The Demise of Housing First Policy: The New Missouri Policy That Criminalizes Homelessness

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THE DEMISE OF HOUSING FIRST POLICY: THE NEW MISSOURI POLICY THAT CRIMINALIZES HOMELESSNESS

ABSTRACT

This Note examines the potential negative complications of Missouri H.B. 1606. The Note also explores possible avenues for relief through litigation or policy reform. H.B. 1606 is a Missouri state bill that altered the State’s policy towards decreasing the rate of homelessness in the State of Missouri. Prior to H.B. 1606, Missouri’s homelessness policy resembled a “Housing First” approach where emphasis was placed on providing affordable permanent housing to those without homes. With the passage of H.B. 1606, the policy turned towards supporting short-term housing initiatives and abandoned the “Housing First” approach. H.B. 1606 also contains a provision that makes it a crime for homeless individuals to sleep on public land. This Note discusses why the provisions of H.B. 1606 are problematic for the homeless population and the organizations that support them, how the language of H.B. 1606 may jeopardize the State of Missouri’s receipt of federal funding, the merits of “Housing First” Policy, and the remedies that exist for defending against H.B. 1606 or rectifying it through legislation.

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INTRODUCTION

In June 2022, Governor Parson of Missouri signed H.B. 1606 into law.2 H.B. 1606, which created Missouri Statute § 67.2300, went into effect January 1, 2023, and attempts to address the problem of homelessness in the State of Missouri.3 This bill passed in the Missouri State House by an overwhelming majority of 109 yea votes to thirty-four nay votes.4 The vote was largely split along party lines with the majority of the Missouri House Democrats voting nay on the bill and the majority of the Missouri House Republicans voting...

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The bill was passed in response to the majority of the Missouri House’s belief that the national “Housing First” policy promoted by the Department of Housing and Urban Development (HUD) has failed at addressing the problem of homelessness in Missouri. The “Housing First” policy focuses on building affordable permanent housing and assisting homeless and at-risk persons with finding affordable housing options and achieving financial stability. The Missouri legislators who sponsored this bill hope that by allocating state funds and federal funds—that are not earmarked for use supporting the “Housing First” policy—to support mental health and other services, the State will be able to reduce homelessness.

This Note will examine how the bill is an attack on homeless persons in Missouri and the organizations that support them. First, this Note will discuss the problematic statutory provisions created by H.B. 1606. Next, the Note will discuss the merits of the “Housing First” policy and how H.B. 1606 departs from it. Finally, the Note will discuss legal remedies for the problems created by H.B. 1606, as well as provide policy recommendations to correct H.B. 1606.

I. OPPOSITION TO H.B. 1606 FROM SUPPORTERS OF “HOUSING FIRST” POLICY

The legislators’ intentions with the bill to radically reform Missouri’s approach to homelessness do not seem realistic because the “Housing First” policy has been successful at placing homeless and at-risk individuals into permanent stable housing. The diversion of funds away from existing homelessness assistance programs is inefficient and will likely exacerbate poverty and homelessness throughout the state. Missouri’s statute leaves open the possibility of misappropriating federal “Housing First” funds to support temporary housing while putting existing homeless shelters in jeopardy and limiting the liberty of the homeless population.

8. See Schleis, supra note 6.
10. See Schleis, supra note 6.
H.B. 1606 faced opposition from the majority of the Missouri Democratic Caucus as well as Valerie Huhn, the Missouri Department of Mental Health Director.¹² Huhn and opponents of the Bill claim that the provisions of the bill will negatively affect homeless persons in Missouri.¹³ Huhn stated in a letter to the Governor that the provisions of H.B. 1606 are more likely to exacerbate the problems associated with homelessness, such as substance abuse, than decrease the rate of homelessness in Missouri.¹⁴ Huhn was especially concerned with the provision in H.B. 1606 that created a criminal penalty for camping on public land.¹⁵

Gretchen Bangert, a Missouri state representative for Missouri’s 70th district, which includes municipalities in the St. Louis, Missouri, suburbs, opposes H.B. 1606 because she views the bill as an attack on homeless persons and the institutions that support them.¹⁶ To Bangert, H.B. 1606 represents the latest effort by a majorly conservative state legislature to pull state funding from social services.¹⁷ Representative Bangert identified two provisions of H.B. 1606 as being especially problematic for homeless persons in Missouri.¹⁸ The first provision being the criminalization of homelessness through the Class C misdemeanor penalty imposed on those individuals who camp on public land, as well as the provision that revokes state funding from municipalities when they fail to reduce their rate of homelessness below the state average.¹⁹ Bangert believes that this Bill will negatively impact her constituency, since, being a suburb of St. Louis, Missouri, the rate of homelessness is higher than the state average, and that the method of addressing homelessness implemented by this bill is both inappropriate and ineffective for achieving its stated objective.²⁰

¹³. See Erickson, supra note 12.
¹⁴. See id.
¹⁵. See id. (quoting Valerie Huhn’s letter to the Governor that stated, “When people experiencing homelessness have criminal justice histories, it is difficult to find housing”).
¹⁷. Frerking Letter, supra note 16.
¹⁸. See id.
¹⁹. See id.
²⁰. See id.
The opposition from Huhn and legislators like Bangert did not raise large public outcry against H.B. 1606.21 The bill easily passed through the majorly conservative legislature and was signed by Governor Parson.22 The bill, that went into effect on January 1, 2023, will likely disrupt the social services and housing accommodations for homeless persons across the state.23

II. THE PROBLEMATIC PROVISIONS OF H.B. 1606

H.B. 1606 includes four provisions that are likely to create problems within the state for homeless people and the organizations that assist them.24 The provisions prioritize harsh enforcement measures to restrict the freedom of homeless people in Missouri and prioritize short-term solutions to homelessness over creating sustainable long-term solutions.25

