

No. 21-276

IN THE

Supreme Court of the United States

SAFEHOUSE, a Pennsylvania nonprofit corporation,
Petitioner,

v.

U.S. DEPARTMENT OF JUSTICE, *et al.*,
Respondents.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Third Circuit**

**BRIEF FOR *AMICI CURIAE* CURRENT
AND FORMER PROSECUTORS AND
LAW ENFORCEMENT LEADERS, AND FORMER
ATTORNEYS GENERAL AND DEPARTMENT
OF JUSTICE OFFICIALS AND LEADERS
IN SUPPORT OF PETITIONER'S
PETITION FOR A WRIT OF CERTIORARI**

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CASES	Page(s)
<i>Canada v. PHS Community Services Society</i> , [2011] 3 S.C.R. 134 (Can.)	19, 24
STATUTES	
21 U.S.C. § 856	3, 10
Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (PROTECT Act), Pub. L. No. 108-21, § 608, 117 Stat. 650 (2003)	10-11
R.I. Gen. L. § 23-12-10-1(a)	4
OTHER AUTHORITIES	
Beckett, Katherine, <i>The Uses and Abuses of Police Discretion: Toward Harm Reduc- tion Policing</i> , 10 Harv. L. & Pol’y Rev. 77 (2016).....	7
Belackova, Vendula & Allison M. Salmon, <i>Overview of International Literature- Supervised Injection Facilities & Drug Consumption Rooms</i> Issue 1 (Aug. 2017)	15, 17
Beletsky, Leo, <i>America’s Favorite Antidote: Drug-Induced Homicide in the Age of the Overdose Crisis</i> , 4 Utah Law Review 833 (2019).....	22
Beletsky, Leo, et al., <i>The Law (and Politics) of Safe Injection Facilities in the United States</i> , 98 Am. J. Pub. Health 231 (2008) ..	9

TABLE OF AUTHORITIES—Continued

	Page(s)
Binswanger, Ingrid A., et al., <i>Release from Prison—A High Risk of Death for Former Inmates</i> , 356 <i>New Eng. J. Med.</i> 157 (2007).....	8
British Columbia Ministry of Health, <i>Harm Reduction: A British Columbia Community Guide</i> (2005).....	11, 13
Caulkins, Jonathan P., et al., <i>Towards a harm reduction approach to enforcement</i> , 8 <i>Safer Communities</i> 9 (2009).....	11, 13, 14
Centre for Law Enforcement & Public Health, <i>Police Statement of Support for Drug Policy Reform</i> (Feb. 2019), https://cleph.com.au/application/files/4815/4957/9983/Statement_of_Support_for_Drug_Policy_Reform_Feb_2019.pdf	24
Centers for Disease Control and Prevention, <i>Drug Overdose Deaths</i> (Mar. 3, 2021), https://www.cdc.gov/drugoverdose/data/statedeaths.html	5
City of Philadelphia, <i>The Mayor’s Task Force to Combat the Opioid Epidemic in Philadelphia, Final Report & Recommendations</i> (May 19, 2017)	8
City of Philadelphia Department of Public Health, <i>The Opioid Epidemic in Philadelphia: Implementation of the Mayor’s Task Force Recommendations</i> (March 14, 2018), https://www.phila.gov/media/20180606132344/OTF_StatusReport_March2018.pdf	7

TABLE OF AUTHORITIES—Continued

	Page(s)
City of Philadelphia Department of Public Health, <i>Opioid Misuse and Overdose Report</i> (Feb. 13, 2020), https://www.phila.gov/media/20200226121229/Substance-Abuse-Data-Report-02.26.20.pdf	14
Collins, Susan E., et al., <i>LEAD Program Evaluation: Recidivism Report</i> (March 27, 2015), http://static1.1.sqspcdn.com/static/f/1185392/26121870/1428513375150/LEAD_EVALUATION_4-7-15.pdf	23
Darke, Shane, et al., <i>The Ratio of Non-Fatal to Fatal Heroin Overdose</i> , 98 <i>Addiction</i> 1169 (2003)	5
DeBeck, Kora, et al., <i>Injection drug use cessation and use of North America’s first medically supervised safer injecting facility</i> , 113 <i>Drug & Alcohol Dependence</i> , nos. 2-3, Jan. 2011.....	18
Drug Enforcement Administration, <i>The Opioid Threat in Pennsylvania</i> , Joint Intelligence Report (Sept. 2018).....	7
Drug Policy Alliance, <i>The Drug War, Mass Incarceration and Race</i> (Jan. 2018), http://www.drugpolicy.org/sites/default/files/drug-war-mass-incarceration-and-race_01_18_0.pdf	9

TABLE OF AUTHORITIES—Continued

	Page(s)
Eichel, Larry & Meagan Pharis, <i>Philadelphia’s Drug Overdose Death Rate Among Highest in Nation</i> , The Pew Charitable Trusts (Feb. 15, 2018), https://www.pewtrusts.org/en/research-and-analysis/articles/2018/02/15/philadelphias-drug-overdose-death-rate-among-highest-in-nation	6
Fairbairn, Nadia, et al., <i>Seeking refuge from violence in street-based drug scenes: Women’s experiences in North America’s first supervised injection facility</i> , 67 Soc. Sci. & Med. 817 (2008).....	19
Farley, M.D., Thomas, <i>Overdose prevention sites can help cities like Philadelphia save lives</i> , Stat News (Apr. 5, 2019), https://www.statnews.com/2019/04/05/overdose-prevention-sites-save-lives	5-6
Federal Bureau of Investigation, <i>2017 Crime in the United States</i> (2017), https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/tables/table-29	17
Feldman, Nina, <i>Philadelphia Department of Prisons will begin offering buprenorphine to male inmates again</i> , WHYY (Apr. 1, 2019), https://whyy.org/articles/philadelphia-department-of-prisons-will-begin-offering-buprenorphine-to-male-inmates-again/	17

TABLE OF AUTHORITIES—Continued

	Page(s)
Fellner, Jamie, <i>Race, Drugs, and Law Enforcement in the United States</i> , 20 Stan. Law & Pol. Rev. 257 (2009), https://www-cdn.law.stanford.edu/wp-content/uploads/2018/03/fellner.pdf	22
Freeman, Karen, et al., <i>The impact of the Sydney Medically Supervised Injecting Centre (MSIC) on crime</i> , 24 Drug & Alcohol Rev. 173 (2005)	19
Friedman, Samuel R., et al., <i>Relationships of deterrence and law enforcement to drug-related harms among drug injectors in US metropolitan areas</i> , 20 AIDS 93 (2006).....	9
Goldstein, Leila, <i>Montgomery County Overdoses Up 50 Percent Over Last Year</i> , WYSO.org (Apr. 16, 2020), https://www.wyso.org/post/montgomery-county-overdoses-50-percent-over-last-year	6
Harm Reduction Coalition, <i>Principles of Harm Reduction</i> , https://harmreduction.org/about-us/principles-of-harm-reduction (last visited May 4, 2020)	12
Harm Reduction International, <i>What is harm reduction?</i> , https://www.hri.global/what-is-harm-reduction	11

