

No. 20–1422

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

UNITED STATES OF AMERICA, *Appellant*,

v.

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

SAFEHOUSE, a Pennsylvania nonprofit corporation, *Appellee*,

v.

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

Appeal from the United States District Court for the Eastern District of
Pennsylvania (Hon. Gerald A. McHugh), Civ.A. No. 19–0519

**BRIEF OF AMICI CURIAE MAYOR JIM KENNEY AND HEALTH
COMMISSIONER DR. THOMAS FARLEY**

July 6, 2020

CITY OF PHILADELPHIA LAW DEPARTMENT
MARCEL S. PRATT, CITY SOLICITOR

By: Jennifer MacNaughton
Senior Attorney, Appeals
1515 Arch Street, 17th Floor
Philadelphia, PA 19102-1595
(215) 683-3561

*Attorney for Amici Mayor Kenney and Health
Commissioner Farley*

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I. INTEREST OF AMICI CURIAE

Jim Kenney is the mayor of Philadelphia, the city in which Safehouse intends to open one or more overdose prevention sites. Dr. Thomas Farley is the Commissioner of the Philadelphia Department of Public Health, the agency that responds to public health emergencies, tracks public health data, and recommends and implements health policy for the City.

Philadelphia's opioid crisis is likely the most severe of any big city in the nation. The Kenney Administration has made it a priority to mobilize a broad-reaching, coordinated response to what is truly a public health emergency. Mayor Kenney and Commissioner Farley support an overdose prevention site in Philadelphia because decades of public health research have shown that these facilities save lives and reduce the harms associated with opioid use. Mayor Kenney and Commissioner Farley believe an overdose prevention site is an important component of the City's broad-spectrum response to the opioid epidemic, and would prioritize public safety and engaging members of the surrounding community before a site opens.¹

¹ No party's counsel authored this brief in whole or in part, and no party or party's counsel contributed money intended to fund the preparation or submission of this brief. All parties have consented to this filing.

II. INTRODUCTION

More than a thousand people are dying of overdoses in Philadelphia each year, with approximately 90% of those deaths involving opioids. These deaths are all the more tragic because they are mostly preventable.

The overwhelming consensus among public health experts is that overdose prevention sites work: they save lives, prevent HIV and other infections, reduce public injecting and injection-related litter, and provide an accessible pathway to recovery. These facilities have been tried, tested, and proven in other countries for decades. The evidence is so strong that both the American Medical Association and the Pennsylvania Medical Society have voted to endorse overdose prevention facilities,² and the Philadelphia Board of Health – the City’s health regulatory body comprised of doctors and public health experts – passed a resolution in support of these facilities in Philadelphia.³

² American Medical Association, *Press Release: AMA wants new approaches to combat synthetic and injectable drugs* (June 17, 2017), www.ama-assn.org/press-center/press-releases/ama-wants-new-approaches-combat-synthetic-and-injectable-drugs; Pennsylvania Medical Society, *Press Release: PAMED Endorses Pilot Program of Safe Injection Sites to Combat Opioid Crisis* (Nov. 20, 2019), pamedsoc.org/detail/article/endorse-safe-injection-sites.

³ Phila. Bd. of Health, *Resolution in Support of Operation of Overdose Prevention Facilities in Philadelphia*, approved July 9, 2019, available at <https://www.phila.gov/media/20190710144627/BOH-Resolution-Overdose-Prevention-Facilities-Approved-July-9-2019.pdf>.

The Kenney Administration has adopted a pragmatic, evidence-driven approach to the opioid crisis that approaches addiction as a public health issue, not just a matter of criminal law. Key to this strategy is the three-legged stool of prevention, treatment, and harm reduction. The City has already significantly ramped up prevention and treatment efforts, yet Philadelphia is still losing a thousand lives each year to overdoses. Overdose prevention sites are a crucial part of the continuum of care that will help keep people alive until they are mentally ready to accept treatment. The City needs this proven life-saving resource.

III. ARGUMENT

Opioids and overdose deaths are one of the biggest problems facing this City. Even though the City is doing everything in its power to combat this crisis, the death toll is still climbing. Mayor Kenney and Commissioner Farley support an overdose prevention site in Philadelphia because the evidence overwhelmingly demonstrates that these facilities work.

A. Philadelphia, Which Has Been Especially Hard-Hit by the Opioid Epidemic, Must Consider Every Option to Reduce its Overdose Death Toll

The opioid epidemic is killing Philadelphians at a staggering rate. In 2019 alone, Philadelphia lost 963 lives to overdoses involving opioids.⁴ In 2018 that

⁴ Philadelphia Dep't of Pub. Health, CHART, Vol. 5 No. 4 (May 2020), <https://www.phila.gov/media/20200511105852/CHART-v5e4.pdf>.

figure was 939 lives; in 2017, 95 was 1075.⁵ Nearly three times as many people died from opioids in 2019 as from homicide.⁶ Overdose now ranks as the third leading cause of death in the city (behind cancer and heart disease).⁷ In a recent survey of Philadelphia residents, 29% reported knowing someone who died from opioids.⁸

