

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
SAFEHOUSE, a Pennsylvania nonprofit)
corporation;)
)
JOSE BENITEZ, as President and)
Treasurer of Safehouse,)
)
Defendants.)

Civil Action No. 19-0519

SAFEHOUSE, a Pennsylvania nonprofit)
corporation,)
)
Counterclaim Plaintiff,)
)
v.)
)
UNITED STATES OF AMERICA,)
)
Counterclaim Defendant,)
)
and)
)
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,)
)
Third-Party Defendants.)

BRIEF OF AMICI CURIAE HARROWGATE CIVIC ASSOCIATION, BRIDESBURG CIVIC ASSOCIATION, JUNIATA PARK CIVIC ASSOCIATION, KENSINGTON INDEPENDENT CIVIC ASSOCIATION, PORT RICHMOND ON PATROL AND CIVIC, SOUTH PORT RICHMOND CIVIC ASSOCIATION, AND FRATERNAL ORDER OF POLICE, LODGE 5, IN SUPPORT OF PLAINTIFF UNITED STATES OF AMERICA’S MOTION FOR JUDGMENT ON THE PLEADINGS

Amici are civic associations representing the North Philadelphia neighborhoods most likely to be affected by the operation of an illegal drug consumption site and the police officers sworn to protect them. For *Amici*, the impact of the illegal drug crisis in Philadelphia is not theoretical—it is deeply personal. Every day, *Amici* suffer the consequences of the drug epidemic in their neighborhoods. They witness shootings in the streets as rival drug dealers battle over territory. They deal with physical violence against innocent citizens so addicts can grab a dollar here or five there. They frequently find illegal drug users passed out in the doorways of their homes and businesses. The property that they have worked and saved to buy is stolen from them—not only in the dark of night, but even in broad daylight. Their car windows are broken to snatch anything of value from their vehicles. They must plan out divergent routes for their children to walk to school to avoid the drug corners on their way. These are the horrid consequences that Congress intended to ameliorate when it outlawed the maintenance of *any place* for the use of illegal drugs. And they are the consequences that Safehouse’s proposal would exacerbate and entrench.

Indeed, Congress enacted 21 U.S.C. § 856(a), and subsequent amendments expanding its scope, precisely because it recognized that facilities that concentrate illegal drug use frequently represent the death knell for communities, especially those already struggling with the impact of drug abuse. Make no mistake, Safehouse does not deny that it intends to provide a place for users to consume illegal drugs even though that is precisely what the law prohibits. But Congress categorically prohibited the operation of *any* facility for illegal drug use. The statute’s plain text and its legislative history make clear that Congress was not merely targeting manufacturing operations or for-profit enterprises, as Safehouse suggests. Indeed, Congress banned all such facilities because it was intent on preventing the destructive consequences that inevitably accompany the concentration of illegal drug use in affected communities. In the words of the bill’s

sponsor: “We have this bill on the floor today because as a nation of hometowns, neighborhoods and families we have stood up and said, ‘enough.’” Hence, Congress deemed it essential to eliminate “places where users congregate to purchase and *use*” drugs in order that “our streets . . . not become toxic waste dumps of the drug trade.”

In its desire to create a haven for the use of illegal drugs, Safehouse asks this Court to turn a blind eye to the serious concerns that drove Congress’ legislative judgment as embodied in Section 856(a). While *Amici* wholeheartedly share Safehouse’s desire to tackle the drug epidemic in our City, *Amici* do not have the luxury of ignoring the consequences that illegal drug consumption sites would unleash on their communities. Common sense, *Amici*’s first-hand experience, and decades of research confirm that consumption sites would attract more addicts and additional drug dealers to service those users, lead to more crime, reduce public safety, and contribute to the potential destruction of the communities where they are located. Unsurprisingly, Safehouse’s most powerful proponents have shown no interest in locating the sites anywhere close to their own communities. Moreover, the limited, flawed studies that Safehouse relies upon neither disprove these inevitable consequences on affected neighborhoods nor even come close to proving that the preponderance of the people they seek to help would, over the long term, benefit from the proliferation of consumption sites. In fact, if anything, they confirm that Safehouse’s dangerous social experiment would be a disaster. And, even if Safehouse were correct about the policy merits of its proposed experiment (which it is not), the rule of law simply does not permit the legislative vigilantism that Safehouse urges.

At bottom, this case presents the question whether a private group can violate a federal statute enacted to protect communities from the scourge of illegal drug use. Safehouse claims it should be above the law because it believes its good intentions with respect to one group—those

who suffer from addiction—permit it to ignore other innocent victims of the illegal drug trade. But, Safehouse is fundamentally wrong to suggest that it alone can decide what the law should be and how it should be applied. That is a question left to the People’s representatives in Congress, who are tasked with considering and balancing all of the competing interests at play. Here, Congress deliberately balanced those interests and then decided to prohibit the operation of any facility whose existence serves to concentrate the use of illegal drugs in a specific place. And every time that Congress has amended the law on this issue it has *expanded* its reach. There is thus no “gap” in the law. It decisively prohibits what Safehouse proposes—and it does so to protect neighborhoods from the fallout of facilities where the use of illegal drugs is concentrated.

