

# Strategies to Address Homelessness in the Trump Era: Lessons from the Reagan Years

*Maria Foscarinis*

I first began working on homelessness in the early 1980s, during the Reagan era, which was also when modern homelessness first emerged as a national crisis. Now, with the advent of the Trump Administration, it sometimes feels depressingly like *déjà vu*, with anti-government rhetoric driving proposed cuts to safety net supports, bolstered by racism, sexism, xenophobia, and discrimination of all types. At the same time, progressive activism is also on the rise, and resistance to the current regime is pushing more people to engage in the political process to champion social justice on a range of fronts.

During the Reagan years, we were able to spur a federal response to homelessness despite steep political odds. Now, despite the challenges, there may also be opportunities for progress—in fact there may be more. Looking back at the initial emergence of the crisis and the early advocacy to address it may offer lessons for the current moment and for the future.

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My part of the story starts in 1983, when I was a litigation associate at Sullivan & Cromwell in New York. A memo came around asking whether anyone wanted to take a pro bono case representing homeless families who had been denied emergency shelter on Long Island, a generally affluent suburb of New York City. I'd grown up in the city and I'd been to Long Island many times, but I'd never seen the extreme poverty that co-existed alongside the wealth. I was intrigued and signed up.

Florence and John Koster and their five children had been evicted from their home because the landlord needed it for his own family. John had been injured three years earlier and was unable to work; the family lived on his disability check. Rents had shot up and after the eviction the family hadn't been able to find a place they could afford. The county had paid for them to stay in a cheap motel for three days; private charities stepped in to help for a few more. The family stayed with relatives, splitting up the children and sleeping on couches or the floor, but their welcome wore thin. Eventually, they slept in their old station wagon, parked

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in the lot of an outdoor shopping mall. The Koster children missed school, ate poorly, and had only their summer clothes.

The Kosters were the lead plaintiffs in the case I volunteered to work on. It had been filed in federal court by a local legal services organization along with a New York City advocacy organization.<sup>1</sup> Our interviews with dozens of families revealed that the problems the Kosters faced were widespread, and we moved successfully for class certification. The defendants—New York State and Nassau County—were now looking at a significant chance of a big loss and, eventually, we negotiated a favorable settlement agreement. Reports of homeless families denied shelter and being placed into substandard temporary housing in Nassau County dropped off significantly.

But it turned out that the plight of these families was not unusual, in ways that stretched beyond the bounds of our class action. Nationally, homelessness was exploding, transforming what had previously been a limited problem into a mass phenomenon. Many experts believed that more people were homeless than at any time since the Depression,<sup>2</sup> and surveys documented the inability of cities around the country to meet the increasing demand for emergency shelter. Families with children were the fastest growing segment of the homeless population. Racial and ethnic minorities were increasingly affected, along with younger, working men and women. No longer limited to large urban areas, homelessness was reaching into suburban and rural communities. What I had witnessed on Long Island—suburban family homelessness—was a part of this larger trend.

A number of developments had converged to drive it. During his first year in office, President Reagan led a successful effort to slash in half funds for public housing and Section 8, the major federal rent subsidy program.<sup>3</sup> In the private market, urban development was replacing inex-

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1. *Koster v. Webb*, 598 F. Supp. 1134 (E.D.N.Y. 1983); *Koster v. Perales*, 108 F.R.D. 46 (E.D.N.Y. 1985). Our case was novel: we were making our claim under federal law, the Aid to Families with Dependent Children (AFDC) program. (In 1996, President Bill Clinton signed into law Congress's repeal of the program as part of "welfare reform.") The county and state disputed our reading of the law and asked the judge to throw our case out, but the judge had sided with us and ruled that we had stated a claim. To win, we still had to show that our version of the facts was correct.

2. The Great Depression pushed large numbers of people into homelessness and extreme poverty, but the New Deal, followed by World War II, resolved much—though by no means all—of it. (As Matthew Desmond recently noted, Black Americans were largely denied the benefits of the New Deal, *Stanford Poverty and Inequality Report* at 17 (2017)) Those not absorbed by the war effort tended to be elderly and disabled, and they later began to constitute the "typical" homeless person on skid rows in major cities. KIM HOPPER, *RECKONING WITH HOMELESSNESS* 55 (2002).