The first provision is that state and federal funding, that was originally allocated to support permanent housing solutions for homeless persons in compliance with HUD’s “Housing First” policy, will now be allocated to other social service uses such as addictions support, mental health services, and temporary housing.26 Public servants working with homeless persons are doubtful that the diversion of funds away from creating permanent housing will have a positive effect.27 The “Housing First” approach, as it has been implemented by organizations within Missouri, has a high success rate of securing permanent housing for individuals who participate.28 Those working with homeless persons fear that the diversion of these funds will deprive their organizations of support and reduce the positive outcomes of the “Housing First” approach.29

The second provision is that the bill provides for a criminal penalty for homeless people who sleep on public land.30 The penalty is supposed to protect the homeless population by incentivizing them to move into more secure lodgings.31 Public servants working with the homeless population fear that the imposition of criminal penalties—in this case a Class C misdemeanor—will do more harm than

21. See Erickson, supra note 12.
22. See id.; Vote Count, supra note 4.
25. See id.
26. See id. § 67.2300(4)(1).
27. See Schleis, supra note 6.
28. See id.
29. See id.
31. See Schleis, supra note 6.
good. The homeless population with criminal records tend to struggle with finding affordable permanent housing due to their criminal record. Furthermore, the penalty associated with a Class C misdemeanor is fifteen days in prison or a $750 fine. The imposition of a fine on members of the public who struggle with poverty is counterproductive to the aim of alleviating poverty and homelessness.

The third provision—an “accountability provision”—is that if cities or political subdivisions are unable to decrease their rate of homelessness below the state average then they could lose the funding allocated by the State to support their homeless assistance programs. This provision is problematic because it pulls funding from programs that are meant to support the homeless population as punishment for not decreasing the overall rate by an arbitrary measure of less than the state average. Programs that support the homeless population could be deprived of resources and the ability to assist their communities if they fail to meet the standards set by the Missouri General Assembly to receive funding.

The fourth provision is that federal funds that have been allocated by the federal government to the State for the purposes of housing and urban development can now be used for social support programs and temporary housing development instead of being used to build permanent affordable housing in adherence with HUD’s “Housing First” policy. Since HUD’s overarching policy for funds allocated to states for housing and urban development is intended to adhere to the “Housing First” policy, Missouri’s insistence on including federal funding in their short-term housing development projects could jeopardize the State’s ability to use federal funds.

32. See id.
34. Id.
35. See id.
37. See id.
38. See id.
39. See id. § 67.2300(4)(1)(a)–(c).
The provisions of the bill that create a criminal penalty for camping on public land and revoke state funding for municipalities who fail to reduce their rate of homelessness are problematic on their surface because they penalize homeless people and the organizations who serve them.41 Criminal penalties for camping on public land, which is often a consequence of being homeless, and penalizing cities who fail to reduce their homelessness rate by an unachievable level of the Missouri state average are provisions that will serve only to harm the homeless population.42

The provisions of H.B. 1606 that are concerning from a state financing viewpoint are the provisions that divert state and federal funding away from “Housing First” initiatives and into temporary housing projects and new social services.43 The diversion of funds will deprive existing institutions that serve the homeless population of funding and may jeopardize the State’s receipt of federal funding from HUD.44

III. THE LIKELY MISAPPROPRIATION OF FEDERAL FUNDS DUE TO THE LANGUAGE OF H.B. 1606

A. The Definition of “State Funds” Carries the Possibility of Misusing HUD Funds

H.B. 1606 could compromise Missouri’s ability to receive federal funding from HUD if funds are misappropriated by the State for uses that do not conform to HUD regulations.45 Missouri citizens who work with the homeless population under the current “Housing First” state policy fear that their funding could be jeopardized or revoked due to the wording of the statute.46 The statute is unspecific when referring to the departments that will be administering the policy and it provides an unclear and broad definition of “state funds.”47 “State funds” is defined by Missouri Statute § 67.2300 as: “(2) ‘State funds’, any funds raised by the state and federal funds received by the state for housing or homelessness, but shall not include any

(1984) (explaining that when Congress has not explicitly instructed about a particular part of a statute delegating power to an agency then the agency has license to interpret the statute in a reasonable manner).

42. See Mo. Ann. Stat. § 67.2300(5), (7) (West 2023); see Schleis, supra note 6.
44. Schleis, supra note 6.
45. See id.; HUD Announces $2.6 Billion, supra note 40.
46. Schleis, supra note 6.
federal funds not able to be used for housing programs pursuant to this section due to federal statutory or regulatory restrictions.”

The statute’s definition of “state funds” includes both legitimate state funds acquired through state taxes, but also federal funds received by the State for housing development and the support of the homeless population. The majority of the federal funds received by Missouri for housing development and homelessness infrastructure support will come from HUD. HUD is the main federal government body that administers funds to assist in housing. The broad wording of the “state funds” definition leaves open the possibility of Missouri misappropriating the federal funds allocated by HUD.

The Cicero Institute, the think tank behind the drafting of H.B. 1606, has asserted that HUD has clearly indicated what funds are supposed to be used for “Housing First” and which funds can be used for housing and homeless support programs subject to the state’s discretion. The Cicero Institute explained:

There has been some confusion that the law would cause the state to lose federal funds. Although the law, in section 1, does include federal funds going through the state for the above-stated purposes, it also explicitly states that the law does not affect federal funds that are subject to other “federal statutory or regulatory restrictions.” Therefore, if a federal contract or grant or rule requires using the funds for different purposes, this law would not apply.

HUD has not spoken on whether they agree with The Cicero Institute’s interpretation of the earmarked use of their allocated funds. If HUD has not definitively instructed the states on how to administer the allocated funds, they do run the risk of the funds not being used to support HUD’s “Housing First” initiative. Missouri has structured this bill around the idea that the knowledge of HUD’s overarching “Housing First” initiative is not enough to control the use of the funds.