Amici share Safehouse’s goal of reducing drug abuse and preventing overdose deaths. The residents represented by the *Amici* Civic Associations regularly devote their time and resources to help friends, neighbors, and community members who suffer from drug addiction. And the officers represented by the Fraternal Order of Police, Lodge 5 put their lives at risk every day to protect these communities from the dangers associated with the illegal drug crisis. They also help those afflicted by addiction by carrying and administering Narcan to prevent overdose fatalities. The police, who are experts in this area, know what Congress knew. They know from bitter experience that concentrating drug use in a place like the one that Safehouse proposes will bring more addicts, more dealers, and more violent crime to neighborhoods that are already suffering.

In the end, *Amici* ask this Court for nothing more than that the law be enforced as written. They do so in order that their communities can have a fighting chance to save their way of life. It hardly seems too much to ask.

INTEREST OF *AMICI*

The Harrowgate Civic Association (“HCA”) was formed in 2014 by Shannon Farrell, a native and 41-year resident of Northeast Philadelphia’s Harrowgate neighborhood, to advocate for the citizens of the area. Harrowgate, which borders Kensington and Port Richmond, is in the epicenter of Philadelphia’s opioid crisis. The HCA wishes to give a voice to the community members who suffer the effects of the opioid crisis every day, and whose quality of life will be further degraded, perhaps irreparably, by the opening of a consumption site.

The Bridesburg Civic Association (“BCA”) was founded in the 1940s as one of Philadelphia’s first registered community organizations (“RCO”). Along with the other RCOs that have joined this brief, BCA strongly opposes consumption sites.

The Juniata Park Civic Association (“JPCA”), an RCO founded in 1954, advocates for the goodwill and safety of the residents of the Juniata community. JPCA strongly opposes Safehouse’s proposed consumption site, which it believes will send many communities further into despair, especially by allowing open illegal drug use. Community members will see their quality of life evaporate even further, businesses will begin to withdraw from the neighborhoods, and residents who already live in fear for themselves will only suffer more. JPCA thus joins its fellow RCOs and community organizations to support the United States’ effort to block Safehouse’s proposed consumption site.

The Kensington Independent Civic Association (“KICA”) was established over 50 years ago. As an RCO that represents the Kensington area, it has learned that Safehouse plans to build a consumption site next to its boundaries. It believes that allowing Safehouse to open a consumption site in Philadelphia would do an injustice to law-abiding citizens. And it fears that

Safehouse's encouragement of open illegal drug use will make it impossible for Kensington parents to teach their children to stay in school, get a job, or follow the rules.

Port Richmond On Patrol And Civic ("PROPAC") is an RCO in the City of Philadelphia. PROPAC's volunteer members participate in many initiatives to improve their community. Along with the other RCOs that have joined this brief, PROPAC strongly opposes consumption sites.

The South Port Richmond Civic Association ("SOPO"), founded in 2018, is an RCO in the City of Philadelphia which advocates for the residents in its community. SOPO's founding members and board have been involved in the community for years and were very active in other RCOs. SOPO's community members have voiced their overwhelming opposition to the consumption sites at numerous meetings.

The Fraternal Order of Police, Lodge 5, ("FOP") represents approximately 14,000 active and retired officers of the Philadelphia Police and Sheriff's Department. FOP works vigilantly and vigorously to protect, promote and improve the working conditions, legal rights, salary compensation, pensions and benefits of Philadelphia Police Officers and Deputy Sheriffs. FOP members devote their lives to protecting those who live in and visit the City of Philadelphia. They work each day to get drug dealers and users off of the streets and to protect the City's neighborhoods from the scourge of the illegal drug trade. FOP, on behalf of its members, wishes to ensure that those sworn to protect Philadelphia's neighborhoods are not hamstrung in their ability to effectively serve and protect all the citizens of our neighborhoods.

ARGUMENT

I. Illegal Drug Consumption Sites Would Wreak Further Havoc On Neighborhoods That Are Already Suffering.

In its effort to reduce overdose deaths among drug users, Safehouse's proposal to open illegal drug consumption sites would only further damage the communities that are already under

siege from the City's illegal drug crisis. *Amici* live and work in the communities where Safehouse has proposed opening consumption sites, and they have experienced first-hand the consequences that naturally result from the concentration of illegal drug use in their neighborhoods. As drug use floods into a community, so do dealers looking to prey on those who suffer from addiction. As a community's corners become littered with dealers, each seeking to protect their territory, violence inevitably ensues. Law abiding citizens walking to or from work and young children traveling to school face the risk of getting caught in the violence, and become targets for the dealers looking to increase their customer base. Meanwhile, some of those suffering from addiction turn to crime to gather the means to obtain illegal drugs. The community's safety declines as police struggle to deal with this confluence of illegal activity, violence, and drug-induced behavior. And it is not only the immediate and direct victims of drug violence who suffer. All those living and working in the impacted neighborhoods are traumatized by the violence that pervades their community.¹

First and foremost, residents fear for the safety of their children. For example, local leaders have warned that a "safe harbor for drug users" will encourage more young men to sell drugs and could lead them to prison.² At community meetings addressing the proposed consumption sites, local residents have passionately protested that they are "tired of our kids being exposed to the same environment over and over again."³ Others worry that a consumption site will entrench their community's drug problem. In its narrow focus on reducing immediate drug overdoses, no matter how laudable that goal may seem, Safehouse's proposal to place consumption sites in these already

¹ See Violence Policy Center, *The Relationship Between Community Violence and Trauma* 3 (2017).

