

No. 20–1422

IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD
CIRCUIT

UNITED STATES OF AMERICA, *Appellant*,

v.

SAFEHOUSE, a Pennsylvania nonprofit corporation; and
JOSE BENITEZ, President and Treasurer of Safehouse, *Appellees*.

SAFEHOUSE, a Pennsylvania nonprofit corporation, *Appellee*,

v.

UNITED STATES OF AMERICA; U.S. DEPARTMENT OF JUSTICE;
WILLIAM P. BARR, in his official capacity as Attorney General of the
United States; and WILLIAM M. MCSWAIN, in his official capacity as U.S. Attorney for
the Eastern District of Pennsylvania, *Appellants*.

APPEAL FROM THE FEBRUARY 25, 2020 ORDER GRANTING FINAL
DECLARATORY JUDGMENT, IN CIVIL ACTION NO. 19–519,
IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
PENNSYLVANIA (HON. GERALD A. McHUGH)

**AMENDED BRIEF OF *AMICI CURIAE* AIDS UNITED, AMERICAN MEDICAL
ASSOCIATION, ASSOCIATION FOR MULTIDISCIPLINARY EDUCATION AND
RESEARCH IN SUBSTANCE USE AND ADDICTION, ASSOCIATION OF SCHOOLS
AND PROGRAMS OF PUBLIC HEALTH, CALIFORNIA SOCIETY OF ADDICTION
MEDICINE, DRUG POLICY ALLIANCE, FOUNDATION FOR AIDS RESEARCH,
HARM REDUCTION COALITION, NATIONAL ALLIANCE OF STATE AND
TERRITORIAL AIDS DIRECTORS, NETWORK FOR PUBLIC HEALTH,
PENNSYLVANIA MEDICAL SOCIETY, PHILADELPHIA COUNTY MEDICAL
SOCIETY, POSITIVE WOMEN’S NETWORK, TREATMENT ACTION GROUP, AND
VITAL STRATEGIES IN SUPPORT OF APPELLEES SAFEHOUSE AND JOSE
BENITEZ AND SEEKING AFFIRMANCE OF ORDER GRANTING FINAL
DECLARATORY JUDGMENT**

Lindsay LaSalle
CA Bar No. 267072
Drug Policy Alliance
1330 Broadway, Suite 1426
Oakland, California 94710
Phone: (510) 679-2315
Email: llasalle@drugpolicy.org

Ellen C. Brotman
PA Identification No. 71775
One South Broad Street, Suite 1500
Philadelphia, Pennsylvania 19107
Phone: (215) 609-3247
Email: ebrotman@ellenbrotmanlaw.com

STATEMENT OF INTEREST AND IDENTITY OF *AMICI CURIAE*¹

Amici AIDS United, American Medical Association (AMA), Association for Multidisciplinary Education and Research in Substance Use and Addiction (AMERSA), Association of Schools and Programs of Public Health, California Society of Addiction Medicine, Drug Policy Alliance, Foundation for Aids Research (amfAR), Harm Reduction Coalition, National Alliance of State and Territorial Aids Directors (NASTAD), Network for Public Health, Pennsylvania Medical Society, Philadelphia County Medical Society, Positive Women's Network, Treatment Action Group, and Vital Strategies include national and state professional associations representing schools of public health and academics, public health government officials, physicians, nurses, social workers, and drug treatment specialists as well as national public health, infectious disease, and harm reduction organizations.

Amici have broad medical and public health expertise on a host of drug-related issues, including overdose, transmission of infectious disease, substance use disorder treatment, and harm reduction services. Though representing a wide range of perspectives and interests, *Amici* are all interested in the disposition of the current action because they prioritize individual and community health and well-

¹ All parties have consented to the filing of this brief. No party's counsel authored this brief in whole or in part, and no party or party's counsel or person other than *Amici Curiae* and their counsel funded the preparation of this brief or its submission.

being by supporting evidence-based solutions to address the harms of drug addiction, including the implementation of supervised consumption sites.

BACKGROUND AND SUMMARY OF ARGUMENT

The United States is grappling with one of the worst public health crises in history—over 750,000 people have lost their lives to a drug overdose since 1999.² Over 67,000 people died of a drug overdose in 2018, nearly double the number of deaths ten years prior.³ Pennsylvania had the third highest number of overdose deaths in 2018, behind only the far more populous states California and Florida, at over 5,300, and the third highest rate of overdose deaths at just over 36 per 100,000 people.⁴ In 2019, 1,150 Philadelphians lost their lives to drug overdose.⁵ Fentanyl was present in 84 percent of Philadelphia’s overdoses in 2018 and in 67 percent of the state’s overdose deaths in 2017.⁶

² Wilson, Nana et al., Drug and Opioid-Involved Overdose Deaths — United States, 2017–2018. MMWR MORB MORTAL WKLY REP (2020).

³ National Center for Health Statistics, *Drug Overdose Deaths in the United States, 1999–2018* (2020).

⁴ *Id.*

⁵ There were 34 more overdose deaths in 2019 than in 2018 (1,116), and 2019 represented the second highest year for overdose deaths in Philadelphia’s history (2017 was the highest). City of Phila., *Opioid Misuse and Overdose Data* (2020), <https://www.phila.gov/programs/combating-the-opioid-epidemic/reports-and-data/opioid-misuse-d-overdose-data/>.

⁶ Drug Enforcement Administration, *The Opioid Threat in Pennsylvania* (Sept. 2018), <https://www.dea.gov/sites/default/files/2018-10/PA%20Opioid%20Report%20Final%20FINAL.pdf>.

Crises of this proportion demand implementation of immediate, evidence-based solutions that will help save lives, protect health, and preserve communities and families.

Appellees (“Safehouse”) have a keen understanding of the overdose crisis and seek to offer services that will potentially help curb overdose deaths in Philadelphia in addition to providing a host of other health-related benefits, including reducing transmission of infectious diseases and increasing access to substance use disorder treatment. Safehouse intends to implement a supervised consumption site that will offer critical, necessary, and lifesaving medical services including access to sterile syringes and other equipment, drug education, direct supervision of drug consumption, on-site initiation of medication-assisted treatment, health assessments, wound care, and referrals to withdrawal management and treatment as well as social, housing, and primary care services.⁷ Safehouse will also provide emergency services should the need arise.⁸ Finally, Safehouse will collect data on a range of information points, including client demographics, needs assessments, utilization, and referrals for

⁷ Safehouse, *The Safehouse Model*, <https://www.safehousephilly.org/about/the-safehouse-model>.