48. Id.
49. Id.
50. See HUD Announces $2.6 Billion, supra note 40; All States 2021 Funding Report, supra note 40.
53. Id.
54. Id.
55. See HUD Announces $2.6 Billion, supra note 40.
B. “Housing First” Policy Is the Leading Policy Initiative Promoted by HUD

The “Housing First” policy has been championed by HUD Secretary, Marcia L. Fudge, and has been established as a requirement for states receiving funds from Continuum of Care Grants (CoC) as well as funding through the American Rescue Plan.57

“Access to stable housing is a basic necessity—the safety of a home is essential, especially as we continue to fight the COVID-19 virus,” said HUD Secretary Marcia L. Fudge. “These Continuum of Care program grants, coupled with the historic resources in the American Rescue Plan, will deliver communities the resources needed to ensure that every person in a respective community has the equitable opportunity to a safe and stable home.”58

The “Housing First” policy is based on the prevailing theory that the best way to sustainably combat homelessness is to provide long-term affordable housing to low-income individuals who are at risk of being homeless.59 Missouri, up until H.B. 1606 was passed, accepted the funds granted by HUD through CoC, and distributed the funds in a way that adhered to “Housing First” and allowed them to qualify for the funding.60 Missouri Statute § 67.2300 structures Missouri’s homeless programs to prioritize short-term housing and mental health services over permanent affordable housing development and assistance.61

C. The Fiscal Note for H.B. 1606 Provides No Clarity Regarding the Source and Use of Federal Funds

Missouri Statute § 67.2300 does not specify which federal funds will be used to fund the establishment of the new programs supporting short-term housing over long-term housing.62 The fiscal note attached to H.B. 1606 and Missouri Statute § 67.2300, created by the Committee on Legislative Research Oversight Division (Oversight Division), does not provide a clear answer for which Missouri

57. HUD Announces $2.6 Billion, supra note 40.
58. Id.
60. See HUD Announces $2.6 Billion, supra note 40.
61. See generally MO. ANN. STAT. § 67.2300 (West 2023).
62. See id.
state agency will be responsible for administering the newly created program due to the statute’s vagueness, but assumes that the Department of Economic Development will likely be responsible for the program:

Officials from the Department of Economic Development (DED) assume the proposal appears to create a short-term housing construction program for the homeless to be funded from state funds. DED is required to provide bonuses of up to ten percent for such programs that meet guidelines as established by the department. This proposal also requires the department to promulgate rules and regulations. The fiscal impact is unknown at this time.63

H.B. 1606 has created a program that alters funding for existing programs in the state that support helping homeless or at-risk persons achieve permanent stable housing without fully considering where the funding is going to come from or what agency is going to be responsible for insuring a smooth transition for existing support programs to the newly created programs.64 “[Committee on Legislative Research] Oversight [Division] notes that DED currently does not provide any guidance or tax credit affecting the overall funding above. The proposal suggests a new program funded by state or federal moneys that are not currently associated with any particular funding of any agency in Missouri.”65 This further guidance by the Oversight Division does not provide any insight into what federal funds the Missouri General Assembly was considering appropriating while drafting Missouri Statute § 67.2300.66

The Fiscal Note provides more clarity when it comes to how state funds will be reallocated and administered by H.B. 1606.67 The Oversight Division only indicates that the Missouri Housing Trust Fund money that was originally used for “a variety of housing needs, such as homeless prevention; rehab or new construction of rental housing, rental assistance; and home repair to eligible organizations providing housing assistance to Missourians” will now be devoted to:

2. State funds for the homeless shall be used for the following:
   (1) For parking areas, each area shall provide:
       (a) Access to potable water and electric outlets; and

63. Missouri Committee on Legislative Research Oversight Division, Fiscal Note: Political Subdivisions; Counties, 101-3703H.08T, 2d Reg. Sess., at 21–22 (Mo. 2022) [hereinafter Fiscal Note].
66. See id.
67. Id. at 22–23.
(b) Access to bathrooms sufficient to serve all of the parking areas;
(2) For camping facilities, individuals experiencing homelessness may camp and store personal property at such facilities, which shall be subject to the following:
(a) Individuals shall only camp and store personal property at such facilities in the areas designated to each individual by the agency providing the camping facilities; and
(b) Facilities shall provide a mental health and substance use evaluation as designated by a state or local agency and individuals may complete such evaluation.

The Housing Trust Fund is administered by the Missouri Housing Development Commission which falls under the control of the Department of Economic Development. The Missouri Housing Development Commission “provides financing for the construction of affordable housing and administers the Low-Income Housing Tax Credit programs, the Affordable Housing Assistance Program Tax Credit, and federal HOME funds.” The short-term housing program that has been created by Missouri Statute § 67.2300 will likely be carried out through cooperation between the Department of Economic Development and its subdivision, the Missouri Housing Development Commission.

The Housing Trust Fund before the passage of H.B. 1606 was used to support the creation of permanent stable housing for homeless and at-risk individuals through “rehab or new construction of rental housing, rental assistance; and home repair to eligible organizations providing housing assistance to Missourians.” When Missouri Statute § 67.2300 went into effect on January 1, 2023, the funds allocated to programs supported by the Housing Trust Fund were reallocated to the new state program for addressing homelessness. Consequently, the “campsite” form of a homeless shelter will be prioritized and promoted by the Missouri Department of Economic Development.

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71. See id.; MO. ANN. STAT. § 67.2300 (West 2023).
73. See Fiscal Note, supra note 63, at 21–22; MO. ANN. STAT. § 67.2300(4)(1).
IV. MISSOURI WILL LIKELY UTILIZE RHP FUNDS TO SUPPORT MISSOURI STATUTE § 67.2300

Since H.B. 1606, Missouri Statute § 67.2300, and the Fiscal Note associated with those items do not identify or attempt to identify the federal funds that will be allocated to help fund the new housing program outlined in Missouri Statute § 67.2300, it is unclear what federal funds the legislature believes they can appropriate to support the development and administration of the new program. HUD is the primary federal administrative body that allocates funds for the support of homeless people through a variety of programs. Missouri and charitable organizations within the state received a total of $42,388,633 through Continuum of Care (CoC) Grants in 2021 as well as a combined total of more than $53 million in 2022 through Community Development Block Grants (CDBG), Emergency Solutions Grants (ESG), The HOME Investment Partnerships Program (HOME), Housing Opportunities for Persons with HIV/AIDS (HOPWA), Housing Trust Fund (HTF), and CDBG Recovery Housing Program (RHP) grants.