² Darryl C. Murphy, *What 'safe-injection sites' sound like to people on the front lines of the city's drug wars*, Plan Philly (Feb. 12, 2018), available at <https://bit.ly/2Jauor9>.

³ Joel Wolfram, *Kensington residents passionately debate supervised injection facility*, WHYY (Mar. 28, 2018), available at <https://bit.ly/2Hv9uA9>.

suffering areas ignores the very dangers that Congress decided such sites pose to others. And it is the protection of existing law that *Amici* seek by their participation in this action.

a. The Residents of These Neighborhoods Justifiably Fear That Safehouse’s Consumption Site Will Further Devastate Their Communities.

Consumption sites pose precisely the risks that Congress sought by statute to prevent. The illegal drug crisis has already damaged *Amici*’s neighborhoods. Due to the massive influx of drug dealers and drug users, Kensington-area residents already are forced to witness open-air drug use and drug sales,⁴ to walk through city blocks littered with used syringes and trash,⁵ and to maneuver around “streets [that] have become toilets.”⁶ Residents fear to leave their homes due to the “violence and shootings” spawned by the area’s drug problem.⁷ And, in just one year, from 2017 to 2018, the number of people living on Kensington’s streets has skyrocketed from 271 to 703—“a level unlike anything city officials have ever seen before.”⁸

Amici also know that, if consumption sites are permitted to exist, the police necessarily will be hamstrung in their efforts to control the drug trade. They inevitably would be forced to stop patrolling and arresting users and dealers who possess or use illegal drugs near the site. Indeed, that is already happening in the countries that allow consumption sites.⁹ And

⁴ Aubrey Whelan, *Eight months after Kensington’s disaster declaration, progress is tempered by the realities of the opioid crisis*, Philadelphia Inquirer (June 27, 2019), available at <https://bit.ly/2XhW5oD>.

⁵ ‘You’re Going To Get Hit By A Syringe’: Hundreds Take To Kensington To Make Community Safer, NBC News (April 6, 2016), available at <https://cbsloc.al/2Xb8hTw>.

⁶ Jon Kamp, *Wracked by Opioid Crisis, Philadelphia Braces for Tent-Camp Closures*, Wall Street Journal (May 28, 2018), available at <https://on.wsj.com/2IO8MR5>.

⁷ Hayden Mitman, *In Philly neighborhood with drug problem, children play in the streets again*, Philly Voice (July 20, 2016), available at <https://bit.ly/2Lmv8cq>.

⁸ Aubrey Whelan, *Philadelphia’s Kensington ‘under siege’ as opioid-linked homelessness soars*, Philadelphia Inquirer (Sept. 18, 2018), available at <https://bit.ly/2J1PjLj>.

⁹ See Camilla Theakstone, *Drug dealers are flocking to Melbourne’s controversial injecting room to sell heroin – and police are powerless to stop them*, Daily Mail (Apr. 14, 2019).

Philadelphia's District Attorney has already pledged not to prosecute illegal drug use at consumption sites.¹⁰ How could it be otherwise? If the police engage in strenuous enforcement efforts, users will avoid the consumption site and the entire project will be rendered a nullity. As a result, Safehouse's proposal not only would create a facility in the neighborhood that, contrary to the purpose of Section 856(a), concentrates the use of illegal drugs, but also would create a zone in which dealers can, without fear of consequence, ply their trade.

Therefore, perhaps unsurprisingly, even those whose careers and lives are devoted to saving users believe that the consumption site concept is dangerously misguided. For example, the leader of a local substance abuse recovery program has warned that consumption sites would "give[] an active drug addict the green light to say it's ok to get high," adding that "[t]here's no way in the world that anything can come out of this but chaos and confusion."¹¹ And a local resident who is in recovery was "horrified" by the idea because "what it says is you're sanctifying using."¹²

It is common sense that concentrating illegal drug use will naturally increase drug dealing in the area, which will inevitably lead to greater violence. It is well known that drug dealers fight for territory, and it is only logical that they will fight even more intensely for territory near the consumption sites because of its potential to increase their profits.¹³ While Safehouse's proponents cite academic studies suggesting that crime did not increase near Canadian and Australian

¹⁰ See Cherri Gregg, *Krasner: Philly DA's Office Won't Prosecute Those Using Safe Injection Sites*, CBS Philly (Feb. 14, 2018), available at <https://cbsloc.al/2XDOZ9B>.

¹¹ Murphy, *What 'safe-injection sites' sound like*.

¹² Elana Gordon, *Talk of Philly safe-injection site heats up at community meeting*, WHYY (Feb. 11, 2018), available at <https://bit.ly/2K5JRrJ>.

¹³ Kate Kilpatrick, *Philadelphia's plan for opioid safe injection site splits opinion*, The Guardian (July 18, 2018), available at <https://bit.ly/2AIBTax>.

facilities, residents in neighborhoods that Safehouse is targeting rely on their first-hand experience that “in North Philly, in Kensington, those drug dealers are violent.”¹⁴ Especially given that Philadelphia’s drug trade *already* generates significant gun violence¹⁵—and that Australia and Canada have stricter gun control laws and far lower gun homicide rates¹⁶—local residents are correct to question not only the validity of those studies, but also their relevance.

