deteriorate on our streets or in mass shelters. Yet, as housing costs continue to spiral out of control, this is precisely what is happening for too many Californians.

It is time for state legislators to recognize that housing is a basic need — and to reconsider the proper role of government in ensuring that all Californians have access to adequate housing. California, both a proudly progressive state and the epicenter of the nation’s housing and houselessness crisis, must lead the way.

California’s state constitution already recognizes various rights: life, liberty, property, safety, happiness, and privacy — all of which rely on a right to housing. Over time, California has led the nation in expanding the list of basic rights for all Californians to include the right to free public education and the human right to water.¹ Most recently, California voters passed Proposition 1, which amended the California Constitution to enshrine a fundamental right to reproductive freedom in opposition to the United States Supreme Court’s holding in *Dobbs v. Jackson Women’s Health Organization*.² Passed by an impressive 67% majority, the proposition ensures that abortion rights in California are respected by the government and protected by the courts.³

Guaranteeing the right to housing would help to ensure that all Californians have access to housing that is safe, permanent, habitable, affordable, culturally appropriate,

and close to important community infrastructure such as jobs, healthcare, and schools. This framework has a long history: Franklin Roosevelt, in his 1944 State of the Union address, declared that every family in the United States should have the right to a decent home,⁴ and in 1948, the United States signed the Universal Declaration of Human Rights, which recognizes adequate housing as a human right.⁵ Californians agree that there should be a recognized and protected right to housing. In 2020, polling showed that 66% of all Californians (including over half of those identifying as Republican) support an amendment to the California constitution ensuring the human right to housing.⁶

This report demonstrates the need to secure housing as a constitutional human right in California. When housing is recognized as a right, it creates an obligation on the part of the state to respect, protect and fulfill that right. It does not leave access to this critical resource up to political winds, the vagaries of the market, or the generosity of the charitable sector. This government obligation is a missing element in our housing policies — a component necessary to ensure that all Californians have the opportunity to thrive.

The report begins by providing a brief history of housing policy in the United States and an overview of the root causes and contours of California’s housing and houselessness crisis. Then the report proposes a constitutional amendment to secure the right to housing, describes what this right would include and how it would be enforced, discusses comparative case studies, and provides policy recommendations that would advance the right to adequate housing for all Californians.

HISTORY OF HOUSING POLICY IN THE UNITED STATES: HOW DID WE GET HERE?



ELEANOR ROOSEVELT HOLDING A POSTER OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS. LAKE SUCCESS, NEW YORK, NOVEMBER 1949. PHOTO CREDIT: FDR PRESIDENTIAL LIBRARY & MUSEUM.

NEW DEAL PROGRESSIVISM & RHETORIC ABOUT HOUSING AS A HUMAN RIGHT

Discussions about making housing a human right in the United States are not new. Many people credit President Franklin Roosevelt for beginning the conversation about a right to housing in the United States.⁷ In his 1944 State of the Union address, President Roosevelt introduced a “[S]econd Bill of Rights” to address the widespread poverty and income inequality impacting millions of Americans in the aftermath of the Great Depression. This “Second Bill of Rights” included the right for every American, regardless of “station, race, or creed” to have a “decent home.”⁸ Following his address, the United States led the UN to draft and adopt the Universal Declaration on Human Rights, which included the right to adequate housing.⁹

Roosevelt included a rights-based approach in his policies, signing the National Housing Act of 1934 and the Housing Act of 1937 in a major effort to use federal funding to renovate existing unsafe and unsanitary housing and to construct new federal public housing.¹⁰ These laws were a major step toward the United States government ensuring that Americans could enjoy the right to housing; they provided new housing or better conditions for millions of homeowners and renters.¹¹ These programs were not perfect, however, and they embedded racial segregation patterns in housing that would last for generations.¹² Later, failure to provide maintenance to public housing returned these units to the poor conditions Roosevelt had sought to remedy.¹³

Roosevelt’s rhetoric of a right to a decent home created a social contract with the American people that the government would not allow Americans to become unhoused or live in inadequate housing conditions. However, the right to adequate housing was never enshrined into law.

President Truman continued Roosevelt’s work with the landmark 1949 Housing Act, a part of Truman’s Fair Deal, but again framed housing not as a right but only as a goal with no enforceable mandate.¹⁴ The 1949 Housing Act was intended to protect the health and living standards of people through housing production and related community development but also authorized segregation by local governments, and its funding for Black housing went to massive, densely-populated, urban high-rises that made access to community, jobs, and other resources impossible or impractical.¹⁵

RACISM IN HOUSING POLICY AND HOUSING DEVELOPMENT AT ALL LEVELS

Federal housing programs have systematically discriminated against Black people since their inception in the New Deal — enforcing segregation of neighborhoods that pushed Black families into overpopulated urban slums, excluding Black homebuyers from housing opportunities, and concentrating Black housing in low-income neighborhoods.¹⁶ Federally funded public housing constructed during the Second World War furthered this trend, with local governments guiding the racial character of neighborhoods.¹⁷

Local zoning rules have been another powerful form of racial exclusion. They have often limited middle class neighborhoods to single-family homes that are unaffordable for low-income families of all races, disproportionately impacting Black Americans.¹⁸ Further, these rules often pushed Black families into neighborhoods burdened by pollutants — including hazardous air quality and toxic waste.¹⁹

The federal practice of “redlining” excluded economic opportunities for potential home buyers in Black communities — deeming them too risky of an investment.²⁰ Racially restrictive covenants in many places restricted home ownership opportunities to whites and excluded Black buyers and other racial minorities, and these contracts were enforced and promoted by the government at all levels for many years.²¹

Frighteningly, state and local governments have also offered tacit support for mob violence against Black families who dared to enter white communities, and police often refused to provide protection to the victims of such crimes.²²

In recent years, private real estate interests backed by the government have systematically discriminated against Black homebuyers. Tragically, a major opportunity for Black

homeownership came in the form of exploitative, government-backed subprime loans in the early 2000’s targeting borrowers who ultimately could not pay the exorbitant interest rates and were often forced into foreclosure — a practice sometimes called “predatory lending” or “reverse redlining.”²³

Given our nation’s vast history of explicitly racist housing policies at all levels, it is not surprising that Black people are overwhelmingly burdened with housing insecurity. **Black people are disproportionately overrepresented in the unhoused population, evicted at higher rates than other groups, and largely do not benefit from intergenerational wealth in the form of home ownership.**²⁴

COLD WAR CONSERVATISM & FEDERAL DISINVESTMENT IN HOUSING

Housing rights policy discussions largely went dark during the Cold War, when endorsement of economic and social justice issues could brand advocates as communists.²⁵

Despite the chilling effect of the Red Scare, the Housing and Community Development Act of 1974 amended the Housing Act of 1937 to create Section 8 public housing.²⁶ Thanks to decades of progressive investments in affordable housing at the federal level, in 1970 affordable housing — both market rate and federally subsidized — was mostly available to low-income households that needed it,²⁷ though inequality and segregation still hindered full enjoyment of the right.²⁸

The reputation of public housing declined in the 1970s.²⁹ This was both due to government policies that “transformed public housing into a warehousing system for the poor,” as well as corresponding racist rhetoric.³⁰ President Nixon furthered this view, calling public housing projects “monstrous, depressing places — rundown, overcrowded, crime-ridden.”³¹

During the early 1980s, the Reagan administration gutted the affordable housing budget for the Department of Housing and Urban Development.³² Funding for federally subsidized housing plunged by nearly 80%, and subsidized housing became a scarce resource available only to a small number of people who needed it.³³

THE RISE OF VISIBLE HOUSELESSNESS

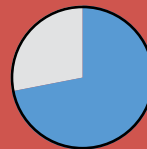
Federal disinvestment in public housing corresponded with an unprecedented rise in visible housing displacement — by one estimate, houselessness almost immediately tripled.³⁴ This gave rise to the modern houselessness crisis we know today.