Missouri will likely not be able to control the administration of CoC funds because they are distributed directly by HUD to projects and organizations within the state that support the homeless population and adhere to “Housing First” policy. The other programs HOME, HOPWA, HTF, and ESG contain language in the regulation of the funds that restricts their use to a specific purpose.

75. Id. § 67.2300(2)–(4).
76. See id. § 67.2300; Fiscal Note, supra note 63, at 21–22.
77. HUD Announces $2.6 Billion, supra note 40.
78. Id.; HUD Announces More Than $53 Million, supra note 72.
80. See 42 U.S.C.A. § 5301(c) (stating that the congressional purpose behind supporting CDBGs is to “provide[e] decent housing and a suitable living environment and expand[ ] economic opportunities, principally for persons of low and moderate income”); 42 U.S.C.A. § 11374 (stating that ESG funds may be used to support emergency shelters and assist families and homeless or at-risk persons secure stable housing); 42 U.S.C.A. § 12722 (stating that the purpose of the HOME program is “to expand the supply of decent, safe, sanitary, and affordable housing, with primary attention to rental housing, for very low-income and low-income Americans”); HUD Announces $10.3 Billion in
The grant money that Missouri likely thinks they will be able to access and allocate to the funding of the program created by Missouri Statute § 67.2300 is the money granted through CDBG Recovery Housing Program (RHP).81 The regulations governing the use of the RHP funds mention that they should be used “to provide stable, transitional housing for individuals in recovery from a substance-use disorder.”82 The regulations established through the SUPPORT for Patients and Communities Act dictates that RHP funds should be treated like CDBG funds.83

1) IN GENERAL.—Except as otherwise provided by this section, amounts appropriated, or amounts otherwise made available to States under this section shall be treated as though such funds were community development block grant funds under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.)84

The definition section of Title I of the Housing and Community Development Act of 1974 fails to define “stable, transitional housing.”85 Since this term is left open to interpretation by the state receiving the funds, they may be allocated to support programs that do not follow the traditional structure of temporary housing provided by homeless shelters. Although the intention behind CDBGs is “the development of viable urban communities, by providing decent housing and a suitable living environment and through expanding economic opportunities, principally, for persons of low-and-moderate-income,” the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act adds alternative regulations to the use of the funds as they apply to Recovery Housing Program (RHP) funds.86

Grants for Housing and Community Development Activities Across U.S., DEP’T OF HOUS. & URB. DEV. (May 17, 2022) [hereinafter HUD Announces $10.3 Billion], https://www.hud.gov/press/releases_media_advstartingurl=WASHINGTON%20%2D%20The%20U.S.%20Department%20of%20Public%20Housing%20Modernization%20to%20Economic [https://perma.cc/3RMW-68RY] (stating that the HTF “provides funding to produce affordable housing units” and HOPWA “provides rental housing assistance and supportive services for persons living with HIV/AIDS and their families.”).

82. HUD Announces $10.3 Billion, supra note 80.
83. See Substance Use-Disorder Prevention Act, supra note 81, at 4096.
84. Id.
86. See MO. ANN. STAT. § 67.2300 (West 2023); Community Development Block Grant Program, U.S. DEP’T OF HOUS. & URB. DEV. (Dec. 22, 2022), https://www.hud.gov/pro
The language of Missouri Statute § 67.2300 has similarities to that of the SUPPORT for Patients and Communities Act. Both the statute and the Act prioritize the use of funds to support members of the homeless community who struggle with substance abuse. Each document also places stress on the two-year time limit that should be placed on the utilization of the temporary housing that could be created by these RHP funds. Based on the similarities between Missouri Statute § 67.2300 and the Act, Missouri's legislature seems to have been structuring their statute around the receipt of these federal funds.

Even though the Act that established the program to distribute RHP funds adds additional regulations to the funds that are treated otherwise as CDBGs, the additional regulations do not necessarily override the original conditions of CDBGs. The congressional intent behind the CDBGs is to invest in communities to build infrastructure to support individuals who are trying to pull themselves out of poverty. Although RHP funds were explicitly created to provide states with flexibility to address immediate housing and substance abuse problems within their communities, it does not necessarily disregard the original intent behind CDBG that prioritizes investment in a community.

V. “HOUSING FIRST” POLICY IS THE MOST EFFECTIVE POLICY FOR COMBATTING HOMELESSNESS

Missouri has now implemented Missouri Statute § 67.2300, which does not prioritize permanent stable housing, but rather incentivizes the creation of short-term housing for homeless individuals. HUD’s “Housing First” policy is upheld as the best structure for assisting homeless populations in states. The “Housing First”
structure for supporting homelessness has proven to be extremely effective at reducing homelessness by providing a system for homeless individuals to achieve stability through permanent housing.\textsuperscript{96} Those homeless individuals who have participated in “Housing First” oriented programs throughout the nation remain in their permanent housing placements seventy-five to ninety-one percent of the time.\textsuperscript{97} “Housing First” oriented programs have been shown to allow homeless individuals to have increased access to mental health resources and other social services.\textsuperscript{98} The structure provided through the “Housing First” model allows for the participants who receive stable housing to then leverage the organizations who helped them to secure the housing to then access mental health and addiction services.\textsuperscript{99}