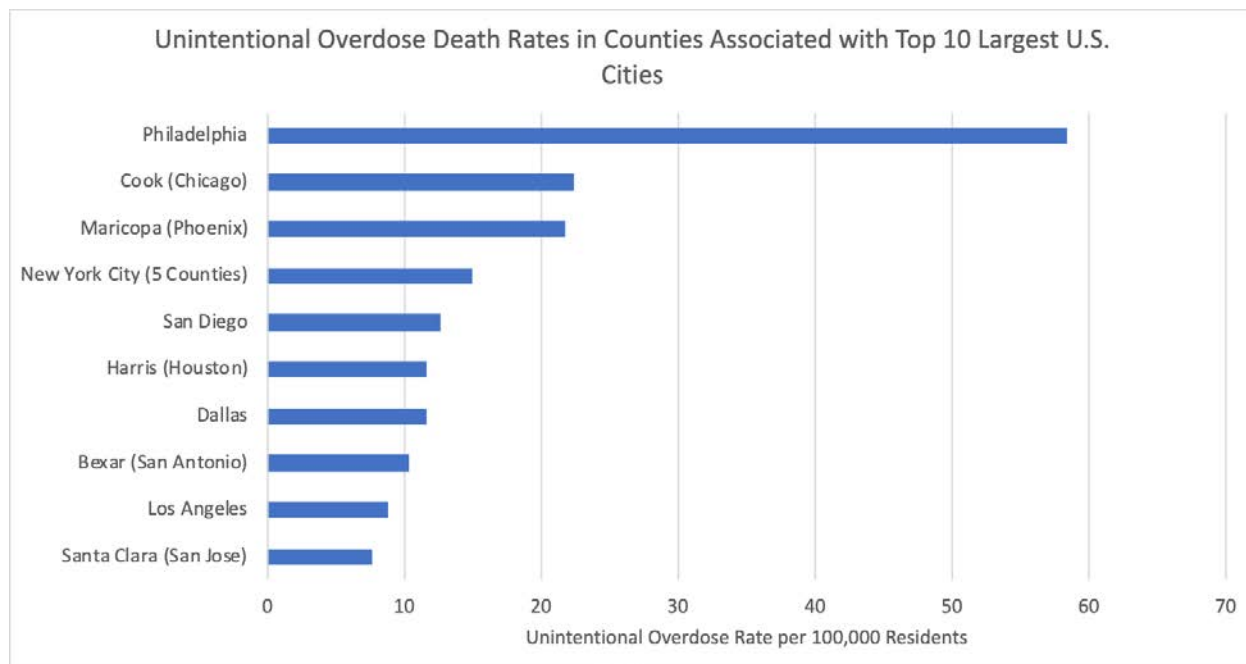
Philadelphia's overdose rate is also among the highest in the country. Of the counties associated with the ten largest U.S. cities, Philadelphia's overdose rate is by far the highest per capita, and more than double that for Chicago's Cook County or the five counties associated with New York City.

⁵ CHART (May 2020), *supra* note 4.

⁶ Philadelphia Police Department statistics, available at <https://www.phillypolice.com/crime-maps-stats/>.

⁷ Phila. Dep't of Public Health, *Health of the City 2019*, at 5, available at https://www.phila.gov/media/20191219114641/Health_of_City_2019-FINAL.pdf

⁸ Eichel, Larry and Pharis, Meagan, *Poll Shows Impact of Opioid Crisis on Philadelphians and Their Neighborhoods* (Pew Charitable Trusts, Aug. 6, 2019), available at <https://www.pewtrusts.org/en/research-and-analysis/articles/2019/08/06/poll-shows-impact-of-opioid-crisis-on-philadelphians-and-their-neighborhoods>.



Source: Philadelphia Dept. of Health, using publicly available data.⁹

This epidemic cuts across all racial and age groups. Although opioid users have long been predominantly white, opioid overdose deaths have recently increased sharply among Black and Hispanic Philadelphians, offsetting the modest gains the City has made in reducing overdoses among whites.¹⁰ The victims of overdose span all working-age groups.¹¹

⁹ Centers for Disease Control and Prevention, CDC WONDER Database, Multiple Cause of Death Data, *available at* <https://wonder.cdc.gov/ucd-icd10.html>.

¹⁰ CHART (May 2020), *supra* note 4.

¹¹ *Id.*

As the big city with the highest rate of individuals living in poverty,¹² Philadelphia has always been especially vulnerable to substance abuse.¹³ But opioid abuse more so than any other drug grew rapidly beginning in the early 2000s, fueled by over-use of prescription opioids. An estimated four out of five new heroin users started with prescription opioids.¹⁴ Because prescription opioids are expensive and difficult to obtain, many users eventually turn to heroin as a substitute.¹⁵ This is especially true in Philadelphia, which (due to international drug trafficking patterns) has the dubious distinction of being home to the purest, cheapest heroin in the nation.¹⁶

¹² In 2017, Philadelphia's poverty rate of 25.7% was the highest among the top 10 largest cities, and third-highest of all cities overall. Pew Charitable Trusts, *Philadelphia 2019: The state of the city*, fig. 9.2 (Apr. 11, 2019), www.pewtrusts.org/en/research-and-analysis/reports/2019/04/11/philadelphia-2019.