To address the rise in widespread visible houselessness, Congress passed the Stewart B. McKinney Homeless Assistance Act in 1987, the first major federal legislation on the issue.³⁵ The Act created the entity now known as the United States Interagency Council on Homelessness (USICH) to lead and coordinate federal efforts to address what the Act explicitly named a “crisis” facing the nation.³⁶ Significantly, much of the Act’s funding went to temporary solutions like emergency shelter, while only small amounts went to long-term solutions like permanent housing.³⁷ The movement towards longer-term relief was further halted in the 1990s due to a national and statewide trend of cutting welfare program spending and a rejection of houselessness as an object of national policy.³⁸

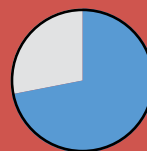
While the Bush administration represented somewhat of a shift by expressing a goal of ending “chronic homelessness” within ten years and revitalizing the USICH, its ten-year plan was largely symbolic and proposed legislation³⁹ to fund the goal never passed.⁴⁰

CRIMINALIZATION OF HOUSELESSNESS

By the end of the 1990s, advocacy around houselessness mostly turned to the defensive with an increasing focus on combating the rise in the “criminalization” of life-sustaining activities of unhoused individuals.⁴¹ Rather than investing in housing and long-term policy solutions, many cities focused on policing the visible signs of houselessness by citing and arresting individuals for sitting or lying down on the sidewalk, loitering, and similar “offenses.”⁴² This form of criminalization is now pervasive throughout United States cities, though advocates have had limited successes fighting back against criminalization with civil rights lawsuits.⁴³



72% OF CITIES HAVE AT LEAST ONE LAW RESTRICTING CAMPING IN PUBLIC.



37% OF CITIES HAVE ONE OR MORE LAWS PROHIBITING CAMPING CITYWIDE.



57% OF CITIES HAVE ONE OR MORE LAWS PROHIBITING CAMPING IN PARTICULAR PUBLIC PLACES.⁴⁴

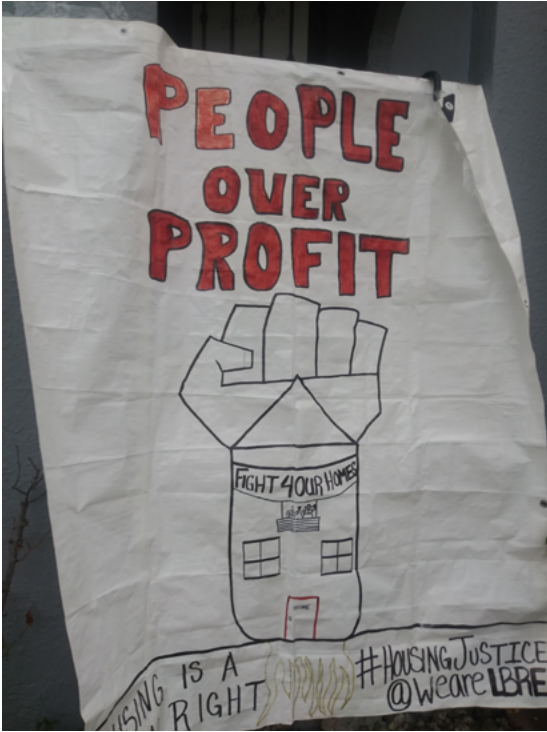


Photo Credit: Martha Escudero

“FINANCIALIZATION” OF HOUSING

In recent decades, the United States and countries around the world have seen the expansion of the role of housing as a financial instrument on the global market, a trend sometimes referred to as the “financialization of housing.”⁴⁵ Increasingly viewed as a profitable commodity, housing and real estate have become the main investment for many financial corporations. The value of global real estate is about \$217 trillion, nearly 60% of the value of all global assets, with residential real estate comprising 75% of the total.⁴⁶

Prior to the advent of mortgage-backed securities in the 1980s, a home mortgage was usually a contract between a single lender and a single creditor or homeowner.⁴⁷ However, the advent of “mortgage-backed securities” allowed for home loans to be bundled together and sold on secondary bond markets.⁴⁸ This gave rise to new market conditions that led to a global financial crisis.⁴⁹ In late 2008, there were an average of 10,000 foreclosures per

day in the United States, and as many as 35 million people were evicted over a five-year period.⁵⁰ Black households, previously shut out of homeownership by generations of racist policies, were targeted for predatory loans and were thus disproportionately impacted by these foreclosures.⁵¹

Rather than moving away from financialization practices after the crisis, corporations engaged in a large-scale buying up of distressed housing and real estate debt at discount prices.⁵² Like the disastrous mortgage-backed securities, they began to create rent-backed securities. The Blackstone Group, the world’s largest real estate private equity firm, spent \$10 billion to purchase repossessed properties at auction, becoming the largest rental landlord in the country.⁵³ Instead of discouraging predatory practices, federal policies often aided real estate corporations by providing tax subsidies, tax breaks for investors, and bailouts for financial institutions.⁵⁴

On the whole, financialization of the housing sector has resulted in remote investors extracting wealth out of communities, unprecedented levels of evictions and foreclosures, the harmful practice of “flipping” foreclosed properties, and increasing rents while maintaining substandard living conditions.⁵⁵ Advocates, including UN Rapporteurs, have highlighted the harmful ways in which “financialization” disconnects housing from its core social purpose of providing people with a safe, dignified place to live.⁵⁶

“I believe there’s a huge difference between housing as a commodity and gold as a commodity. Gold is not a human right, housing is. . . Housing has been financialized: valued as a commodity rather than a human dwelling . . .”⁵⁷

– LEILANI FARHA,
UNITED NATIONS SPECIAL RAPPOREUR

THE HOUSING FIRST APPROACH

One substantive shift in public understanding of the housing crisis occurred in the early aughts and 2010s with the publication of multiple reports that demonstrated the effectiveness of the “Housing First” approach.⁵⁸ This model is based on empirical studies demonstrating that houselessness is most effectively solved by providing low-barrier access to permanent, stable housing.⁵⁹ This approach has subsequently been embraced by local, state, and federal governments — including the California legislature.⁶⁰

The Biden administration has had some successes in addressing veteran houselessness with a Housing First approach using funds from the American Rescue Plan in a collaboration across federal agencies. This program built on past federal successes in housing veterans quickly and providing wraparound support services — including health care and job training, as well as legal and educational assistance. In total, the federal Housing First program for veterans has resulted in a 55.3% reduction in veteran houselessness since 2010.⁶¹

WHERE WE ARE TODAY

Overall, housing justice advocates have won some important victories and created a patchwork of rights and policies that provide important aid and protection, yet these are wholly insufficient to end or reverse our local, state, and national housing crises.⁶²

President Biden ran on a platform that “[h]ousing should be a right, not a privilege,”⁶³ a promise that was welcomed by housing justice advocates, though it is unclear how and whether a rights-based framework will be proposed at the federal level. The administration has released an important “Renters Bill of Rights” blueprint, and while its tenets are not legally binding, the document makes a strong case for federal, state, and local policies to protect renters.⁶⁴

Despite dogged advocacy over several decades, no administration has replenished the federal government’s affordable housing programs, and the availability of subsidized housing still does not come close to meeting demand.

The nation’s Housing First approach has lacked the funding necessary to make a significant dent in the affordable housing and houselessness crisis, which has continued to worsen. Meanwhile, the charitable sector has been unable to fill in the gaps,⁶⁵ and market-rate housing — the only type of housing our current system is designed to produce at scale — has become increasingly out of reach for low- and middle-income households.⁶⁶

In total, the federal Housing First Program for veterans has resulted in a 55.3% reduction in veteran houselessness since 2010.



STORY: SARAH ODUM

Sarah said:

“The city’s treatment of me and other unhoused people has made me feel like a target of violence, harassment, and discrimination. In addition, the city’s efforts to sweep the unhoused population out of Lancaster is putting my physical, mental, and emotional safety in extreme danger.”

Sarah Odum, a housing justice advocate in Lancaster.

Sarah Odum is an unhoused resident of Lancaster, California and a housing rights activist. Sarah aspires to be a lawyer, and plans to go back to school to study law and policy. After losing her housing, Sarah was unable to find a landlord who would accept her Section 8 housing voucher before it expired. For about one year, Sarah lived in an encampment in Lancaster with other unhoused community members. Although the encampment was not housing, at least it was close to food, water, and services, and it was protected from the elements by a brick wall.

However, the city and sheriffs made Sarah’s life significantly more dangerous by displacing her encampment on a regular basis. During multiple such displacements, officials attempted to throw away all of her belongings. Sometimes, they allowed only five minutes for Sarah and other unhoused residents to gather all the belongings they

could carry before bulldozing the area. An officer once told Sarah that the only place she could avoid being bothered by the police is in the desert outside city limits, an area that is dangerously exposed to the elements.⁶⁷

The city often ordered people to move during extreme weather conditions. On one occasion, the city displaced people during 100-degree heat, while overheated unhoused residents struggled to carry their belongings in the hot sun. The city then bulldozed and destroyed residents’ remaining belongings including their identification cards, medication, and tents. Sarah had to relocate, which made it difficult for her caseworker to find her, hindering access to social services.