TABLE OF AUTHORITIES—Continued

	Page(s)
Hedegaard, M.D., Holly, et al., <i>Drug Overdose Deaths in the United States, 1999–2017</i> , Centers for Disease Control and Prevention, NCHS Data Brief No. 329 (Nov. 2018), https://www.cdc.gov/nchs/products/databriefs/db329.htm	5
Huey, Laura, <i>What is Known About the Impacts of Supervised Injection Sites on Community Safety and Wellbeing? A Systematic Review</i> , 48 <i>Sociology Publications</i> (2019).....	21
Johnson, Sterling & Leo Beletsky, <i>The Role of Overdose Prevention Sites in Coronavirus Response</i> , Justice Collaborative Inst. (May 7, 2020), https://tjcinstitute.com/wp-content/uploads/2020/05/20.05_Safe-Injection-Sites-1.pdf	24
Kilmer, Beau, et al., <i>Considering Heroin-Assisted Treatment and Supervised Drug Consumption Sites in the United States</i> , RAND Corporation (2018), www.rand.org/t/RR2693	4, 19
Kirkland, Talia, <i>Overdose Deaths Skyrocket in Pennsylvania During COVID-19 Pandemic</i> , Local21News.com (Apr. 22, 2020), https://local21news.com/news/local/overdose-deaths-skyrocket-in-pennsylvania-during-covid-19-pandemic	6
LEAD Bureau, www.leadbureau.org (last visited May 8, 2020).....	12

TABLE OF AUTHORITIES—Continued

	Page(s)
Marshall, Brandon D.L., et al., <i>Reduction in Overdose Mortality After the Opening of North America’s First Medically Supervised Safer Injecting Facility: A Retrospective Population-Based Study</i> , 377 <i>The Lancet</i> 1429 (2011)	15, 20
Massachusetts Medical Society, <i>Report of the Task Force on Opioid Therapy and Physician Communication: Establishment of a Pilot Medically Supervised Injection Facility in Massachusetts</i> (Apr. 2017)	18
McElrath, Karen, et al., <i>Crime Victimization Among Injection Drug Users</i> , 27 <i>J. of Drug Issues</i> 771 (1997)	22
Milloy, M.-J. S., et al., <i>Estimated Drug Overdose Deaths Averted by North America’s First Medically-Supervised Safer Injection Facility</i> , 3(10) <i>PLoS One</i> 3 e3351 (2008)	15
MSIC (Medically Supervised Injection Centre) Evaluation Committee, <i>Final Report of the Evaluation of the Sydney Medically Supervised Injection Centre</i> (2003), https://www.drugsandalcohol.ie/5706/1/MSIC_final_evaluation_report.pdf	20
Myer, Andrew J. & Linsey Belisle, <i>Highs and Lows: An Interrupted Time-Series Evaluation of the Impact of North America’s Only Supervised Injection Facility on Crime</i> , 48 <i>J. Drug Issues</i> 36 (2017) ..	19

TABLE OF AUTHORITIES—Continued

	Page(s)
Petrar, Steven, et al., <i>Injection Drug Users’ Perceptions Regarding Use of a Medically Supervised Safer Injecting Facility</i> , 32 <i>Addictive Behaviors</i> , 1088 (2007).....	15, 18
The Pew Charitable Trusts, <i>Collateral Costs: Incarceration’s Effect on Economic Mobility</i> (2010), https://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2010/collateralcosts1pdf.pdf	9
The Pew Charitable Trusts, <i>More Imprisonment Does Not Reduce State Drug Problems</i> (March 2018), https://www.pewtrusts.org/~media/assets/2018/03/pspp_more_imprisonment_does_not_reduce_state_drug_problems.pdf	8, 14
Potier, Chloe, et al., <i>Supervised Injection Services: What Has Been Demonstrated? A Systematic Literature Review</i> , 145 <i>Drug & Alcohol Dependence</i> 48 (2014) ...	17
Rothwell, Jonathan, <i>Drug Offenders in American Prisons: The Critical Distinction Between Stock and Flow</i> , Brookings Institution (Nov. 25, 2015), http://www.brookings.edu/blogs/social-mobility-memos/posts/2015/11/25-drug-offenders-stock-flow-prisons-rothwell	8
Salmon, A.M., et al., <i>The Impact of a Supervised Injecting Facility on Ambulance Call-Outs in Sydney, Australia</i> , 105 <i>Addiction</i> 676 (2010)	16

TABLE OF AUTHORITIES—Continued

	Page(s)
Stauffer, Brian, <i>Every 25 Seconds: The Human Toll of Criminalizing Drug Use in the United States</i> , Human Rights Watch (Oct. 12, 2016), https://www.hrw.org/report/2016/10/12/every-25-seconds/human-toll-criminalizing-drug-use-unit-ed-states	7-8
Tracy, Melissa, et al., <i>Circumstances of Witnessed Drug Overdose in New York City: Implications for Intervention</i> , 79 <i>Drug & Alcohol Dependence</i> 181 (2005).....	22
Tyndall, Mark W., et al., <i>Attendance, Drug Use Patterns, and Referrals Made from North America’s First Supervised Injection Facility</i> , 83 <i>Drug & Alcohol Dependence</i> 193 (2006)	18
Van Beek, Ingrid, <i>The Sydney Medically Supervised Injecting Centre: Reducing Harm Associated with Heroin Overdose</i> , 14 <i>Critical Public Health</i> 391 (2003).....	16
Vancouver Coastal Health, <i>Insite User Statistics</i> , http://www.vch.ca/public-health/harm-reduction/supervised-consumption-sites/insite-user-statistics (last updated July 2019).....	4