These community members are not blind to the devastating impact of the drug epidemic on the lives of individual users. Indeed, families and friends number among its foremost victims.¹⁷ Nor are they indifferent to it. Some of them, like Darrell Chapman, have devoted their lives to helping drug addicts. Others, like Shannon Farrell, are simply conscientious citizens. “We feed [the drug addicts], we clothe them, we have taken Narcan trainings,” Farrell said at a recent community meeting.¹⁸ “We’ve done everything up until now that we’ve been asked to by the city, by the advocates. If we see somebody bothering them and disrespecting [the drug addicts], we stop them. We don’t let them get hurt—even though they’re not very kind to us.”¹⁹

¹⁴ Kilpatrick, *Philadelphia’s plan for opioid safe injection site splits opinion*.

¹⁵ See Mitman, *In Philly neighborhood with drug problem* (describing Kensington residents’ fears of the “violence and shootings that follow in [the] wake” of the neighborhood’s “drug activity”); Brian X. McCrone and Dan Stamm, *Drug-Related Slayings Blamed for 10-Year High in Philly Homicides*, NBC Philadelphia (Dec. 18, 2018), available at <https://bit.ly/2xigYR9> (noting that “police Commissioner Richard Ross has come to terms with the link between slayings and the opioid epidemic”).

¹⁶ Jonathan Masters, *How do U.S. gun laws compare to other countries?*, PBS Newshour (June 13, 2016), available at <https://to.pbs.org/2swjvHT>.

¹⁷ See Sara Hoover, *New homes for those struggling with addiction set for heart of Philly opioid crisis*, WHYY (Jan. 15, 2019), available at shorturl.at/ikEiY (describing the Kensington neighborhood of North Philadelphia as “the epicenter of the opioid crisis”).

¹⁸ Facebook Video: Kensington Community Meeting, Facebook (April 1, 2019), available at <https://bit.ly/2EruYw9>.

¹⁹ *Id.*

But they draw the line at consumption sites—and for good reason. “This is the one time . . . we’re asking for our community to have a say—for our kids,” Farrell said.²⁰ “It’s not because we don’t care about [drug addicts]. We’re choosing our children this time . . . We’ve done everything. This is the one time our kids come first.”²¹ What *Amici* are saying about the risks posed to the children of the neighborhood are precisely the risks that Congress sought to prevent by specifically targeting those who “put[] kids at risk” by operating facilities for illegal drug use.²² In its focus on the drug users who might utilize a consumption site, Safehouse overlooks these other lives. Perhaps it is understandable that Safehouse ignores these other lives since its mission is not to weigh the interests and needs of all those in the crosshairs of the drug epidemic. Rather, that is the duty of the Congress. And, Congress, while always free to revisit the judgment it has made, has made its determination. That determination heard the voices of our communities and outlawed the use of property for illegal drug consumption—which is what Safehouse proposes here.

b. Consumption Sites Have Spawned Public Disorder In Countries That Permit Them.

In an attempt to distract from the legislative judgment set forth in 21 U.S.C. § 856(a), Safehouse attempts to take the Court on a journey to other nations whose drug, gun, and neighborhood situations are different than the ones that *Amici* are living with today. Yet, the key lesson learned from even those foreign experiences seems to be, unsurprisingly, that consumption sites invite crime. Melbourne’s consumption site, according to an Australian police union chief, has created a “one-stop shop” for crime in the area by attracting illegal drug buyers who also “trade

²⁰ *Id.*

²¹ *Id.*

²² *See* Defendant Safehouse’s Answer (“Answer”), ECF 3 at 29–30.

in the crime that derives money.”²³ Additionally, Melbourne police officers report that increased theft and property crime has followed the influx of drug users to the consumption site area.²⁴ Likewise, Calgary police officers have warned that the province’s consumption site attracts drug dealers to the area, and residents complain about rising violent crime near the site.²⁵ One Calgary resident compared living across the street from the site—and enduring daily break-ins—to being “at war.”²⁶ And near Toronto’s consumption site, residents and workers lament that the site lures in drug users who assault them and damage their property.²⁷

Consumption sites also encourage open illegal drug use outside their walls. Near the Calgary consumption site, a bookstore owner reports that he and his staff are “not equipped” to deal with the countless drug users who enter his store to consume drugs.²⁸ Near the Toronto consumption site, residents report seeing more used needles in the street and more drug dealers selling their wares “in plain sight.”²⁹ And in Melbourne, someone who travelled to the city’s consumption site to buy drugs and inject them in a nearby parking lot put it best: “It’s a free-for-all.”³⁰

²³ Remy Varga, *Melbourne injecting centre a ‘one stop shop for crime’, says police union boss*, The Australian (May 22, 2019), available at <https://bit.ly/2VUne0c>.

²⁴ *Id.*

²⁵ Ryan Rumbolt, *Beltline businesses near safe injection site frustrated with rise of violent crimes*, Calgary Herald (Dec. 16, 2018), available at <https://bit.ly/2JZG8vI>.

²⁶ Meghan Potkins, *We’re basically at war’: Sheldon Chumir’s zone of overdoses, needles and fear*, Calgary Herald (Feb. 26, 2019), available at <https://bit.ly/2Hv8k7L>.

²⁷ See Samantha Beattie, *Do supervised injection sites bring crime and disorder? Advocates and residents disagree*, The Star (Aug. 16, 2018), available at <https://bit.ly/2MS13iF>.