3. In 1979, the federal government funded 347,600 new units of low-income housing; by 1983, that number had fallen to 2,630. Across-the-board cuts aimed at deficit reduction, not specifically at social programs, actually began at the end of the Carter Administration. MICHELE WAKIN, *OTHERWISE HOMELESS: VEHICLE LIVING*

pensive housing—such as single room occupancy units—with luxury housing; during the 1970s alone, a million such units were destroyed.<sup>4</sup> Much of that housing had accommodated former residents of mental institutions who had been promised residential community care; when that was not fully funded, they ended up in SRO housing; when that was destroyed, many became homeless.<sup>5</sup>

At the same time, economic shifts meant the loss of higher paying manufacturing jobs, leaving many working people unemployed, underemployed, or with sharply diminished incomes.<sup>6</sup> Wages remained stagnant, with the first increase in the federal minimum wage since 1981 not coming until 1990. Federal income support programs were cut and some had their eligibility standards tightened.<sup>7</sup> At the state level, beginning in the early 1980s, programs known as “general assistance,” which provided very modest cash aid to single people who were down on their luck, were being cut or eliminated.

By the early 1980s, these trends came together to create a crisis. Options for affordable housing were shrinking at the same time that incomes, whether through employment or safety net support, were declining, pushing poor and vulnerable people into homelessness at an alarming rate.<sup>8</sup> The media was increasingly covering this sudden explosion of extreme need, with feature stories recounting the plights of specific families and individ-

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and the Culture of Homelessness 34 (2013). The funding was never fully restored; currently, only one in four of those poor enough to be eligible receives housing assistance. Joint Center for Housing Studies at Harvard University, *The State of the Nation's Housing*, at 35 (2017). [http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/harvard\\_jchs\\_state\\_of\\_the\\_nations\\_housing\\_2017\\_chap6.pdf?\\_ga=2.129946383.245049968.1517082854-1343690764.1515776139](http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/harvard_jchs_state_of_the_nations_housing_2017_chap6.pdf?_ga=2.129946383.245049968.1517082854-1343690764.1515776139).

4. See GENERAL ACCOUNTING OFFICE, HOMELESSNESS: A COMPLEX PROBLEM AND THE FEDERAL RESPONSE 23 (HRD-85-40) (1985).

5. Beginning in the 1960s, advances in the treatment of psychiatric disorders, coupled with public exposes of horrendous conditions in mental institutions, led to a movement to stop institutionalizing people and instead treat them in community settings. But of the planned 2,000 federally supported community mental health centers, only 800 were actually funded. See *id.* at 20–21 & n.18.

6. Kim Hopper, Ezra Susser & Sarah Conover, *Economies of Makeshift: Deindustrialization and Homelessness in New York City*, 14 URB. ANTHROPOLOGY & STUDIES OF CULTURAL SYSTEMS & WORLD ECON. DEV. 183 (1985).

7. GAO, *supra* note 4, at 23–24. These included AFDC, the main cash support program for needy families, and Social Security Disability programs that provided income support to poor disabled individuals. An estimated 491,000 people lost their benefits; more than 200,000 of these were reinstated on appeal. These changes were litigated at length in court; eventually further legislative reform addressed some of the impact, but benefits are still extremely hard to get.

8. See Kim Hopper, *Homelessness Old and New: The Matter of Definition*, 2 HOUSING POL'Y DEBATE 755 (1991).

uals. Homelessness was becoming a national crisis, but there was virtually no federal response. Communities were left to fend for themselves.

The organization I was working with on the pro bono case, the Coalition for the Homeless, focused on New York, but it had recently formed a national arm to address the emerging national crisis, and it wanted to launch an office in Washington, D.C., to develop a campaign for a federal response through lobbying and litigation. The salary on offer was a fraction of that at the firm; there would be funds for part time secretarial help, but no other staff. I would be responsible for establishing a Washington office—including everything from renting space, installing a phone, and developing and executing a strategy for getting the federal government to respond to homelessness. It seemed like an exciting opportunity and I said yes.