¹³ Pub. Health Mgmt. Corp., *Findings from the Philadelphia Urban ACE Survey*, at 9 (Table 3), 11 (Table 6), 22-23 (September 2013), www.instituteforsafefamilies.org/sites/default/files/isfFiles/Philadelphia%20Urban%20ACE%20Report%202013.pdf.

¹⁴ Mayor's Task Force to Combat the Opioid Epidemic in Philadelphia, *Final Report & Recommendations*, at 6 (May 19, 2017), www.phila.gov/documents/opioid-task-force-report/ ("Mayor's Task Force Report").

¹⁵ *Mayor's Task Force Report*, *supra* note 14, at 6.

¹⁶ U.S. Drug Enforcement Agency, *2018 Heroin Domestic Monitor Program*, at 24, www.dea.gov/sites/default/files/2018-10/Heroin%20Domestic%20Monitor%20Report%20DEA-GOV%20FINAL.pdf.

This influx of new users coincided with the rise of fentanyl. Fentanyl is a powerful synthetic opioid that is often manufactured overseas and shipped to dealers in the U.S. Its prevalence spiked beginning around 2013, as dealers started using it to increase drug potency.¹⁷ A lethal dose of fentanyl is approximately three milligrams; by comparison, a lethal dose of heroin is approximately 30 milligrams.¹⁸ Fentanyl can trigger an overdose within minutes of injecting it. Meanwhile, the average EMS response time in Philadelphia is eight and a half minutes.¹⁹

Fentanyl's death toll soared from only a handful of deaths in 2013 to nearly 900 in 2019 – the vast majority of opioid-related overdose deaths.²⁰ The rate of fentanyl adulteration detected in drug samples in Philadelphia is several magnitudes higher than the national average.²¹ As a result, while overdose deaths

¹⁷ Pew Charitable Trusts, *How Fentanyl Changes the Opioid Equation* (Oct. 17, 2018), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/10/17/how-fentanyl-changes-the-opioid-equation>.

¹⁸ Bond, Allison, *Why fentanyl is deadlier than heroin, in a single photo*, STAT (Sept. 29, 2016), <https://www.statnews.com/2016/09/29/why-fentanyl-is-deadlier-than-heroin/>.

¹⁹ Philadelphia City Council, Phila. Fire Dep't Fiscal Year 2019 Budget Testimony (May 1, 2018), http://phlcouncil.com/wp-content/uploads/2018/04/FY19-Testimony_Fire_submitted-to-Council-4.27.pdf.

²⁰ CHART (May 2020), *supra* note 4, at 2.

²¹ Nat'l Drug Early Warning Sys., Univ. of Md. Ctr. for Substance Abuse Rsrch., *Phila. Sentinel Community Site (SCS) Drug Use Patterns and Trends* (Nov. 2018),

due to other drugs remained relatively stable, opioid-related deaths more than quintupled from 2003 through 2019.²²

Today, it is estimated that at least 70,000 Philadelphians use heroin, though the real figure is probably much higher.²³ In 2018, Philadelphia's publicly-funded health system treated approximately 16,800 patients for opioid use disorder.²⁴ This figure does not include people who sought treatment outside of the City's public health system.

Along with the tragic death toll from overdoses, Philadelphia has suffered other effects of the opioid epidemic that an overdose prevention site could potentially mitigate. Responding to overdoses has put added strain on the City's first responders and the health care system. First responders (emergency medical services, police, and public transit employees) administered naloxone over 3,600

at 8, <https://ndews.umd.edu/sites/ndews.umd.edu/files/SCS-Report-2018-Philadelphia-FINAL-121718.pdf>.

²² Philadelphia Dep't of Public Health, *Opioid Misuse and Overdose Report* (July 2020), at 40, phila.gov/media/20200702105030/Substance-Abuse-Data-Report-07.01.20.pdf.

²³ Mayor's Task Force Report, *supra* note 14, at 7.

²⁴ Phila. Dep't of Public Health data, *available at* <https://public.tableau.com/profile/pdph#!/vizhome/BehavioralHealthServices/UniqueMedicaidBeneficiarieswithaPrimaryDiagnosisofOUDParticipatinginAnyMedicaidFundedBehavioralHealthService>.

times in 2019 alone.²⁵ That same year, 7,092 people were seen in City hospital emergency rooms for overdoses.²⁶ EMS personnel already report high psychological stress and burnout; responding to preventable overdose calls is an added burden that could be lessened by an overdose prevention facility.