²⁸ Potkins, *‘Nobody is protecting us.’*

²⁹ Beattie, *Do supervised injection sites bring crime and disorder?*

³⁰ Paul Sakkal, *Police powerless to stop dealers exploiting drug loophole around injecting room*, The Age (Apr. 11, 2019), available at <https://bit.ly/2Ulus6l>.

As a result, community life is suffering. Consider the effects of Calgary’s consumption site: a grandmother and her grandchildren now “walk in fear” thanks to increased drug use on the sidewalks; fewer children play in the park; and local businesses have shut down.³¹ In Melbourne, children who live near the city’s consumption site no longer walk to school.³² And in Toronto, “kids are afraid to walk to their local park, people are afraid to walk on Sundays through their neighbourhood or to invite friends and families over for a Saturday barbecue.”³³

These results are as predictable as they are destructive to the communities that house the sites. Rather than turning a blind eye to the pertinent statutory provisions in order to sanction an illegitimate and dangerous social experiment in the already suffering neighborhoods of Philadelphia, this Court should enforce the law and enjoin Safehouse from opening its planned consumption sites. To protect the countless communities it represents, Congress prohibited making *any place* available for illegal drug use. Regardless of Safehouse’s motivation, Safehouse has no license to disregard Congress’ deliberative choice and the impacted communities’ opposition simply because it believes that it knows better.

II. Existing Studies On Consumption Sites Undermine Safehouse’s Proposal.

In an effort to evade the law and obscure the commonsense, experience-based concerns that *Amici* have raised, which other countries’ experiences with consumption sites have confirmed, Safehouse relies on a handful of research studies. But those studies are methodologically flawed and fail to prove the anti-common-sense proposition that the concentration of illegal drug use

³¹ Rick Bell, *Welcome to Calgary’s safe injection horror show*, Calgary Sun (Feb. 14, 2019), available at <https://bit.ly/2Eqw6Qm>.

³² Luke Henrique-Gomes, *‘It’s saving lives’: community rallies to support Melbourne’s drug-injecting room*, The Guardian (Sept. 15, 2018), available at <https://bit.ly/30zzbal>.

³³ Samantha Beattie, *Don’t open more drug injection sites here, downtown city councillor says*, The Star (Aug. 14, 2018), available at <https://bit.ly/2VTiibY>.

somehow makes communities safer. If anything, the studies suggest that consumption sites *enable* greater drug abuse, and no reliable study actually shows that they reduce overdose deaths.

By facilitating drug use, consumption sites enable continued and long-term drug use. In doing so, they put the drug addicts that they intend to help at serious risk for permanent physical and psychological damage. The data from Toronto and Vancouver shows that consumption sites do *not* reduce illegal drug use—not the total number of drug users,³⁴ not communities’ rates of drug use,³⁵ and not individuals’ rates of drug use.³⁶ And they do not promote recovery: only a small percentage of participants receive *referrals* to treatment,³⁷ a still smaller percentage actually *enter* treatment,³⁸ and no study shows that they *stay* in treatment long term.³⁹ Consumption sites

³⁴ See Chloé Potier, *Supervised injection services: What has been demonstrated? A systematic literature review* A systematic literature review, 145 *Drug & Alcohol Dependence* 48, 63 (2014) (reporting that Vancouver’s consumption site did not reduce the number of drug users who injected drugs). While the Potier report also reported a separate finding that 23% of Vancouver consumption site participants stopped *injecting* drugs, that study did not find that they stopped *using drugs altogether*. *Id.* Further, that study expressly conceded that “the observational nature of our study precludes inferences regarding causation.” Kora DeBeck et. al, *Injection drug use cessation and use of North America’s first medically supervised safer injecting facility*, 113 *Drug and Alcohol Dependence*, 172, 174 (2011).

³⁵ See *Vancouver’s INSITE Service and Other Supervised Injection Sites: What Has Been Learned from Research?* (2008), available at shorturl.at/gPVW7 (reporting that “there is no evidence that [consumption sites] influence rates of drug use in the community”).

³⁶ See Thomas Kerr et al., *Impact of a medically supervised safer injection facility on community drug use patterns: a before and after study* 332 *BMJ* 220, 221 (2006) (finding that the Vancouver consumption site did not affect the rates at which participants stopped binging drugs or smoking crack cocaine).

³⁷ See, e.g., KPMG, *NSW Health Further evaluation of the Medically Supervised Injecting Centre during its extended Trial period (2007–2011)* 23 (2010) (showing that Sydney’s consumption site referred only 4.6 of every 1000 participants to drug treatment).

³⁸ See, e.g., Olga Khazan, *Why Can’t Addicts Just Quit?*, *The Atlantic* (Nov. 13, 2017), available at <https://bit.ly/2ATISEL> (reporting that only 10% of British Columbia consumption site participants enter treatment).

³⁹ While several studies report higher treatment entry rates, they either do not make causal arguments or fail to evaluate long-term outcomes. See DeBeck at 174 (reporting higher entry rates but cautioning that their study “precludes inferences regarding causation”);

thus provide an undisturbed environment for doing illegal drugs, without any empirical basis to believe that the user group at risk, as a whole, is actually benefitted rather than harmed by the existence of these sites.