⁸ *Id.*

treatment.⁹ An evaluation of the impact of the services on overdose fatalities and use of drug treatment will be also conducted.¹⁰

Evidence from around the world suggests that supervised consumption sites have helped save lives, offer access to necessary services, and, more generally, provide support to people who use drugs. As national medical and public health organizations representing academics, advocates, and professionals, *Amici* envision a world wherein people are provided evidence-based services that will protect and improve their lives and their communities. *Amici* urge the Court to declare that Safehouse's model for addressing overdose deaths and other drug-related harm is not prohibited by 21 U.S.C. § 856 of the Controlled Substances Act. The legislative history of Section 856 makes clear that it was not intended to reach legitimate medical and public health interventions such as Safehouse, which aims to reduce the harms of drug use and addiction. Moreover, supervised consumption sites actually further the broad intents and purposes of the Controlled Substances Act, which include an emphasis on protecting public health.

⁹ Safehouse, *Frequently Asked Questions*, <https://www.safehousephilly.org/frequently-asked-questions#faqsafety-datacollected>.

¹⁰ *Id.*

ARGUMENT

I. SUPERVISED CONSUMPTION SITES ARE AN EVIDENCE-BASED MEDICAL AND PUBLIC HEALTH INTERVENTION WITH THE POTENTIAL TO IMPROVE INDIVIDUAL AND COMMUNITY HEALTH.

Safehouse is intending to operate a medically supervised consumption site as a critical public health intervention to address the growth in overdoses in Philadelphia. The model of Safehouse is based on the best available evidence indicating individual and community health benefits with no evidence of increases in crime or drug use.

A. THE SAFEHOUSE MODEL IS BASED ON EVIDENCE FROM SUPERVISED CONSUMPTION SITES CURRENTLY OPERATING AROUND THE WORLD.

Supervised consumption sites are facilities that provide a hygienic space for people to consume their pre-obtained drugs under the supervision of trained staff.¹¹ They are designed to help reduce public health and order issues that arise with public and unsupervised drug use. Staff at supervised consumption sites do not directly assist in drug consumption, distribution, or administration, and they do not handle any drugs brought in by clients. They are instead present to provide sterile consumption supplies, answer questions on safe consumption practices, administer

¹¹ Supervised consumption sites are also known as safe injection facilities, overdose prevention sites, and drug consumption rooms, depending on the jurisdiction. They are all meant to describe facilities wherein a person who uses drugs has the opportunity to consume drugs in a supervised environment and with access to health care or other trained professionals who can offer education, access to treatment, and emergency assistance to clients should the need arise.

first aid (if needed), and monitor clients for potential overdose. These services are offered to clients who would otherwise use these substances in an unsupervised environment, where the risk of death or harm increases from factors that include using hastily, using alone, and sharing or reusing syringes.

Clients at supervised consumption sites may also receive health care, counseling, and referral to health and social services, including drug treatment. In addition, supervised consumption sites are designed to reduce public drug use in the community surrounding the facility. The services offered are vital to a comprehensive public health approach to reduce the harms of substance use disorder. Supervised consumption sites are meant to complement, not replace, existing prevention, harm reduction, and treatment interventions.

Supervised consumption sites have operated in Europe since the 1980s, and now operate in eleven countries around the world (Australia, Canada, Denmark, France, Germany, Luxembourg, the Netherlands, Norway, Portugal, Spain, and Switzerland).¹² Other countries, including Belgium, Ireland, and the United

¹² European Monitoring Centre for Drugs and Drug Addiction, *Drug Consumption Rooms: An Overview of Provision and Evidence* (June 2018), http://www.emcdda.europa.eu/system/files/publications/2734/POD_Drug%20consumption%20rooms.pdf; Helen Redmond, *Filter Video: Inside Portugal's First Mobile Safe Consumption Site*, FILTER MAGAZINE, June 10, 2019, <https://filtermag.org/2019/06/10/filter-video-inside-portugals-first-mobile-safe-consumption-site/>.

Kingdom, are planning to open supervised consumption sites soon.¹³ To date, there are approximately 120 legally sanctioned supervised consumption sites around the world.¹⁴ Supervised consumption sites have been widely studied with the results published in dozens of peer-reviewed journal articles. Safehouse would not be operating in a vacuum; instead, its model is based on decades of continued operation and practice as well as science. The anticipated benefits of supervised consumption sites are vast and have the potential to help curb the overdose crisis and further outbreaks of infectious disease related to drug use.

B. SUPERVISED CONSUMPTION SITES OFFER AN ARRAY OF PUBLIC HEALTH BENEFITS.

Data indicate that supervised consumption sites are uniquely effective in sustaining contact with the most marginalized and chaotic people who inject drugs in public places.¹⁵ These people are at the greatest risk for infectious disease and overdose death, and are also the least likely to engage directly in traditional

¹³ Drug Policy Alliance, *Supervised Consumption Services* (August 2018), http://www.drugpolicy.org/sites/default/files/supervised-consumption-services-opp_0.pdf.

¹⁴ European Monitoring Centre for Drugs and Drug Addiction, *supra* note 12; *see also* Redmond, *supra* note 12; Harm Reduction International, *Global State of Harm Reduction 2018 Briefing, Drug Consumption Rooms* (2018), <https://www.hri.global/files/2019/03/29/drug-consumption-room-brief-2018.pdf>.

¹⁵ *See, e.g.*, Chloé Potier et al., *Supervised Injection Services: What Has Been Demonstrated? A Systematic Literature Review*, 145 *DRUG & ALCOHOL DEPENDENCE* 48, 64 (2014); Kathleen Dooling & Michael Rachlis, *Vancouver's Supervised Injection Facility Challenges Canada's Drug Laws*, 182 *CANADIAN MED. ASSN. J.* 1440, 1441 (2010).

abstinence-based health services.¹⁶ In a study examining supervised consumption sites in Australia, Canada, and Europe, researchers noted that the sites “foster a supportive and welcoming environment characterized by social acceptance and belonging in which [people who use drugs] feel comfortable engaging with [supervised consumption site] staff regarding health needs.”¹⁷ The therapeutic relationship fostered by supervised consumption sites is what facilitates public health benefits.