After years of being harassed by government officials because she did not have a place to live, Sarah has finally found a placement in one of the limited affordable housing options in Lancaster.

CALIFORNIA'S HOUSING CRISIS

The results of the national housing crisis have been devastating for

Californians. Whereas past generations of Californians built economic opportunity for themselves and their children through careful financial planning and saving, today's rental market leaves many Californians without a realistic ability to meet their basic needs or save for an emergency much less a home. The result has been generations of Californians living paycheck to paycheck, on the precipice of financial disaster.

The state now has the second highest average rent in the nation⁶⁸ and, according to one estimate, the average asking price for a vacant unit is now \$3000 per month.⁶⁹ As a result, more than 40% of all California households and nearly half of all Black Californians are “housing cost burdened” — that is, they spend more on housing costs than they can afford, leaving little to invest in their families and futures.⁷⁰ Among renters, 64% of Black households and almost 58% of Latine households in California are burdened by housing costs.⁷¹ And while the high cost of housing is devastating for all residents, it hits people with the lowest incomes the hardest.⁷² About one quarter of renter households in California have extremely low incomes, and an astounding three-quarters of these households spend over half of their income on rent.⁷³ Meanwhile, eligible households can wait as long as an entire generation to obtain subsidized housing they can actually afford.⁷⁴

At the same time, earnings for California's low- and middle-income workers have generally declined or stagnated for decades.⁷⁵ Yet, both wages and net worth for the wealthiest Californians have increased — resulting in stark wealth inequality.⁷⁶ Stagnating incomes for the state's workers has been especially challenging given rising housing costs, which far outpace the typical

full-time worker's annual earnings, making it increasingly difficult for families to make ends meet.⁷⁷ California's minimum wage is \$15.00 per hour, and yet the state's “housing wage” — the amount a full-time employee must earn in order to afford an average 2-bedroom apartment — is now \$39 an hour. In many parts of the state this number is much higher.⁷⁸

Not surprisingly, California has become ground zero for the nation's houselessness crisis. The state is home to about 12% of the nation's population⁷⁹ but over half of all unsheltered people (51%) and a little over a quarter of all people who are unhoused.⁸⁰ The risk of housing displacement falls disproportionately on Black people, who make up about 6.5% of California's population⁸¹ but around 30% of its unhoused population.⁸² As a report by the Los Angeles Homeless Services Authority notes:

“THE CIRCUMSTANCES THAT LEAD BLACK PEOPLE TO DISPROPORTIONATELY EXPERIENCE HOMELESSNESS CANNOT BE UNTANGLED FROM THE IMPACT OF INSTITUTIONAL AND STRUCTURAL RACISM IN EDUCATION, CRIMINAL JUSTICE, HOUSING, EMPLOYMENT, HEALTH CARE, AND ACCESS TO OPPORTUNITIES.”⁸³

The California Reparations Task Force has put forward detailed policy recommendations to help reverse these racialized harms, including investments in public housing, compensation to Black people whose land was forcibly taken, and repeal of discriminatory zoning and “crime-free” housing policies.⁸⁴

Unaffordable housing costs, combined with low wages, are the primary reason that wealthy California has the highest poverty rate in the nation.⁸⁵ It accounts for California's status as an epicenter for crowded housing, with more than half of the nation's most heavily crowded census tracts located in Los Angeles and Orange Counties.⁸⁶ Overcrowding is devastating for the state's children, with research showing that it leads to lower educational achievement and poorer child health outcomes.⁸⁷

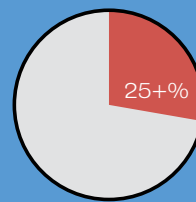
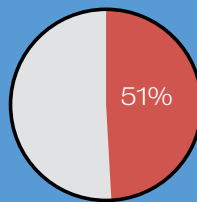
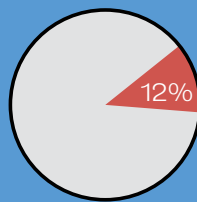
Clearly, it is time to create a moral and legal obligation for the state and local governments to realize the right of adequate housing for all Californians. Doing so would, in part, acknowledge the crisis our communities face and focus our policy debate on solutions.

California's Minimum Wage:
\$15.00 per hour

California's Housing Wage*:
\$39.00 an hour

(*The amount a full-time employee must earn in order to afford an average 2-bedroom apartment)

HOUSELESSNESS IN CALIFORNIA



Not surprisingly, California has become ground zero for the nation's houselessness crisis. The state is home to about 12% of the nation's population but over half of all unsheltered people (51%) and a little over a quarter of all people who are unhoused.

PROPOSALS IN CALIFORNIA FOR A RIGHT TO HOUSING

In acknowledgment of the growing housing crisis in California, state legislators have introduced constitutional amendment proposals in recent years to enumerate a right to housing in the state constitution, as well as similar statutory bills.⁸⁸ Drawing on language from international law, these proposals recognize that housing is a “fundamental human right” and create an obligation on the part of both state and local jurisdictions to “respect, protect, and fulfill” a right to housing, through “progressively implemented” measures.

The proposed amendments are broadly worded, as are most constitutional provisions, and are designed to articulate general principles and identify basic rights.⁸⁹ Importantly, these proposals provide a legal mechanism for holding local and state governments accountable for ensuring that everyone has equitable access to affordable and adequate housing. As constitutional amendments, they would receive a high degree of protection from the courts and afford Californians significantly more legal protection in the area of housing.⁹⁰

Bills recognizing housing as a right have been proposed in other states and at the federal level.⁹¹ If passed in California, the state would be the first to enshrine the right to housing into law. Proposed constitutional amendments introduced by the legislature in California require a two-thirds majority vote in both houses, and are then sent to the voters for passage by a simple majority vote.⁹² Constitutional amendments can also be passed as citizens’ initiatives where proponents gather petition signatures from at least 8% of the total number of voters in the last gubernatorial election.⁹³

While there are many hurdles in passing such a proposal, there is a growing movement to make housing a legal right in California and beyond. The question is not whether California *should* recognize this fundamental right, but rather *how quickly can we get it done?*



Press conference for the introduction of ACA 10, a bill to add a human right to housing to the California constitution. March 8, 2023.

WHAT IS A RIGHT TO HOUSING?

Worldwide, at least one in four people live in inadequate housing with conditions that detrimentally affect their health, safety, and access to opportunities.⁹⁴ In response to this global crisis, the UN has recognized housing as a human right, declaring that adequate housing is essential to an adequate standard of living.⁹⁵ The right to adequate housing has been recognized as fundamental because it is integral to core human rights values such as dignity, equality, inclusion, wellbeing, security of the person and public participation.⁹⁶ Multiple UN treaties and intergovernmental agreements provide legal definitions of what a right to housing means and how it should be implemented and enforced.⁹⁷

The right to housing creates an obligation on the part of the government to ensure its residents are adequately housed. It also prohibits the government from passing policies that hinder access to affordable housing or otherwise infringe on equitable access to adequate housing. The right does not guarantee that everyone will have access to housing immediately, but it does create a government obligation to invest significant funding and to work progressively to achieve the full realization of the right. Governments that shirk their obligations under a constitutional right to housing may be held accountable by both public and private entities.

Government Obligation to “Respect, Protect, and Fulfill” the Right to Housing:

International law defines the government’s obligation to “respect, protect, and fulfill” the human right to housing.⁹⁸ This combined set of obligations creates both negative and positive rights — meaning, both a right to be free of government interference with the right, as well as an affirmative obligation by the government to ensure the right is fully realized.

First, state and local jurisdictions have an obligation to “respect” the right to housing. The plain text of this obligation is a negative duty, meaning a right not to be subjected to the state’s adverse actions. Under international law, “respect” requires the government to refrain from any actions that would prevent individuals and groups from carrying out their right to housing. It further requires the government to abstain from interfering with the right.⁹⁹ This aspect of the right would apply in situations where the government infringes on individuals’ or groups’ right to housing; for example, by forcibly evicting residents from property that is publicly owned or managed.

