

CASUALTIES OF CUTS: HOMELESSNESS IN THE FACE OF CALIFORNIA’S BUDGET WOES

Sharon Rapport

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Sharon Rapport joined the Corporation for Supportive Housing in November 2006. As the Associate Director for California Policy at CSH, Ms. Rapport advances and coordinates efforts to implement a California policy agenda across multiple issues affecting people experiencing homelessness, including working to create an interagency council on homelessness, to channel Medi-Cal resources toward more effective services for people experiencing homelessness, to expedite and facilitate processing of SSI cases for disabled homeless individuals, and to create a state services funding program. Prior to joining CSH, Ms. Rapport served as a Congressional Fellow for U.S. Senator Jack Reed (D-RI), focusing on housing and judiciary issues. She previously spent 11 years working for the Office of Hearings and Appeals, Social Security Administration, in Los Angeles and San Diego, most recently as Hearing Office Director. During her tenure as Staff Attorney for Inland Counties Legal Services in Indio, CA, through June 1994, Ms. Rapport litigated on behalf of indigent clients on a wide range of civil cases. She earned a J.D. from George Washington University and a B.A. from the University of California, Los Angeles.

The Corporation for Supportive Housing (CSH) is a national nonprofit that helps communities create permanent, affordable housing with services—known as permanent supportive housing (PSH)—to prevent and end homelessness. CSH provides training and technical assistance to the PSH industry, makes loans and grants to project sponsors, and reforms public policy to facilitate PSH creation and operation. CSH has committed nearly \$218 million in loans and grants to support the creation of nearly 40,000 units, ending homelessness for tens of thousands of adults and children. Since 1992, the California Program has helped communities create over 11,000 PSH units.

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I. INTRODUCTION

When Governor Schwarzenegger releases his revised proposed budget for this year, it is expected to include cuts affecting people in severe poverty: drastic cuts to health care access and coverage, elimination of welfare, and the eradication of In-Home Support Services for disabled people.¹ Last year, as in previous years, the California Legislature and Governor enacted a series of budget cuts in an effort to balance a budget that reflected significant decreases in general fund revenue. In February 2009, lawmakers attempted to forestall a \$42 billion deficit. Additional cuts followed in July, when the Legislature passed billions in cuts to make up for a \$24 billion shortfall.² The Governor used his “blue pencil” to veto spending by another \$500 million for programs the Legislature passed in July.³

Each year, lawmakers are placed in the precarious position of attempting to make up for budget deficits within the confines of our complex system. This system includes annual budget cycles that necessitate a two-thirds majority vote, a two-thirds majority requirement to exact tax increases, reliance on tax sources vulnerable to boom and bust, and voter-passed spending mandates that leave little flexibility to design introspective budgets. Voters have rejected changes to the two-thirds constraints in the past, which the popular Proposition 13 ushered in. As a result, the state budgets will continue to offer short-term band-aids, when the state requires

1. Julie Small, *Schwarzenegger to Reveal Grim Budget Today*, Southern California Public Radio, May 14, 2010, available at <http://www.scpr.org/news/2010/05/14/May-budget-peek/>.

2. Michael Rothfeld & Patrick McGreevy, *Assembly Approves Most of State Budget, Which Now Goes to Governor*, L.A. TIMES, Jul. 29, 2009, available at <http://latimesblogs.latimes.com/lanow/2009/07/assembly-approves-most-of-state-budget-which-now-goes-to-governor.html>.

3. Michael Rothfeld & Shane Goldmacher, *Schwarzenegger Cuts \$500 Million More as He Signs Budget*, L.A. TIMES, Jul. 29, 2009, at A1. Advocates for people affected by the Governor’s blue pencil cuts have filed a challenge to the Governor’s action, arguing that, while the California Constitution (Art. IV, § 10) allows the Governor to veto an entire bill or a budget line item, the Governor may not modify or change an appropriation the Legislature passed. See *St. John’s Well Child & Fam. Ctr. v. Schwarzenegger*, No. A125750 (Cal. Ct. App. 1st App. D. petition filed Aug. 12, 2009). Legislators have also acted to reverse the Governor’s cut of all state funding for domestic violence shelters. See S.B. 662, 2009 Leg., 2009-2010 Sess. (Cal. 2009).

systemic surgery to cease the gushing.

Though final budget deals reached in the Legislature and the Governor's office last year resisted the Governor's initial call for a 10 percent "across-the-board" reduction in all agency spending (which would have cut social service programs more drastically, eliminating some programs all together), the final budget filled over half of the budget holes with cuts to social service programs for Californians in poverty.

Social services cuts are common during lean budget times, but these cuts can have the unintended consequence of further exacerbating the effects of a recession.⁴ Examining the impact of cuts for our homeless population is a study in short-term budget balancing leading to long-term consequence. Recently enacted cuts to safety net programs will cause increased homelessness throughout California and keep people homeless longer. Particularly for homeless people with disabilities—who are often casualties of fiscal crisis—research indicates the budget cuts will widen the gap between income and housing costs, jeopardize the health of homeless people, and may violate federal civil rights laws under the *Olmstead*⁵ case.

The state could take action to reduce homelessness, even during these lean budget times. Continuing to neglect homelessness will, as research documents, only result in greater economic and moral burden to our state and local governments.

II. HOMELESSNESS IN CALIFORNIA

California has the largest homeless population in the country, with an estimated 157,277 people sleeping on our streets or in our shelters each night, and over 380,000 people homeless at some point each year.⁶ We also have one of the highest ratios of homelessness per resident, with one of every 230 residents being homeless at any

4. ELIZABETH MCNICHOL & NICOLAS JOHNSON, CTR. ON BUDGET & POL'Y PRIORITIES, RECESSION CONTINUES TO BATTER STATE BUDGETS; STATE RESPONSES COULD SLOW RECOVERY 8 (2010), <http://www.cbpp.org/files/9-8-08sfp.pdf>. Because low-income people are likely to spend their entire income, income reductions for people in this category will have a significant consequence for the economy. Tax increases also reduce demand from the economy, but, if the increase is imposed on high-income taxpayers, it has minimal to no consequence to economic activity.

5. 527 U.S. 581 (1999).

6. U.S. DEP'T OF HOUS. AND URBAN DEV., OFFICE OF CMTY. PLANNING AND DEV., THE 2008 ANNUAL HOMELESS ASSESSMENT REPORT TO CONGRESS: A SUMMARY OF FINDINGS 12-13 (Jul. 2009).

point in time.⁷ One in ninety-five of us will experience homelessness over the course of a year. Though Los Angeles has the most homeless residents, homelessness affects most counties, even small and rural counties. Mendocino County, in fact, has the second highest rate of homelessness per resident in the country,⁸ despite a population of under 100,000.⁹

Historical trends indicate that homelessness will increase nationally as a result of the recession. Recessions have resulted in increases in deep poverty, causing increases in homelessness.¹⁰ Economists estimated in late 2008 that an unemployment rate of 9 percent would translate into an additional 8.4 to 10.9 million people falling into poverty (in addition to the national estimates of over 37 million who already in poverty before the recession began).¹¹ Since we have long surpassed a 9 percent unemployment rate, we can expect the number in poverty to well exceed the current 40 million nationwide.¹²

Increases in deep poverty cause higher rates of homelessness. Indeed, homelessness among families with children has been on the rise, up 9 percent in 2008 alone.¹³ People are also staying in shelters and transitional housing longer than in previous years.¹⁴ Consistent with national trends, communities throughout California have cited increased demands for homeless services since the recession began.¹⁵

7. *Id.*

8. NAT'L ALLIANCE TO END HOMELESSNESS, HOMELESSNESS RESEARCH INST., GEOGRAPHY OF HOMELESSNESS, PART 2: PREVALENCE OF HOMELESSNESS 3 (Aug. 27, 2009).