TABLE OF AUTHORITIES—Continued

	Page(s)
White House Statement, August 2, 2021, <i>ONDCP Funds Research to Support Evidence Based State Drug Policies and Laws</i> , https://whitehouse.gov/ondcp/briefing-room/2021/08/02/ondcp-funds-research-to-support-evidence-based-state-drug-policies-and-laws/	10
White House Statement, June 29, 2021, <i>Biden-Harris Administration Expands Treatment to Underserved Communities with Mobile Methadone Van Ride</i> , https://whitehouse.gov/ondcp/briefing-room/2021/06/29/biden-harris-administration-expands-treatment-to-underserved-communities-with-mobile-methadone-van-rule-2021/	10
Wood, Evan, et al., <i>Changes in Public Order After the Opening of a Medically Supervised Safer Injecting Facility for Illicit Injection Drug Users</i> , 171 <i>Canadian Med. Assoc. J.</i> 731 (2004).....	20
Wood, Evan, et al., <i>Impact of a Medically Supervised Safer Injecting Facility on Drug Dealing and Other Drug-Related Crime</i> , 1 <i>Substance Abuse Treatment, Prevention, and Policy</i> 1 (2006).....	23
Wood, Evan, et al., <i>Rate of Detoxification Service Use and Its Impact Among a Cohort of Supervised Injecting Facility Users</i> , 102 <i>Addiction</i> 916 (2007).....	18

**STATEMENT OF INTEREST OF
*AMICI CURIAE*¹**

Amici are 80 current or former prosecutors and law enforcement officials and former attorneys general and U.S. Department of Justice (“DOJ”) leaders with expertise in prosecution, policing, and cooperative federal-state law enforcement activities.² Amici understand the challenges of preserving public safety and health and combating the epidemic of opioid-related deaths. Amici currently serve or have served in 32 states, including in communities struggling to stem the tide of fatal overdoses caused by substance use disorder, limited access to effective treatment, and a toxic supply stream flooded with powerful synthetic opioids. These problems remain acute despite law enforcement’s best efforts.

Many of amici’s communities have experienced unprecedented levels of fatal opioid overdoses. The criminal justice and law enforcement agencies that amici lead or have led strive daily to respond to opioid-related overdoses, while also combating hazards posed by public injection. Discarded needles pose a safety risk in parks and on streets. The rapid spread of blood-borne illnesses has been exacerbated by the needle sharing among intravenous drug users without access to clean syringes, thus endangering people whether or not they use drugs. Public injection has made residents feel unsafe in their own communities.

¹ Counsel of record received timely notice of the intent to file this brief, and all parties have consented to this filing. No counsel for a party authored this brief in whole or in part, and no one other than amici’s counsel made any monetary contribution toward the brief’s preparation or submission.

² A full list of amici is in the attached Appendix.

And business owners and residents must contend with the daily prospect of finding people unconscious from an overdose in public places. Punitive responses to these concerns further stigmatize and marginalize people who use drugs, thereby deterring them from accessing treatment and support. Amici understand the urgency of finding practical solutions to this public health crisis and believe that communities can only manage the problems posed by opioid abuse by partnering with public health experts.

Amici have an interest in this litigation because overdose prevention sites (OPSs)³ are among the harm reduction and public health interventions that have proven effective in preventing fatal overdoses and diverting people from unnecessary and counterproductive interactions with the justice system. Amici, many of whom are currently or were previously responsible for enforcing the nation's drug laws, also believe that the Controlled Substances Act cannot be construed to prohibit operation of a facility designed to address the most acute aspects of this public health emergency.

These issues are particularly concerning now, with an ongoing pandemic and fractured relations between law enforcement and communities. Failing to address the loss of life resulting from drug overdoses—and criminalizing a community-based public health organization working to save lives—will further erode trust

³ OPSs are also sometimes referred to as safe consumption sites, supervised consumption facilities or medically supervised consumption sites. They provide people using drugs with a sanitary environment in which to inject drugs under supervision. Drugs are provided by the participant, not the facility, and OPS staff observe injections and are available to respond immediately to an overdose. Importantly, OPS staff do not perform any injections.

in the justice system. If there were ever a time to demonstrate that our government values the dignity of human life, that time is now.

Amici respectfully submit that the Court should grant certiorari to review the Third Circuit's determination that 21 U.S.C. § 856 prohibits public health organizations, such as Petitioner Safehouse, from establishing an overdose prevention site that will prevent fatalities by providing immediate medical care to people experiencing drug-related overdoses.

SUMMARY OF ARGUMENT

Petitioner seeks to open a facility specifically designed to address the public health emergency posed by the epidemic of opioid-related overdoses. Like a syringe exchange, the contemplated OPS would provide people who inject drugs with sterile equipment to minimize the spread of illness. And like any emergency medical care provider, the contemplated OPS would also administer oxygen or the overdose “antidote” naloxone to reverse overdoses. Rather than pushing participants onto the streets to inject in an unhygienic and unmonitored place, Safehouse would provide space for supervised consumption and observation. Supervision ensures that individuals who could otherwise be at high risk of death if they inject unsupervised or alone are within immediate reach of lifesaving medical care—including the administration of oxygen, CPR, or naloxone—in the event of an overdose. Safehouse would also help injection drug users, who are often medically vulnerable, stabilize their lives and improve their health. Safehouse would offer services, including on-site initiation of medication-assisted treatment for substance use disorder, basic medical services, wound care, physical and behavioral health assessments, and referrals to social services. *See* Pet. App. 73a-74a.

While no OPSs are operating in the United States, more than 110 currently operate in at least 11 other countries, with many more expected.⁴ Not one of these OPSs has ever reported a fatal overdose inside its facility.⁵ The supervision available in an OPS is directly responsible for saving lives: for example, an OPS facility in Vancouver, Canada had 189,837 visits from 5,436 individuals in 2018, and the OPS staff administered 1,466 overdose interventions and 3,725 other clinical treatment interventions, such as wound care and pregnancy tests.⁶

Two months ago, Rhode Island became the first state to statutorily recognize the enormous potential value of OPSs. On July 6, 2021, Governor Dan McKee signed into law a statute authorizing a two-year pilot program “to prevent drug overdoses through the establishment of [OPSs].” R.I. Gen. L. § 23-12-10-1(a).

As law enforcement and criminal justice leaders, amici’s objective is to maintain public safety; saving lives and promoting health is as central to that mission as preventing and prosecuting crime. Local governments must have the leeway to address the opioid crisis through proven methods that minimize the need for confrontational encounters between police and citizens, especially in this time of pandemic and

⁴ See Beau Kilmer et al., *Considering Heroin-Assisted Treatment and Supervised Drug Consumption Sites in the United States*, RAND Corporation 30-31 (2018), www.rand.org/t/RR2693 [hereinafter “RAND Report”].