Second, the government has an obligation to “protect” the right to housing. The plain text of the term “protect” means to effectively ensure the existing housing rights of a population from external, non-governmental threats. Part of this duty is to ensure that any possible violations of the right to housing by third parties are prevented and that adequate remedies are given when rights are violated.¹⁰⁰ In California, this would likely create an obligation on local and state governments to regulate the private housing market. This could entail creating further protections against tenant discrimination and harassment; enacting eviction protections and due process measures; guaranteeing that banks and financial institutions extend housing finance without discrimination; and ensuring enforcement mechanisms can provide redress to people whose right to housing has been infringed upon by third parties.¹⁰¹

Third, the government has an obligation to “fulfill” a right to housing. This is both a positive right and an affirmative duty.¹⁰² The plain text of the term “fulfill” means an obligation to fully

realize the fundamental right to housing. Under international law, this duty concerns affirmative government actions such as: public expenditure, government regulation of the economy and land market, the provision of public services and related infrastructure, the redistribution of income, and other proactive legislative measures.¹⁰³

The Office of the United Nations High Commissioner on Human Rights specifies some of the actions government must take to “fulfill” the right to housing:

- “The obligation to [fulfill] requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures to fully realize the right to adequate housing.”
- “States must, for instance, adopt a [housing policy or plan] that: defines the objectives for the development of the housing sector, with a focus on disadvantaged and marginalized groups; identifies the resources available to meet these goals; specifies the most cost-effective way of using them; outlines the responsibilities and time frame for the implementation of the necessary measures; monitors results and ensures adequate remedies for violations.”
- “. . . States must also, progressively and to the extent allowed by their available resources, prevent and address homelessness; provide the physical infrastructure required for housing to be considered adequate (this would include taking steps towards ensuring universal and non-discriminatory access to electricity, safe drinking water, adequate sanitation, refuse collection and other essential services); or ensure adequate housing to individuals or groups unable, for reasons beyond their control, to enjoy the right to adequate housing, notably through housing subsidies and other measures.”¹⁰⁴

Governments have options in terms of the specific strategies and policies they undertake to “fulfill” the right to housing. These strategies may include devoting more resources and funding to public housing, distributing housing vouchers, enacting policies to ensure habitable housing conditions, and creating incentives for the development of affordable housing.¹⁰⁵

SEVEN ELEMENTS OF “ADEQUATE HOUSING”

The human right to housing is defined by the United Nations Committee on Economic, Social and Cultural Rights (CESCR) as “the right to live somewhere in security, peace, and dignity,” a right that should be ensured to all persons irrespective of income or access to economic resources.¹⁰⁶ According to the CESCR, the right to housing should not be interpreted narrowly, and it is not the same as merely providing shelter or a roof over one’s head.¹⁰⁷ Rather, the right guarantees “adequate housing,” which consists of seven elements:

- (1) security of tenure;
- (2) availability of services;
- (3) affordability;
- (4) accessibility;
- (5) habitability;
- (6) location; and
- (7) cultural adequacy.¹⁰⁸

These seven elements form the basis of the definition of adequate housing, and they are each discussed and defined below.

(1) Security of Tenure

“Security of Tenure” is most relevant in the area of forced evictions, when individuals, families, or communities are removed against their will from their homes or land, without provision of legal protection.¹⁰⁹ International law recognizes forced eviction as a “gross violation of human rights.”¹¹⁰ Policies to ensure security of tenure should apply to all types of housing, including rental accommodations, cooperative housing, leases, owner occupation, or emergency housing and informal settlements.¹¹¹ Security of tenure guarantees all people legal protection against forced evictions, harassment, and threats.¹¹²

To ensure security of tenure, governments should work to prevent evictions through measures such as rent stabilization and controls, rental assistance, land reform,

and other initiatives to promote land and tenure security in urban and rural settings.¹¹³ Governments should also take preventive measures to eliminate the underlying causes of eviction and displacement, such as by regulating speculation in land, real estate and housing.¹¹⁴ For an eviction to comply with international human rights standards, certain criteria must be met, including “meaningful engagement with those affected, exploration of all viable alternatives, relocation to adequate housing agreed upon by the affected households so that no one is rendered homeless, access to justice to ensure procedural fairness, and compliance with all human rights.”¹¹⁵

(2) Availability of Services, Materials, Facilities and Infrastructure

The “Availability of Services, Materials, Facilities and Infrastructure” element applies to access to basic resources to fulfill everyday needs.¹¹⁶ If a home lacks basic facilities, people are unable to live comfortably, and the right to adequate housing is not met. For a structure to qualify as a home, it should allow for sustainable living and need-fulfillment, including those essential to health, security, comfort and nutrition.¹¹⁷ These essentials include but are not limited to:

- Safe drinking water
- Energy for cooking, heating and lighting
- Sanitation and washing facilities
- Means of food storage
- Refuse disposal
- Site drainage
- Access to emergency services¹¹⁸

Availability of internet access is also likely required under this element.¹¹⁹

(3) Affordability

“Affordability” means that one’s basic needs should never be threatened by the cost of housing.¹²⁰ Governments must create policies to ensure that housing costs are proportional to income levels.¹²¹ Housing subsidies and financing options should be provided for those in need at a level that does not compromise other basic needs like paying for necessary medications or nutritious food.¹²² Additionally, rent increases and rent levels should be capped at an affordable level for all tenants.¹²³

(4) Accessibility

“Accessibility” means that the specific housing needs of disadvantaged groups should be taken into account.¹²⁴

Disadvantaged groups include but are not limited to older people, children, people with

physical and mental disabilities, people with terminal illnesses, HIV positive individuals, people with chronic health conditions, victims of natural disasters, and people living in disaster-prone areas.¹²⁵ Housing laws and policies should take fully into account the special needs of these groups.¹²⁶ Policies should also be designed to increase access to land by landless or impoverished peoples.¹²⁷

(5) Habitability

“Habitability” means that housing must reasonably guarantee residents’ physical health and safety. Specifically, housing should provide protection against the stressors of the physical environment, as well as provide fulfillment of the occupant’s psychological needs, including having a private place of their own for themselves and their family.¹²⁸ Housing should also provide adequate space, be free of structural hazards, and protect occupants from the cold, damp, heat, rain, wind, and other health hazards.¹²⁹

(6) Location

The “location” of housing must also be adequate, meaning that it must be built in healthy and accessible locations. This includes “access to employment options, health-care services, schools, childcare centers, and other social facilities.”¹³⁰ The cost and distance of commuting to work must also be considered, as this can make housing practically inaccessible — especially for individuals and families who are low-income.¹³¹ Additionally, housing should not be built on polluted sites or close to pollution sources that threaten the health of its residents.¹³² Providing adequate neighborhoods along with homes is essential to creating long-term, permanent solutions to the housing crisis.



A formerly unhoused woman's Orange County home after she received subsidized affordable housing.

(7) Cultural Adequacy

International law recognizes that adequate housing must be “culturally adequate,” meaning it must “respect and take into account the expression of cultural identity.”¹³³ According to the CESCR:

“The way housing is constructed, the building materials used and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing. Activities geared towards development or modernization in the housing sphere should ensure that the cultural dimensions of housing are not sacrificed, and that, inter alia, modern technological facilities, as appropriate are also ensured.”¹³⁴

For example, inadequate housing for Indigenous people in the United States creates negative impacts on health and wellbeing through overcrowding, lack of maintenance, and destruction of connections to ancestral land.¹³⁵

“PROGRESSIVE REALIZATION” OF THE RIGHT TO HOUSING USING THE “MAXIMUM AVAILABLE RESOURCES”

International law recognizes that a right to housing will not be achieved overnight, but rather that governments will achieve the “*full realization*” of the right “*progressively*,” by taking steps to enact relevant policies. The CESCR states “while the full realization of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time,” and “[s]uch steps should be deliberate, concrete and targeted as clearly as possible towards meeting the [recognized obligations].”¹³⁶

Importantly, the right to housing creates an obligation on governments to realize the right by investing the “*maximum of available resources*.”¹³⁷ This means governments must make all possible efforts to raise as many resources as they can for housing, without, of course, undermining the long-term viability of the economy.¹³⁸

EQUITY AND NON-DISCRIMINATION

International human rights frameworks, including those for a right to housing, emphasize the equitable application of rights — ensuring that equitable access to housing is provided regardless of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other such factors, and that enjoyment of the right must not be subject to any form of discrimination.¹³⁹

Non-discrimination has a more expansive meaning in the international human rights context.¹⁴⁰ States have an obligation to prohibit and eliminate discrimination on all grounds and ensure *de jure* and *de facto* equality in access to adequate housing. Eliminating discrimination therefore requires analysis of the sources of housing discrimination, as well as taking affirmative steps to combat conditions that perpetuate discrimination.¹⁴¹



Martha Escudero, a leader in the Reclaiming Our Homes movement, and her daughters.