VI. MISSOURI STATUTE § 67.2300 FAILS TO ADHERE TO “HOUSING FIRST” POLICY

The Missouri statute does not adhere to a “Housing First” approach. First, the statute potentially diverts HUD funding to projects that prioritize the creation of short-term housing solutions and second, the statute systematically zones the homeless population away from public lands and into either existing shelters or newly developed campsites or safe parking areas that do not provide the structure or stability of permanent housing.\textsuperscript{100} The enforcement measures that Missouri has included in the statute provide a criminal penalty for homeless people who sleep on public land, and also require cities in Missouri to reduce their homelessness level below the state average or comply with enforcing the provisions in subsection 6 that require a city to: “not adopt or enforce any policy under which the political subdivision prohibits or discourages the enforcement of any order or ordinance prohibiting public camping, sleeping, or obstructions of sidewalks.”\textsuperscript{101} The statute requires cities in Missouri to control the movements of their homeless populations and restrict their freedom or else face the penalty of the revocation of funding that would allow them to support their homeless populations.\textsuperscript{102}

\textsuperscript{96} See id.
\textsuperscript{97} Id.
\textsuperscript{98} See id.
\textsuperscript{99} See id.
\textsuperscript{100} Mo. Ann. Stat. § 67.2300(2)(1)–(4) (West 2023).
\textsuperscript{101} Id. § 67.2300(6)(1).
\textsuperscript{102} See id.
VII. MISSOURI’S LEGISLATURE IS PENALIZING HOMELESS PERSONS INSTEAD OF SUPPORTING “HOUSING FIRST” POLICY

The legislature is prioritizing the forced removal of homeless people from public land into temporary lodging.\(^{103}\) The “campsite” and “safe parking areas” that are sanctioned and supported by this statute are strictly temporary housing with a cap of two years for those homeless persons who want to utilize these facilities.\(^{104}\) These new “campsite” temporary shelter solutions only have to comply with Missouri’s statute that governs the safe operation of a typical campsite, so the overhead costs of these organizations is less than a traditional shelter.\(^{105}\) This is likely attractive to the state government due to the limited amount of state funds that are delegated to the support and maintenance of facilities that house the homeless population, but the allocation of state funds to other “campsite”-like temporary housing solutions dilutes the amount of state funds available to homeless support institutions like classic shelters.\(^{106}\) The lower operating costs are beneficial for the State’s budget, but it also means that the living conditions of these sites are that of campgrounds.\(^{107}\)

The enforcement measure of requiring cities to reduce their homeless population rate to at or below the state average is not only an arbitrary measure to hold cities accountable, but it will also disproportionately affect cities across Missouri.\(^{108}\) The largest homeless populations in Missouri exist in Kansas City, Missouri, and St. Louis, Missouri.\(^{109}\) Because the measure of success for homeless shelters in Missouri trying to secure state funding is whether they are able to decrease homelessness in their region below the state average, this puts a disproportionate burden on St. Louis, Missouri, and Kansas City, Missouri, which have the largest homeless population.\(^{110}\) The structure of Missouri Statute § 67.2300 is contrary to the intention and purpose of the “Housing First” policy enforced by HUD because it restricts the freedom of homeless persons and prioritizes the creation and provision of temporary housing as a solution to homelessness.

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103. See id. § 67.2300(2).
104. Id. § 67.2300(2)(1)–(2), (3)(d).
105. See id. § 67.2300(3); MO. ANN. STAT. § 537.328(4)(1)–(4) (West 2021).
106. See MO. ANN. STAT. § 67.2300(2) (West 2023).
107. See id.
108. See id. § 67.2300(7)(1)–(2).
110. See MO. ANN. STAT. § 67.2300(7) (West 2023); Missouri Statewide Homelessness Study, supra note 109, at 6.
VIII. LEGAL CHALLENGES AGAINST MISSOURI STATUTE § 67.2300

Legal challenges against Missouri Statute § 67.2300 have been brought by concerned Missouri citizens and a Missouri homeless shelter who believe that the statute will negatively impact homeless Missourians and the people who serve them.111 These local legal challenges may prevent Missouri Statute § 67.2300 from being cemented as Missouri homeless policy, but they do nothing to enforce HUD’s national “Housing First” policy.112 For HUD to prevent future state legislation from being passed that uses federal money to fund projects that do not adhere to “Housing First” policy, HUD must make the conditions of a state’s receipt of federal funds clear—not necessarily explicit—because there is deference to the administrative agency’s interpretation.113

A. HUD Should Make the “Housing First” Policy a Clear Requirement of a State’s Receipt of Federal Funding

“Housing First” policy is a highly supported policy by HUD, and Congress would be able to guarantee state compliance with the “Housing First” policy using the congressional spending power.114 Missouri’s legislature believes that the “Housing First” requirement does not require them to use all federal funds from HUD to support “Housing First” initiatives.115 If HUD wanted to explicitly enforce “Housing First” they would have to exercise the congressional spending power as an extension of Congress.116

Congress would likely succeed in requiring that all federal housing funds be used for “Housing First” initiatives.117 Congress has

112. See Rehwald, Second Lawsuit, supra note 111; Rehwald, Springfield Nonprofit, supra note 111.
115. See MO. ANN. STAT. § 67.2300(1)(1)–(2) (West 2023) (stating that “state funds” include state and federal funds that have not been earmarked for another purpose).
116. See Sebelius, 567 U.S. at 576; Dole, 483 U.S. at 206.
117. See Sebelius, 567 U.S. at 576; Dole, 483 U.S. at 206.
delegated administrative control of the funds appropriated to addressing the problem of homelessness to HUD.\textsuperscript{118} Congress, using HUD as an administrative agency, can then use the spending power to place conditions on the use of the funds such as requiring that they be used to support “Housing First” projects.\textsuperscript{119} Currently, HUD’s earmarking of appropriated state funds is not explicit especially for the RHP funds discussed earlier in this Note.\textsuperscript{120}

**B. Challenges to a Clear “Housing First” Requirement Would Likely Not Be Successful**

Congress can exercise its spending power to put conditions on states receiving federal funding for certain projects.\textsuperscript{121} In *South Dakota v. Dole*, the Court held that Congress can attach requirements to how provided funds can be spent by the states.\textsuperscript{122} Missouri claims that some money granted to the State by HUD is not bound by the condition that it must be used in support of “Housing First” programs.\textsuperscript{123} If HUD revokes Missouri’s funding under programs that have clear “Housing First” conditions and the State misappropriated the funds, then the State will likely challenge the action as an overreach of the congressional spending power.