Philadelphia has also recently seen rising rates of HIV due to injection drug use, even while rates in the overall population have fallen.²⁷ This unfortunate reversal comes after years of declining HIV infections after syringe exchange was legalized. The Department of Public Health expects to see a similar pattern in hepatitis C infections as well, as the vast majority of newly diagnosed people with hepatitis C report having used injection drugs.²⁸

Opioids have devastated entire neighborhoods, burdening neighbors and businesses with increased street crime, discarded needles, and public drug use. The Kensington neighborhood has borne the worst of this crisis. Kensington Avenue is

²⁵ Phila. Dep't of Public Health data, *available at* <https://public.tableau.com/profile/pdph#!/vizhome/NaloxoneAdministrationsbyFirstResponders/NaloxoneDistributionandAdministration>

²⁶ Phila. Dep't of Public Health data, *available at* <https://public.tableau.com/profile/pdph#!/vizhome/NonFatalOverdoseClinicalSite/EmergencyRoomVisits>

²⁷ Phila. Dep't of Pub. Health, *HIV Surveillance Report* (Oct. 2019) at 8, *available at* www.phila.gov/media/20191101092716/HIV_10_30_2019_FINAL_web.pdf.

²⁸ Phila. Dept. of Health data, *available at* <https://hip.phila.gov/DataReports/Hepatitis>.

infamous as the epicenter of the drug trade in Philadelphia.²⁹ Neighbors have felt under siege, with children often walking to school on streets littered with discarded needles, and residents finding people passed out or overdosing in front of their homes and businesses.³⁰

Even ordinary people have been drafted into fighting this epidemic. At McPherson Library in Kensington, a hotspot of public heroin use, librarians have taken on the role of first responders.³¹ One librarian profiled on CNN had reversed six overdoses in just a few months.³² Similarly, fast food restaurant and convenience store managers and workers have increasingly sought out the City's naloxone distributions and training in response to patrons overdosing in bathrooms.

Opioids are killing Philadelphians in record numbers, devastating families and neighborhoods, and overwhelming health care and social services agencies. The City needs every possible resource to fight this epidemic.

²⁹ See Lubrano, Alfred, *How Kensington got to be the center of Philly's opioid crisis*, Philadelphia Inquirer (Jan. 23, 2018).

³⁰ Whelan, Aubrey, *The other victims of Kensington's opioid crisis: Children bearing witness*, Philadelphia Inquirer (Nov. 23, 2018).

³¹ Simon, Darran, *The opioid epidemic is so bad that librarians are learning how to treat overdoses*, CNN, June 24, 2017, <https://www.cnn.com/2017/06/23/health/opioid-overdose-library-narcans/index.html>.

³² *Id.*

B. An Overdose Prevention Site Will Save Lives and Generate Other Harm-Reduction Benefits for its Clients and the Larger Community

There are over 100 such facilities now operating in Europe, Australia, and Canada. The first location in North America was Insite in Vancouver, Canada, which opened in 2003. Facilities have recently opened in Montreal and Toronto. Decades of experience and research have demonstrated that these facilities' impact is overwhelmingly positive: they save lives, prevent blood-borne infections, help connect users with treatment, and reduce public drug use and unsafe syringe disposal.

1. An Overdose Prevention Site Will Save Lives

Safehouse's life-saving potential is obvious: clients stand a much better chance of surviving an overdose if they are being monitored by staff trained to recognize and reverse overdoses. A prime example is Vancouver's Insite, which was North America's first overdose prevention facility. Insite has seen more than 3.6 million visits since it opened in 2013, and it intervened in 6,440 overdoses, with not a single overdose death.³³ And during Insite's first two years of its

³³ Vancouver Coastal Health, Insite User Statistics, www.vch.ca/public-health/harm-reduction/supervised-consumption-sites/insite-user-statistics.

operation, overdose deaths in the surrounding neighborhood decreased by 35 percent.³⁴ Facilities in other countries have achieved similar results.³⁵

2. An Overdose Prevention Site Will Provide an Irreplaceable Gateway to Addiction Treatment Services

Safehouse has tremendous potential to help people escape the cycle of addiction: due to its unique relationship of trust with people who use opioids, it can connect clients with treatment options at the critical moment when they are ready to accept treatment. Mental health and recovery experts recognize that, when an individual is suffering from addiction, their “recovery window” when they are willing to seek help is often fleeting. It is important to provide these individuals a simple, immediate way to access treatment wherever and whenever that window opens.³⁶ Clinical providers also understand that people are much more receptive to beginning treatment when they are not suffering from withdrawal symptoms.³⁷

³⁴ Marshall, Milloy et al., *Reduction in overdose mortality after the opening of North America’s first medically supervised safer injecting facility: a retrospective population-based study*, 337 *The Lancet* 1429 (Apr. 18, 2011).

³⁵ Potier, Chloé et al., *Supervised injection services: What has been demonstrated? A systematic literature review*, 145 *Drug & Alcohol Dependence* 48, 62 (2014).