Numerous evidence-based, peer-reviewed studies have shown the potential for positive public health impacts of supervised consumption sites, including preventing drug overdose deaths, minimizing the risk of HIV, hepatitis C and hepatitis B transmission, and increasing referral to drug treatment and other health services, while simultaneously improving public order and nuisance concerns.

i. Supervised Consumption Sites Can Prevent and Reduce Overdose Deaths.

The alarming overdose death rate in the United States broadly and in Philadelphia specifically demands the implementation of supervised consumption sites. Moreover, the known presence of illicitly manufactured fentanyl in

¹⁶ Barbara Tempalski & Hilary McQuie, *Drugscares and the Role of Place and Space in Injection Drug Use-Related HIV Risk Environments*, 20(1) INT. J. DRUG POL. 4 (2009).

¹⁷ Mary Clare Kennedy et al., *Public Health and Public Order Outcomes Associated with Supervised Drug Consumption Facilities: A Systematic Review*, 14 CURRENT HIV/AIDS REPORTS 161, 178 (2017).

Pennsylvania's drug supply,¹⁸ combined with its high potency and shorter duration,¹⁹ should implore us to be even more attentive to the risk of overdoses. Indeed, a RAND Corporation report noted that “[f]entanyl and its various analogues increase the risk of overdose, which might make supervision more beneficial in places where it has penetrated the market.”²⁰

While overdoses do occur frequently in supervised consumption sites, there has not been a single reported overdose fatality at any site operating worldwide because staff are immediately available to respond with emergency treatment, including the administration of oxygen and/or naloxone, as well as a call for ambulance support. Over the span of 13 years (2000-2013), staff at a German supervised consumption site were able to assist in the reversal of 3,180 overdoses.²¹ Nearly 4,400 overdoses at the supervised consumption site in Sydney,

¹⁸ Drug Enforcement Administration, *supra* note 6.

¹⁹ See, e.g., P.W. Peng & A.N Sandler, *A Review of the Use of Fentanyl Analgesia in the Management of Acute Pain in Adults*, 90(2) J. AM. SOC. ANESTHESIOLOGISTS 576 (1999); D. Ciccarone et al., *Heroin Uncertainties: Exploring Users' Perceptions of Fentanyl-Adulterated and-Substituted 'Heroin,'* 46 Int'l J. Drug Pol. 146 (2017).

²⁰ Bryce Pardo et al., RAND Health Care and RAND Social and Economic Well-Being, *Assessing the Evidence on Supervised Drug Consumption Sites* (December 2018), https://www.rand.org/pubs/working_papers/WR1261.html.

²¹ Harm Reduction Coalition, *Alternatives to Public Injecting* (2016), <https://harmreduction.org/wp-content/uploads/2016/05/Alternatives-to-Public-Injection-report.pdf>.

Australia had been reversed as of 2011.²² And, at Vancouver’s Insite, North America’s first supervised consumption site, there have been nearly 175,500 client visits to the site, including 49,000 clinical treatment visits, and 6,440 overdose interventions without any deaths.²³ The data speaks for itself—supervised consumption sites effectively treat health emergencies and help prevent certain drug-related harm or death.²⁴

Some research also suggests that supervised consumption sites may help reduce overdose mortality rates. A study of the sites in Switzerland, for instance, concluded that supervised consumption sites help to “reduce the incidence of fatal overdoses and, therefore, the mortality rate in this population.”²⁵ An evaluation of Insite reached a similar conclusion: “. . . [O]verdose mortality was reduced after

²² The Royal Australian College of Physicians, *Medically Supervised Injecting Centre Position Statement 2012*, <https://www.racp.edu.au/docs/default-source/advocacy-library/medically-supervised-injecting-centre-position-statement.pdf>.

²³ Vancouver Coastal Health, *Insite User Statistics*, <http://www.vch.ca/public-health/harm-reduction/supervised-consumption-sites/insite-user-statistics>.

²⁴ See, e.g. Pardo et al., *supra* note 20 (“. . . [people who use drugs] who overdose in the presence of trained staff equipped with naloxone are much more likely to have it reversed than if they overdosed on the same product without supervision.”).

²⁵ Frank Zobel & Françoise Duboise-Arber, *Short Appraisal of the Role and Usefulness of Drug Consumption Facilities (DCF) in the Reduction of Drug-Related Problems in Switzerland*, University Institute of Social and Preventive Medicine, Lausanne 27 (2004).

the opening of a [supervised consumption site].”²⁶ Specifically, “[r]eductions in overdose rates were most evident within the close vicinity of the facility—a 35% reduction in mortality was noted within 500m of the facility after its opening[,] [whereas] overdose deaths in other areas of the city during the same period declined by only 9%.”²⁷ In Sydney, Australia, there was a 68% decline in the number of ambulance calls for opioid-related overdose in the area surrounding a supervised consumption site compared to areas without one.²⁸ The study tracked calls in the 36 months before and the 60 months after the site opened its doors and noted that the decline was especially noticeable near the supervised consumption site and during its operating hours.²⁹

Safehouse has the potential to similarly save lives that might otherwise be lost without supervision and immediate intervention and medical assistance.

ii. Supervised Consumption Sites Reduce Riskier Injecting and Transmission of Infectious Diseases.

The services offered at supervised consumption sites, including access to sterile syringes, may help reduce riskier injection practices and have the ability to

²⁶ Brandon Marshall et al., *Reduction in Overdose Mortality After the Opening of North America’s First Medically Supervised Safer Injecting Facility: A Retrospective Population Based Study*, 377 THE LANCET 1429, 1434 (2011).

²⁷ *Id.*

²⁸ A.M. Salmon et al., *The Impact of a Supervised Injecting Facility on Ambulance Call-Outs in Sydney, Australia*, 105 ADDICTION 676, 678 (2010).