9. U.S. Census Bureau, State & County QuickFacts, Mendocino County, Cal., <http://quickfacts.census.gov/qfd/states/06/06045.html> (last visited Apr. 23, 2010).

10. "Deep poverty" is defined as a household receiving income that is 50% or below the federal poverty level. For a family of four, "deep poverty" translates into a monthly income of \$833. SHARON PARROTT, CTR. ON BUDGET AND POL'Y PRIORITIES, RECESSION COULD CAUSE LARGE INCREASES IN POVERTY AND PUSH MILLIONS INTO DEEP POVERTY 1, 3-5 (Nov. 24, 2008, rev. Aug. 2009).

11. *Id.* at 5. About 40% of families who are eligible for welfare under the Temporary Assistance for Needy Families (TANF) program do not receive it. *Id.* at 2. As a comparison, during recessions of the 1980's and 1990's, approximately 80% of poor families that were eligible for welfare received it. BARBARA SARD, CTR. ON BUDGET AND POL'Y PRIORITIES, NUMBER OF HOMELESS FAMILIES CLIMBING DUE TO RECESSION 5 (2009), available at <http://www.cbpp.org/files/1-8-09hous.pdf>.

12. SARD, *supra* note 11.

13. The Department of Housing and Urban Development collected statistics regarding the number of homeless people and trends in homelessness from October 1, 2007 through September 30, 2008. U.S. DEP'T OF HOUS. AND URBAN DEV., *supra* note 5, at 3.

14. *Id.* at 8.

15. See, e.g., Cynthia Hubert, *National Child Homeless Rate Hits Home in Valley*, MODESTO

A. *Lack of Housing Affordability*

Throughout our California counties, high poverty, high unemployment, high rents, and low rental unit vacancy rates have resulted in high numbers of homeless people. Homelessness is, in fact, correlated to high housing cost burden—the ratio of rental payment to household income—brought on by low vacancy rates.¹⁶ To afford a two-bedroom rental at the California fair market rent of \$1,291 per month in 2009, wage earners would have needed to earn \$24.83 per hour, or \$51,654 per year. In 2009, the average renter household brought in \$17.52 per hour, or \$36,447 per year.¹⁷ A family of four in deep poverty receives an income of \$833 or less per month, making these households unlikely to find housing affordable to them.¹⁸

Adding to the rental burden, home foreclosures have reportedly caused many Californians to enter the rental market. The foreclosure crisis has, in effect, increased the demand for rental housing and decreased rental vacancies. As opposed to the common belief that housing is becoming more affordable, in many communities, rents have actually increased in light of greater demand for rentals.¹⁹

B. *Housing Instability*

Poverty does not necessarily cause someone to become homeless. Though recent trends indicate a growing number of homeless people are homeless for the first time after a period of long-term housing stability,²⁰ in general, people fall into homelessness after a significant period of housing instability. People who, for example, have frequently moved, are living in overcrowded

BEE, Mar. 10, 2009, at A1; Jessica Garrison, *Shelters See More Families*, L.A. TIMES, Dec. 18, 2008, available at <http://articles.latimes.com/2008/dec/18/local/me-homeless18>; C.W. Nevius, *More People on S.F. Streets Newly Homeless*, S.F. CHRONICLE, Dec. 16, 2008, available at http://articles.sfgate.com/2008-12-16/bay-area/17130955_1_homeless-families-philip-mangano-martin-cooper.

16. John Quigley, Stephen Raphael, & Eugene Smolensky, *Homelessness in America, Homelessness in California*, 83 REV. ECON. & STAT. 37, 46 (2001).

17. KEITH WARDRIPE ET AL., NAT'L LOW INCOME HOUS. COALITION, OUT OF REACH 2009: PERSISTENT PROBLEMS, NEW CHALLENGES FOR RENTERS 14 (Apr. 2009), available at <http://www.nhtf.org/oor/oor2009/oor2009pub.pdf> (Fair market rent is the 40th percentile of an area's rental market.).

18. SARD, *supra* note 10, at 4.

19. *Id.* at 5.

20. U.S. DEP'T OF HOUS. AND URBAN DEV., OFFICE OF CMTY. PLANNING AND DEV., *supra* note 5, at 7.

or “doubled up” housing situations, cannot afford rent and do not receive any housing subsidy, or have had past experiences of homelessness are more likely to become homeless.²¹

Someone is also at greater risk of housing instability, and therefore homelessness, when he or she lived in poverty or in foster care as a child, is pregnant or responsible for an infant, is experiencing domestic violence, has children involved with the child welfare system, is abusing substances or alcohol, or is suffering from chronic physical health conditions.²² People with schizophrenia or major depression have higher rates of homelessness as well.²³ Older age, victimization, and arrest history are risk factors for “chronic homelessness.”²⁴

III. WHAT WORKS

While homelessness involves a complex set of causes and touches multiple aspects of society—housing, health care, social services, corrections, foster care, public benefits, and behavioral health—data demonstrate what works to prevent and reduce homelessness. Evidence shows, for example, that communities experience lower rates of homelessness when they target rental subsidies to very poor households, even in communities with low vacancy rates.²⁵ A five-year, federally funded study showed that households receiving a rental subsidy had a 74 percent decreased risk

21. *Id.*

22. Marybeth Shinn et al., *Predictors of Homelessness Among Families in New York City: From Shelter Request to Housing Stability*, 88 AM. J. PUB. HEALTH 1651, 1654-55 (1998). See generally MARTI BURT ET AL., HELPING AMERICA’S HOMELESS: EMERGENCY SHELTER OR AFFORDABLE HOUSING? (2001).

23. David Folsom et al., *Prevalence and Risk Factors of Homelessness and Utilization of Mental Health Services Among 10,340 Patients with Serious Mental Illness in a Large Public Mental Health System*, 162 AM. J. PSYCHIATRY 370, 373-74 (2005).

24. CAROL CANTON ET AL., NAT’L SYMPOSIUM ON HOMELESSNESS RESEARCH, CHARACTERISTICS AND INTERVENTIONS FOR PEOPLE WHO EXPERIENCE LONG-TERM HOMELESSNESS (2007), available at <http://aspe.hhs.gov/hsp/homelessness/symposium07/caton/index.htm>.

25. JILL KHADDURI, HOMELESSNESS RESEARCH INSTITUTE, HOUSING VOUCHERS CRITICAL FOR ENDING FAMILY HOMELESSNESS (Jan. 2008), available at <http://www.endhomelessness.org/content/article/detail/1875>; U.S. GEN. ACCT. OFFICE, FEDERAL HOUSING ASSISTANCE: COMPARING THE CHARACTERISTICS AND COSTS OF HOUSING PROGRAMS, (Jan. 2002), available at <http://www.gao.gov/new.items/d0276.pdf>; DOUGLAS RICE, CTR. ON BUDGET AND POL’Y PRIORITIES, ADDITIONAL HOUSING VOUCHERS NEEDED TO STEM INCREASE IN HOMELESSNESS 1 (Apr. 16, 2009), available at <http://www.cbpp.org/files/4-16-09hous.pdf>.

of homelessness compared to households in a control group.²⁶

Given our low rental housing vacancy rates in California, Californians have benefited from public capital financing programs designed to spur construction of housing affordable to people at risk of or already homeless. California voters passed housing bond measures in 2002 and 2006 to create more housing affordable to low-income and homeless Californians,²⁷ and these funds help leverage other sources of federal, state, local, and philanthropic investment, allowing people in poverty to access affordable housing.