³⁶ Hertzler, Lauren, *Penn takes on Philadelphia’s opioid epidemic*, *Penn Today* (Univ. of Pa. Mar. 14, 2018), <https://penntoday.upenn.edu/news/penn-takes-philadelphias-opioid-epidemic>

³⁷ *Id.*

Here again, Insite's history speaks volumes. Several independent studies have found that Insite clients are more likely to access treatment.³⁸ One study found that in the year after Insite opened, use of Insite was associated with a 30% increase in detoxification service use.³⁹ Another study of repeat Insite clients found more frequent visitors were *more* likely to seek treatment: 46% of individuals with three or more visits went on to access addiction treatment.⁴⁰

The City's Department of Behavioral Health and Intellectual disAbility Services (DBHIDS), which coordinates mental health and addiction treatment for Philadelphians eligible for publicly-funded health care, has already begun laying the groundwork to ensure that certified peer specialists and recovery specialists will be available to Safehouse clients. DBHIDS has found that peer specialists are the most effective way to connect with this extremely hard-to-reach population. While the City has already tried to make drug treatment available via numerous channels, Mayor Kenney and Commissioner Farley anticipate that an overdose

³⁸ *E.g.* DeBeck, Kora et al., *Injection drug use cessation and use of North America's first medically supervised safer injecting facility*, 113 *Drug & Alcohol Dependence* 176 (2010); Wood, Evan et al., *Rate of detoxification service use and its impact among a cohort of supervised injecting facility users*, 102 *Addiction* 916 (2007).

³⁹ Wood et al. (2007), *supra* note 38.

⁴⁰ Wood, Evan et al., *Attendance at supervised injecting facilities and use of detoxification services*, 354 *N. Engl. J. Med.* 2512 (2006).

prevention site will provide a path to recovery for individuals not currently reached by existing outreach efforts.

3. An Overdose Prevention Site Will Reduce Public Drug Use and Improper Syringe Disposal, Without Increasing Crime or Drug Use

Perhaps the main controversy surrounding overdose prevention sites is the fear that they will attract a criminal element to the neighborhood or encourage drug use. The reality is much different: overdose prevention sites tend to have a *positive* effect on the surrounding areas by markedly reducing public drug use and unsafe syringe disposal, and there is no evidence that these facilities contribute to crime or neighborhood disorder.

It seems obvious that an overdose prevention site would reduce public drug use, and multiple studies in other countries have backed up that intuition.⁴¹ For example, researchers in Vancouver counted roughly half as many instances of public consumption and injection-related litter after Insite opened.⁴² Residents and

⁴¹ Potier et al., *supra* note 35; Wood, Evan et al., *Changes in public order after the opening of a medically supervised safer injecting facility for illicit injection drug users*, 171 *Can. Med. Ass'n J.* 731 (2004).

⁴² Wood (2004), *supra* note 41, at 733.

business operators near an overdose prevention site in Sydney, Australia also reported a significant decrease in public injection and discarded syringes.⁴³ Similarly, a small, “underground” overdose prevention facility operating in the U.S. appears to be providing an attractive alternative to public drug use: clients reported that more than 90% of the time, if they had not had access to the site, they would have injected in a public restroom, street, park, or parking lot.⁴⁴

There is no evidence that overdose prevention sites encourage drug use. These facilities typically serve people who have already been using for many years, who inject drugs multiple times per day, and who recognize the risks of overdose that they are taking. In a survey of 1065 Insite clients, researchers found that the clients had been injecting drugs for a median of 15.9 years, but only one of those clients reported their first injection drug use was at the facility.⁴⁵ Another study comparing data before and after Insite opened found no increase in the

⁴³ Salmon, Allison M., et al., *Five years on: What are the community perceptions of drug-related public amenity following the establishment of the Sydney Medically Supervised Injecting Centre?*, Int’l J. of Drug Pol’y, Vol. 18 Issue 1, 46-53 (2007).

⁴⁴ Kral, Alex H. & Davidson, Peter J., *Addressing the Nation’s Opioid Epidemic: Lessons from an Unsanctioned Supervised Injection Site in the U.S.*, 53 Am. J. of Preventive Med. 919 (Dec. 2017).

⁴⁵ Kerr, Thomas et al., *Circumstances of First Injection Among Illicit Drug Users Accessing a Medically Supervised Safer Injection Facility*, 97 Am. J. Public Health 1228 (2007).

relapse rate among Vancouver injection drug users.⁴⁶ Safehouse's clients are people who will be using opioids regardless of whether an overdose prevention site is available.

And while it is understandable that community members may be concerned about crime, these concerns are not borne out by experience. Extensive quantitative research on overdose prevention sites across the globe, including a meta-analysis of peer-reviewed studies on overdose prevention sites and a synthesis of the published research, revealed that researchers were unable to detect any effect on drug dealing or other crime in the surrounding neighborhoods.⁴⁷

As an added precaution, the City has already developed a public safety plan to quash any potential problems quickly.⁴⁸ The Police Department, SEPTA transit police, and the City's town watch coordinator will work together to ensure there is no increase in drug dealing, loitering, or other disorderly behavior in the vicinity,

⁴⁶ 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 (2006).

⁴⁷ Kilmer, Beau et al., *Considering Heroin-Assisted Treatment and Supervised Drug Consumption Sites in the United States* (Rand Corporation, 2018), at 33-34; Potier, *supra* note 35; Wood, Evan et al., *Impact of a medically supervised safer injecting facility on drug dealing and other drug-related crime*, Substance Abuse Treatment, Prevention, & Policy (May 8, 2006), at 13.