⁵ See, e.g., Vancouver Coastal Health, *Insite User Statistics*, <http://www.vch.ca/public-health/harm-reduction/supervised-consumption-sites/insite-user-statistics> (last updated July 2019) (“[M]ore than 3.6 million [clients have] inject[ed] illicit drugs under supervision by nurses at Insite since 2003.”).

⁶ *Id.*

tension between communities and law enforcement. Amici therefore urge the Court to consider the well-reasoned opinions of the district court; of Judge Roth, who wrote in dissent in the Third Circuit; and of Judge McKee, who wrote in dissent from the Third Circuit's denial of the petition for rehearing; and grant review.

ARGUMENT

I. The Opioid Overdose Epidemic Has Caused Extensive Harm

Nationwide, 70,630 people died from drug-related overdoses in 2019.⁷ Since 1999, the drug overdose death rate in the United States has increased nearly four-fold.⁸ Existing drug policy strategies are insufficient to respond to a crisis of this scale.

Philadelphia, like many other parts of the United States, contends daily with the epidemic of opioid-related deaths. “In Philadelphia alone, on an average day the city morgue accepts three or more overdose victims, making the city’s overdose death rate about triple its homicide rate.”⁹ Philadelphia County’s 2016

⁷ Centers for Disease Control and Prevention, *Drug Overdose Deaths* (Mar. 3, 2021), <https://www.cdc.gov/drugoverdose/data/statedeaths.html>. 2019 represents the latest CDC statistics available. These figures describe only *fatal* drug overdoses; the number of overall overdoses is certainly much higher. See Shane Darke et al., *The Ratio of Non-Fatal to Fatal Heroin Overdose*, 98 *Addiction* 1169, 1170 (2003) (estimating that there are from 20 to 30 non-fatal opioid-related overdoses events for every fatality).

⁸ Holly Hedegaard, M.D. et al., *Drug Overdose Deaths in the United States, 1999–2017*, Centers for Disease Control and Prevention, NCHS Data Brief No. 329 (Nov. 2018), <https://www.cdc.gov/nchs/products/databriefs/db329.htm>.

⁹ Thomas Farley, M.D., *Overdose prevention sites can help cities like Philadelphia save lives*, STAT News (Apr. 5, 2019),

drug overdose death rate was second among the 44 U.S. counties with over one million residents, and Pennsylvania's drug overdose death rate increased 16.9 percent from 2016 to 2017.¹⁰

Notably, the coronavirus pandemic has significantly exacerbated the overdose crisis. Fatal opioid overdoses have spiked in the wake of pandemic-related isolation, trauma and the inability to access treatment. For instance, confirmed and suspected opioid deaths in Pennsylvania's York County were three times higher in March 2020 than January 2020.¹¹ Ohio's Montgomery County, which led the nation in per capita overdose deaths in 2017, saw drug overdoses increase through April 2020 by more than 50 percent compared to the same period in 2019.¹²

The devastating consequences of this crisis go beyond fatalities. Although the overall number of new HIV cases in Philadelphia has fallen over the last few years, the number of cases among those who inject drugs has substantially increased. The number of new

<https://www.statnews.com/2019/04/05/overdose-prevention-sites-save-lives>.

¹⁰ Larry Eichel & Meagan Pharis, *Philadelphia's Drug Overdose Death Rate Among Highest in Nation*, The Pew Charitable Trusts (Feb. 15, 2018), <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/02/15/philadelphias-drug-overdose-death-rate-among-highest-in-nation>.

¹¹ See Talia Kirkland, *Overdose Deaths Skyrocket in Pennsylvania During COVID-19 Pandemic*, Local21News.com (Apr. 22, 2020), <https://local21news.com/news/local/overdose-deaths-skyrocket-in-pennsylvania-during-covid-19-pandemic>.

¹² See Leila Goldstein, *Montgomery County Overdoses Up 50 Percent Over Last Year*, WYSO.org (Apr. 16, 2020), <https://www.wyso.org/post/montgomery-county-overdoses-50-percent-over-last-year>.

Hepatitis C cases, most of which result from intravenous drug use, has also increased dramatically. The proportion of emergency room visits related to drug use has doubled since 2007.¹³ And the opioid crisis costs Pennsylvania nearly \$56 billion annually.¹⁴ The severity of this crisis demands solutions of equal magnitude.

A. Criminalization Has Exacerbated, Not Prevented, The Overdose Epidemic

As current and former criminal justice leaders, amici have seen first-hand how the classic “war on drugs” approach to drug control—with its almost exclusive focus on aggressive criminal law enforcement—has exacerbated the overdose epidemic. This experience confirms that no jurisdiction can arrest its way out of this public health problem. Fatal overdoses are a symptom of substance use disorder, a medical condition requiring a medical response.

Amici’s experience comports with the available evidence. Between 1981 and 2006, the number of drug arrests in the United States quadrupled to nearly two million per year, disproportionately affecting people and communities of color.¹⁵ An estimated 74 percent

¹³ City of Phila. Dep’t of Pub. Health, *The Opioid Epidemic in Philadelphia: Implementation of the Mayor’s Task Force Recommendations*, 9 (March 14, 2018), https://www.phila.gov/media/20180606132344/OTF_StatusReport_March2018.pdf.

¹⁴ Drug Enforcement Admin., *The Opioid Threat in Pennsylvania*, Joint Intelligence Report 45 (Sept. 2018) (estimated economic cost to Pennsylvania of opioid use disorders in 2016).

¹⁵ Katherine Beckett, *The Uses and Abuses of Police Discretion: Toward Harm Reduction Policing*, 10 Harv. L. & Pol’y Rev. 77, 81 (2016); see also Brian Stauffer, *Every 25 Seconds: The Human Toll of Criminalizing Drug Use in the United States*, Human

of the people processed at Philadelphia prisons test positive for drug use upon admission to jail, and “[d]rug crimes have been the predominant reason for new admissions into state and federal prisons in recent decades.”¹⁶

These massive increases in drug arrests and drug-related incarcerations have not reduced drug consumption. The evidence shows that “higher rates of drug imprisonment do not translate into lower rates of drug use, arrests, or overdose deaths.”¹⁷ When a person with substance use disorder is incarcerated, the weeks following release pose a dramatically elevated risk of fatal overdose.¹⁸ Mass incarceration for drug offenses also has devastating consequences for

Rights Watch (Oct. 12, 2016), <https://www.hrw.org/report/2016/10/12/every-25-seconds/human-toll-criminalizing-drug-use-united-states> (“In every state for which we have sufficient data, Black adults were arrested for drug possession at higher rates than white adults[.]”).