Strategies like providing rental subsidies and creating housing targeted to low-income people work to prevent and end homelessness for many Californians. However, many others remain homeless or repeatedly experience homelessness for long periods or even throughout their lives, unless they become tenants of “supportive housing,” housing that does not limit the length of tenancy and that offers services tailored to address needs of the individual tenant. Services include case management that helps tenants access appropriate health care and social services, transportation, substance abuse and mental health treatment, vocational training, life skills classes, and assistance applying for benefits to which the individual/family is entitled. People especially in need of these services include people who have disabilities and have been homeless for long periods or have experienced repeated episodes of homelessness (“chronically homeless” people),²⁸ people exiting institutions—hospitals, jails/prisons, institutes for mental disease, or detoxification facilities—who have no where to live once discharged from the institution, people with complex mental health and/or other chronic health conditions, and young adults who are homeless, many of whom have aged out of the foster care system or have experienced difficult family histories. Supportive housing is

26. Michelle Wood et al., *Housing Affordability and Family Well-Being: Results from the Housing Voucher Evaluation*. 19:2 HOUS. POL'Y DEBATE (2008) at 367-412.

27. Voters passed Prop. 46, the “Housing and Emergency Shelter Trust Fund Act of 2002,” after the Legislature passed S. B. 1227, chaptered in Cal. Health & Safety §§ 50675.13, 50675.14, 51451.5, 51453, 51505, and Part 11, Division 31. Voters passed Prop. 1C, the “Housing and Emergency Shelter Trust Fund Act of 2006,” after the Legislature passed Assembly Bill 2638, now codified at Cal. Health & Safety §§ 50843, 50842.1, 50842.2, 50843.5.

28. Under federal law, “chronic homelessness” is defined as experiencing a disability and homelessness for at least one continuous year or four episodes of homelessness within the last three years. About 30% of all homeless people in California are chronically homeless. U.S. DEP'T OF HOUS. AND URBAN DEV., *supra* note 5, at 15.

the only method proven to end homelessness for these individuals. In fact, it has ended homelessness for tens of thousands of people, many of whom have been homeless for decades.²⁹

State agencies and local governments in California recognize supportive housing as a necessary strategy in addressing homelessness. The housing bonds mentioned above have included financing for supportive housing, and the state has allocated a portion of funds from the Mental Health Services Act (MHSA), which directs funds from a “millionaire’s tax” for services for people with serious mental illness, to create more supportive housing for homeless people with mental illness via the MHSA Housing Program.³⁰ Multiple state agencies, in fact, acknowledged supportive housing as a tactic that works.

IV. CUTS AFFECTING HOMELESSNESS

Following two years of budget cuts, the budgets passed in February and July 2009 included substantial spending reductions, plugging 51.7 percent of the budget holes. Cuts curtailed close to \$31 billion in poverty programs (\$15.8 billion in July’s and \$14.8 billion in February’s budget deals).³¹ These cuts to safety net programs will push people in poverty into homelessness and keep people homeless.

29. U.S. DEP’T. OF HEALTH AND HUMAN SERVS., MAKING A DIFFERENCE: REPORT OF THE MCKINNEY RESEARCH DEMONSTRATION PROGRAM FOR HOMELESS MENTALLY ILL ADULTS (1994). See CORP. FOR SUPPORTIVE HOUSING, SUPPORTIVE HOUSING RESEARCH FAQs: WHO LIVES IN SUPPORTIVE HOUSING? (Jan. 2007), available at <http://documents.csh.org/documents/policy/FAQs/WhoLivesInSHFAQFINAL.pdf> (information on tenants in supportive housing).

30. See Letter from Cal. Dept. of Mental Health, Oct. 30, 2009, available at http://www.dmh.ca.gov/Prop_63/MHSA/Housing/docs/MHSA_SemiAnnualHousingReport.pdf (information about the MHSA Housing Program). California voters passed MHSA, also known as Proposition 63, to fund services for people with serious mental illness through a 1 percent tax on people earning over \$1 million. Added Parts 3.1, 3.2, 3.6, 3.7, and 4.5 to Division 5, Article 11 to Chapter 1 of Part 4, to the Welfare and Institutions Code of California, as well as several sections to the Revenue and Taxation Code.

31. Jennifer Steinhauer, *California Reaches Budget Deal, with Billions Cut*, N.Y. TIMES, Jul. 20, 2009, available at <http://www.nytimes.com/2009/07/21/us/21calif.html> (The Governor’s veto of programs the Legislature funded comprised three percent of the July budget cuts, temporary tax increases closed 20.9% of the budget gap (\$3.9 billion), and federal stimulus funds from the American Recovery and Reinvestment Act totaled eight percent of the California budget this year.); California Budget Project, Power Point Presentation, *An Overview of Recent Cuts to California’s Safety Net*, Oct. 2009 at slide 4.

*A. Housing Affordability Further
Threatened by Cuts to Income Benefits*

Spending to programs providing income to millions of people in poverty could have the most dramatic impact on Californians on the brink of homelessness. Though income assistance is insufficient to lift anyone out of poverty, people receiving some reliable, consistent form of income are less likely to fall into homelessness and more likely to find housing that is affordable.

Shrinking income benefit amounts jeopardizes housing stability. As an example, decreased income among families receiving federal Housing Choice vouchers³²—better known as “Section 8”—created a funding shortfall in the program.³³ Since vouchers pay the difference between a voucher holder’s rent and 30 percent of the voucher holder’s income, the program must provide a higher subsidy when a holder’s income decreases. For this reason, income reductions among tenants using vouchers affect how many people receive the vouchers and how much each household receives. The cost of each voucher was 5 percent higher in 2009 than in 2008, causing a \$13.24 million shortfall in voucher funding in California.³⁴ Despite a recent congressional appropriation to make up the shortfall, new vouchers may be scarce in many California communities as a result.³⁵

Similarly, the income reductions in Supplemental Security Income (SSI) and the California Work Opportunities and Responsibility to Kids program (CalWORKS) passed in last year’s budgets, will have ripple effects throughout our communities. The Social Security Administration awards SSI to 1.26 million indigent Californians who are over age 65, who are legally blind, or who cannot work because of a disability.³⁶ In addition to the federal SSI payment, 23 states, including California, provide a State Supplementary Payment (SSP), theoretically adjusted for costs of

32. DOUGLAS RICE, CTR. ON BUDGET AND POL’Y PRIORITIES, FUNDING SHORTFALLS CAUSING CUTS IN HOUSING VOUCHERS 1-2, 5 (2009) (One-third of voucher holders are disabled or seniors, over one-half are families with children.).

33. *Id.*

34. *Id.*

35. *Id.*

36. 20 C.F.R. § 416.920(a) (2009); *See* SSI Recipients by State and County, 2008 – California, http://www.ssa.gov/policy/docs/statcomps/ssi_sc/2008/ca.html (according to the Social Security Administration, 899,395 people in California receive SSI due to a disabling condition.).

living increases. CalWORKS—known nationally as Temporary Aid to Needy Families—also a federal program that relies on California contributions, provides temporary cash aid and services to about half a million families with children.

California has frozen cost-of-living adjustments for these programs for years. CalWORKS payments before July were the same as they were in 1989,³⁷ though housing costs have increased almost 51 percent in just the last nine years.³⁸ The July budget not only suspended cost-of-living adjustments for the 2009-2010 fiscal year for both programs, but also permanently eliminated cost-of-living adjustments for SSI and CalWORKS recipients.³⁹ The state also reduced monthly payments. Single individuals who received \$907 in SSI in April 2009 are now receiving \$845 per month (\$50 less than federal poverty level income).⁴⁰ For a family of three receiving CalWORKS, the grant decreased from \$723 to \$694 per month, placing these families in deep poverty. The state limited the period in which adult members of the household may receive consecutive payments, from sixty to forty-eight months. The budget bills also imposed additional requirements on CalWORKS recipients, requirements that may be difficult for homeless families to meet.⁴¹ The cuts included reductions in CalWORKS childcare and employment services, which will affect recipients' ability to obtain and maintain employment.⁴² Before these cuts, Los Angeles County

37. California Budget Project Power Point, *supra* note 30 (Incomes of low-income renters decreased significantly since 1989. One 2004 study showed low-income renter income dropped 10.3% from 1989 to 2003.); CAL. BUDGET PROJECT, LOCKED OUT IN 2004: CALIFORNIA'S AFFORDABLE HOUSING CRISIS 2 (Jan. 2004), available at <http://www.cbp.org/pdfs/2004/lockedout2004.pdf>.