Photo Credit: Pea Núñez

Story: Martha Escudero

Martha Escudero is a native Californian, a mother of two daughters, and a leader in the Reclaiming Our Homes movement.¹⁴² For many years, Martha and her daughters rented in the Boyle Heights neighborhood in Los Angeles, where Martha worked at a non-profit serving immigrant mothers in the area. In her work, she saw the effects of the housing crisis firsthand. Many of the women she worked with lived in their cars, shelters, or crowded apartments shared by multiple families. Some women stayed in abusive relationships or in toxic family environments because they could not afford to move out.

In 2019, Martha and her family experienced the trauma of housing insecurity themselves after returning to the United States after living in a rural community in Chile for two years. Due to skyrocketing housing costs, Martha could not

find a home she could afford. All options were triple the cost of her previous apartment in Boyle Heights. The family couch-surfed for a year and a half. Martha and her daughters experienced panic attacks, anxiety, and depression due to the traumatizing instability.

The family was sleeping on a friend's floor when Martha learned about efforts to “reclaim” publicly-owned homes in the El Sereno neighborhood. The state's transportation agency (CalTrans) owned dozens of residential homes in the area, and the properties had been sitting vacant and unoccupied for years. She felt it was unacceptable that the state was hoarding houses while so many families were unhoused or stuck on years-long waitlists for public housing. She began talking with other mothers about forming a movement to “reclaim” these properties.

In March 2020, Martha and her daughters moved into one of the vacant homes. After a highly publicized protest campaign, Martha and the other reclaimers eventually won two-year contracts to live in the homes. Following this, the city promised to provide the families with permanent, stable housing. Martha was relieved to have a safe place to live, and her family found a supportive community in El Sereno. She even ran a homeschool for five families when schools were closed during the pandemic.

However, in early 2023, Martha and her daughters faced eviction from their home. The government made offers of “affordable” housing, but the units were far away from her family’s community and her daughters’ schooling in El Sereno. Martha is still fighting for her family and others like hers to gain access to affordable housing that is *adequate* to meet their needs.

Martha stated:

“Especially as a mom, I want to be able to teach my daughters that you don’t have to conform to a system that’s not working and is causing a lot of suffering for people. That we have the power to change things. That we have the power to say no and take a stand.”



Martha's Daughters.

Photo Credit: Martha Escudero

RIGHT TO HOUSING VERSUS RIGHT TO SHELTER

A right to housing is not the same as a right to shelter, and a “shelter first” approach can undermine the goals of a meaningful right to housing. Yet, some politicians have conflated the two approaches and have falsely framed congregate shelter models as a “right to housing.”

For example, a voter initiative in Sacramento called Measure O, which was passed in 2022, was touted as a “right to housing” even though it prioritized emergency shelters as opposed to investments in permanent housing.¹⁴³ The measure also called for criminal enforcement against unhoused people for camping on public property.¹⁴⁴ Housing advocates criticized Measure O because it relied on criminal punishment and ran counter to data-driven Housing First principles.¹⁴⁵ For these reasons, the measure is at odds with the value of human dignity from which international human rights are derived and is incompatible with the right to adequate housing.¹⁴⁶

Similarly, New York City’s “right to shelter” — a legal mandate that the city provide emergency shelter to unhoused residents — is sharply divergent from a right to housing.¹⁴⁷ To meet its obligation to fulfill a court mandate, New York City has prioritized investments in its large network of shelters at the expense of affordable housing for over 40 years. The results speak for themselves. Currently, the city has the highest number of unhoused people in the United States.¹⁴⁸ Fifty-seven thousand people stay in New York City shelters each night, but only around two hundred people move to permanent housing each week.¹⁴⁹

In contrast to a “shelter first” approach, the right to adequate housing aligns with our state and nation’s official “Housing First” policies. Substantial research shows that Housing First increases access to housing, reduces the use of costly emergency room visits, promotes self-sufficiency, and helps to keep people who were formerly unhoused in their homes.¹⁵⁰ Housing First solutions stem from the belief that providing low-barrier housing is the first step in bringing someone out of homelessness, rather than requiring people to meet certain criteria before entering housing (e.g. sobriety).¹⁵¹

Housing advocates and researchers agree that to solve homelessness we must provide stable, permanent, affordable, and supportive housing. Prioritizing shelters does not address the root causes of the housing affordability crisis, monopolizes limited resources, and subjects unhoused people to long stays in shelters. For these reasons, this report lays out the case for a constitutional right to *housing*, which should not be confused with a right to *shelter*.



Inhumane conditions at a temporary shelter.

Photo Credit: Eve Garrow.

ENFORCEABILITY OF A RIGHT TO HOUSING

As discussed above, a right to housing in California creates obligations on the part of both the state and local governments. As a result, the right is mostly implemented through the adoption of legislative policies and budgetary measures. It is only if governments *fail* to meet these obligations that they may be held accountable through the courts.

A fundamental constitutional right to housing is likely enforceable by a public and a private right of action — meaning, it could be enforced by the government (e.g. a state attorney general) and/or by a private actor (e.g. an individual or group whose rights have been violated).¹⁵² When a constitutional provision¹⁵³ creates a right or protects a class of people but does not explicitly provide a civil remedy, the court may accord a private right of action (that is, the right to sue to enforce the right).¹⁵⁴ Additionally, the government may also be able to sue to enforce the right (called a “public” right of action).¹⁵⁵ In California, constitutional provisions are presumed self-executing as long as there is no language to the contrary,¹⁵⁶ which means government entities are prohibited from taking official actions that contravene these provisions.¹⁵⁷

Generally, constitutional rights only provide a right of action against *government actors* for violations of the right, as opposed to *private* individuals or entities. Usually, this means a state or local government agency or an official working in a governmental capacity.¹⁵⁸ As with other constitutional rights in California, individuals, organizations, and taxpayers would be able to file a private lawsuit against government actors who violate their obligations to “*respect, protect, and fulfill*” a right to housing.

It is rare for constitutional rights to apply to purely private actors, so courts will likely only interpret a right to housing to apply to non-government actions if there is legislative intent for the right to apply in this way.¹⁵⁹ Occasionally, the right may be applicable to private entities that are considered “state actors.” An individual or entity may be considered a state actor when “governmental authority may dominate an activity to such an extent that its participants must be deemed to act with the authority of the government.”¹⁶⁰ One example is a housing project that is run jointly by private enterprises and the government, since courts have previously found these projects to be state actors for purposes of lawsuits for violations of the California Constitution.¹⁶¹

In some cases, it may be possible for tenants or homeowners to use the right to housing as an affirmative defense in eviction or foreclosure actions if the property owner or manager is a government entity.¹⁶² There may be limitations on the scope of this defense, however, with judges weighing relevant factors, circumstances, and reasonableness.



Photo Credit: Alliance of Californians for Community Empowerment (ACCE) Action

CASE STUDY: OTHER RIGHTS IN CALIFORNIA

California voters have approved more than 500 amendments to the state's constitution, including adding new fundamental rights, and the legislature has enacted powerful new statutes to protect and enforce civil rights.¹⁶³ Most recently, California voters passed Proposition 1, which amended the California Constitution to enshrine a fundamental right to reproductive freedom in opposition to the United States Supreme Court's holding in *Dobbs v. Jackson Women's Health Organization*.¹⁶⁴ Passed by an impressive 67% majority, the proposition ensures that abortion rights at the state level are not subject to political whims.¹⁶⁵ Similarly, the housing crisis is the result of political inaction, and Californians have expressed a desire to enshrine housing as a right in the state constitution.

The successes and shortcomings of other rights guaranteed by the state illustrate that (1) Californians have supported a rights-based framework in a variety of areas, and (2) a right to housing would extend this framework in meaningful ways.

THE RIGHT TO EDUCATION

In some ways, the right to housing will operate similarly to the existing right to education in California. The state's Supreme Court recognized a fundamental right to education in 1976.¹⁶⁶ As a result, government actions that infringe on a student's fundamental interest in equal access to education are subject to heightened scrutiny in California's courts.¹⁶⁷ Although the constitutional right to education guarantees only equal opportunity and not a minimum level of quality,¹⁶⁸ it nonetheless imposes an affirmative duty on state and local governments to fund public schools. By comparison, the right to housing would create an obligation on behalf of the state and local governments to fulfill the right to housing, including through budgetary allocations. Also like the right to education, the right to housing would be explicitly deemed "*fundamental*," meaning government interference with the right would give rise to heightened scrutiny by the courts. However, in contrast to the right to education, the right to housing would also create a government duty to ensure that every Californian has access to *adequate* — not just equal — housing through funding and policy changes. In this sense, the right to housing would set a quality standard that the housing would be required to meet or exceed.