⁴⁸ The plan is outlined on the City's website. See City of Philadelphia, *The City of Philadelphia's Commitment to Overdose Prevention Sites*, www.phila.gov/media/20200211105701/overdoseprevention02062020.pdf.

while also preparing to manage any protest activity in the area. The Administration is committed to working with the community and any overdose prevention site to ensure that neighborhoods already disrupted by the opioid epidemic are not asked to carry yet another burden.

4. An Independent Study Concluded that an Overdose Prevention Site in Philadelphia Will Save a Substantial Number of Lives and Reduce Health Care and Emergency Response Costs by Millions of Dollars

Public health specialists have already quantified how an overdose prevention site may benefit Philadelphia. Epidemiologists and public health specialists from the Main Line Health System and Thomas Jefferson University, funded by the Robert Wood Johnson Foundation, estimated the effects of an overdose prevention site in Philadelphia.⁴⁹ They found that just a single site could:

- Save up to 76 lives per year;
- Prevent 1 to 18 new HIV infections and 15 to 213 new cases of hepatitis C annually;
- Reduce health care costs for skin and soft tissue injuries associated with injecting drugs by \$1,500,000 to \$1,800,000 annually; and

⁴⁹ Larson, Sharon et al., *Supervised Consumption Facilities – Review of the Evidence* (Main Line Health Center for Population Health Research, December 2017), https://dbhids.org/wp-content/uploads/2018/01/OTF_LarsonS_PHLReportOnSCF_Dec2017.pdf.

- Save \$123,776 each year on ambulance costs related to overdoses, \$280,683 yearly in emergency room costs, and \$247,971 yearly in reduced hospitalizations.⁵⁰

These figures are likely conservative, as they were based on 2016 data, and Philadelphia's opioid problem has only grown worse since then. The City cannot afford to forego the benefits of an overdose prevention site.

C. Harm Reduction, Including Overdose Prevention Sites, is a Critical Element of the Kenney Administration's Comprehensive Strategy on Opioids

The City is already pursuing virtually every feasible policy intervention – both time-tested and experimental – to tackle the opioid crisis, but clearly the City needs to do more. This strategy is informed by the work of the Mayor's Task Force to Combat the Opioid Epidemic, a panel of experts from fields spanning medicine, behavioral health, social work, law enforcement, health insurers, and other specialties, which thoroughly evaluated a broad range of policy options. Based on the Task Force's evidence-backed recommendations, the Administration's public health strategy mainly focuses on three areas: prevention, treatment, and harm reduction. The Administration has poured a tremendous amount of effort and resources into the prevention and treatment prongs and has seen some promising

⁵⁰ Larson, *supra* note 49, at 7, 18 table 2.

gains. However, Philadelphia's stubbornly high overdose deaths show just how important the harm-reduction component is.

For the treatment prong, the City has dramatically expanded access to treatment and publicly-funded treatment capacity. Notably, DBHIDS worked with a major nonprofit social services partner to open a new, 24/7 walk-in center where people can receive on-demand stabilization with medication assisted treatment (MAT) and referral to longer-term treatment.⁵¹ MAT is considered the gold standard for helping people who use opioids to stay on the path to recovery. The number of Philadelphians receiving publicly-funded MAT increased by 3,400 individuals from 2016 to 2018.⁵² Philadelphia has also promoted MAT provision by primary care physicians, including coordinating pledges by major health systems in the city to have all of their primary care physicians obtain a DEA waiver necessary to prescribe buprenorphine buprenorphine and offering a

⁵¹ Whalen, Aubrey, *24-hour center opens for opioid treatment: Its purpose is to be there whenever people seek help*, Phila. Inquirer (Jul. 12, 2018); Philadelphia Dep't of Public Health & DBHIDS, *The Opioid Epidemic in Philadelphia: Implementation of the Mayor's Task Force Recommendations* (Jan. 9, 2019) <https://www.phila.gov/media/20190110101212/The-Opioid-Epidemic-in-Philadelphia-.pdf> ("Jan. 9, 2019 Status Report").

⁵² Philadelphia Dep't of Public Health data, *available at* <https://public.tableau.com/profile/pdph#!/vizhome/MedicationAssistedTreatment/UniqueMedicaidBeneficiarieswithaPrimaryDiagnosisofOUDReceivingAnyMedicaidFundedMedicationAssistedTreatment>.

buprenorphine mentorship program for newly waived primary care physicians.⁵³

The City has also stepped up funding for both residential and outpatient recovery services, and safe recovery housing.⁵⁴ The goal is to ensure that anyone who wants treatment can get help right away, regardless of insurance or ability to pay.

The City is also striving to take advantage of every possible opportunity to connect people in active addiction with recovery services. For example, the City has worked with emergency departments to implement “warm handoffs”, so that patients who survive an overdose can be immediately connected with treatment providers and started on MAT where appropriate, rather than simply being released back onto the street in a state of withdrawal.⁵⁵ The Philadelphia prison system has dramatically improved MAT access for prisoners with opioid use disorder.⁵⁶

Research shows that individuals who participate in MAT while incarcerated are

⁵³ Kopp, John, *Philly takes 'major step forward' in opioid crisis by expanding buprenorphine access*, Philly Voice (Feb. 24, 2020), <https://www.phillyvoice.com/buprenorphine-access-philadelphia-primary-care-doctors-opioid-crisis/>

⁵⁴ See Jan. 9, 2019 Status Report, *supra* note 51.