Moreover, by facilitating participants' drug consumption, consumption sites increase those participants' risk of suffering permanent damage from long-term drug use. It is well established that the repeated use of illegal drugs changes users' brain structure, "compromising brain function and driving chronic misuse."⁴⁰ And, because long-term use can destroy the brain's white matter, distorting a user's "decision-making abilities, [] ability to regulate behavior, and responses to stressful situations,"⁴¹ the prolonged use of those drugs increases, rather than decreases, the likelihood of continued use and fatal overdoses.⁴²

The evidence does not even show that Safehouse will achieve its stated purpose of reducing overdose deaths.⁴³ The first study that Safehouse cites as support—a 2018 RAND Corporation report that surveyed prior studies on consumption sites (the "RAND report")⁴⁴—actually undermines Safehouse's case. While the report acknowledged that these prior studies "report positive findings," it concluded that the studies should not be relied upon because the

Evan Wood et al., *Rate of detoxification service use and its impact among a cohort of supervised injecting facility users*, Society for the Study of Addiction, (2007) (studying consumption site participants only from December 2003 to June 2005).

⁴⁰ U.S. Department of Health and Human Services, Office of the Surgeon General, *Facing Addiction in America: The Surgeon General's Spotlight on Opioids* 12 (2018).

⁴¹ National Institute on Drug Abuse, *What are the long-term effects of heroin use?* (2018), available at shorturl.at/aijwE.

⁴² See CDC, *Prescription Opioids: What You Need to Know*, (May 9, 2016), available at <https://bit.ly/2Ivdez1>.

⁴³ See Answer at 2–3.

⁴⁴ See Answer at 3 n.5.

pertinent data was “limited in quality and location.”⁴⁵ In fact, the report actually offered multiple reasons why these studies should be ignored: (1) they generally used methods that could not “teas[e] out the effects of [consumption sites] on individual or population-level outcomes”;⁴⁶ (2) the “quasi-experimental” studies on these sites mostly compared the areas around consumption sites to “the whole city or even the entire state”—not to “reasonably similar” areas;⁴⁷ and (3) the mathematical modeling studies on these sites relied on flawed models, produced “implausible results,” or failed to establish that these sites independently cause good outcomes.⁴⁸ Thus, the RAND report affirmatively contradicts Safehouse’s assertion that existing empirical data supports their argument.⁴⁹

Likewise, the study that Safehouse relies on to predict that its consumption site will reduce overdose deaths—a 2017 literature review by Philadelphia-based researchers (the “Larson study”)⁵⁰—undermines its case. First, the report relies upon the flawed research debunked by the RAND report.⁵¹ It then borrows the research method of a prior study to predict that a North

⁴⁵ Kilmer et al., RAND Corp., *Considering Heroin-Assisted Treatment and Supervised Drug Consumption Sites in the United States*, 31 (2018).

⁴⁶ *Id.* at 32.

⁴⁷ *Id.* at 33–34.

⁴⁸ *Id.* at 35–38.

⁴⁹ The second study that Safehouse cites—a 2014 study that predates the RAND report (the “Potier study”)—reviewed the same research and reported the same positive findings but did not address—or even acknowledge—the flaws that the RAND report identified. *See generally* Potier et al., *Supervised injection services*.

⁵⁰ *See* Answer at 19.

⁵¹ The Larson study also identifies four *different* flaws of the existing research on consumption sites than those identified by the Kilmer study. Larson et al., *Supervised Consumption Facilities* 15 (noting, among other things, that these studies mostly rely on data from “only one” consumption site in Vancouver, limiting their applicability to other cities and that they do not consider how residents of American cities might be “more vulnerable . . . to the harms from substance abuse”).

Philadelphia consumption site would reduce overdose deaths by 30 percent.⁵² But, apparently in pursuit of its desired conclusion, the Larson study ignored the determination reached by the architects of that research method: that it was “impossible to declare with certainty” that the consumption site it studied had actually reduced overdose deaths.⁵³ Thus, the Larson study on its face represents a troubling example of what Safehouse is attempting to pass off as definitive “science.” Moreover, the Larson study itself admits that “it is difficult to disentangle the full impact of [consumption sites] on relevant harm-reduction outcomes.”⁵⁴

Safehouse’s central justification for opening a consumption site—that it will save lives by reducing overdose deaths—is highly questionable. And the bottom line is that it cannot serve as a basis for ignoring Congress’s decision to ban the activity that Safehouse now seeks to undertake.

* * *

In the end, Safehouse fails to consider whether the benefits of overdose prevention outweigh the risks posed to community safety and policing. Nor does it address whether the deaths from overdoses as a result of prolonged drug use exceed the short-term prevention of overdoses at consumption sites, or whether the lives effectively lost through physical and mental degradation caused by long-term drug use exceed the short-term gain of preventing some unspecified number of overdoses. Thus, Safehouse has failed to answer the basic question of whether consumption sites do more harm than good, even for the very people they aim to help. And Safehouse makes no effort whatsoever to deal with the impact of its proposal on the communities and people that

⁵² *Id.* at 19–20.

⁵³ See M-J Milloy et al., PLoS One, *Estimated Drug Overdose Deaths Averted by North America’s First Medically-Supervised Safer Injection Facility 2* (2008) (explaining that “it is not possible to know if overdoses occurring in the [consumption site] would have occurred elsewhere”).