¹⁶ City of Phila., *The Mayor’s Task Force to Combat the Opioid Epidemic in Philadelphia, Final Report & Recommendations*, 11 (May 19, 2017) [hereinafter “Mayor’s Task Force Report”]; Jonathan Rothwell, *Drug Offenders in American Prisons: The Critical Distinction Between Stock and Flow*, Brookings Institution (Nov. 25, 2015), <http://www.brookings.edu/blogs/social-mobility-memos/posts/2015/11/25-drug-offenders-stock-flow-prisons-rothwell>.

¹⁷ The Pew Charitable Trusts, *More Imprisonment Does Not Reduce State Drug Problems*, 6 (March 2018), https://www.pewtrusts.org/-/media/assets/2018/03/pspp_more_imprisonment_does_not_reduce_state_drug_problems.pdf.

¹⁸ See Ingrid A. Binswanger et al., *Release from Prison—A High Risk of Death for Former Inmates*, 356 *New Eng. J. Med.* 157, 165 (2007).

those incarcerated, their families, and their communities.¹⁹

A strict-enforcement approach also stigmatizes people who use drugs in ways that increase health risks, drive problems underground, and magnify social harms. Fear of arrest and incarceration does not reliably deter drug use, but it does deter intravenous drug users from accessing healthcare, harm reduction services, and treatment that could save their lives and significantly reduce the social costs of their drug use.²⁰ Fear and shame force people using drugs to turn to isolated and dangerous spaces—such as alleys and abandoned houses—where hygienic injection is impossible. These environments increase transmission of blood-borne diseases like HIV, hepatitis C, and septicemia.²¹ Isolation increases the risk of fatal overdose: people injecting alone are unlikely to be discovered and to receive the overdose “antidote” naloxone within the critical minutes before a drug overdose can kill.

Given the stark evidence that criminalizing drug use only increases its harms, the prior Administration’s

¹⁹ The Pew Charitable Trusts, *Collateral Costs: Incarceration's Effect on Economic Mobility*, 3-5 (2010), https://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2010/collateralcosts1pdf.pdf; Drug Policy Alliance, *The Drug War, Mass Incarceration and Race*, 2 (Jan. 2018), http://www.drugpolicy.org/sites/default/files/drug-war-mass-incarceration-and-race_01_18_0.pdf.

²⁰ Leo Beletsky et al., *The Law (and Politics) of Safe Injection Facilities in the United States*, 98 Am. J. Pub. Health 231, 231 (2008).

²¹ *Id.*; see also Samuel R. Friedman et al., *Relationships of deterrence and law enforcement to drug-related harms among drug injectors in US metropolitan areas*, 20 AIDS 93, 97 (2006) (strict criminalization is associated with higher incidence of HIV among injected drug users).

attempt to extend the Controlled Substances Act to block a public health response to the overdose crisis is perplexing.²² Amici, who have served in federal agencies that enforce the Controlled Substances Act and state agencies with their own (often similar or even identical) criminal drug laws, have never seen these laws used to prohibit public health and harm reduction programs such as syringe exchange facilities, naloxone provision services, or OPSs. Substance use disorder is, first and foremost, a medical condition requiring medical treatment. Criminal sanctions by themselves do not address—and often exacerbate—the root causes of substance use disorder. Section 856 was enacted to target the manufacturing of crack cocaine in “crack houses” and amended to address ecstasy use at raves. *See* Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today

²² The current Administration is appropriately viewing the opioid crisis through a public health lens. It has committed to “expanding access to evidence-based prevention, treatment and harm reduction.” White House Statement, August 2, 2021, *ONDCP Funds Research to Support Evidence Based State Drug Policies and Laws*. <https://whitehouse.gov/ondcp/briefing-room/2021/08/02/ondcp-funds-research-to-support-evidence-based-state-drug-policies-and-laws/>. And the Drug Enforcement Administration explicitly recognized that “we cannot arrest our way out of this devastating [opioid epidemic] problem.” White House Statement, June 29, 2021, *Biden-Harris Administration Expands Treatment to Underserved Communities with Mobile Methadone Van Ride*. <https://whitehouse.gov/ondcp/briefing-room/2021/06/29/biden-harris-administration-expands-treatment-to-underserved-communities-with-mobile-methadone-van-rule-2021/>.

Against this backdrop, it is unfortunate that the Government has chosen to waive its response to the instant Petition. The Court would undoubtedly have benefited from the views of the new Administration and many state and local leaders are looking for federal guidance on this issue.

Act of 2003 (PROTECT Act), Pub. L. No. 108-21, § 608, 117 Stat. 650, 691 (2003). It was never intended to target public health facilities like OPSs.

B. Law Enforcement Agencies And Elected Prosecutors Around The Country Are Embracing A Harm Reduction Model Because It Is Effective

OPSs fit comfortably within an approach to the opioid epidemic known as “harm reduction,” which has proven more effective than simply arresting and incarcerating people struggling with substance use disorder. Harm reduction describes an approach to addressing drug use generally, and the opioid crisis in particular, by “targeting directly drug-related harms rather than drug use itself.”²³ Harm reduction encompasses numerous practices, including “drug consumption rooms, needle and syringe program[s], non-abstinence-based housing and employment initiatives, drug checking, overdose prevention and reversal, psychosocial support, and the provision of information on safer drug use.”²⁴ Extensive evidence demonstrates that these practices are cost-effective and have a positive impact on individual and community health.²⁵ Central to harm reduction is the principle that institutions must

²³ Jonathan P. Caulkins et al., *Towards a harm reduction approach to enforcement*, 8 *Safer Communities* 9, 9 (2009); see also Harm Reduction International, *What is harm reduction?*, <https://www.hri.global/what-is-harm-reduction/> (last visited September 2, 2021).

²⁴ Harm Reduction International, *supra* note 23.

²⁵ *Id.*; British Columbia Ministry of Health, *Harm Reduction: A British Columbia Community Guide* 6-12 (2005).

structure their services “to meet drug users ‘where they’re at.’”²⁶

Harm reduction has been accepted as a proven response to substance use disorder globally, and numerous U.S. law enforcement organizations have similarly recognized that harm reduction strategies address substance use disorder and the overdose epidemic more effectively than arrests and prosecution. For example, 52 jurisdictions have already implemented a Law Enforcement Assisted Diversion (“LEAD”) model, which enlists police and prosecutors to work with community groups and social service agencies to provide harm reduction interventions instead of a punitive, criminal justice response.²⁷

LEAD programs are rapidly spreading: 44 jurisdictions are currently considering, developing, or launching LEAD programs.²⁸ This is a testament both to the benefits accruing to law enforcement agencies and the communities they serve and to the increased trust and cooperation born of incorporating public health and harm reduction strategies into responses to the opioid crisis. Amici who have introduced harm reduction programs in their own jurisdictions have seen how such strategies lead to more positive interactions between law enforcement and vulnerable community members. This mutual understanding builds relationships that can lead to greater cooperation and better

²⁶ Harm Reduction Coalition, *Principles of Harm Reduction*, <https://harmreduction.org/about-us/principles-of-harm-reduction> (last visited September 2, 2021).