THE RIGHT TO WATER

Another illustrative example is the human right to water. Passed in 2012, Assembly Bill 685 added a section to the Water Code stating that it is "the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water."¹⁶⁹ The section requires that all relevant state agencies "shall consider" the state policy recognizing a human right to water in their decision making affecting water rights.¹⁷⁰ Although the language of the statute only requires *consideration* of the right by relevant agencies, in the decade since California established a human right to water, drinking water investments in underserved communities have increased.¹⁷¹ Significant investment and action is still needed, but other policy improvements such as water shutoff protections and local drought response planning are evidence that the human right to water is a tool for meaningful policy change.¹⁷² Importantly, the constitutional right to housing would go further than the statutory human right to water in that it would require government actors to "*respect, protect, and fulfill*" the right, not just "*consider*" it. Further, as a right guaranteed by the constitution (as opposed to by statute), the right to housing would provide greater protection from possible future attempts to reverse or repeal the right.

CASE STUDY: THE RIGHT TO HOUSING IN FINLAND

According to the United States Department of Housing and Urban Development's Office of Policy Development and Research, "Finland has largely ended homelessness."¹⁷³ Central to Finland's success is the fact that its constitution recognizes a right to housing, as well as a corresponding government obligation to ensure residents have access to adequate housing.¹⁷⁴ The government adopted a decades-long initiative known as the National Program to Reduce Long Term Homelessness ("the Program") that functions to fulfill this obligation. The Program embraces a Housing First model, grounded in the principle that "having a place to live is both a human right and a basic right."¹⁷⁵

Finland's approach illustrates how a constitutional right to housing could apply to and improve California's houselessness crisis. Although Finland's constitutional right to housing is one piece of a complex program, the right is an essential tool that we lack in California.

FINLAND'S CONSTITUTION GUARANTEES THE RIGHT TO EVERYONE

The human right to housing is enshrined in the Finnish Constitution.¹⁷⁶ The text states that "[t]hose who cannot obtain the means necessary for a life of dignity have the right to receive indispensable subsistence and care" from public authorities who "shall promote the right of *everyone* to housing and the opportunity to arrange their own housing."¹⁷⁷ Additionally, Section 19 of the constitution guarantees the "[t]he right to social security" which includes the requirement that "[t]he public authorities shall promote the right of everyone to housing and the opportunity to arrange their own housing."¹⁷⁸

The constitutional guarantee of a right to housing is implemented by statutes providing publicly-funded housing and services for all residents, including the Act of Residential Leases, the Act of Developing Housing Conditions, and the Social Welfare Act.¹⁷⁹ The Social Welfare Act (1301/2014) stipulates what services the municipalities must provide, including housing services;

home services and care; children's day care; social work; rehabilitation; transportation; mental health care; and substance abuse services.¹⁸⁰ These services are mainly funded by taxation and are provided free of charge or at a low cost.¹⁸¹ The lion's share of services included in the Finnish model are produced by municipalities (the public sector).¹⁸² Strong tenant protection laws also ensure that the right to housing is enforced by guarding against evictions.¹⁸³

In comparison, the United States does not enshrine a right to housing in its Constitution, and the nation's model is based mostly upon the private market, rather than guarantees of housing and social services to every resident.



Affordable housing provided by the Y-Foundation, an organization in Finland that has been instrumental in reducing homelessness through government partnerships.
Photo provided by the Y-Foundation.

HOUSING FIRST MODEL IN FINLAND

The Housing First model in Finland centers the notion of housing as a human right and the “assumption that the first support measure should be the provision of housing.”¹⁸⁴ Importantly, Finnish municipal governments have taken the lead in the purchasing and development of new affordable housing to ensure that adequate subsidized units are available for people who need them.¹⁸⁵ As one strategy, Finland’s Program gradually shut down and replaced or converted shelters into long-term leasing units.¹⁸⁶ In 2008, there were 600 shelter beds in Helsinki, and by 2016 there were only 52 emergency use beds.¹⁸⁷ As a result of the nation’s Housing First strategy, long-term homelessness fell precipitously from 2008 to 2015, almost halving in some cities.¹⁸⁸

The country’s focus on providing permanent housing is backed by political consensus across all levels of government, as well as the private sector.¹⁸⁹ Municipalities participate in a “regular information exchange” with the national government, yearly negotiations, an annual report, and a monitoring and steering group.¹⁹⁰

Although Finland and the United States made a housing first commitment at about the same time,¹⁹¹ Finland has almost eliminated homelessness while the problem has reached crisis levels in the United States. A major difference is that Finland has established a constitutional right to housing, while most United States housing policies have no enforcement mechanisms. Additionally, in contrast to

Finland’s emphasis on converting short-term shelters into permanent housing, California increased its budgetary spending on homelessness to over \$14 billion as of 2022, focusing largely on short-term solutions during the pandemic.¹⁹² The closest parallel to the Finnish model of converting shelters to leasing units is Governor Gavin Newsom’s Project Homekey, another program that hopes to create over 12,000 longer-term placements in upcoming years by converting hotels, motels, and office buildings.¹⁹³ Successful conversions, however, face infrastructure barriers such as years-long waitlists, unusable vouchers, extension application cycles, unrealistic deposit prices, and lack of housing options.¹⁹⁴

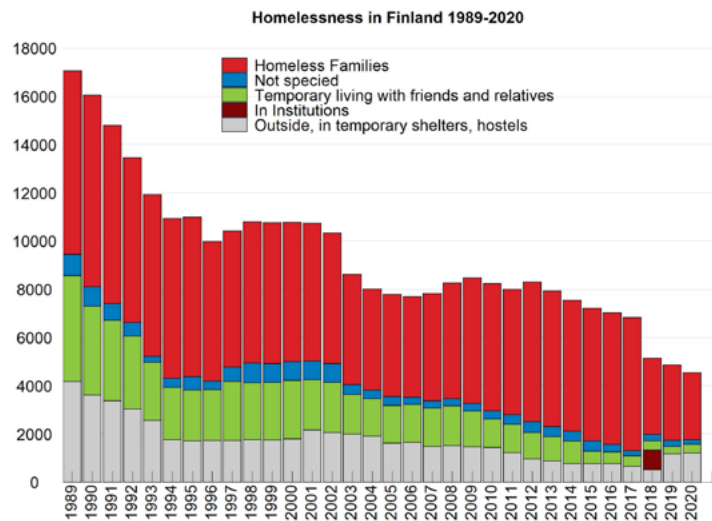
IMPACT OF FINLAND’S RIGHT TO HOUSING

Finland is the only European country where the number of houseless individuals is on a trend of decline.¹⁹⁵ As of November 2021, Finland’s reported unhoused population dropped from around 17,000 in 1987 to approximately 4,000 in 2021 — a stunning 76.5% decrease in homelessness.¹⁹⁶

Figure 1 shows the relative decrease in Finland’s homelessness population in recent decades.¹⁹⁷ Since 1987, approximately 12,000 individuals gained access to housing.¹⁹⁸

Finland’s Housing First model has also resulted in municipal savings. While short-term costs of conversions and service provision were high, long-term costs per individual lowered as more permanent housing became available.¹⁹⁹ United States studies have also shown that permanent housing reduces frequent reliance on police responders or hospital services, as well as the cost of safe campgrounds which, in the United States, can amount to more than \$2,500 a month per resident.²⁰⁰

Figure 1



Source: Report 2021: Homelessness in Finland 2020, The Housing Finance and Development Centre of Finland (ARA).

Researchers attribute Finland’s success in part to its ongoing internal and external reflection efforts and its willingness to adapt existing models based on collected data and promising approaches in other countries.²⁰¹ Political consensus across different levels of the Finnish government and private sectors are contributing factors to their success.

While such consensus would be difficult to reach at the federal level in United States politics, federal agencies have had success in reducing veteran homelessness by nearly half thanks to widespread political support.²⁰² Additionally, at the state level, there is agreement within the California legislature around the Housing First model, evidenced by the passage of Senate Bill 1380 (2016),²⁰³ which embraced this model for all state programs providing funding for people who are unhoused or at risk of becoming unhoused.²⁰⁴ California can benefit by following Finland’s example and adopting a right to housing, enacting corresponding legislation to implement the right, and fully funding Housing First programs throughout the state.