⁵⁵ See Jan. 9, 2019 Status Report, *supra* note 51.

⁵⁶ See Jan. 9, 2019 Status Report, *supra* note 51; Pew Charitable Trusts, *How Treatment for Opioid Use Disorder Is Evolving in Philadelphia's Jails* (Jun. 4, 2019), <https://www.pewtrusts.org/en/research-and-analysis/articles/2019/06/04/how-treatment-for-opioid-use-disorder-is-evolving-in-philadelphias-jails>.

more than twice as likely to engage in treatment upon their release from prison.⁵⁷ The Fire Department has developed a specialized EMS unit, Alternative Response Unit 2 (“AR-2”), in which paramedics partner with social service case workers to respond to overdose calls and help guide the victim to addiction treatment.⁵⁸ The City has launched a public education campaign, “Bupe Works”, to convince people to try medication-assisted treatment.⁵⁹ These efforts appear to be working: for example, the number of individuals receiving Medicaid-funded addiction treatment services rose from about 9,000 in 2010 to over 17,000 in 2019.⁶⁰ Nonetheless, the City must continue to look for any new opportunities to connect opioid users to recovery when their window of opportunity arises.

The City has also invested heavily in prevention, the second prong of the Administration’s public health strategy. Because over-prescribing of opioid medications is the root cause of today’s epidemic, the Department of Public Health

⁵⁷ Mayor’s Task Force Report, *supra* note 14, at 25.

⁵⁸ Philadelphia Fire Dep’t, Press Release: *New EMS Unit Takes a Different Approach to Overdoses* (June 5, 2019), <https://www.phila.gov/2019-06-05-new-ems-unit-takes-a-different-approach-to-overdoses/>; Winberg, Michaela, *Philly’s New EMS overdose team is unlike any in the nation*, BillyPenn.com (Jun. 6, 2019), <https://billypenn.com/2019/06/06/philly-created-an-ems-overdose-team-unlike-any-in-the-nation/>.

⁵⁹ For a comprehensive overview of the City’s efforts to combat the opioid crisis, *see* www.phila.gov/programs/combating-the-opioid-epidemic/.

⁶⁰ *Opioid Misuse and Overdose Report*, *supra* note 22, at 63.

has been working with both healthcare providers and insurers to implement safer prescribing policies.⁶¹ The City has also launched a public education campaign to inform consumers of the risks of prescription opioids. Thanks in part to these and similar efforts by the state and professional licensing organizations, prescription opioid sales have been trending downwards, with the first quarter of 2020 registering the lowest amount prescribed since 2002.⁶²

As for the third leg of the stool, harm reduction, Philadelphia's overdose death rate would likely be even higher if not for the City's push to broadly distribute naloxone. Since 2014, the City has put tens of thousands of doses of naloxone in the hands of health care providers and first responders, actively recruited community organizations and concerned citizens to carry naloxone, launched two media campaigns regarding naloxone, and distributed naloxone and hosted monthly trainings on how to respond to an overdose emergency. In 2019 alone, the City distributed over 55,000 doses of Naloxone to health care providers and community organizations.⁶³

⁶¹ See City of Philadelphia, Opioid prescribing and tapering guidelines, <https://www.phila.gov/documents/opioid-prescribing-and-tapering-guidelines/>

⁶² *Opioid Misuse and Overdose Report*, *supra* note 22, at 6.

⁶³ Philadelphia Dep't of Public Health data, Naloxone Doses Distributed, July 1, 2017 - April 24, 2020, *available at* <https://public.tableau.com/profile/pdph#!/vizhome/NaloxoneAdministrationsbyFirs tResponders/NaloxoneDistributions>.

While the Kenney Administration appreciates the role of law enforcement in diverting some opioids from the streets, for decades local and federal law enforcement have been aggressively targeting traffickers, dealers, buyers, and “pill mills”, and yet Philadelphia’s overdose death toll continues to climb. To finally turn the tide, Philadelphia cannot rely on law enforcement alone; it must continue to strengthen its public health response, including overdose prevention sites as part of the continuum of care.

D. The Mayor’s Support for Safehouse Reflects His Carefully Considered Judgment that Overdose Prevention Sites Will Be Beneficial to Philadelphia

The decision to pilot an overdose prevention site was guaranteed to provoke controversy. Mayor Kenney made this decision only after thoroughly exploring the issue to make sure this measure was the right choice for Philadelphia. This decision falls squarely within the role of local government to respond to public health emergencies.