Missouri’s challenge to the congressional spending power would likely challenge the scope of Congress’s ability to attach the “Housing First” policy requirement to the grant money. States previously challenged Congress’s ability to mandate Medicaid expansion for states to increase the scope of individuals that were covered by Medicaid in *National Federation of Independent Business v. Sebelius*.\textsuperscript{124} The states were required, through the Affordable Care Act, to expand the scope of individuals covered under Medicaid or the state would lose all existing Medicaid funding.\textsuperscript{125} The Court held that this exercise of the spending power amounted to a “gun to the head” for states.\textsuperscript{126}

In this case, if Missouri misappropriated HUD funds that were clearly designated for “Housing First” and they were to challenge

\begin{footnotes}
\footnotetext[119]{See Panama Refin. Co., 293 U.S. at 429–30; Combs, 98 F. Supp. at 755.}
\footnotetext[120]{See 42 U.S.C.A. § 5301(c); 42 U.S.C.A. § 11374; 42 U.S.C.A. § 12722; HUD Announces $2.6 Billion, supra note 40; see supra note 80 and accompanying text.}
\footnotetext[121]{See Dole, 483 U.S. at 206.}
\footnotetext[122]{Id.}
\footnotetext[123]{See MO. ANN. STAT. § 67.2300(1)(2) (West 2023).}
\footnotetext[124]{See Sebelius, 567 U.S. at 575–76.}
\footnotetext[125]{Id.}
\footnotetext[126]{Id. at 581.}
\end{footnotes}
HUD’s requirement that funds must be used to support “Housing First” programs, they would likely fail because the condition does not create a new requirement for states to follow to continue receiving the funding. The “Housing First” requirement existed when the funds were first granted to the states and Missouri chose to accept the funding and apply it toward “Housing First” programs. Missouri’s actions in possibly using federal HUD funds to support temporary housing projects violates the spending power condition of receiving the HUD funding. Missouri would not likely be able to claim that the condition imposed by HUD for the spending of the grant money on “Housing First” programs amounted to a “gun to the head.”

C. Local Legal Challenges Against Missouri Statute § 67.2300 Based on the Missouri Constitution

Legal challenges could theoretically come directly from HUD against Missouri’s use of federal housing funds as examined in the previous paragraphs. Missouri could then challenge under the precedent of Sebelius which created the “gun to the head” standard. Presently, these challenges have not been initiated against Missouri Statute § 67.2300. However, a local homeless shelter and some affected Missouri citizens have each filed lawsuits against the State of Missouri. Their complaints are similar and they challenge the statute under the Missouri Constitution. These existing lawsuits demonstrate the harmful impact that homeless shelters and Missouri citizens are anticipating from a statute that criminalizes

127. See id. at 581, 583; HUD Announces $2.6 Billion, supra note 40.
128. See HUDBill Announces $2.6 Billion, supra note 40; All States 2021 Funding Report, supra note 40.
129. See Sebelius, 567 U.S. at 581.
132. See id. at 581.
133. Rehwald, Second Lawsuit, supra note 111; Rehwald, Springfield Nonprofit, supra note 111.
134. See Rehwald, Second Lawsuit, supra note 111; Rehwald, Springfield Nonprofit, supra note 111.
homelessness and diverts funding away from “Housing First” initiatives and into projects that promote short-term housing solutions.\footnote{135. See Rehwald, Second Lawsuit, supra note 111; Rehwald, Springfield Nonprofit, supra note 111.}

The first lawsuit was filed by The Gathering Tree, a nonprofit organization located in Springfield, Missouri, a large city in Missouri with a higher-than-average homeless population.\footnote{136. Rehwald, Springfield Nonprofit, supra note 111.} The Gathering Tree serves the homeless population in Springfield by operating Eden Village I and II which are tiny home communities that provide stable and safe homes for those in need of housing.\footnote{137. See id.} Before the passage of H.B. 1606, the nonprofit received adequate funding from the state to support its housing communities, but under Missouri Statute § 67.2300 the nonprofit believes its funding will be in jeopardy.\footnote{138. Id.} The Gathering Tree opposes parts of H.B. 1606 because of the criminalization of homelessness and the provision of the Bill that revokes state funding from Missouri cities that do not decrease their homelessness rate to below the state average.\footnote{139. See id.} The Gathering Tree may be especially impacted by H.B. 1606’s revocation provision because Springfield, Missouri, has a rate of homelessness that far exceeds the state average.\footnote{140. See id.}

Although The Gathering Tree opposed parts of the Bill due to its negative impacts on the homeless community and the organizations that support them, the organization is suing the State of Missouri for the Bill’s violations of Article III § 21 and § 23 of the Missouri Constitution.\footnote{141. See id.; MO. CONST. art. III, §§ 21, 23.} Article III § 21 and § 23 create “clear title and single subject” requirements for bills as well as the prohibition on amendments changing the original purpose of the Bill.\footnote{142. MO. CONST. art. III, §§ 21, 23.}

The second lawsuit, filed by three Missouri citizens who care for and serve the homeless population in the state, challenged H.B. 1606 under Article III of the Missouri Constitution as well.\footnote{143. Rehwald, Second Lawsuit, supra note 111.} The Missouri citizens establish their standing for the lawsuit by asserting that as taxpayers they have a right to challenge the misuse of state funds when unconstitutionally reallocated through legislation.\footnote{144. See id.}

The Missouri Constitution prohibits the creation of legislation that is intended to conceal its actual purpose.\footnote{145. See MO. CONST. art. III, §§ 21, 23.} Article III of the
Missouri Constitution is intended to put limits on the legislative power of the Missouri General Assembly and protect the citizens of Missouri from the dishonest creation of legislation. The Gathering Tree and the group of Missouri citizens who filed suits against the State believe that when the Missouri General Assembly passed H.B. 1606 they had dishonestly included the section that created Missouri Statute § 67.2300. The lawsuits find support in the legislative history of the Bill since the language creating Missouri Statute § 67.2300 was added later through amendment and the Bill’s purpose, when introduced as “County Financial Statements,” did not put the public on notice that H.B. 1606 would contain language affecting state funding for homeless shelters and other social services. Furthermore, the title of H.B. 1606 when introduced was: “To repeal sections 50.800, 50.810, 50.815, and 50.820, RSMo, and to enact in lieu thereof two new sections relating to county financial statements.” And the title of the final “truly agreed” bill was: “To repeal sections 50.327 . . . and 523.061, RSMo, and to enact in lieu thereof fifty new sections relating to political subdivisions, with a delayed effective date for a certain section and with penalty provisions.”