²⁷ LEAD Bureau, www.leadbureau.org (last visited September 2, 2021).

²⁸ LEAD Bureau, *supra* note 27.

outcomes during police interactions with the people they serve, thereby enhancing public safety.

Particularly when employed within a comprehensive public health framework, harm reduction techniques can successfully address some of the most significant limitations of the traditional approach to the opioid crisis. One report concluded:

Harm reduction saves lives and improves quality of life by allowing drug users to remain integrated in society. The alienation and marginalization of people who use drugs often compound the reasons why they engage in unsafe drug use. Harm reduction also reduces health care costs by reducing drug-related overdose, disease transmission, injury and illness, as well as hospital utilization.

Harm reduction benefits the community through substantial reductions in open drug use, discarded drug paraphernalia, drug-related crime, and associated health, enforcement and criminal justice costs. It lessens the negative impact of an open drug scene on local business and improves the climate for tourism and economic development.²⁹

Criminal justice leaders should not take a back seat in implementing harm reduction strategies.³⁰ Police, prosecutors, and others involved in the criminal justice system have adopted several harm reduction strategies, including referring users to treatment or

²⁹ British Columbia Ministry of Health, *supra* note 25, at 4; *see also id.* at 7-12 (identifying harm-reduction strategies for addressing opioid abuse).

³⁰ Caulkins, *supra* note 23, at 9.

social service agencies before arrest or charging, obtaining familiarity with and implementing overdose remediation techniques and medications such as naloxone, and warning users when a shipment of tainted drugs hits a city's streets.³¹ These duties are integral to the oath officers take to protect and serve their communities and to the aim of prosecutors to serve the public and promote the community's wellbeing.

OPSs would fill a critical need in the harm reduction efforts of cities like Philadelphia: they prevent overdose fatalities among some of the most at-risk groups. While 2,333 people died from overdoses in Philadelphia in 2017 and 2018, not one person has died of an overdose within an OPS anywhere in the world.³² As described below, OPSs are evidence-based, public health focused facilities that can help address the opioid crisis in a manner consistent with smart and effective criminal justice policies.

II. Public Safety Is Well-Served By Overdose Prevention Sites

Introducing an OPS into a community ravaged by opioid deaths permits law enforcement agencies to use resources more effectively and promotes trust and cooperation between law enforcement agencies and a population subject to a disproportionate number of police interactions. Empirical evidence also shows that OPSs can reduce crime and public nuisances related to injection drug use. Accordingly, OPSs are valuable tools for protecting public safety when

³¹ See *id.* at 14; The Pew Charitable Trusts, *supra* note 17, at 6-7.

³² See City of Phila. Dep't of Pub. Health, *Opioid Misuse and Overdose Report* (Feb. 13, 2020), <https://www.phila.gov/media/20200226121229/Substance-Abuse-Data-Report-02.26.20.pdf>.

employed as part of a multifaceted solution to the overdose epidemic—particularly at this critical moment.

A. Overdose Prevention Sites Save Lives And Reduce The Adverse Impact Of Drug Use

The primary objective of OPSs is to save lives, and they have been proven to do so. Multiple studies in Vancouver, British Columbia and Sydney, Australia have demonstrated that overdose-related morbidity and mortality are reduced when people inject drugs at an OPS rather than on the street.³³ In Vancouver, a statistical analysis of the OPS known as Insite estimated that the facility prevented an average of 1.9 to 11.7 deaths annually over four years. This would have accounted for between 6 percent and 37 percent of the overdose fatalities in the neighborhood during that period.³⁴ Also, compared to the period before Insite's opening, Vancouver experienced 35 percent fewer overdoses in the area within 500 meters of the facility.³⁵ Similarly, during its first eighteen months, Sydney's Medically Supervised Injecting Centre

³³ See, e.g., Vendula Belackova & Allison M. Salmon, *Overview of International Literature-Supervised Injection Facilities & Drug Consumption Rooms* Issue 1, 8-18 (Aug. 2017).

³⁴ M-J. S. Milloy, et al., *Estimated Drug Overdose Deaths Averted by North America's First Medically-Supervised Safer Injection Facility*, 3 PLoS One e3351, 4 (2008).

³⁵ Brandon D.L. 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, 1433 (2011); Steven Petrar, et al., *Injection Drug Users' Perceptions Regarding Use of a Medically Supervised Safer Injecting Facility*, 32 *Addictive Behaviors* 1088, 1092 (2007).

(“MSIC”) managed 409 overdoses without a single death.³⁶

By reducing fatal overdoses in the community and moving some of the highest-risk injection drug use from streets and alleys to a facility with medical supervision, OPSs can reduce the burden on law enforcement resources caused by the opioid epidemic. Overdoses, whether fatal or not, require responses from police, EMS, and other first responders; these increasingly common overdose calls prevent and distract personnel from addressing other public safety concerns.

OPSs have been shown to substantially reduce these burdens on law enforcement and first responders by providing medically trained staff within a designated facility to respond to overdoses. For instance, the presence of an OPS in Sydney, Australia significantly reduced the burden on ambulance services in the site’s vicinity.³⁷ By diverting overdoses from the street to a controlled, medically supervised facility, and by allowing for more effective early responses to overdoses, OPSs advance public safety and allow law enforcement agencies to dedicate their resources to other objectives.

Policing people who publicly inject drugs poses burdens beyond the high cost of the immediate response to an overdose. People who inject publicly account for a disproportionate share of police

³⁶ Ingrid Van Beek, *The Sydney Medically Supervised Injecting Centre: Reducing Harm Associated with Heroin Overdose* 14 *Critical Public Health* 391, 395 (2003).