As discussed above, the Mayor’s Task Force recommended exploring an overdose prevention site (termed a “comprehensive user engagement site” in the Report) that, like Safehouse, would pair medically supervised consumption with wraparound services, including referral to addiction treatment.⁶⁴ To gather more

⁶⁴ Mayor’s Task Force Report, *supra* note 14, at 23.

information, the City sent a delegation of top officials from the Police Department, Managing Director's Office, Health Department, Behavioral Health Department, Fire Department, and other key agencies to visit Insite and meet with Vancouver police to learn more about how Insite has worked in that community. City officials have also met with community members to provide the facts about an overdose prevention site and hear from residents and local health care and outreach workers about their experiences. In particular, the City hosted Staff Sergeant Bill Spearn, a top drug enforcement official with the Vancouver police department. Sgt. Spearn was opposed to overdose prevention sites, but after witnessing the dramatic drop in overdoses after Insite opened, he became an advocate for harm reduction. As he stated in an interview: "They work. I've done a 180."⁶⁵

The City has long had an excellent working relationship with Safehouse's leadership, many of whom are involved with Prevention Point Philadelphia, a leading syringe exchange program. Prevention Point is estimated to have prevented over 10,000 new HIV infections over its first ten years of operation after legal barriers to syringe exchange were lifted.⁶⁶ Based on this experience working with

⁶⁵ Stuart, Meghan, *Fentanyl: 'The Police Can't Arrest Their Way Out of This': Where it's coming from, why it's so deadly, and what it will take to end the overdose crisis, according to a top Vancouver cop*, Vancouver Magazine, July 28, 2017, available at <http://vanmag.com/city/policing-fentanyl-vancouver/>.

⁶⁶ Ruiz, Monica S., et al., *Using Interrupted Time Series Analysis to Measure the Impact of Legalized Syringe Exchange on HIV Diagnoses in Baltimore and*

Prevention Point, Mayor Kenney and Commissioner Farley believe Safehouse will be a source of positive change for Philadelphia.

Responding to public health emergencies is traditionally the domain of local government. *See Gonzales v. Oregon*, 546 U.S. 243, 270 (2006). The Department of Public Health is charged with “the preservation and promotion of the health of the people of the City,” and is entrusted with “regulatory or police powers and duties” to carry out its mandate. PHILA. CODE § 6-101. These powers are substantial: for instance, in a public health emergency, the Department may quarantine individuals or forbid public assembly to prevent the spread of infectious disease. *See* PHILA. CODE §§ 6-204 to 6-206. Commissioner Farley’s decision to endorse an overdose prevention site is well within his authority to respond to this public health emergency.

Mayor Kenney and Commissioner Farley also respectfully disagree with the District Court’s decision to stay its decision pending the outcome of this appeal. While Philadelphia has been facing unprecedented challenges due to COVID-19 and civil unrest, in the Mayor’s and Health Commissioner’s judgment, an overdose prevention site can be implemented despite these challenges. If anything, the City needs an overdose prevention site today more than ever to free up EMS and health

Philadelphia, J. Acquired Immune Deficiency Syndrome, Vol. 82, Supp. 2 (Dec. 1, 2019).

care resources for COVID patients. And as the Washington Post recently reported, the pandemic has actually worsened the overdose crisis due to disruptions in the drug supply chain, economic hardship, isolation, and hopelessness.⁶⁷ The Department of Public Health has received reports of people in recovery having difficulty getting access to MAT due to the pandemic, putting these individuals at risk of relapse. Even in this difficult time, the City must not turn its back on its citizens struggling with addiction.

Although the Mayor and the Health Commissioner are grateful for federal law enforcement's efforts to pursue drug dealers and intercept illegal drugs, law enforcement alone cannot solve this crisis. The evidence overwhelmingly supports overdose prevention facilities. Mayor Kenney and Commissioner Farley urge this Court to reject the federal government's attempt to deprive Philadelphia of one of the most effective weapons available in the fight to save the lives of people affected by opioid addiction.

IV. CONCLUSION

For the foregoing reasons, Philadelphia Mayor Jim Kenney and Health Commissioner Dr. Thomas Farley respectfully request that the Court affirm the District Court's decision.

⁶⁷ Wan, William and Long, Heather, '*Cries for help*': Drug overdoses are soaring during the coronavirus pandemic, Washington Post, Jul. 1, 2020.

Respectfully submitted,

CITY OF PHILADELPHIA LAW DEP'T
MARCEL S. PRATT, CITY SOLICITOR

/s/ *Jennifer MacNaughton*

By: Jennifer MacNaughton, Esq.

Attorney I.D. PA 88424

Senior Attorney, Appeals

City of Philadelphia Law Department

1515 Arch Street, 17th Floor

Philadelphia, PA 19102-1595

Tel (215) 683-3561

Fax (215) 683-5296

jennifer.macnaughton@phila.gov

*Attorneys for Amici Curiae Mayor Jim Kenney and
Health Commissioner Dr. Thomas Farley*

Dated: July 6, 2020

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Jennifer MacNaughton
City of Philadelphia Law
Department

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I hereby certify that I filed the foregoing brief via the Court's ECF system, which will accomplish service on all parties.

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/s/ Jennifer MacNaughton
Jennifer MacNaughton
City of Philadelphia Law
Department