²⁹ *Id.*

curb the transmission of infectious diseases, such as HIV and Hepatitis C, among people who use drugs who might otherwise reuse or share syringes. Indeed, consistent use of Insite in Vancouver has been associated with reusing syringes less often, injecting less hurriedly, injecting outdoors less frequently, using clean water for injecting, cooking or filtering before injecting, injecting in a clean place, safer disposal of syringes, and less difficulty finding a vein.³⁰ A study of supervised consumption sites in Barcelona and Madrid, Spain similarly showed a reduction in the use of shared syringes.³¹ Another study from Catalonia, Spain also observed that sharing of syringes was much lower among frequent participants of supervised consumption sites.³² An evaluation of clients at a Netherlands site found that 90% of the interviewees reported positive changes in their drug use-related behavior since visiting the supervised consumption site.³³

³⁰ J.A. Stoltz et al., *Changes in Injecting Practices Associated with the Use of a Medically Supervised Safer Injection Facility*, 29 J. PUB. HEALTH 35, 35 (2007).

³¹ Maria J. Bravo et al., *Use of Supervised Injection Facilities and Injection Risk Behaviours Among Young Drug Injectors*, 104 ADDICTION RESEARCH REPORT 614, 615 (2009).

³² Cinta Folch, et al., *Drug Consumption Rooms in Catalonia: A Comprehensive Evaluation of Social, Health and Harm Reduction Benefits*, 62 INT'L J. DRUG POL. 24, 24 (2018).

³³ Dagmar Hedrich, *European Report on Drug Consumption Rooms*, European Monitoring Center for Drugs and Drug Addiction (Feb. 2004), [file:///C:/Users/llasalle/Downloads/consumption_rooms_report%20\(2\).pdf](file:///C:/Users/llasalle/Downloads/consumption_rooms_report%20(2).pdf).

Reducing risky and unhygienic injection practices can reduce the risk of disease transmission. A study of the supervised consumption sites in Switzerland, for example, concluded that the sites can “reduce risk behaviour likely to lead to the transmission of infectious diseases, particularly HIV/AIDS, among the population of the worst affected drug users.”³⁴ An evaluation reviewing the evidence in support of supervised consumption sites similarly found that they may “minimize risks for abscesses, bacterial infections and endocarditis [as well as] minimise the risk of HIV, hepatitis C and hepatitis B transmission”³⁵ Studies on Insite in Vancouver estimate that the supervised consumption site prevents anywhere between four and 35 new HIV infections annually.³⁶ Another study posited that if Insite were closed, the annual number of incident HIV infections among Vancouver injecting drug users would be expected to increase from 179.3 to 262.8.³⁷

³⁴ Zobel, *supra* note 25.

³⁵ Tempalski et al., *supra* note 16 at 9.

³⁶ Steven D. Pinkerton, *How Many HIV Infections Are Prevented by Vancouver Canada’s Supervised Injection Facility?*, 22 INT’L J. DRUG POL. 179, 183 (2011); Martin Andresen & Neil Boyd, *A Cost-Benefit and Cost-Effectiveness Analysis of Vancouver’s Supervised Injection Facility*, 21 INT’L J. ON DRUG POL. 70, 72 (2010).

³⁷ Steven D. Pinkerton, *Is Vancouver Canada’s Supervised Injection Facility Cost-Saving?*, 105 ADDICTION 1429, 1432 (2010).

Supervised consumption sites like that planned by Safehouse may help prevent the spread of diseases that can, if untreated, lead to permanent injury or death.

iii. Supervised Consumption Sites Do Not Increase Drug Use but, Instead, Offer People Who Use Drugs Access to Treatment and Social Services.

After a thorough review of the evidence from supervised consumption sites across Europe and Australia, the European Monitoring Centre on Drugs and Drug Addiction concluded that “[c]onsumption rooms achieve the immediate objective of providing a safe place for lower risk, more hygienic drug consumption without increasing the levels of drug use or risky patterns of consumption.”³⁸ The study further stated that “no evidence was found to suggest that naïve users are initiated into injecting as a result of the presence of consumption rooms.”³⁹ Another systemic review of public health and public order outcomes around the world suggested positive associations between usage of supervised consumption sites, beginning treatment for substance use disorder, and using other health or social services.⁴⁰

In Switzerland, the presence of supervised consumption sites had “no detrimental effect on the number of drug users and the frequency with which they

³⁸ Hedrich, *supra* note 33.

³⁹ *Id.*

⁴⁰ Kennedy et al., *supra* note 17.

use drugs,” and instead actually contributed to a decline on both fronts among participants.⁴¹ A Canadian study similarly noted no “increased relapse among former drug users,” and found that the presence of a supervised consumption site had no “negative influence on those seeking to stop drug use.”⁴² The data makes clear that the operation of a supervised consumption site is not likely to encourage additional drug use among participants. It has the potential, however, to act as a critical bridge between people who use drugs in Philadelphia and opportunities for treatment and social services.

Moreover, data show that supervised consumption sites reach the intended target groups of people with long-term addictions, street injectors, people who are homeless and use drugs, and sex workers who use drugs and thus aid in the facilitation of contact with the most marginalized group of people who use drugs.⁴³ One study of Insite found that “regular use of the [services] and having contact with counselors at the [facility] were associated with entry into addiction treatment, and enrollment in addiction treatment programs was positively associated with injection cessation.”⁴⁴ Another study concluded that “[safe

⁴¹ Zobel, *supra* note 25.

⁴² Dooling, *supra* note 15.

⁴³ *Id.*

⁴⁴ K. DeBeck et al., *Injection Drug Use Cessation and Use of North American’s First Medically Supervised Safer Injecting Facility*, 113 DRUG AND ALCOHOL DEPENDENCE 172, 174 (2011).

consumption sites] provide greater opportunities for health workers to connect with injectors, and to move them into primary care, drug treatment, and other rehabilitation services.”⁴⁵

Indeed, one study found that in a single year Insite made more than 2,000 referrals to community-based services: 37% were for addiction counseling, 12% for detoxification services, 16% for community health centers, 4% for methadone maintenance therapy, and 3% for long-term recovery houses.⁴⁶ Another evaluation of Insite demonstrated that the facility “was associated with a greater than 30% increase in the rate of detoxification service use among [facility] users in comparison to the year prior to the [facility]’s opening” and that “[s]ubsequent analyses demonstrated that detoxification service use was associated with increased use of methadone and other forms of addiction treatment, as well as reduced injecting at the [facility].”⁴⁷ The study even observed that supervised consumption sites may have “helped to reduce rates of injection drug use among users of the facility.”⁴⁸

⁴⁵ Robert Broadhead et al., *Safer Injection Facilities in North America: Their Place in Public Policies and Health Initiatives*, 32 J. DRUG ISSUES 329, 348 (2002).