38. KEITH WARD RIP, ET AL., *supra* note 15, at 8.

39. California Budget Project Power Point, *supra* note 30; CAL. HEALTH & HUMAN SERVS. AGENCY, BUDGET FACTS FOR 2009-10 15-16 (Aug. 2009), available at <http://www.chhs.ca.gov/initiatives/Documents/BBFinal.pdf>. (Elimination of the SSP cost-of-living adjustments will take effect July 2011 for SSI recipients. With elimination of cost-of-living adjustments to the SSP, Californians on SSI will eventually receive the federal minimum payment.)

40. Payments to couples on SSI decreased from \$1,579 in April 2009 to \$1,407 per month. CAL. HEALTH & HUMAN SERVS. AGENCY, *supra* note 38, at 16.

41. *Id.* at 15 (The July budget included measures designed to limit and decrease enrollment among beneficiaries, such as regular self-sufficiency reviews of particular enrollees. In general, homeless people have greater difficulties complying with administrative requirements than people who are housed, due to instability, transience, and lack of basic supports to comply.); U.S. GOV'T ACCOUNTABILITY OFFICE, HOMELESSNESS: BARRIERS TO USING MAINSTREAM PROGRAMS 7 (2000).

42. California Budget Project Power Point, *supra* note 30.

reported 12 percent more families receiving welfare reported being homeless in 2008 than in 2007.⁴³ These cuts will exacerbate this trend.

Similarly, many young adults aging out of the foster care system, who are more likely to become homeless, now face an increased danger of falling into homelessness due to the budget cuts. Last year, the Legislature enacted a \$5 million (12.5 percent) spending reduction in the Transitional Housing Program-Plus (THP-Plus).⁴⁴ THP-Plus provides young adults aging out of the foster care system housing subsidies and supportive services for two years. Two-thirds have an imminent housing need when entering the program. Two-fifths have experienced homelessness.⁴⁵ The cut is expected to affect almost 300 young adults.⁴⁶ In 2010, the Governor has proposed eliminating this program altogether if federal contributions do not match the Governor's request for a federal bail out. One in four young adults aging out of the system will become homeless without supports programs like THP-Plus provide.⁴⁷

Cuts to income programs come on the heels of a crisis in the housing market. Construction permits in 2008 were lower than any time since 1982.⁴⁸ And few sources of state funding for capital investment in housing affordable to Californians at risk of homelessness currently exist. The state has already committed housing bond funds to projects now under development or developed.⁴⁹ Several large counties have committed all funds allocated under the MHSA Housing Program.⁵⁰ Though other MHSA funds can be used for rental subsidies, the state is estimating

43. Data from CalWORKS Program Division, Los Angeles County, Dec. 23, 2008, *reported in* BARBARA SARD, *supra* note 10, at 5.

44. CAL. HEALTH & HUMAN SERVS. AGENCY, *supra* note 38, at 25; Michael Rothfeld & Shane Goldmacher, *supra* note 2.

45. THP-PLUS STATEWIDE IMPLEMENTATION PROJECT. *THP-PLUS ANNUAL REPORT, FISCAL YEAR 2008-09*, JOHN BURTON FOUNDATION FOR CHILDREN WITHOUT HOMES, 4,6 (Oct. 2009) available at <http://www.thplusplus.org/pdfs/THP-Plus%20Annual%20Report%20FY%2008-09.pdf>.

46. T Reilly, *Transition from Care: Status and Outcomes of Youth Who Age Out of Foster Care*, 82 CHILD WELFARE 727, 727-46 (2003).

47. *Id.*

48. PUB. POL'Y INST. OF CAL.. JUST THE FACTS: HOUSING IN CALIFORNIA, 1-2 (Sept. 2008), available at http://www.ppic.org/content/pubs/jtf/JTF_HousingJTF.pdf.

49. Dep't of Hous. and Human Dev., <http://www.hcd.ca.gov/> (last visited Apr. 15, 2010).

50. Cal. Dep't of Mental Health, Mental Health Services Act, http://www.dmh.ca.gov/Prop_63/MHSA/docs/Mental_Health_Services_Act_Full_Text.pdf (last visited Apr. 15, 2010).

decreased revenues under the program over the next several years, at a time when lawmakers have increasingly relied on MHSA to close gaps in services left by cuts to other programs.⁵¹

Diminishing resources available for housing construction further, the Legislature and Governor agreed in July to borrow \$1.7 billion in redevelopment funds to fulfill state mandates in education spending.⁵² Under the California Constitution and California Redevelopment Law, cities and counties receive property tax increment funds to finance the redevelopment of blighted areas.⁵³ Local government must use at least 20 percent of the revenues toward the creation or preservation of housing for people with low and moderate incomes, a system that has worked well to leverage state resources.⁵⁴ The Los Angeles Community Redevelopment Agency (CRALA) estimated a loss of \$72 million in redevelopment projects this year in the County, and identified affordable housing projects as at risk.⁵⁵ Though other funding resources still exist to create low-income housing, the redevelopment fund loan lessens overall resources for this purpose.

B. Health Stability

Homeless people have higher rates of chronic health problems than others in poverty, suffering from higher rates of heart disease, diabetes, lung disease, and HIV/AIDS. Three times as many homeless people report their health to be “fair to poor,” when compared with the general population. People who are homeless have difficulties accessing regular or preventive care and difficulties

51. Kathleen Wilson, *Lack of Funding Threatens Program Aiding Mentally Ill, Disabled*, VENTURA COUNTY STAR, Nov. 2, 2009.

52. The Legislature attempted to use Redevelopment funds for education in the 2008-2009 budget as well, but a judge determined that the state could not use redevelopment funds for purposes unrelated to redevelopment projects. *Calif. Redevelopment Assoc. v. Genest*, No. 34-2008-00028334-CU-WM-GDS (Sup. Ct. CA, Sacramento County Apr. 2009) (Ruling on Submitted Matter), at 13. As an attempt to circumvent this ruling, the July budget “redevelopment shift” will only fund schools in redevelopment areas. DEP’T. OF FIN., CAL. STATE BUDGET 2009-10 13 (Sept. 2009), available at <http://www.dof.ca.gov/budget/historical/2009-10/governors/summary/documents/enacted/FullBudgetSummary.pdf>. The California Redevelopment and local redevelopment agencies are challenging this July redevelopment loan in court.

53. Cal. Constitution, Art. XVI, § 16; CAL. HEALTH & SAFETY CODE § 33000, et. seq. (2009).

54. CAL. HEALTH & SAFETY CODE § 33334.2 (2009).

55. Jessica Garrison, *State Budget Would Hit Three Major L.A. Projects*, L.A. TIMES, Jul. 21, 2009, available at <http://latimesblogs.latimes.com/lanow/state-budget/page/3/>.

complying with treatment when they do receive care, as they have no place to store medications, are exposed to the elements on a regular basis, cannot adhere to a healthy diet, cannot maintain appropriate hygiene, cannot obtain sufficient rest to recover from illness, and are frequent victims of violence.⁵⁶

Likewise, the incidence of homelessness among people with disabilities is substantially greater than people without disabilities. Fifteen percent of people with schizophrenia and other serious mental illnesses are homeless at any point in time, as opposed to the average rate of homelessness in California of .43 percent.⁵⁷ Like cuts to income programs, such as SSI and CalWORKS, cuts to health care and other services programs could cause further housing instability, and keep many already-homeless people homeless longer.