⁵⁴ Larson et al. at 15.

will be affected by its illegal social experiment. In other words, Safehouse has failed to present any credible case for believing that Congress made a mistake when it enacted 21 U.S.C. § 856(a) with the specific purpose of protecting affected neighborhoods. Ultimately, though, what is critically important to remember here is that the question of whether consumption sites are good *policy* is immaterial. What matters is whether consumption sites are *legal*—and, as the text and legislative history of 21 U.S.C. § 856(a) demonstrate, they plainly are not.

III. Congress Balanced Competing Interests and Exercised Its Constitutional Judgment When It Very Consciously Decided To Ban Consumption Sites.

In 1986, Congress determined that banning the possession and distribution of controlled substances is insufficient to protect communities and the nation’s youth from the scourge that such drugs cause. At that point, Congress made the judgment that it is essential to prohibit the maintenance of “any place” for the purpose of illegal drug use. Congress has since stood by that determination and, indeed, expanded its reach. Despite numerous amendments to the relevant statutes and new comprehensive legislation targeted at the opioid epidemic specifically, Congress has never determined that consumption sites are an appropriate response to the drug epidemic. It has never determined that the potential benefits of such facilities outweigh their likely costs. Instead, to the contrary, Congress has chosen time and again to maintain the prohibition against such places of drug use. If new data or new realities call for a reconsideration of that judgment, it is the role of Congress—not Safehouse—to engage in that exercise.

a. Congress Enacted 21 U.S.C. § 856 to Protect Neighborhoods From The Scourge of Concentrated Illegal Drug Use.

In response to the crack cocaine epidemic that began in the 1980s and plagued the nation’s inner cities, Congress passed the Anti-Drug Abuse Act of 1986 (“the Act”).⁵⁵ As its formal title

⁵⁵ Pub. L. No. 99-570, 100 Stat 3207.

makes clear, the Act was comprehensive and intended, among other things, “to improve enforcement of Federal drug laws and . . . to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes.”⁵⁶ As part of this robust legislation—aimed at both prevention and rehabilitation—the Act added a new section to the Controlled Substances Act (“CSA”), codified at 21 USC § 856. The statute as enacted had two subsections: The first made it unlawful to “knowingly open or maintain *any place* for the purpose of manufacturing, distributing, or using any controlled substance.”⁵⁷ The second made it unlawful to “manage or control *any building, room, or enclosure*, either as an owner, lessee, agent, employee, or mortgagee, and knowingly and intentionally rent, lease, or make available for use, with or without compensation, the building, room, or enclosure for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance.”⁵⁸ Originally introduced as part of the Emergency Crack Control Act of 1986,⁵⁹ this statutory enactment was later added to the omnibus Anti-Drug Abuse Act.

By enacting Section 856, Congress made clear that increased penalties for possession, while important, were insufficient to achieve its goal of protecting neighborhoods and their children.⁶⁰ Consistent with the collective experience of *Amici*, and the already-existing data on consumption sites, Congress deemed it essential to also eliminate “places where users congregate to purchase and use” drugs.⁶¹ As the bill’s sponsor, Lawton Chiles, a Democratic Senator from

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Id.

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21 U.S.C. § 856(a)(1) (1986) (emphasis added).

⁵⁸

21 U.S.C. § 856(a)(2) (1986) (emphasis added).

⁵⁹

S. 2719, 99th Cong. (1986).

⁶⁰

132 Cong. Rec. 26447 (1986) (statement of Sen. Chiles).

⁶¹

Id.

Florida, explained: “This bill makes it a felony to operate such a [place].”⁶² Indeed, Senator Chiles’ statements left no doubt that § 856 was intended to protect communities like those in North Philadelphia: “We have this bill on the floor today because as a nation of hometowns, neighborhoods and families we have stood up and said, ‘enough. No more poison.’”⁶³ Congress was intent that “our streets will not become toxic waste dumps of the drug trade.”⁶⁴ As Senator Chiles proclaimed: “We will not allow [drug dealers] to shanghai our schoolchildren into the deadly slavery of drug users.”⁶⁵ It is precisely these concerns that animate *Amici*, and that Safehouse chooses to ignore. Thus, as the legislative text—which bans “any place”—and its history make abundantly clear, Safehouse’s plan to provide a location for drug users to congregate and inject illegal drugs is exactly what Congress sought to prohibit.

b. Congress Has Only Expanded The Scope Of 21 U.S.C. § 856 Since Its Enactment.

Moreover, each time it has amended § 856, Congress has expanded, rather than contracted, its scope. That legislative fact conclusively defeats Safehouse’s argument that Congress intended § 856 to apply narrowly. First, as part of the Children’s Health Act of 2000, Congress added subsection (c), which makes violations of § 856 an “offense against property,” therefore triggering mandatory restitution.⁶⁶ In so doing, Congress saw it necessary to *increase the penalties* for maintaining such premises. Then, in 2003, Congress amended § 856 to clarify (and expand) the scope of subsection (a)(2). The 2003 amendments were passed as part of the “PROTECT Act”—formally titled the “Prosecutorial Remedies And Tools Against The Exploitation Of Children

⁶²

Id.

⁶³

Id.

⁶⁴

Id.

⁶⁵

Id.

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Pub. L. No. 106-310, 114 Stat 1101.