⁴⁶ M.W. Tyndall et al., *Attendance, Drug Use Patterns, and Referrals Made From North American’s First Supervised Injection Facility*, 83 DRUG AND ALCOHOL DEPENDENCE 193, 197 (2005).

⁴⁷ Evan Wood et al., *Rate of Detoxification Service Use and its Impact Among a Cohort of Supervised Injection Facility Users*, 102 ADDICTION 916, 918 (2007).

⁴⁸ *Id.*

An evaluation of the 17 facilities in Germany found that more than half of the clients had received referrals for detox, social services, and counseling.⁴⁹ In Australia, 1,385 referrals to assistance were provided to 577 clients during an 18-month period; the most frequent referrals were for drug treatment (43%), in particular buprenorphine maintenance treatment (13%), detoxification programs (10%), and methadone maintenance treatment (9%).⁵⁰

Similar results could be expected of any supervised consumption site operated by Safehouse. Indeed, Safehouse explicitly intends to present clients with rehabilitation options at multiple points during their Safehouse visit.⁵¹ Clients will receive a physical and behavioral health assessment, and certified peer specialists, recovery specialists, social workers, and case managers will encourage treatment readiness and facilitate access to medical and social services.⁵²

C. SUPERVISED CONSUMPTION SITES IMPROVE INDIVIDUAL AND PUBLIC HEALTH WITHOUT COMPROMISING PUBLIC SAFETY.

The public health benefits detailed above can be achieved by Safehouse with no evidence of increase in crime; rather, available evidence indicates that supervised

⁴⁹ Hedrich, *supra* note 33.

⁵⁰ Medically Supervised Injecting Centre Evaluation Committee, *Final Report of the Evaluation of the Sydney Medically Supervised Injecting Centre* (2003), https://www.drugsandalcohol.ie/5706/1/MSIC_final_evaluation_report.pdf.

⁵¹ Safehouse, *supra* note 7.

⁵² *Id.*

consumption sites could improve public order. Moreover, the longevity of existing supervised consumption sites alone—supervised consumption sites have been operating for 15 to 30 years and have survived multiple changes in local and national governments—suggests that they pose minimal, if any, adverse consequences. A RAND Corporation report notes that “it seems unlikely that these programs . . . would have such longevity if they had serious adverse consequences for their clients or for their communities.”⁵³

i. Supervised Consumption Sites Improve Public Order by Reducing Discarded Syringes and Public Injecting.

Data from several countries suggest that supervised consumption sites help target the “nuisance factor” of drug scenes—the used, improperly discarded syringes and presence of drug use in public spaces—by offering people who use drugs an alternative, supervised, and safer space to consume.

A study from Barcelona, Spain found “a huge reduction in the number of unsafely discarded syringes in the city (from 13,132 in 2004 to 3,190 in 2012)” after a supervised consumption site opened in the city in 2004.⁵⁴ Another study from Catalonia, Spain found that frequent clients⁵⁵ of supervised consumption sites

⁵³ Pardo et al., *supra* note 20.

⁵⁴ Carmen Vecino et al., *Safe Injections Rooms and Police Crackdowns in Areas with Heavy Drug Dealing, Evaluation by Counting Discarded Syringes Collected From the Public Space*, 23 ADDICTION 333, 336 (2013).

⁵⁵ “Frequent attendance” was defined as having attended the supervised consumption site every day when they injected drugs, “medium attendance” as

“were six times more likely to place used syringes in a safe place” and “had a 61% lower risk of injecting in public.”⁵⁶ A study of the supervised consumption site Insite, in Vancouver, found “significant reductions in public injection drug use, publicly discarded syringes and injection-related litter after the opening of the medically supervised safer injection facility.”⁵⁷ The findings from the Insite study appeared to be independent of several potential confounders and were supported by external data sources.⁵⁸

An evaluation in Switzerland concluded that supervised consumption sites help to “reduce public order problems, particularly by doing away with open drug scenes, reducing drug use in public places, recovering used syringes, and reducing the impact of drug problems on residential areas.”⁵⁹ The European Monitoring Centre on Drugs and Drug Addiction’s review of the evidence in support of supervised consumption sites found that “[s]urveys of local residents and businesses, as well as registers of complaints made to the police, generally show positive changes following the establishment of consumption rooms, including

having attended more than half the days they injected drugs, and “low attendance” as having attended half or fewer than half the days they injected drugs.

⁵⁶ Folch, et al., *supra* note 32.

⁵⁷ Evan Wood et al., *Changes in Public Order After the Opening of a Medically Supervised Safer Injecting Facility for Illicit Injection Drug Users*, 171 CANADIAN MED. ASSN. J. 731, 733 (2004).

⁵⁸ *Id.*

⁵⁹ Zobel, *supra* note 25.

perceptions of decreased nuisance and increases in acceptance of the [supervised consumption sites].”⁶⁰ The Centre also found that “[p]olice, too, often acknowledge that [supervised consumption sites] contribute to minimising or preventing open drug scenes.”⁶¹ At the supervised consumption site in Sydney, Australia, “monthly counts of discarded needles and syringes collected locally indicated a decrease of around 50% following the establishment of [the site]” and was sustained over six years.⁶²

Benefits to improved public order are not surprising given that a commonly reported reason for public drug use is the lack of an alternative place to consume and that the people who use supervised consumption sites are often homeless or unstably-housed.⁶³

ii. No Data Suggest That Crime Rates Increase as a Result of Supervised Consumption Sites.

Studies of supervised consumption sites across multiple jurisdictions suggest that their opening did not lead to an increase in crime in the surrounding area. A study from the United Kingdom found no evidence of either an increase or

⁶⁰ Hedrich, *supra* note 33.