³⁷ See A.M. Salmon, et al., *The Impact of a Supervised Injecting Facility on Ambulance Call-Outs in Sydney, Australia*, 105 *Addiction* 676, 678 (2010).

interactions and criminal prosecutions.³⁸ The result of an arrest-only response is often that medical treatment occurs within an incarcerated setting (if at all). Currently, as in many American communities, Philadelphia's largest provider of medication-assisted drug treatment is its jail.³⁹ By encouraging and increasing substance use treatment services in the community, OPSs help stabilize patients' lives, thereby reducing future negative interactions with law enforcement and first responders, allowing law enforcement to allocate resources elsewhere, and creating a more positive self-help pathway.

Multiple studies have also shown significant additional public health benefits associated with OPSs. These facilities have reduced harmful behaviors, reduced blood-borne virus transmission, reduced infections, increased access to substance use disorder treatment, and connected users to other critical healthcare and social services.⁴⁰ For example, a survey of 1,082 people found that, after visiting the Vancouver OPS, 71 percent indicated they had engaged in less outdoor injecting, 49 percent reported cleaning the injection

³⁸ See, e.g., Federal Bureau of Investigation, *2017 Crime in the United States* Table 29, (2017), <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/tables/table-29> (documenting that the highest number of arrests in the United States in 2017 were for drug abuse violations).

³⁹ Nina Feldman, *Philadelphia Department of Prisons will begin offering buprenorphine to male inmates again*, WHYY (Apr. 1, 2019), <https://whyy.org/articles/philadelphia-department-of-prisons-will-begin-offering-buprenorphine-to-male-inmates-again/>.

⁴⁰ See, e.g., Belackova, *supra* note 33, at 8; Chloe Potier et al., *Supervised Injection Services: What Has Been Demonstrated? A Systematic Literature Review*, 145 *Drug & Alcohol Dependence* 48, 50-61 (2014).

site more frequently, and 37 percent reported reusing syringes less often.⁴¹ These benefits are experienced by individuals with the greatest need for support: people who are “homeless, unsure of how to access clean drug equipment such as needles, ha[ve] overdosed in the past, and tend[] to inject in public spaces.”⁴²

OPSs also serve as critical lifelines to health and social services. One study associated the Vancouver OPS with a 30 percent increase in the use of detoxification services compared to the year before it opened.⁴³ Another found that regular use of the Vancouver OPS and contact with its counselors was “associated with entry into addiction treatment, and enrollment in addiction treatment programs [which were] positively associated with injection cessation.”⁴⁴ OPSs are also a conduit to other critical services such as housing, social work, and mental health treatment.⁴⁵

OPS opponents sometimes contend that opening an OPS will create a so-called “honeypot effect,” drawing drug dealers and attendant crime and public nuisance

⁴¹ See Petrar, *supra* note 35, at 1091.

⁴² Massachusetts Medical Society, *Report of the Task Force on Opioid Therapy and Physician Communication: Establishment of a Pilot Medically Supervised Injection Facility in Massachusetts*, 12 (Apr. 2017).

⁴³ See, e.g., Evan Wood et al., *Rate of Detoxification Service Use and Its Impact Among a Cohort of Supervised Injecting Facility Users*, 102 *Addiction* 916, 918 (2007).

⁴⁴ Kora DeBeck et al., *Injection drug use cessation and use of North America’s first medically supervised safer injecting facility*, 113 *Drug & Alcohol Dependence*, 172, 174-75 (2011).

⁴⁵ See, e.g., Mark W. Tyndall, et al., *Attendance, Drug Use Patterns, and Referrals Made from North America’s First Supervised Injection Facility*, 83 *Drug & Alcohol Dependence*, 193, 197 (2006).

to a neighborhood. The evidence is to the contrary. Communities' experiences with the more than 110 OPSs in operation worldwide demonstrate that OPSs can, in fact, reduce the negative effects of injection drug use and enhance public safety.⁴⁶ In Vancouver, controlled studies documented an abrupt and durable decline in property crimes and violent crimes in the area around the OPS.⁴⁷ A study in Sydney likewise concluded that no local increases in property crimes, drug-related crimes, or loitering could be attributed to the opening of an OPS.⁴⁸ And a 2018 RAND Corporation review of the empirical literature concluded that “[n]o study reported an increase in crime associated with [OPS] operation.”⁴⁹ Notably, OPSs also protect their participants, who are more likely than the general population to be victims of violent and property crimes.⁵⁰

Similarly, a study of the Vancouver OPS found that daily counts of suspected drug dealers in the vicinity

⁴⁶ See RAND Report, *supra* note 4, at 30-31.

⁴⁷ Andrew J. 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 *J. Drug Issues* 36, 43 (2017). See also *Canada v. PHS Community Services Society*, [2011] 3 S.C.R. 134, 189 (Can.) (reaching the same conclusion about the Vancouver OPS).

⁴⁸ Karen Freeman et al., *The impact of the Sydney Medically Supervised Injecting Centre (MSIC) on crime*, 24 *Drug & Alcohol Rev.* 173, 182-184 (2005).

⁴⁹ RAND Report, *supra* note 4, at 34.

⁵⁰ See, e.g., Nadia Fairbairn et al., *Seeking refuge from violence in street-based drug scenes: Women's experiences in North America's first supervised injection facility*, 67 *Soc. Sci. & Med.* 817, 817 (2008).

did not increase after the OPS was opened.⁵¹ The reason is simple: OPSs tend to serve people in the immediate neighborhood, rather than drawing in people from farther away. Over 70 percent of frequent users of the Vancouver OPS reported living within four blocks of the facility.⁵² And while overdose mortality dropped approximately 35 percent in the area within 500 meters of the facility following its opening, there were no significant changes in overdose mortality further away.⁵³ This concentrated benefit suggests that the OPS was primarily serving people already in that area, rather than attracting people from elsewhere. Because an OPS largely serves its immediate neighborhood, rather than drawing in new users, there is no additional demand drawing drug dealers into the area. And an OPS's presence need not prevent law enforcement from going after dealers and traffickers as they always have.

OPSs also decrease public nuisances associated with large-scale public injection in public streets, alleys, parks, and restrooms.⁵⁴ The prevalence of discarded needles and other injection-related litter tends to drop near an OPS, since an OPS moves consumption inside and provides safe disposal facilities.⁵⁵ Studies have

⁵¹ 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. Assoc. J.*, 731, 733 (2004).

⁵² Marshall, *supra* note 35, at 1431.

⁵³ *Id.* at 1433.

⁵⁴ Wood, *supra* note 51, at 732.