POLICY RECOMMENDATIONS FOR LOCAL AND STATE CALIFORNIA LAWMAKERS

This section outlines policy recommendations to ensure the right to housing is enacted and meaningfully implemented in California.

I. Pass a state constitutional amendment recognizing the *fundamental human right to adequate housing, with language modeled on international human rights law.*

- The amendment should create a *shared obligation* on the part of both the state and local governments to *respect, protect, and fulfill* the right.
- Under the amendment, the government should be required to *progressively implement* the right using the *maximum available resources* with a view toward achieving the *full realization* of the right.
- The right should include language that ensures *equity* and *non-discrimination*.
- It will be helpful to include language defining “adequate” housing, based upon the seven elements of adequacy, as defined by the UN Committee on Economic, Social and Cultural Rights (CESCR), which are: *security of tenure; availability of services; affordability; accessibility; habitability; location; and cultural adequacy.*

II. State and local governments should meet their obligation to *respect, protect, and fulfill* the right to housing by progressively implementing the following policies.

- **Respecting** the right to housing requires the government to refrain from any actions that would prevent individuals and groups from carrying out this right. It also requires the government to abstain from interfering with the right. Government entities should respect the right to housing by:
 - Ending the criminalization of homelessness;
 - Repealing discriminatory “crime free” housing policies; and
 - Ending restrictive zoning rules that block affordable housing.
- **Protecting** the right to housing requires the government to protect existing housing rights from external, non-governmental threats. Part of this duty is to ensure that any possible violations of the right to housing by private actors such as landlords and real estate companies are prevented and that adequate remedies are available when rights are violated. Protecting the right to housing should include:
 - Enacting a right to counsel in eviction proceedings;²⁰⁵
 - Repealing existing state law that prevents strong rent control protections;
 - Passing and enforcing rent control and “just cause” eviction laws;
 - Passing and enforcing tenant anti-harassment laws;
 - Passing and enforcing policies to ensure habitable housing conditions; and
 - Ensuring due process in eviction and foreclosure proceedings, including eliminating expediting timelines for unlawful detainer lawsuits.

- **Fulfilling** the right to housing includes progressive implementation of policies and budgetary allocations to ensure the right to adequate housing is fully realized. Governments should take the following measures to fulfill a right to housing:
 - Investing vastly more resources toward the creation and preservation of affordable housing that remains out of the hands of the private, for-profit market, including “social housing”;
 - Devoting vastly more funding to low-barrier Housing First models with wraparound services for unhoused Californians, where individuals can live safely with their loved ones, pets, and property;
 - Converting vacant government properties into social housing;
 - Distributing housing vouchers to everyone who needs affordable housing, with effective housing navigation to ensure housing is obtained; and
 - Adjusting affordable housing subsidies and financing options to ensure that tenants’ housing costs are below 30% of their income — so they do not compromise other basic needs like paying for medicine, utilities, or nutritious food.

HUMAN RIGHTS OBLIGATIONS

THE GOVERNMENT MUST:



RESPECT



**REFRAIN FROM
INTERFERING WITH THE
ENJOYMENT OF THE RIGHT**

PROTECT



**PREVENT OTHERS FROM
INTERFERING WITH THE
ENJOYMENT OF THE RIGHT**

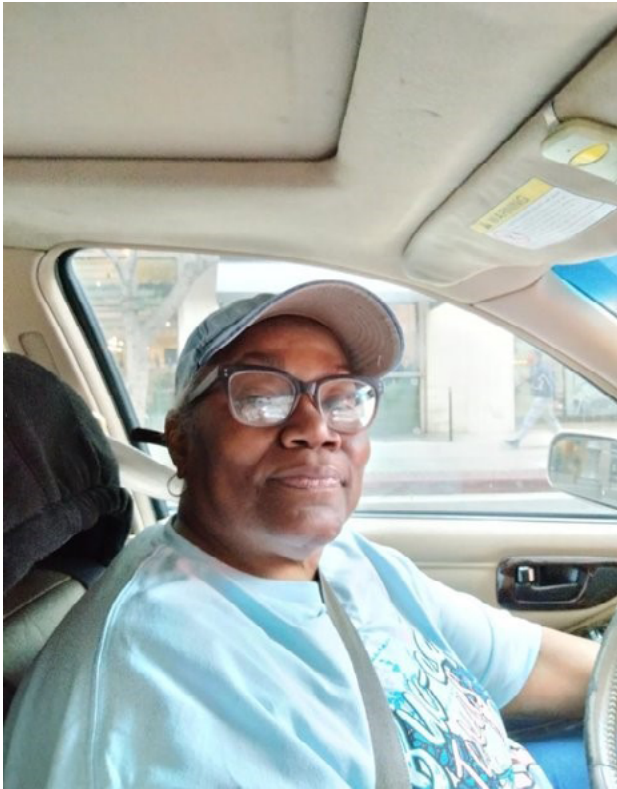
FULFILL



**ADOPT APPROPRIATE MEASURES
TOWARDS THE FULL REALIZATION
OF THE RIGHT**

CREDIT: GRAPHIC INFORMATION FROM THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

STORY: MS. PEGGY PLEASANT



Ms. Peggy Pleasant is a resident of Los Angeles, a mother and grandmother, and an advocate for housing justice. For 22 years, Ms. Pleasant worked in the same job, and she maintained a stable home to raise her daughter. In 2008, she was suddenly laid off from her longtime employment. When she was unable to find another position and could no longer pay her bills, she lost her apartment and moved into her car with her daughter. The two slept in the car in a grocery store parking lot and ate fast food every night until her car was repossessed.

Unable to find stable housing, Ms. Pleasant sent her daughter to live with her father. Ms. Pleasant then moved to Skid Row in downtown Los Angeles. There, she lived in three temporary housing facilities where she struggled to sleep and began to suffer anxiety attacks. She was unable to reunite with her daughter during this time because children were not allowed in the shelter.

Housing justice advocate Ms. Peggy Pleasant.

Fortunately, Ms. Pleasant was one of a small number of people who was able to move into her own apartment at the Downtown Women's Center. She cried the first day she was there because she had her own bathroom. She no longer had to survive on fast food because she could cook in her own kitchen. Finally, she had the space and stability to regularly take her medications and improve her mental health, which had deteriorated while she was unhoused.

Ms. Pleasant said:

"There are so many like me. There are women sitting outside that facility right now hoping to get a bed, a permanent place to stay, an affordable place to stay. To be reconnected with their families, and to get their hope and self-esteem back. We need [a right to housing]. I cannot continue to drive by there and see women sleeping on the street and not helping to find them permanent housing. I cannot stand to see children and mothers and fathers living in missions that are only temporary. We have to do something about it. A home gives you hope. It gives you opportunity. It gives you a chance to raise your children. . . . Remember . . . Housing is a human right."



Ms. Peggy Pleasant speaking in support of Housing as a Human Right at the bill launch press conference for Assembly Constitutional Amendment 10 (Haney, 2023).

CONCLUSION

When Ms. Peggy Pleasant lost her job and her home during the 2008 financial crisis, she required safe, adequate housing as an immediate response to her needs. But waiting lists for affordable housing in Los Angeles were closed. Her only option was to live in temporary shelters, where her health and spirits rapidly deteriorated.

Housing is a human right. But as Ms. Pleasant's harrowing experience illustrates, California does not yet respect this right. This report demonstrates the need for a constitutional amendment that will establish the human right to housing in California. It is a mistake to assume that California's policies, which have relied on one-time, limited and insufficient investments in affordable housing, will solve this crisis, which has only worsened over the last few decades.

Attempting to solve the housing and houselessness crisis without a clear and enforceable government obligation to respect, protect, and fulfill the human right to housing is not working. As a first step, elected officials should implement the recommendations in this report, which include taking steps to enshrine the right to housing in California's constitution. Moving forward, officials at all levels of government should uphold their obligation to respect, protect, and fulfill this right.

Ms. Pleasant is now safely housed. But she should never have been forced to experience the emotional trauma and extreme material deprivation of houselessness. We all deserve adequate housing, which is fundamental to life, health, and wellbeing. To realize this vision, we need a state constitutional amendment establishing the right to housing.