⁶¹ *Id.*

⁶² National Center in HIV Epidemiology and Clinical Research, *Evaluation of Service Operation and Overdose-Related Events*, Sydney Medically Supervised Safe Injecting Centre Evaluation Report, at 9 (2007), <https://kirby.unsw.edu.au/sites/default/files/kirby/report/EvalRep4SMSIC.pdf>.

⁶³ Wood, *supra* note 57.

decrease of crime as a result of the site.⁶⁴ The study posited that “to the extent that [supervised consumption sites] are successful in providing access to structured treatment and other interventions aimed at social integration, they may also have an indirect impact on crime levels.”⁶⁵ Similar studies on supervised consumption sites in Australia, Canada, the Netherlands, and Switzerland found no associated increase in drug trafficking, drug-related crime, and acquisitive crime in the direct vicinity of supervised consumption sites.⁶⁶

One Australian study, for example, explored whether there was an increase in acquisitive crime in the Kings Cross area of Sydney.⁶⁷ It noted that police data showed no increase in robbery or theft that were attributable to the supervised consumption site in the three years after it opened in 2001.⁶⁸ There was also no marked increase in the number of illicit drug users or drug sellers in the area after the supervised consumption site was established.⁶⁹ A review of four studies conducted in Sydney, Australia observed “no changes in police-recorded thefts or robbery incidents, drug possession, drug dealing or illicit drug offences in the

⁶⁴ Neil Hunt, *The Evaluation Literature on Drug Consumption Room*, The Report of Independent Working Group on Drug Consumption Rooms, at 40 (2006), <https://www.jrf.org.uk/sites/default/files/jrf/migrated/files/Hunt-DCR-B.pdf>.

⁶⁵ *Id.*

⁶⁶ Chloé Potier et al., *supra* note 15.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

neighbourhood of the [supervised consumption site] after the facility was established.”⁷⁰ The Swiss study similarly suggested no change in a variety of crime types, including theft, burglary, aggression, and threats in different parts of Geneva before and after its supervised consumption site was established in 2003.⁷¹ Finally, a study of Insite in Vancouver found a decrease of 42 crimes per week in the area where the supervised consumption site was located.⁷²

A number of factors contribute to changes in crime rates, including economic growth or decline, police priorities and enforcement practices, average age of the population, and several others that have a bearing on crime rates generally. Consistently stable crime rates, however, indicate that the implementation of a supervised consumption site by Safehouse should not pose a threat of crime increases.

II. SECTION 856(A)(2) WAS NOT INTENDED TO CRIMINALIZE PUBLIC HEALTH INTERVENTIONS, INCLUDING SUPERVISED CONSUMPTION SITES, AND, IN FACT, SUPERVISED CONSUMPTION SITES FURTHER THE PURPOSES OF THE CONTROLLED SUBSTANCES ACT.

The Government relies on Section 856 of the Controlled Substances Act in an attempt to thwart the operation of a proposed supervised consumption

⁷⁰ Kennedy et al., *supra* note 17.

⁷¹ Potier et al., *supra* note 15.

⁷² Andrew Myer & Linsey Belisle, *Highs and Lows: An Interrupted Time-Series Evaluation of the Impact of North America’s Only Supervised Injection Facility on Crime*, 48(1) J. DRUG ISSUES 36 (2018).

site by Safehouse, but nothing in the legislative history of that statute indicates that Section 856 was intended to prevent public health interventions, and, in fact, supervised consumption sites further the broad purposes of the Controlled Substances Act.

- i. Legislative History Makes Clear that Supervised Consumption Sites are Outside the Intended Reach of Section 856.

The Third Circuit has explained that a court’s “goal when interpreting a statute is to effectuate Congress’s intent.” *S.H. ex rel. Durrell v. Lower Merion School Dist.*, 729 F.3d 248, 257 (3d Cir. 2013) (quoting *Hagans v. Comm’r of Soc. Sec.*, 694 F.3d 287, 295 (3d Cir. 2012)).

Section 856—often referred to as the “Crack House Statute”—was first introduced and discussed as part of the Emergency Crack Control Act of 1986. *United States v. Sturmoski*, 971 F.2d 452, 462 (10th Cir. 1992). Section 856 makes it unlawful to “(1) knowingly open, lease, rent, use, or maintain any place, whether permanently or temporarily, for the purpose of manufacturing, distributing, or using any controlled substance; (2) manage or control any place, whether permanently or temporarily, either as an owner, lessee, agent, employee, occupant, or mortgagee, and knowingly and intentionally rent, lease, profit from, or make available for use, with or without compensation, the place for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance.” 21 U.S.C. § 856(a) (2006).

Senator Chiles and Senator Biden introduced the legislation to combat the crack epidemic in the 1980s. *See* 132 CONG. REC. S10425 (daily ed. Aug. 15, 1986). Senator Chiles believed that the law at the time made it difficult for police to arrest the operators of crack houses, where people would go to purchase and use the drug. *Id.* at S10426. According to Chiles, people who used and sold crack could easily dispose of the drug as soon as police raided the crack houses, thereby avoiding arrest. *Id.* The law was intended to create new penalties against people who opened and used buildings to produce, sell, or use crack. *Id.* at S10430. In introducing the legislation, Senator Biden stated “it is imperative that any solution to the crack abuse epidemic must involve new and effective law enforcement tools, coupled with innovative proposals for reducing demands.” 132 CONG. REC. S10425 (daily ed. Aug. 15, 1986).

Congress ultimately enacted Section 856 as part of the Anti-Drug Abuse Act of 1986. *Sturmoski*, 971 F.2d at 462. The Senate summarized section 856 as outlawing the “operation of houses or buildings so-called ‘crack houses,’ where ‘crack,’ cocaine and other drugs are manufactured and used.” 132 CONG. REC. S13780 (daily ed. Sept. 26, 1986). The language and legislative history of the statute, “demonstrate that Congress intended to create a new felony that would punish a defendant’s use of property for manufacturing activities related to narcotics.” *Sturmoski*, 971 F.2d at 461. In passing the law, Senator Chiles pointed

out that the Act “recognizes crack’s insidious impacts on neighborhoods by outlawing crack houses . . .” 132 CONG. REC. S14288 (daily ed. Sept. 30, 1986).