H.B. 1606 contained language that created Missouri Statute § 67.2300 which contained provisions that will redistribute state funding for housing and impact the current social services for homeless individuals in the state. These titles for H.B. 1606 both when introduced and finalized fail to inform the citizens of Missouri of the complete impact and purpose of H.B. 1606. Since the Bill fails to clearly represent its contents and actual purpose to the citizens of Missouri, the lawsuits filed against the State of Missouri are not frivolous and may succeed on the claim that H.B. 1606 violates Article III of the Missouri Constitution.

The titles of bills are often vague and overinclusive as a strategy for avoiding violating title and single subject requirements. Proponents of H.B. 1606 may argue that the phrase “with a delayed effective date for a certain section and with penalty provisions”
refers to the language creating Missouri Statute § 67.2300 and should be sufficient for putting the public on notice.155 This argument goes against the intention of Article III of the Missouri Constitution that is intended to limit the Missouri General Assembly’s power and protect Missouri citizens from being governed by legislation that they were not informed of.156

The title of H.B. 1606 both at its introduction and finalization does not put the public on notice of the full purpose of the legislation.157 H.B. 1606 is both a Bill about homelessness policy reform as well as changes to political subdivisions, yet the title of the Bill only indicates that it is a Bill affecting political subdivisions.158

IX. EIGHTH AMENDMENT CHALLENGES TO THE PROVISION OF MISSOURI STATUTE § 67.2300 THAT CRIMINALIZES HOMELESSNESS

These lawsuits attempt to use the Missouri Constitution as a tool to prevent H.B. 1606 from jeopardizing HUD funding to Missouri and also depriving Missouri cities of state funding to support their homeless populations.159 These challenges to H.B. 1606 attempt to mitigate the possible impact of the Bill on the state, but if their lawsuits fail, individual citizens who receive Class C misdemeanors for camping on public land can challenge the criminal penalty through claiming a violation of their Eighth Amendment rights under the United States Constitution.160

The Eighth Amendment states that “excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”161 As a last resort against laws that criminalize homelessness, homeless individuals who are prosecuted under these statutes could challenge under the Eighth Amendment.162 The challenges are often successful in courts if homeless individuals can prove that they had to sleep on public land because there were no beds

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156. See MO. CONST. art. III, §§ 21, 23.
159. See Rehwald, Second Lawsuit, supra note 111; Rehwald, Springfield Nonprofit, supra note 111.
160. See Rehwald, Second Lawsuit, supra note 111; Rehwald, Springfield Nonprofit, supra note 111; U.S. CONST. amend. VIII.
161. See U.S. CONST. amend. VIII.
162. See id.
available in reasonably accessible homeless shelters. Homeless advocacy organizations assist with these Eighth Amendment challenges by keeping track of how many beds are available in which shelters. These Eighth Amendment challenges are a defense against a law that harms homeless persons, but unfortunately they do nothing to change the law to prevent the charge from occurring.

X. POLICY ARGUMENT

H.B. 1606 and its product, Missouri Statute § 67.2300, actively work to deprive homeless people of the ability to lift themselves out of homelessness. Missouri Statute § 67.2300 by its very design deprives the existing homelessness support network—shelters, social work agencies, and community initiatives—of funding they originally received when the Missouri homelessness policy followed the “Housing First” approach. The statute relegates homeless persons to campsites that the State has failed to provide clear instruction for developing. Currently, homeless persons are in a state of limbo risking arrest by sleeping on public land, and deprived of access to resources that could help them navigate this new approach to homelessness in the state.

Since the “Housing First” policy is an initiative of HUD, and not expressly written into every act allocating money to states to provide housing and combat homelessness, the likelihood that HUD could enforce the “Housing First” policy and revoke funding from Missouri for misusing federal funds is slim unless the State misappropriates earmarked funds for a “Non-Housing First” project. For there to be federal intervention against Missouri’s new homelessness policy, there would have to be a recognizable violation. Since the Fiscal Note provides little to no guidance as to what federal funds the State is allocating towards its new homelessness initiatives, at

163. See Martin v. City of Boise, 920 F.3d 584, 603 (9th Cir. 2019).
165. See U.S. CONST. amend. VIII.
166. See MO. ANN. STAT. § 67.2300 (West 2023).
167. See id. § 67.2300(4).
168. See id. § 67.2300(3).
169. See id. § 67.2300(2).
170. See id. § 67.2300(4).
this time a federal challenge and its likelihood of success against Missouri is uncertain.\footnote{172}

For lasting policy change, challenges in court are variable and risky. Although the state constitutional challenges and the potential federal challenges may be successful, that then leaves a policy-making decision up to the courts. The courts would decide whether to strike down H.B. 1606 as a whole or decide whether an offending provision is severable.\footnote{173}

Lasting policy change should be made by the legislature, which is accountable to the people of Missouri, or by HUD that is acting as an overseer of uniform federal policy throughout the United States. Both entities can enact lasting policy changes that could prevent homeless persons from facing criminal charges for not having a place to sleep at night.