Even for programs not specifically targeting homeless people, last year's budget cuts will have a direct impact on homelessness, given that health care and homelessness are intertwined.⁵⁸ One example is the cut to state funding for mental health services. Aside from federally mandated services, the Legislature cut all state funding for mental health services with the rationale that MHSAs provide services to people with serious mental illness.⁵⁹ Due to cuts and their own budget woes, counties are struggling to fill deficits in medication costs, day treatment, crisis intervention, psychiatrist and psychologist services, and specialty mental health services.⁶⁰ The budget also reduced funding for mental health assessment and treatment to children with serious emotional disturbance.⁶¹

Despite the state's recognition that services reduce risk of long-term nursing and other institutional care, the Governor vetoed all

56. *Id.*

57. David Folsom et al., *supra* note 22, at 373-74.

58. CAROL CATON ET AL., *supra* note 22.; Margot Kushel, M.D., Associate Professor of Medicine in Residence, UC San Francisco, Testimony to Legislative Forum on Homelessness in California, Jul. 18, 2007, *available at* http://www.housingca.org/resources/Joint_Ctte_on_Homelessness_Testimony_Kushel.pdf; David Folsom et al., *supra* note 22, at 373-74.

59. CAL. HEALTH & HUMAN SERVS. AGENCY, *supra* note 38, at 24.

60. Counties already bore the burden of funding the "match" to the federal government's Medicaid payment for most mental health services prior to this year's budget. The July budget agreement effectively ended state funding for mental health care other than hospitalization and other federally mandated programs. NAT'L ALLIANCE ON MENTAL ILLNESS, CAL., NEW CHALLENGES FOR STATE NONPROFIT SERVING PEOPLE WITH MENTAL ILLNESS AND THEIR FAMILIES (Nov. 23, 2009).

61. CAL. HEALTH & HUMAN SERVS. AGENCY, *supra* note 38, at 24.

funding for the Integrated Services for Homeless Adults with Serious Mental Illness program, better known as “AB 2034,” in the 2007-2008 budget. The Governor stated in his veto message that MHSA could provide the same services.⁶² Like MHSA, AB 2034 provided housing subsidies, mental health services, case management, and other services needed to keep homeless people with serious mental illness stably housed.⁶³ While combining programs has benefits, the cut resulted in decreased resources for people with mental illness. Not all those eligible for AB 2034 are eligible for MHSA and, because a good number of AB 2034 recipients are now accessing MHSA programs, fewer MHSA resources are available to serve people not served under AB 2034.⁶⁴

In February 2009, the state agreed to eliminate ten benefits under Medi-Cal, California’s version of the federal Medicaid health insurance program. The cut benefits included dental, vision, and podiatry care.⁶⁵ Since homeless people have a high incidence of diabetes, podiatry and vision care are essential to homeless health care.⁶⁶ Dental disease is also common among people who are homeless, and homeless peoples’ inability to access treatment for severe dental disease can cause Medi-Cal beneficiaries to suffer

62. Assem. B. 2034, Reg. Sess. (2000) (amending §§ 5806, 5811, 5814, and 5814.5 of the Welfare and Institutions Code).

63. *Id.*

64. Several organizations representing the interests of homeless people with serious mental illness challenged the Governor’s veto of funding for the AB 2034 program, in *Mental Health Association in California v. Schwarzenegger*, Case No. RG07361190 (Superior Ct. of CA, County of Alameda Apr. 27, 2009) (Order Denying Petition for Writ of Mandate And Summary Adjudication of Second and Third Causes of Action for Declaratory and Injunctive Relief) (Unable to find case). Petitioners challenged the AB 2034 cut based on a provision in the Mental Health Services Act that prohibited MHSA funds from being, “used to supplant existing state or county funds utilized to provide mental health services” or increase a “county’s share of costs or financial risk for mental health services.” CAL. WELF. & INST. CODE § 5814 (2009). The Superior Court of Alameda ruled against the Petitioners, finding the language in MHSA did not have the intent of guaranteeing General Fund allocations for every mental health program in existence when MHSA was passed, and nothing in the Governor’s veto order required counties to continue AB 2034 program funding. The case is on appeal.

65. The Medi-Cal program, which provides health insurance to 7.2 million low-income pregnant women, seniors, disabled people, and pregnant women, suffered the most profound cuts, with a total cut of \$1.3 billion. Daniel Wood, *California Budget Cuts Deep Into Healthcare, Schools: The Long-Awaited Compromise Won’t Raise Taxes but its Service Cuts are Unlikely to Make it Popular*, THE CHRISTIAN SCIENCE MONITOR (Jul. 21, 2009).

66. E. BONIN ET AL., HEALTH CARE FOR THE HOMELESS CLINICIANS’ NETWORK, NAT’L HEALTH CARE FOR THE HOMELESS COUNCIL, INC., ADAPTING YOUR PRACTICE: GENERAL RECOMMENDATIONS FOR THE CARE OF HOMELESS PATIENTS vii (2004), available at <http://www.nhchc.org/Publications/6.1.04GenHomelessRecsFINAL.pdf>.

complications in other chronic conditions, like heart disease and diabetes.⁶⁷

Other cuts may affect the ability of people at risk of homelessness to access health care in their communities. The state reduced payments to private hospitals that frequently serve Medi-Cal patients, decreased payments to counties serving Medi-Cal beneficiaries,⁶⁸ cut community-based services programs for low-income seniors and disabled adults,⁶⁹ cut In-Home Supportive Services for people who would otherwise be institutionalized,⁷⁰ and eliminated the Linkages program, which provided case management services to adults not eligible for Medi-Cal who were at risk of institutionalization.⁷¹ Between legislative and gubernatorial cuts, the 2009-2010 budget effectively eliminated all state general fund spending for rural, migratory worker, and Indian health programs.⁷² The state expects these cuts to affect 768 clinic sites,⁷³ despite recent increased demand for community clinic services.⁷⁴

Additional cuts will affect care for populations vulnerable to homelessness. As an example, the Governor eliminated all state funding for HIV/AIDS counseling and home and community-based care programs, some of which helped fund services to homeless people with HIV/AIDS in supportive housing.⁷⁵ The budget agreement effectively eliminated state funding for alcohol and drug

67. *Id.* at 9, 23.

68. CAL. HEALTH & HUMAN SERVS. AGENCY, *supra* note 398, at 9-10.

69. *Id.* at 10. However, in *Brantley v. Maxwell-Jolly*, the federal district court of the Northern District of California granted an injunction against the cuts to the Adult Day Health Center program. *Brantley v. Maxwell-Jolly*, 656 F. Supp. 2d 1161, 1178 (N.D. Cal. 2009).

70. Under the IHSS cuts, eight percent of IHSS recipients would have lost IHSS benefits and an additional 22% would have experienced reductions in service hours. A federal district court judge, however, enjoined this July budget cut. *V.L. v. Wagner*, C 09-04668 CW at 1 (N.D. Calif. 2009). The cut would have affected about 133,000 people, 36,179 of whom would have no longer been eligible to receive any services. STEVEN P. WALLACE ET AL., UCLA CTR FOR HEALTH POL'Y RESEARCH, HEALTH POLICY RESEARCH BRIEF: CALIFORNIA BUDGET CUTS FRAY THE LONG-TERM CARE SAFETY NET 4 (Oct. 2009), available at <http://www.healthpolicy.ucla.edu/pubs/files/LTC%20Budget%20Cuts%20FINAL%209-22-09.pdf>.

71. CAL. HEALTH & HUMAN SERVS. AGENCY, *supra* note 38, at 29.

72. *Id.* at 28.

73. *Id.*

74. See *Budget Cuts, More Uninsured Strain California's Health Care System* (Southern California Public Radio 89.1 KUOR Oct. 6, 2009), available at <http://www.scpr.org/news/2009/10/06/healthcare-stress/>.