It is clear from the legislative history that Congress did not intend for the Crack House Statute to criminalize legitimate public health efforts aimed at *reducing the harms of drug use*. And, in fact, supervised consumption sites expressly fulfil two of the explicit purposes articulated by Senators Biden and Chiles—innovative proposals for reducing the demand for drugs and addressing the impacts of drug use on neighborhoods. Indeed, as noted above, supervised consumption sites have been proven to reduce both the number of people who use drugs and the frequency with which they use drugs. Supervised consumption sites also have positive impacts on neighborhoods where drug use is most prevalent and visible, including reducing public injection and improperly discarded syringes.

In addition, the Anti-Drug Abuse Act of 1986, of which the Crack House Statute was a part, was designed to “provide strong Federal leadership in establishing effective drug abuse prevention and education programs, [and] to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes.” PL 99–570 (HR 5484), PL 99–570, October 27, 1986, 100 Stat 3207. It was explicitly noted that the Act “attacks the problem on several fronts, including the creation and expansion of programs that address education and prevention of substance abuse and rehabilitation for those who

have already become involved.” 132 CONG. REC. H6562 (daily ed. Sept. 10, 1986). Supervised consumption sites like the one Safehouse intends to implement unequivocally further these purposes by providing drug education, treatment, and rehabilitation services.

In the years following the enactment of the Crack House Statute, there was “a uniform practice of targeting only those business owners who commit substantive drug offenses or conspire with those that are committing drug offenses -- in other words, criminals who distribute drugs.”⁷³ As of 2002, prosecutors had primarily used the Crack House Statute against “owners or managers of property who... assisted the manufacture, storage, distribution or use of drugs. (Most) cases dealt with literal crack house(s).”⁷⁴

In 2003, Congress amended the Crack House Statute to include “rogue promoters” who engaged in “predatory behavior” by knowingly using property on a one-time basis to encourage illegal drug use, e.g., raves. Illicit Drug Anti-Proliferation Act of 2003, Pub. L. No. 108-21, §608, 117 Stat. 650, 691 (2003) (codified and amended at 21 U.S.C. §856 (2006)); 149 CONG. REC. 9383.

The amendments confirmed that the Crack House Statute was focused on

⁷³ Michael V. Sachdev, Note, *The Party's Over: Why the Illicit Drug Anti-Proliferation Act Abridges Economic Liberties*, 37 COLUM. J.L. & SOC. PROBS. 585, 596 (2004).

⁷⁴ *Id.*

places maintained for the purpose of illegal drug use and people who profit from such places. *Id.* Indeed, Biden stated: “My bill would help in the prosecution of rogue promoters who not only know that there is drug use at their event but also hold the event for the purpose of illegal drug use or distribution. That is quite a high bar.” 149 CONG. REC. 9384.

As an operator of a supervised consumption site, Safehouse would not profit from the illicit consumption of controlled substances on its premises, nor does it intend to make a place available for the purpose of unlawful drug use. Instead, the purpose of Safehouse is to offer medical and health services to people who use drugs in an effort to reduce drug-related harm, including overdose deaths. This is a far cry from the purposes of a crack house or rave, neither of which is intended to promote public health or reduce harms associated with drug use.

At oral argument in the underlying case, the Government conceded that where the actor does not want the drug use to occur or has the goal of “trying to stop that person from using drugs,” the statute does not prohibit their actions. *United States v. Safehouse*, 408 F. Supp. 3d 583, 609 (E.D. Pa. 2019). The District Court concluded that “[a] review of the legislative evidence confirms that the reach of § 856(a)(2) is limited to purposes to facilitate drug use, which would in turn exclude a purpose to curb or combat drug use that

may involve some allowance of use[,]” and ultimately held that “Safehouse’s approach to harm reduction and increasing access to treatment was not within the contemplation of Congress when it enacted or amended this statute” and that “[t]he ultimate goal of Safehouse’s proposed operation is to reduce drug use, not facilitate it, and accordingly, § 856(a) does not prohibit Safehouse’s proposed conduct.” *Id.* at 607-611.

ii. Supervised Consumption Sites Can Help Achieve the Broad Purposes of the Controlled Substances Act.

Supervised consumption sites fall squarely within the goals of the Controlled Substances Act of 1971 (“CSA”) more broadly, which listed drug abuse prevention and rehabilitation as one of three important objectives in “dealing with the growing menace of drug abuse.” Comprehensive Drug Abuse Prevention and Control Act of 1970, H.R. 18583, 91st Cong. (1970), H.R. Rep. No. 1444 (1970), as reprinted in 1970 U.S.C.C.A.N. 4566, 4567. And, Congress has since indicated that “[t]he success of Federal drug abuse programs and activities requires a recognition that education, treatment, rehabilitation, research, training, and law enforcement efforts are interrelated” and that “[c]ontrol of drug abuse requires... both effective law enforcement ... and effective health programs.” 21 U.S.C. § 1101 (2006). Supervised consumption sites are designed to prevent life-threatening problems related to drug use, offer access to treatment for people with substance use disorders, and

to curb the transmission of disease. These are all consistent with and further the express goals of the CSA. Moreover, these benefits are realized with no impact on public safety.

The Congressional findings and declarations of the CSA also state: “the illegal importation, manufacture, distribution and possession and improper use of controlled substances have substantial and detrimental effect on the health and general welfare of the American people.” 21 U.S.C. § 801(2). Indeed, it is well established that unregulated use of controlled substances can lead to harmful public health outcomes, including permanent injury or death. These realities are what inspired the opening of supervised consumption sites around the world and what motivated Safehouse to contemplate doing the same, particularly given the wide-scale adulteration of the drug supply with illicitly manufactured fentanyl. It is clear that protecting public health was important to the passage of the CSA, so it is critical that evidence-based solutions be implemented to curb the harms that Congress knew existed and which have now amounted to one of the worst public health crises in history.