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¹⁵² See *Cannon v. Univ. of Chi.*, 441 U.S. 677, 730 n.1 (1979). See also *Texas & Pacific R. Co. v. Rigsby*, 241 U.S. 33 (1916); *Tunstall v. Locomotive Firemen & Enginemen*, 323 U.S. 210 (1944).

¹⁵³ Rest.2d, Torts § 874A cmt. A “the term ‘legislative provision’...also includes constitutional provisions.”

¹⁵⁴ Rest.2d, Torts § 874A “When a legislative provision protects a class of persons by proscribing or requiring certain conduct but does not provide a civil remedy for the violation, the court may, if it determines that the remedy is appropriate in furtherance of the purpose of the legislation and needed to assure the effectiveness of the provision, accord to an injured member of the class a right of action, using a suitable existing tort action or a new cause of action analogous to an existing tort action.” See *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).

¹⁵⁵ See Seth Davis, *Implied Public Rights of Action*, 114 Columbia L. Rev. 1 (2014).

¹⁵⁶ *Katzberg v. Regents of Univ. of California*, 29 Cal. 4th 300 (2002); *Oakland Paving Co. v. Hilton*, 69 Cal. 479, 484 (1886).

¹⁵⁷ See 7 Summary (11th), *Constitutional Law*, § 81. See also *Winchester v. Howard*, 136 Cal. 432, 439 (1902); *Rincon Band of Luiseno Mission Indians of the Rincon Reservation California v. Flynt*, 70 Cal. App. 5th 1059 (2021). Courts will also look at whether there was a legislative intent to provide a right of action. 7 Summary (11th), *Constitutional Law*, § 642. In *White v. Davis*, the court found that the California constitutional amendment for the right of privacy supported a cause of action, citing the argument written on the ballot measure that stated that the amendment would create “a legal and enforceable right of privacy for every Californian.” 13 Cal. 3d 757 (1975). When there is no specific intent in either direction, the court has the ability to decide on its own. Restatement (Second) of Torts § 874A (1979). See also 1A C.J.S. Actions § 61.

¹⁵⁸ *Kruger v. Wells Fargo Bank*, 11 Cal. 3d 352, 359 (1974) (“But private action, however hurtful, is not unconstitutional.”).

¹⁵⁹ Cf. J. Clark Kelso, *California’s Constitutional Right to Privacy*, 19 Pep. L. Rev. 327, 443-46 (1992).

¹⁶⁰ *Edmonson v. Leesville Concrete Co. Inc.*, 500 U.S. 614 (1991).

¹⁶¹ In two consolidated cases, the court held that two private management companies who worked with the government to run housing programs were state actors because of their relationship with the state, finding that “The government is, essentially, the landlord. . .” *Appel v. Beyer*, 114 Cal. Rptr. 336, 340 (1974).

¹⁶² *Compare id.* (allowing tenants to use an affirmative constitutional defense in an eviction action).

¹⁶³ California State Senate, *The Constitutions of California and the United States with Related Documents* (Mar. 2017), https://www.senate.ca.gov/sites/senate.ca.gov/files/the_constitutions_of_california_and_the_united_states2.pdf.

¹⁶⁴ *Prop 1: Guarantee Abortion Rights in State Constitution*, Cal Matters, <https://calmatters.org/california-voter-guide-2022/propositions/prop-1-abortion-rights/> (last visited Apr. 10, 2023); see generally *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022).

¹⁶⁵ *Prop 1: Guarantee Abortion Rights in State Constitution*, *supra* note 164.

¹⁶⁶ *Serrano v. Priest*, 18 Cal. 3d 728, 766 (1976).

¹⁶⁷ *Butt v. California*, 4 Cal. 4th 668, 686 (1992).

¹⁶⁸ *Campaign for Quality Educ. v. State of California*, 246 Cal. App. 4th 896, 903 (2016).

¹⁶⁹ General State Powers Over Water, A.B. 685, Ch.524 (2011-2012); Cal. Water Code § 106.3.

¹⁷⁰ *Id.*

¹⁷¹ *10 Years Later, California’s Promise of a Human Right to Water Remains Unfulfilled*, Cal Matters (Dec. 28, 2022), <https://calmatters.org/commentary/2022/12/water-human-right-law-california/>.

¹⁷² *Id.*

¹⁷³ Marybeth Shinn & Jill Khadduri, *How Finland Ended Homelessness*, 22 *Cityscape: A. J. of Pol'y Dev. and Rsch.* 75 (2020).

¹⁷⁴ See Suomen Perustuslaki, Constitution, June 11, 1999, chap. 2, § 19 (amended 2012). See also Eric Tars, *Housing as a Human Right* 13 (2021), https://nlihc.org/sites/default/files/AG-2021/01-06_Housing-Human-Right.pdf.

¹⁷⁵ *A Home of Your Own: Housing First and Ending Homelessness in Finland*, Y-Foundation, 10 (2017), https://www.feantsaresearch.org/download/a_home_of_your_own_low-res_spreads6069661816957790483.pdf.

¹⁷⁶ *Finland's Constitution of 1999 with Amendments Through 2011*, Constitute Project 10 (Apr. 27, 2022) https://www.constituteproject.org/constitution/Finland_2011.pdf?lang=en. See also *State of Housing Rights*, Housing Rights Watch (January 25, 2017), <https://www.housingrightswatch.org/page/state-housing-rights-4>.

¹⁷⁷ *Id.* (emphasis added).

¹⁷⁸ *Finland's Constitution of 1999*, *supra* note 176.

¹⁷⁹ *A Home of Your Own*, *supra* note 175, at 108.

¹⁸⁰ Susanne Jungerstam & Annika Wentjärvi, *Country Portrait Finland - The Finnish Welfare State* 5 (June 3, 2019) <https://www.socialnet.de/en/international/Finland>.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ See *Act on Residential Leases*, Ministry of the Environment, <https://www.finlex.fi/en/laki/kaannokset/1995/en19950481.pdf> (last visited Apr. 10, 2023).

¹⁸⁴ *A Home of Your Own*, *supra* note 175, at 10.

¹⁸⁵ *Id.* at 10-11.

¹⁸⁶ *Id.* at 19.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ Shinn & Khadduri, *supra* note 173, at 78.

¹⁹⁰ *A Home of Your Own*, *supra* note 175, at 113-14.

¹⁹¹ *A Home of Your Own*, *supra* note 175, at 14.

¹⁹² Manuela Tobias, *California Homeless Population Grew by 22,000 Over Pandemic*, CapRadio (Oct. 11, 2022), <https://www.capradio.org/articles/2022/10/11/california-homeless-population-grew-by-22000-over-pandemic/#:~:text=The%20first%20statewide%20snapshot%20of,past%20three%20years%2C%20to%2017%2C800>.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Housing First in Finland*, The Y-Foundation, <https://ysaatio.fi/en/housing-first-finland> (last visited Dec. 14, 2022).

¹⁹⁶ The Housing Finance and Development Center of Finland, *Report 2021: Homelessness in Finland 2020*, 3 file:///Users/andreenriquez/Downloads/Homeless_people_2021_ARA_report_EN.pdf (last visited Dec. 20, 2022).

¹⁹⁷ *Id.*

¹⁹⁸ *Housing First in Finland*, THE Y-FOUNDATION, <https://www.ara.fi/download/noname/%7B-0D67A61D-7980-467C-8346-287DB5768DD2%7D/166447> (last visited Dec. 14, 2022).

¹⁹⁹ *A Home of Your Own*, *supra* note 175, at 68.

²⁰⁰ Carla Hall, *Editorial: To Solve Homelessness, California Should Declare a Right to Housing*, Los Angeles Times, (June 11, 2021), <https://www.latimes.com/opinion/story/2021-06-06/homelessness-right-to-housing-human-right-reimagine-california>.

²⁰¹ Shinn & Khadduri, *supra* note 173, at 78; *id.*

²⁰² Shinn & Khadduri, *supra* note 173, at 78.

²⁰³ Molly Solomon, *Will California Guarantee Housing as a Right? Here's How the Pandemic Is Shaping the Debate*, KQED (May 21, 2020), <https://www.kqed.org/news/11819691/will-california-guarantee-housing-as-a-right-heres-how-the-pandemic-is-shaping-the-debate>.

²⁰⁴ Right to Safe, Decent, and Affordable Housing, A.B. 2405 § 1 (2019-2020).

²⁰⁵ See *Right to Counsel is a National Movement*, Renters' Right to Counsel (2019), <https://rtcla.org/the-national-movement/>.



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