Today Act of 2003”— in a subsection dubbed the “Illicit Drug Anti–Proliferation Act of 2003.”⁶⁷ The PROTECT Act focused primarily on increasing protection for the sexual exploitation of children. However, Congress also saw fit to add language “help[ing] to protect children” by amending and expanding existing statutory coverage.⁶⁸ The 2003 amendment made clear that § 856(a)(2) applied to premises maintained, even on a temporary basis, for the purpose of using illegal drugs. Specifically, it added “whether permanently or temporarily” to subsection (a)(2), and changed § 856’s title to “Maintaining drug-involved premises,” removing the earlier title of “Establishment of manufacturing operations.”⁶⁹ If there was ever any doubt, that change confirmed that the law reaches beyond mere manufacturing and for-profit operations. And, further bolstering § 856’s force, the 2003 amendment added a civil penalty provision for violations.⁷⁰

Like § 856’s initial enactment, its 2003 expansion was aimed at protecting communities from the ill effects that naturally result from the concentration of illegal drug use. As the House Conference Report explained: “This expansion [of § 856] makes it clear that anyone who knowingly and intentionally uses their property, or allows another person to use their property, for the purpose of . . . using illegal drugs will be held accountable.”⁷¹ Thus, at every step, Congress’ adoption of § 856 was intended to protect communities—and especially their young children. And it has been Congress’s considered judgment to *expand* rather than *restrict* the reach of § 856—demonstrating its continued determination that prohibiting the establishment of places for illegal drug use is in the public interest.

c. Congress Has Continuously Chosen To Prohibit Consumption Sites.

⁶⁷ Pub. L. No. 108-21, 117 Stat 650.

⁶⁸ H.R. REP. NO. 108-66, at 68 (2003) (Conf. Rep.).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

If Safehouse wishes to lawfully operate a consumption site, it needs to convince Congress to change the law. In other contexts, Congress has shown that it is amenable to updating and changing the 1986 Anti-Drug Abuse Act to reflect new realities. For example, after determining that mandatory minimum sentences for crack cocaine led to the disproportionate incarceration of African-American men, Congress reduced the crack-powder disparity by passing the Fair Sentencing Act of 2010.⁷² Likewise, Congress recently enacted significant criminal justice reforms in the First Step Act of 2018.⁷³ And Congress is not averse to unorthodox proposals: For instance, Congress reversed course to permit clean needle exchanges after determining that the benefits of such programs—prevention of the spread of communicable diseases—outweighed the potential costs.⁷⁴ Congress is uniquely qualified to make these judgments, and in doing so, it considers input from a variety of sources on a nationwide level.

As it stands, Congress has made the deliberate informed choice to continue to prohibit consumption sites—even though those facilities have existed outside of the United States for decades. In the very year that Congress enacted § 856, the first government-sanctioned consumption site opened in Switzerland.⁷⁵ Such facilities have been operating elsewhere in North America for the better part of two decades,⁷⁶ and today there are nearly 100 such sites operating

⁷² Pub. L. No. 111-220, 124 Stat. 2372; see John Gomis, *The Fair Sentencing Act Aims to Align Drug Sentencing Disparities*, Law Street Media (Sept. 5, 2014), available at <https://bit.ly/2NMwa48>.

⁷³ Pub. L. No. 115-391, 132 Stat 5194.

⁷⁴ Consolidated Appropriations Act of 2016, Pub. L. No. 114-113, § 520, 129 Stat. 2242, 2652; see Laura Ungar, *Funding ban on needle exchanges effectively lifted*, USA Today (Jan. 7, 2016), available at <https://bit.ly/2Ae0eeF>.

⁷⁵ *Consumption rooms for legal drug-taking around the world*, BBC News (Apr. 12, 2013), available at <https://bbc.in/2LuAuSW>.

⁷⁶ The first such site in North America opened in Vancouver in September of 2003. See Ian Bailey, *The inside story of Vancouver's safe injection site*, The Globe and Mail (Oct. 6, 2007), available at <https://tgam.ca/2Xf0kg3>.

in 66 cities.⁷⁷ All the while, Congress has amended the CSA numerous times,⁷⁸ but has never provided any provision or exception for consumption sites. In fact, in 2016 Congress passed and President Obama signed a landmark opioid prevention bill, the Comprehensive Addiction and Recovery Act (“CARA”).⁷⁹ Notably absent from the bill was any provision for consumption sites. Thus, rather than leaving an open “gap” in the law, Congress has repeatedly *chosen* to prohibit the use of property to facilitate illegal drug use. Safehouse is not permitted to unilaterally substitute its priorities for those of others in the Nation. It is the job of the national legislature to balance those priorities and make the necessary and ultimate policy choices. Here, Congress has made clear, at least for now, its legislative judgment. In our constitutional system, that judgment is entitled to enforcement by the federal courts.

CONCLUSION

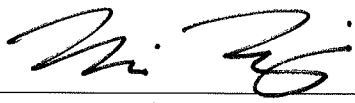
For the foregoing reasons, *Amici* respectfully suggest that the Court should grant the United States’ motion for judgment on the pleadings.

⁷⁷ Ethan Nadelmann and Lindsay LaSalle, Harm Reduction Journal, *Two steps forward, one step back: current harm reduction policy and politics in the United States* 3 (2017).

⁷⁸ See 21 U.S.C.A. § 802 (West) (listing modifying enactments).

⁷⁹ Pub. L. No. 114-198, 130 Stat. 695.

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