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To me, as a young lawyer, it seemed clear that homelessness was a national problem and that a federal response was thus both appropriate and necessary. But this was by no means the dominant view in Washington, D.C. President Reagan called homelessness a “lifestyle choice,”<sup>9</sup> a HUD official claimed “no one is living in the streets,”<sup>10</sup> and Attorney General Ed Meese said that people were going to soup kitchens “voluntarily” because “the food is free.”<sup>11</sup> According to the Administration, homelessness was a matter to be addressed by private charity or, at most, local government. With few exceptions, it was not viewed by the Administration as an issue for federal action.<sup>12</sup>

Congressional action had also been scant. Starting in 1980, Congress had held three hearings on the growing crisis,<sup>13</sup> but no federal legislation

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9. Steven V. Roberts, *Reagan on Homelessness: Many Choose to Live in the Streets*, N.Y. TIMES, Dec. 23, 1988, <http://www.nytimes.com/1988/12/23/us/reagan-on-homelessness-many-choose-to-live-in-the-streets.html>.

10. KIM HOPPER, RECKONING WITH HOMELESSNESS 172 (2002).

11. Robert McFadden, *Comments from Meese on Hunger Produce a Storm of Controversy*, N.Y. TIMES, Dec. 10, 1983, <http://www.nytimes.com/1983/12/10/us/comments-by-meese-on-hunger-produce-a-storm-of-controversy.html>.

12. In 1983, the Secretary of the Department of Health and Human Services, Margaret Heckler, created the Federal Task Force on the Homeless, consisting of representatives of 15 federal agencies, chaired by HHS, to “cut red tape and to act as a ‘broker’ between the federal government and the private sector when an available federal facility resources [was] identified.” GAO, *supra* note 4. It was terminated in 1987 with the creation by the McKinney Act of the Interagency Council on the Homeless. Advocacy, too, focused on the local level, with law playing a key role: one of the earliest strategies was litigation to establish a right to shelter under state and local law in New York and several other cities. See Maria Foscarinis, *Homelessness, litigation, and law reform strategies: a United States perspective*, 10(2) AUST. J. OF HUMAN RIGHTS 105 (2017).

13. The first focused on a report published by the Community for Creative Non-Violence (CCNV) documenting the crisis. VICTORIA RADER, SIGNAL THROUGH

was enacted or considered. The sole federal response, beginning in 1983, was a series of appropriations for emergency food and shelter, not authorized by any legislation, but rather made on an *ad hoc* basis through the Federal Emergency Management Agency, the agency responsible for aiding victims of natural disasters.<sup>14</sup>

A group of national anti-poverty organizations had been meeting for over a year to develop national legislation to address the crisis. Local legal services offices, much like the legal services office I had worked with on Long Island, were increasingly seeing homeless and near homeless clients. Based on their reports, the group had put together a long list of problems faced by these clients as well as proposed solutions. But none of the groups worked specifically on homelessness, nor did they have the time or capacity to focus on moving this work forward. That would be my job, and I worked with the group to shape the list into a legislative proposal that I could take up to the Hill.

Some in the group felt that we should pare the list down and focus on politically “realistic” proposals, while others wanted to maintain the ambitious list. I decided to combine the two approaches, organizing the proposal into a single piece of proposed legislation, consisting of three titles—Emergency Relief, Preventative Measures, and Long Term Solutions—each with many subtitles. The larger, single piece of legislation—styled the Homeless Persons’ Survival Act<sup>15</sup>—laid out an ambitious national agenda for which I could mobilize groups across the country to lobby. The smaller pieces I could get introduced as separate bills in the relevant committees with jurisdiction and look for opportunities to lobby for their passage.