A. HUD Passes a Regulation to Mandate “Housing First Policy”

“Housing First” policy is an overarching initiative promoted by HUD.\footnote{174} Most of the funding sources that they have provided to Missouri are clearly earmarked for “Housing First” uses, but there exists some funding like Recovery Housing Program grants (RHPs) that do not clearly indicate that they are to be used for “Housing First” initiatives.\footnote{175}

If HUD wanted to create a rule that mandated that all its allocated state funds would go to “Housing First” initiatives, then they would have to propose a rule and the rule would go through a “Notice and Comment” process.\footnote{176} The “Notice and Comment” process allows a rule-making agency to be accountable to the public.\footnote{177} Rule-making agencies as a part of this process post their proposed rules to the Federal Register’s website for comment by the public.\footnote{178} Only after the period of public commenting can the proposed rule be finalized and implemented.\footnote{179}

If HUD published a rule regarding a mandated “Housing First” policy requirement, then all states would be bound by that rule if

\footnotesize{172. See Fiscal Note, supra note 63, at 21–22.
173. See Sebelius, 567 U.S. at 693.
174. See Goals, supra note 7.
175. See Substance Use-Disorder Prevention Act, supra note 81, § 550.
177. See id.
178. See id.
179. See id.}
they use HUD allocated federal funds for housing initiatives. This would be the most effective way to reverse the problematic policy created by H.B. 1606 and prevent other states from implementing similar legislation in the future.

HUD recently published a proposed rule on the Federal Register’s website on February 9, 2023, titled Affirmatively Furthering Fair Housing. The proposed rule would hold any recipients of HUD funding liable for supporting fair housing initiatives like creating affordable housing while also eliminating barriers to fair housing opportunities. While the effects of this rule are presently unknown, it can be speculated that the proposed rule may be able to hold Missouri accountable to promoting “Housing First” initiatives. At the very least this proposed rule may cause some provisions of H.B. 1606 to be illegal. The proposed rule’s definition of “affirmatively furthering fair housing” states:

that the duty to affirmatively further fair housing extends to all of a program participant’s activities, services, and programs relating to housing and community development; it extends beyond a program participant’s duty to comply with Federal civil rights laws and requires a program participant to take actions, make investments, and achieve outcomes that remedy the pervasive segregation and disparities the Fair Housing Act was designed to redress.

This language in HUD’s proposed rule could have severe implications for H.B. 1606. The definition and purpose of the proposed rule show HUD’s commitment under the Biden administration to hold recipients of HUD funding accountable for how they implement the funding in their communities.

HUD’s demonstrated commitment to improving accountability for the creation of affordable housing provides hope that states will no longer be able to eliminate homeless individuals’ access to stable, affordable housing.

181. Id.
183. See id.
184. See id.
185. See id.
186. Id.
187. See id.
188. See Furthering Fair Housing, supra note 182.
affordable housing.\textsuperscript{189} HUD may promulgate more impactful rules in the future that make bills like H.B. 1606 impossible to draft and implement without losing HUD funds.\textsuperscript{190}

\textit{B. Amend Missouri Statute § 67.2300 and Increase State Funding for Traditional Homeless Shelters}

The problematic provisions in Missouri Statute § 67.2300 are the diversion of state and federal funds away from creating permanent housing solutions, the enforceable criminal penalty against homeless persons sleeping on public land, the accountability provision against municipalities who do not decrease their homeless population below the state average, and diversion of state funding away from existing homeless shelters to support the development of campsites for the homeless population.\textsuperscript{191}

For Missouri Statute § 67.2300 to no longer harm Missouri homeless persons and their support systems, the statute would have to be amended to eliminate the clauses diverting state and federal funds away from creating permanent housing solutions, creating a criminal penalty for sleeping on public land, and revoking state funding from municipalities who do not meet an arbitrary standard.\textsuperscript{192} These clauses have no purpose but to serve as misguided attempts at keeping municipalities accountable to an ignorant standard and to allow the state government to misuse HUD funding.\textsuperscript{193}

When the statute is stripped of its accountability standards and its diversion of federal funding, it becomes a bill that creates a program to allow for the development of campsites for the homeless population.\textsuperscript{194} This provision by itself is harmless, and instead of Missouri Statute § 67.2300 diverting state funding away from existing homeless shelters to support this initiative, the State should allocate a greater share of its budget to this project.\textsuperscript{195}

If Missouri Statute § 67.2300 is amended to only provide another option for safe lodging to homeless persons without taking money from “Housing First” initiatives or other homeless shelters or penalizing homeless persons for not utilizing this option, then it would be an unproblematic statute.\textsuperscript{196}

\textsuperscript{189} See id.
\textsuperscript{190} See id.
\textsuperscript{192} See id. § 67.2300(2)–(4).
\textsuperscript{193} See id.
\textsuperscript{194} See id. § 67.2300(2).
\textsuperscript{195} See id. § 67.2300(2)–(3).
\textsuperscript{196} See id.
C. Pass Legislation to Repeal Missouri Statute § 67.2300

The last option available for combating Missouri Statute § 67.2300 would be to lobby the Missouri General Assembly to pass legislation to repeal the statute.\(^\text{197}\) So far, there has been little outcry in the Missouri media regarding H.B. 1606, but once the implications of the bill start to become unignorable such as the lack of funding available to homeless support organizations, then there may be efforts from Missouri citizens to hold their legislators accountable for sponsoring and passing irresponsible legislation.\(^\text{198}\)

**CONCLUSION**

H.B. 1606 may have been drafted and passed by Missouri legislators in the spirit of trying something new, operating as a policy laboratory for a new method for addressing homelessness. Unfortunately, the provisions of H.B. 1606 are deeply flawed by penalizing the homeless population in Missouri and the organizations that work to support them. Missouri Statute § 67.2300 leaves open the possibility of misappropriating federal “Housing First” funds to support temporary housing while putting existing homeless shelters in jeopardy and limiting the liberty of the homeless population.\(^\text{199}\) While lawsuits from Missouri citizens or homeless persons charged with violating the law may work to defend against the negative effects of Missouri Statute § 67.2300, what is required is lasting policy change, whether it be from HUD or the Missouri General Assembly.

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