75. CAL. HEALTH & HUMAN SERVS. AGENCY, *supra* note 38, at 27.

programs, including funding for Proposition 36, which diverted hundreds of thousands charged with non-violent drug offenses into drug treatment programs.⁷⁶ Because people who abuse alcohol and drugs are more likely to become and remain homeless,⁷⁷ and since Proposition 36 diverted people from incarceration—another risk factor for homelessness—this cut will increase the risk of homelessness for thousands.

Finally, the Governor vetoed all state funding for operating emergency shelters in 2008. Whereas most homeless people across the country temporarily reside in shelters or transitional housing, 70 percent of California's homeless residents live unsheltered, the largest percentage in the nation.⁷⁸ An informal survey a non-profit organization, Housing California, conducted indicated that 9,255 fewer people would be able to access a shelter because this program was eliminated.⁷⁹

V. LONG-TERM EFFECTS OF CUTS

A. *Moral and Economic Costs of Homelessness*

By placing Californians in shelters or on the streets and keeping many others homeless longer, budget cuts will cause considerable consequence. As noted, homelessness imposes significant health challenges on people experiencing it. In fact, due to their chronic health conditions, people who are homeless die younger. The average age of death for a homeless person is between 42 and 52 years old, while average life expectancy is 80 in the United States.⁸⁰ People with HIV/AIDS, young adults, mentally ill veterans, and people who live on the streets chronically are at particular risk of premature death.⁸¹ People living with HIV/AIDS are nine times

76. *Id.* at 26. A one-time federal stimulus grant softens the effects of the cut, but is not likely to be extended beyond 2011.

77. Margot Kushel, *supra* note 57.

78. U.S. DEP'T. OF HOUSING AND URBAN DEV., THE THIRD ANNUAL HOMELESSNESS ASSESSMENT REPORT TO CONGRESS 13 (Jul. 2008), available at <http://www.hudhre.info/documents/3rdHomelessAssessmentReport.pdf>.

79. Press Release, Housing California, Housing Needs of California Most Vulnerable Hardest Hit by Governor Schwarzenegger's Cuts, Vetoes (Oct. 8, 2008), available at http://www.housingca.org/nr/news/2008_10_08_HCA_CRLAF_pressrelease.

80. JAMES J. O'CONNELL, NAT'L HEALTH CARE FOR THE HOMELESS COUNCIL, MORTALITY IN HOMELESS POPULATIONS: A REVIEW OF LITERATURE 13 (2005).

81. *Id.*

more likely to die of HIV/AIDS when homeless than when housed.⁸² Likewise, children who are homeless have greater risk of grade retention and drop out, as well as more physical problems than their peers. They are also at greater risk of homelessness as adults.⁸³

Putting aside obvious moral dilemmas that stem from underfunding programs that reduce homelessness, keeping people homeless—especially chronically homeless people—is expensive. Chronically homeless people tend to use crisis services frequently and visit emergency rooms three to four times as often as people with similar illnesses.⁸⁴ Additionally, almost half of indigent people using the emergency room for reasons that could have been avoided with earlier or appropriate treatment are homeless.⁸⁵ When people with mental illness who are homeless do seek treatment, their conditions tend to be more severe than people who are housed. One study of people with schizophrenia who are homeless found that these individuals were much more likely to postpone treatment for a physical condition until that condition became severe and, often, required hospitalization, than housed people with schizophrenia.⁸⁶ People experiencing homelessness also have much higher rates of hospitalization⁸⁷ than people who are housed with the same conditions, and homeless people are hospitalized for longer periods than people who are stably housed.⁸⁸ For these reasons, homeless people incur considerably higher hospital, ambulance, and emergency room costs.

People who are homeless also have higher rates of incarceration, at a cost to taxpayers of over \$30,000 per year in jail costs for

82. NYC DEP'T OF HOMELESS SERVS., *THE HEALTH OF HOMELESS ADULTS IN NEW YORK CITY: A REPORT FROM THE NEW YORK CITY DEPARTMENTS OF HEALTH AND MENTAL HYGIENE AND HOMELESS SERVICES 1* (2005), available at <http://www.nyc.gov/html/doh/downloads/pdf/epi/epi-homeless-200512.pdf>.

83. JEFFREY LUBELL & MAYA BRENNAN, *FRAMING THE ISSUES—THE POSITIVE IMPACTS OF AFFORDABLE HOUSING ON EDUCATION AND FRAMING THE ISSUES—THE POSITIVE IMPACTS OF AFFORDABLE HOUSING ON HEALTH* (Jul. 2007), available at http://www.nhc.org/pdf/chp_int_litrvw_hsgedu0707.pdf.

84. Margot Kushel, *supra* note 57.

85. KAREN LINKINS ET AL., *FREQUENT USERS OF HEALTH SERVICES INITIATIVE: FINAL EVALUATION REPORT* (2008), available at http://documents.csh.org/documents/fui/FUHSI_EvaluationReportFINAL.pdf.

86. David Folsom et al., *supra* note 22, at 370-76.

87. Margot Kushel, *supra* note 57 (20 to 25% of people who are homeless are hospitalized each year).

88. KAREN LINKINS ET AL., *supra* note 84.

someone without mental illness, and up to \$110,000 per year in prison costs for someone with mental illness. Over half of homeless people in shelters report a history of incarceration. Probationers and parolees released to homelessness are much more likely to return to jail or prison than probationers and parolees with housing and almost half of defendants with mental illness admit being homeless when committing the crime for which they were arrested.⁸⁹

Finally, while homelessness is not a basis for placing a child of a homeless family into foster care, foster care placement is much more common for homeless families than for housed families. Almost half of all birth parents of children in foster care have experienced homelessness.⁹⁰

Studies have found that supportive housing not only leads to housing and health stability, but also dramatically decreases days spent in jail or prison, visits to emergency rooms and shelters, and hospital inpatient stays.⁹¹ As previously noted, the state has recognized supportive housing as a cost-effective intervention for homeless people with disabilities.⁹² A seminal study of homeless people with mental illness in New York found participants used a total of \$40,500 per year in public resources (in 1999 dollars).⁹³ Once residing in supportive housing, tenants reduced their use of shelters and crisis care, avoiding enough expense to come within \$900 a year in paying for supportive housing.⁹⁴ A recent *Journal of the American Medical Association* article detailed decreases of 41

89. Stephen Metraux et al., *Incarceration and Homelessness*, in *Toward Understanding Homelessness: The 2007 National Symposium on Homelessness Research* (2007), available at <http://aspe.hhs.gov/hsp/homelessness/symposium07/metraux/index.htm>.

90. Cheryl Zlotnik et al, *Foster Care Children and Family Homelessness*, 88 AM. J. PUBLIC HEALTH 1368-70 (1998).

91. NAT'L AIDS HOUS. COAL., *THIRD HOUSING AND HIV/AIDS RESEARCH SUMMIT, EXAMINING THE EVIDENCE: THE IMPACT OF HOUSING ON HIV PREVENTION AND CARE* (2008), available at <http://documents.csh.org/documents/ResourceCenter/SysChgToolkit/CredibleData/NAHCSummitIIIPolicyPaper.pdf>; JENNIFER PERLMAN & JOHN PARVENSKY, COLO. COAL. FOR THE HOMELESS, DENVER HOUSING FIRST COLLABORATIVE: COST BENEFIT ANALYSIS AND PROGRAM OUTCOMES REPORT (Dec. 2006).

92. California Attorney General, Full Text of Propositions 46, 1C, and 63, available at <http://www.voterguide.sos.ca.gov/pdf-guide/props/prop1c-analysis.pdf> (Included findings that supportive housing reduces institutional placement and promotes health and housing stability.).