Supervised consumption sites have everything to do with prioritizing public health and safety, two goals of the CSA, and nothing to do with a desire to further a criminal enterprise. As detailed above, supervised consumption sites offer an array of health benefits that have helped save lives, reduce the

transmission of disease, and remove barriers to accessing substance use disorder treatment, ultimately improving both individual and community health, while protecting public safety. Supervised consumption sites like the one intended by Safehouse are a critical component of a comprehensive solution to addressing the harms of drug use.

CONCLUSION

Amici respectfully submit that the Court should affirm the February 25, 2020 Order Granting Final Declaratory Judgment, in Civil Action No. 19–519, in The United States District Court for The Eastern District of Pennsylvania in favor of Safehouse.

Dated: July 3, 2020

Respectfully submitted:

/s Ellen Brotman

Ellen C. Brotman
PA Bar No. 71775
One South Broad Street, Suite 1500
Philadelphia, Pennsylvania 19107
Phone: (215) 609-3247
Email: ebrotman@ellenbrotmanlaw.com

Lindsay LaSalle
CA Bar No. 267072
Drug Policy Alliance
1330 Broadway, Suite 1426
Oakland, California 94610
Phone: (510) 679-2315
Email: llasalle@drugpolicy.org

COUNSEL FOR *AMICI CURIAE*

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Dated: July 3, 2020

By: /s/ Ellen Brotman

ELLEN BROTMAN

Attorney for *Amici* AIDS United, American Medical Association (AMA), Association for Multidisciplinary Education and Research in Substance Use and Addiction (AMERSA), Association of Schools and Programs of Public Health, California Society of Addiction Medicine, Drug Policy Alliance, Foundation for Aids Research (amfAR), Harm Reduction Coalition, National Alliance of State and Territorial Aids Directors (NASTAD), Network for Public Health, Pennsylvania Medical Society, Philadelphia County Medical Society, Positive Women's Network, Treatment Action Group, and Vital Strategies

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Dated: July 3, 2020

By: /s/ Ellen Brotman

ELLEN BROTMAN

Attorney for *Amici* AIDS United, American Medical Association (AMA), Association for Multidisciplinary Education and Research in Substance Use and Addiction (AMERSA), Association of Schools and Programs of Public Health, California Society of Addiction Medicine, Drug Policy Alliance, Foundation for Aids Research (amfAR), Harm Reduction Coalition, National Alliance of State and Territorial Aids Directors (NASTAD), Network for Public Health, Pennsylvania Medical Society, Philadelphia County Medical Society, Positive Women's Network, Treatment Action Group, and Vital Strategies

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Dated: July 3, 2020

By: /s/ Ellen Brotman

ELLEN BROTMAN

Attorney for *Amici* AIDS United, American Medical Association (AMA), Association for Multidisciplinary Education and Research in Substance Use and Addiction (AMERSA), Association of Schools and Programs of Public Health, California Society of Addiction Medicine, Drug Policy Alliance, Foundation for Aids Research (amfAR), Harm Reduction Coalition, National Alliance of State and Territorial Aids Directors (NASTAD), Network for Public Health, Pennsylvania Medical Society, Philadelphia County Medical Society, Positive Women's Network, Treatment Action Group, and Vital Strategies

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I hereby certify that one of the attorneys whose name appears on the brief,
Ellen Brotman, is a member of the Third Circuit bar.

Dated: July 3, 2020

By: /s/ Ellen Brotman

ELLEN BROTMAN

Attorney for *Amici* AIDS United, American Medical Association (AMA), Association for Multidisciplinary Education and Research in Substance Use and Addiction (AMERSA), Association of Schools and Programs of Public Health, California Society of Addiction Medicine, Drug Policy Alliance, Foundation for Aids Research (amfAR), Harm Reduction Coalition, National Alliance of State and Territorial Aids Directors (NASTAD), Network for Public Health, Pennsylvania Medical Society, Philadelphia County Medical Society, Positive Women's Network, Treatment Action Group, and Vital Strategies

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Dated: July 2, 2020

By: /s/ Ellen Brotman

ELLEN BROTMAN

Attorney for *Amici* AIDS United, American Medical Association (AMA), Association for Multidisciplinary Education and Research in Substance Use and Addiction (AMERSA), Association of Schools and Programs of Public Health, California Society of Addiction Medicine, Drug Policy Alliance, Foundation for Aids Research (amfAR), Harm Reduction Coalition, National Alliance of State and Territorial Aids Directors (NASTAD), Network for Public Health, Philadelphia County Medical Society, Positive Women's Network, Treatment Action Group, and Vital Strategies

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Dated: July 3, 2020

By: /s/ Ellen Brotman

ELLEN BROTMAN

Attorney for *Amici* AIDS United, American Medical Association (AMA), Association for Multidisciplinary Education and Research in Substance Use and Addiction (AMERSA), Association of Schools and Programs of Public Health, California Society of Addiction Medicine, Drug Policy Alliance, Foundation for Aids Research (amfAR), Harm Reduction Coalition, National Alliance of State and Territorial Aids Directors (NASTAD), Network for Public Health, Philadelphia County Medical Society, Positive Women's Network, Treatment Action Group, and Vital Strategies

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By: /s/ Ellen Brotman

ELLEN BROTMAN

Attorney for *Amici* AIDS United, American Medical Association (AMA), Association for Multidisciplinary Education and Research in Substance Use and Addiction (AMERSA), Association of Schools and Programs of Public Health, California Society of Addiction Medicine, Drug Policy Alliance, Foundation for Aids Research (amfAR), Harm Reduction Coalition, National Alliance of State and Territorial Aids Directors (NASTAD), Network for Public Health, Philadelphia County Medical Society, Positive Women's Network, Treatment Action Group, and Vital Strategies

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By: /s/ Ellen Brotman

ELLEN BROTMAN

Attorney for *Amici* AIDS United, American Medical Association (AMA), Association for Multidisciplinary Education and Research in Substance Use and Addiction (AMERSA), Association of Schools and Programs of Public Health, California Society of Addiction Medicine, Drug Policy Alliance, Foundation for Aids Research (amfAR), Harm Reduction Coalition, National Alliance of State and Territorial Aids Directors (NASTAD), Network for Public Health, Philadelphia County Medical Society, Positive Women's Network, Treatment Action Group, and Vital Strategies