⁵⁵ MSIC (Medically Supervised Injection Centre) Evaluation Committee, *Final Report of the Evaluation of the Sydney Medically Supervised Injection Centre* 116-125 (2003), https://www.drugsandalcohol.ie/5706/1/MSIC_final_evaluation_report.pdf.

also found that opening an OPS does not increase drug-related loitering or create open-air drug scenes in the surrounding area.⁵⁶

B. Overdose Prevention Sites Promote Trust In The Justice System, Thus Enhancing Public Safety

Amici understand that developing and retaining the trust of the communities they serve is vital to enforcing the law and protecting public safety. Police and prosecutors can neither prevent nor solve crimes without cooperation and trust from the people they serve. But community trust requires that people view the criminal justice system and law enforcement as legitimate. As the nationwide protests against systemic racism and police brutality underscore, law enforcement's legitimacy depends on valuing the dignity of all human life. Adopting a harm reduction approach—and treating substance use disorder as the public health issue it is—fortifies confidence in law enforcement's legitimacy. Harm reduction enhances legitimacy by embracing proactive and supportive public health approaches that save lives, stabilizing communities, and disrupting the cycles of trauma that perpetuate crime.

Conversely, a punitive approach to managing substance use disorder breeds distrust, amplifies drug use harms, and creates unnecessary risk from additional police interactions. Excessive policing of people who use drugs creates frequent, often hostile contacts with police, disproportionately affecting communities of

⁵⁶ See Laura Huey, *What is Known About the Impacts of Supervised Injection Sites on Community Safety and Wellbeing? A Systematic Review*, 48 Soc. Publications 11-12 (2019) (collecting studies).

color.⁵⁷ Repeated searches, arrests, prosecutions, and punishment in response to a public health concern exacerbate tensions between police and the community. Such interactions also spur police use-of-force incidents, further risking the safety of all involved. Treating overdoses as crime scenes also alienates community members and dissuades people from seeking help.⁵⁸ Indeed, people witnessing an overdose often delay calling emergency services due to fear and distrust of the police.⁵⁹ This trust deficit costs lives—even a few minutes’ delay can turn an overdose into a fatality.

Aggressive enforcement can also deter people who use drugs from reporting crimes committed against them. People who use drugs are more frequently victims of crime,⁶⁰ but they are unlikely to report those crimes unless there is a relationship of trust with law enforcement. This dynamic can lead to increased lawlessness in areas where drug use is common, as crimes

⁵⁷ See Jamie Fellner, *Race, Drugs, and Law Enforcement in the United States*, 20 *Stan. Law & Pol’y Rev.* 257, 269-74 (2009), <https://www-cdn.law.stanford.edu/wp-content/uploads/2018/03/fellner.pdf>.

⁵⁸ See Leo Beletsky, *America’s Favorite Antidote: Drug-Induced Homicide in the Age of the Overdose Crisis*, 4 *Utah L. Rev.* 833, 862-863 (2019).

⁵⁹ See Melissa Tracy et al., *Circumstances of Witnessed Drug Overdose in New York City: Implications for Intervention*, 79 *Drug & Alcohol Dependence* 181, 183-185 (2005) (“The most commonly cited reason for delaying or failing to get help was fear of police response (52.2%). Among those who called for medical help at the last witnessed overdose, 21.2% delayed before calling for help; the most frequently reported reason for the delay was fear of police response (66.3%).”).

⁶⁰ See Karen McElrath et al., *Crime Victimization Among Injection Drug Users*, 27 *J. of Drug Issues* 771, 779 (1997).

against vulnerable people go unreported. By contrast, harm reduction programs, including OPSs, reduce crime by stabilizing lives. For example, Seattle's LEAD program significantly reduced re-arrest rates for participants, as compared to people subject to standard criminal prosecution.⁶¹

Criminal justice leaders in cities with OPSs recognize the stabilizing effects an OPS can bring to a drug-ridden community. This understanding is critical, because a harm reduction facility cannot be effective unless the police allow people to come and go without fear of arrest. Indeed, local police tend to quickly become a major source of referrals for OPS participants after the facilities open.⁶² These referrals indicate that local law enforcement can come to trust OPSs as a constructive part of the collective effort to protect the community.

Supportive, non-punitive interactions between law enforcement officers and people who use drugs can make the entire community safer. Indeed, numerous law enforcement groups have endorsed harm reduction policies, noting that “[p]olice are at the front-line of this ‘war’, and many individuals around the world are growing weary of fighting a ‘war’ that has so many negative outcomes, especially poor health outcomes, for so many of those involved. Police have growing

⁶¹ See Susan E. Collins et al., *LEAD Program Evaluation: Recidivism Report* (March 27, 2015), http://static1.1.sqspcdn.com/static/f/1185392/26121870/1428513375150/LEAD_EVALUATION_4-7-15.pdf.

⁶² See Evan Wood et al., *Impact of a Medically Supervised Safer Injecting Facility on Drug Dealing and Other Drug-Related Crime*, 13 *Substance Abuse Treatment, Prevention, and Policy* 1, 1, 3 (2006).

concerns about a system that pits them against everyday citizens.”⁶³

The public likewise understands the need to embrace these strategies. Recent polling indicates that 60 percent of the American public (including 53 percent of Republicans) support OPSs as a tool to reduce fatal opioid overdoses.⁶⁴ This reflects Americans’ quintessentially pragmatic understanding that extraordinary public health problems demand proven public health responses.

Distorting federal drug laws to prohibit an OPS or to prosecute its sponsors would further undermine trust in the justice system and faith in the fair and sensible application of our drug laws. Interpreting federal criminal law to bar empirically validated harm reduction measures would make no one safer; it would only impede cooperation between law enforcement and the communities they serve.

* * *

OPSs protect their communities from harm and serve those who need support. As the district court ruled, and as Judge Roth wrote in dissent in the Third Circuit, the Controlled Substances Act does not criminalize public health facilities. Amici therefore

⁶³ Centre for Law Enforcement & Public Health, *Police Statement of Support for Drug Policy Reform* (Feb. 2019), https://cleph.com.au/application/files/4815/4957/9983/Statement_of_Support_for_Drug_Policy_Reform_Feb_2019.pdf. See also, e.g., *PHS Community Services Society*, 3 S.C.R. at 151 (“The Vancouver police support Insite.”).

⁶⁴ Sterling Johnson & Leo Beletsky, *The Role of Overdose Prevention Sites in Coronavirus Response*, Justice Collaborative Inst. (May 7, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3607946.

submit that Philadelphia and other American communities should be able to gain the proven benefits of an OPS to save lives, improve public health, and enhance community trust and public safety. This was evident at the time of the district court's thoughtful decision; the overlay of a global health crisis and an intensified distrust of law enforcement make it all the more apparent.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX

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