93. *Id.*

94. Dennis P. Culhane et al, *Public Service Reductions Associated with Placement of Homeless Persons with Severe Mental Illness in Supportive Housing*, 13 HOUS. POL'Y DEBATE 1 (2002).

percent in medical expenses and 87 percent in sobering center expenses among tenants of a Seattle supportive housing program serving chronically homeless people with severe alcohol addiction.⁹⁵ A study of the AB 2034 program revealed that mentally ill homeless Californians were able to reduce their number of emergency room visits by 56 percent and their number of hospital admissions by 45 percent, while securing housing stability.⁹⁶ A study comparing people who were homeless and people living in supportive housing in Los Angeles County found the public costs for people who are homeless was five times greater than people living in supportive housing. For some with complex conditions and a history of incarceration, supportive housing reduced the public costs of homelessness by 79 percent.⁹⁷ Finally, preliminary findings from a Chicago program indicate that homeless people with HIV/AIDS offered medical respite and supportive housing spent 45 percent fewer days in nursing homes than patients in a control group.⁹⁸ Considering Medi-Cal pays \$55,000 per year for nursing home care per year per beneficiary, this study indicates providing, rather than cutting, programs that facilitate housing and services for people who are homeless with life-threatening illness could avoid significant Medi-Cal costs.⁹⁹

B. Potential Olmstead Violations

Data demonstrate that supportive housing advances the civil

95. Mary Larimer et al., *Health Care and Public Service Use and Costs Before and After Provision of Housing for Chronically Homeless Persons with Severe Alcohol Problems*, 301 JAMA 1349-1357, (Apr. 2009), available at <http://jama.ama-assn.org/cgi/content/full/301/13/1349> (Examining outcomes of a "Housing First" program that provides expedited housing placement, no "readiness" or abstinence requirements, and assertive engagement in health and recovery support services for chronically homeless people.).

96. Martha Burt & Tia Martinez, *Impact of Permanent Supportive Housing on the Use of Acute Care Health Services by Homeless Adults*, 57 PSYCHIATRIC SERVICES 992, 992-99 (2006) (Eighty-one percent of chronically homeless participants remained stably housed after a year. Participants experienced even greater declines in emergency room visits and inpatient admissions after living in supporting housing for two years.).

97. DANIEL FLAMING ET AL., ECON. ROUNDTABLE, WHERE WE SLEEP: COSTS WHEN HOMELESS AND HOUSED IN LOS ANGELES 1 (2009), available at http://www.economicrt.org/pub/Where_We_Sleep_2009/Where_We_Sleep.pdf.

98. NAT'L AIDS HOUS. COAL., *supra* note 90.

99. CHARLENE HARRINGTON ET AL., U.C.S.F., DEP'T OF SOC. & BEHAVIORAL SCIENCES, IMPACT OF CALIFORNIA'S MEDI-CAL LONG-TERM CARE REIMBURSEMENT ACT ON ACCESS, QUALITY, AND COSTS (Apr. 1, 2008), available at http://www.pascenter.org/documents/CHCF_NH_Reimbursement.pdf.

rights of people with disabilities by promoting independence and integration. Yet, if the budget cuts lead to longer episodes of homelessness among people who are disabled, these individuals will suffer more frequent and longer institutional experiences in hospitals, jails or prisons, and nursing homes, potentially violating federal civil rights laws.

Federal law requires state programs to aid people with disabilities to live independently in the community.¹⁰⁰ Under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, “A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.”¹⁰¹ A preamble to the implementing regulations to the ADA defines “the most integrated setting appropriate” to mean “a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible.”¹⁰² The ADA regulations consider unjustified placement or retention of people with disabilities in an institution as a form of disability discrimination.¹⁰³

Based on these laws, the Supreme Court in *Olmstead v. L.C. ex rel. Zimring*¹⁰⁴ ruled that keeping anyone with a mental disability institutionalized who is capable of living independently is a form of discrimination based on disability, in violation of the ADA.¹⁰⁵ The Court declared that institutionalizing people who are able to live in a community-based setting, “perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life”¹⁰⁶ and “severely diminishes individuals’ everyday life activities.”¹⁰⁷ Institutional placement may be appropriate for some people who cannot live independently, the Court said, and anyone who does not want to receive community-based treatment

100. California Health and Human Services Agency. *California Olmstead Plan* (May 2003), available at <http://www.chhs.ca.gov/initiatives/Olmstead/Documents/01Section%20I%20-%20V%20combined.pdf>.

101. 28 C.F.R. § 35.130(d) (1998).

102. *Id.* at App. A.

103. *Id.* at § 35.130(d).

104. 527 U.S. 581 (1999).

105. *Id.* at 598.

106. *Id.* at 600.

107. *Id.* at 583.

should not be forced to do so.¹⁰⁸ However, forcing people with mental disabilities to live in institutional settings to receive medical services implies that people with mental disabilities must forgo living independently to get these services, even though people without mental disabilities are not subject to the same restrictions. Institutionalization, therefore, causes dissimilar treatment for people with disabilities.¹⁰⁹ The Court recognized a homeless shelter as a type of institutional or inappropriate setting, saying the ADA was not intended to move people from one institutionalized setting (like a hospital) to another (like a homeless shelter).¹¹⁰

While the ADA included an exception to the integration mandate for requests for relief that would “fundamentally alter” the nature of the state’s program or services, the *Olmstead* Court said lower courts must assess the cost of providing community-based care, the range of services the state offers to people with mental disabilities, and the state’s obligation to provide services equitably.¹¹¹

California has acknowledged that community-based services and supports for people with functional impairment prevent institutionalization.¹¹² Despite notable advances California has made through programs like the Mental Health Services Act (MHSA), thousands of Californians with mental illness remain chronically homeless. Rather than building on the success of MHSA, the budget cuts the state has instituted have served to dull the effectiveness of the program, since these cuts have increasingly relied on the decreasing resources of MHSA as the state’s sole funding source for mental services. In light of evidence that homeless people with disabilities are more likely to receive nursing home care,¹¹³ are more likely to be incarcerated,¹¹⁴ are more likely to visit the emergency room, and are more likely to be admitted to the hospital and stay longer once admitted, cuts to programs affecting homelessness result in institutionalizing the individuals who fall into or remain homeless

108. *Id.* at 600.

109. *Id.* at 596-97.

110. *Id.* at 605.

111. *Id.* at 594.

112. STEVEN WALLACE ET AL, CALIFORNIA BUDGET CUTS FRAY THE LONG-TERM CARE SAFETY NET 2 (Oct. 2009), available at <http://new.healthpolicy.ucla.edu/pubs/Publication.aspx?pubID=380>.

113. NAT’L AIDS HOUS. COAL., *supra* note 90.

114. JENNIFER PERLMAN & JOHN PARVENSKY, *supra* note 90.

because of the cuts.¹¹⁵ Because homeless people are disproportionately disabled, the budget cuts disproportionately affect people with disabilities.¹¹⁶

In a case challenging the 2009-2010 budget cut to the Adult Day Health Center (ADHC) program, a U.S. district court issued an injunction against enacting the cut.¹¹⁷ The court said the state's failure to provide community-based services plaintiffs were receiving from ADHCs would place the plaintiffs at risk for hospital or nursing home institutionalization, violating the integration mandate.¹¹⁸ The court decreed, "risk of institutionalization is sufficient to demonstrate a violation" of *Olmstead*.¹¹⁹ The state argued the plaintiffs could receive care through other programs, but the court said the state bore the burden of establishing, "more than a 'theoretical' availability of such services."¹²⁰ An elimination of IHSS could face a similar fate.

Similarly, a district court recently ruled that New York's failure to provide opportunities for people with mental illness to live in supportive housing settings, rather than adult homes, constituted an *Olmstead* violation. Even though New York funded supportive housing programs to reduce homelessness among thousands with mental illness, thousands of others were "stuck" in institutional settings, like adult homes, as a result of poor access to housing and clinical programs.¹²¹ Placing these individuals in adult homes, in essence, was designed, "to fill a void caused by the unavailability of community-based housing."¹²² Because adult homes provided a segregated setting with restrictive practices that limited residents' ability to interact with people without disabilities, the court concluded that such settings fostered "learned helplessness" and

115. Participants experienced greater declines in emergency room visits and inpatient admissions after living in supportive housing for two years. Tia E. Martinez & Martha R. Burt, *Impact of Permanent Supportive Housing on the Use of Acute Care Health Services by Homeless Adults*, 57 PSYCHIATRIC SERVICES 992, 997 (Jul. 2006) available at <http://psychservices.psychiatryonline.org/cgi/content/full/57/7/992>.

116. *Henrietta D. v. Bloomberg*, 331 F.3d 261, 272 (2d Cir. 2003).

117. *Brantley v. Maxwell-Jolly*, 656 F.Supp.2d 1161 (N.D. Cal. 2009).

118. *Id.*

119. *Id.* (emphasis added).

120. *Id.* at 1174.

121. *Disability Advocates, Inc. v. Paterson*, 2010 WL 933750 (E.D.N.Y. 2009).

122. *Id.* at 116, 195-97.

impeded community integration.¹²³ The court ordered the state to create supportive housing opportunities for the plaintiffs.¹²⁴

New York argued that providing supportive housing to the plaintiffs would “fundamentally alter” the nature of their programs because it would force the state to incur significant expense. After reviewing costs the state was spending on keeping these individuals institutionalized, including higher Medicaid costs, the court concluded that the state paid higher costs to keep people institutionalized than if the state had provided supportive housing,¹²⁵ noting that supportive housing would avoid costs of unnecessary services and overuse of Medicaid.¹²⁶

Other courts have held that fiscal constraints are not an absolute defense against a state’s failure to decrease institutionalization among people with disabilities. Courts have held, “[a] budget crisis does not excuse ongoing violations of federal law.”¹²⁷ A Tenth Circuit court similarly ruled, “the fact that [a state] has a fiscal problem, by itself, does not lead to an automatic conclusion” of fundamental alteration, since Congress recognized the ADA would impose a short-term burden on governments, but believed integration would benefit society on the whole regardless.¹²⁸

Based on the Supreme Court’s ruling in *Olmstead*, a Ninth Circuit case ruled that California was in compliance with *Olmstead* because the state had a comprehensive plan for placing people with disabilities in less restrictive settings, and the plan was working to reduce institutionalization.¹²⁹ However, the court decided this case in 2005, two years after California adopted our current *Olmstead* plan. California has not updated the plan since. Many of the programs listed in the plan, programs the state identified as effectively meeting the needs of people with disabilities, are no longer funded. For example, the plan reported that the AB 2034 program and the Supportive Housing Initiative Act assisted people with mental illness

123. *Id.* at 21-45.

124. *Id.* at 46.

125. *Id.* at 154.

126. *Id.* at 159-60.

127. *Independent Living Ctr. of S. Cal. v. Maxwell-Jolly*, 572 F.3d 644, 659 (9th Cir. 2009).

128. *Fisher v. Oklahoma Health Care Auth.*, 335 F.3d 1175, 1182-83 (10th Cir. 2003).

129. *Sanchez v. Johnson*, 416 F.3d 1051, 1067-68 (9th Cir. 2005); *see also* *ARC of Wash., Inc. v. Braddock*, 427 F.3d 615, 620 (9th Cir. 2005).

who were homeless to live independently in supportive housing,¹³⁰ but neither program currently receives funding.¹³¹ The Department of Social Services included the In-Home Supportive Services (IHSS) program as an example of a program that was “an essential component of the State’s effort to provide services to maintain individuals in their homes and communities,” as well as the Linkages and Adult Day Health Center programs, both of which suffered severe cuts in the 2009-2010 budget.¹³² The state cited plans to implement Proposition 46, the housing bond measure, to reduce homelessness among people with disabilities,¹³³ but state bond financing for supportive housing under Proposition 46, as well as its successor, Proposition 1C, will no longer offer opportunities for future supportive housing construction after this year. While MHSA has fulfilled some of the *Olmstead* objectives, the plan identified in 2003 is outdated, and is therefore no longer an “effectively working” plan, putting the state in violation of *Olmstead*.¹³⁴

VI. ON THE HORIZON

Unfortunately, the economic crisis is likely to continue well beyond 2011, and state fiscal problems historically persist beyond a crisis’ end.¹³⁵ Many of the budget gaps the federal stimulus funding filled will run their term before our fiscal crisis concludes.¹³⁶ And temporary tax increases enacted this year will expire in 2011.

Nevertheless, ongoing severe cuts to make up for budget shortfalls are unsustainable. Additional programmatic cuts will reduce our ability to access federal resources and deepen our fiscal problems. Indeed, additional cuts of programs that work to reduce homelessness and provide a safety net to those in poverty will only worsen California’s ailing health.

Creating more opportunities for housing affordable to those in

130. CAL. HEALTH & HUMAN SERVS. AGENCY, CALIFORNIA OLMSTEAD PLAN (May 2003), available at <http://www.chhs.ca.gov/initiatives/Olmstead/Documents/01Section%20I%20-%20V%20combined.pdf>.

131. *Id.* at 25-26.

132. *Id.* at 32.

133. *Id.* at 54-55.

134. The state has created an *Olmstead* Advisory Group, in part to update the 2003 plan. *See Id.* at 38.

135. ELIZABETH MCNICHOL & NICHOLAS JOHNSON, *supra* note 3.

136. *Id.* at 1.

poverty, as well as supportive housing, would benefit California's economy and the lives of thousands of our residents over the long term. Even without significant investment, California could implement measures to reduce the burden homelessness now places on our systems and save costs in the near term.¹³⁷ Dedicating proceeds from a fee on real estate related transactions to a state housing trust fund could remedy and prevent homelessness for potentially tens of thousands.¹³⁸ A state interagency council on homelessness, like that proposed in Assembly Bill 1177, would foster greater cooperation among state agencies, as well as communication between state government and county and city governments. An interagency council would also provide the opportunity to identify better ways to streamline or combine programs and leverage resources.¹³⁹ California could apply for many federal funding opportunities to which we are entitled, and which we currently do not access. For people who frequently use emergency rooms for avoidable reasons and for people who are homeless and have chronic conditions, our Medi-Cal system could reimburse for non-medical services, like case management, transportation, medication management, linkage to community-based supportive housing, and other services that work to reduce hospitalization and emergency room overuse.¹⁴⁰ The state could access federal dollars by extending the age foster care children "age out" of the system, reducing homelessness among young adults leaving the system.¹⁴¹

The Governor, in response to another projected budget shortfall of \$20 billion in the 2010-11 fiscal year, proposes dramatic cuts in Medi-Cal, THP-Plus, Healthy Families (health insurance for children in poverty), IHSS, and CalWORKS for legislative consideration, and recommends diverting millions in MHSA funding to the general fund. As these cuts have ramifications that affect Californians and the state of our economy for years to come, such spending reductions are the wrong solution for our fiscal woes, placing the burden of our systemic failures on our most vulnerable citizens.

137. For more information about these policy proposals, *see* Corp. for Supportive Hous., Cal. Pol'y, <http://www.csh.org/index.cfm?fuseaction=Page.viewPage&pageId=3574> (last visited Apr. 14, 2010).

138. S.B. 500, 2009-2010 Leg., Reg. Sess. (Cal. 2009).

139. *See* Assem. B. 1177, 2009-2010 Leg., Reg. Sess. (Cal. 2009).

140. Now under consideration as part of a Medicaid 1115 waiver.

141. Assem. B. 12, 2009-2010 Leg., Reg. Sess. (Cal. 2009).