With respect to legislative strategy, first I would have to find a lead sponsor to introduce the whole proposal.<sup>16</sup> As a litigator, I had little knowledge of the legislative process, but I did know how to make a case. Drawing on research, I outlined the problem and our proposed solution in a memo, arguing that the broad demographic and geographic

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the Flames: Mitch Snyder and the America’s Homeless 145 (1986); MARY ELLEN HOMBS, *MODERN HOMELESSNESS: A REFERENCE HANDBOOK* 23 (2011). Two others followed, in 1982 and 1983. HOPPER, *supra* note 10. Maria Foscarinis, *Beyond Homelessness: Ethics, Advocacy, and Strategy*, 12 ST. LOUIS L. REV. 37, n.37 (1993).

14. See Foscarinis, *supra* note 13. In 1985, the General Accounting Office, a non-partisan, independent federal agency (now called the Government Accountability Office) produced a report examining homelessness and its causes. GAO, *supra* note 4. Ted Weiss, a liberal Democrat and a Member of Congress from New York City and Chair of the House Subcommittee on Intergovernmental Relations and Human Resources of the Committee on Government Operations, had requested the report.

15. H. R. 5140, Homeless Persons’ Survival Act of 1986, <https://www.congress.gov/bill/99th-congress/house-bill/5140>; S. 2608, <https://www.govtrack.us/congress/bills/99/s2608>.

16. I could then work with congressional legislative counsel, or “leg counsel,” to turn it into legislative language that could be introduced as a bill.

scope of homelessness meant it was a national issue that the federal government had an obligation to address.<sup>17</sup> Memo in hand, I began making visits to the Hill, confident that the strength of my arguments would garner support.

I started from the short list of members of Congress deemed “sympathetic” to our cause, mostly liberal New York Democrats. Repeatedly, I was told that what I was doing was very important and the Congressperson fully supported it. However, he was facing election in the fall, the proposal was expensive, and “the homeless don’t vote.” Thus, unfortunately, the Congressperson would not be able to sponsor the proposal. Others were ideologically opposed; their goal was to shrink the federal government, not expand it. Sometimes, there was no staff person assigned to the issue, and there was literally no one to meet with. Some just laughed: to them homelessness did not rise to the level of a national political issue appropriate for congressional action. And even if they personally felt it should, this was the Reagan era. Did I seriously think such an effort was possible? How terribly naïve I must be!

After a couple of months, I had met with dozens of legislative offices, to no avail. Then what was beginning to seem like a miracle happened: I met with Rep. Mickey Leland’s office and they were interested. Leland was a Congressman from Texas who had previously been an anti-poverty activist. In Congress, he chaired the Congressional Black Caucus as well as the Congressional Select Committee on Hunger that he had helped create, along with Rep. Ben Gilman, a Republican from New York. He was a liberal Democrat, but he was respected on both sides of the aisle. Once Leland agreed to serve as lead sponsor of the Homeless Persons’ Survival Act, I discovered that getting the second sponsor was a tiny bit easier,<sup>18</sup> the third slightly easier and so on until we had 36 “original” co-sponsors in the House, all Democrats.<sup>19</sup> Later, we’d add a lone Republican, Rep. Gilman.

Getting the proposal introduced in the Senate was even harder. Then the Congressional Wives for the Homeless, a group that had come together out of concern for the growing crisis, invited me to speak at a tea for its members. Sipping from fancy china, I discussed the Homeless Persons’ Survival Act and my efforts to garner support for it. Tipper Gore, wife of then-Senator Al Gore, had become interested in homelessness as part of her in-

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17. The political powerlessness of the homeless population, and its general inability to affect local politics, added to the need for a federal response.

18. Meanwhile, I had also been meeting with the relevant committees to build support for the separate pieces of the proposal; after Leland agreed to sign on, I went back to them to ask for their support of all or part of the bill.

19. Original co-sponsors put their name on the bill at the time of introduction; other co-sponsors later added their names. Eventually, we had a total of 60 cosponsors in the House; we remained at our original two in the Senate. H.R. 5140, Homeless Persons’ Survival Act of 1986, <https://www.congress.gov/bill/99th-congress/house-bill/5140/cosponsors> (list of co-sponsors).

terest in mental health, stemming from her experience with depression following the near death of her son. Tipper promised to speak to her husband, and she helped me arrange a meeting with his chief of staff.

I had met with Gore's staff previously, without success. They had expressed concern that the proposal's potential cost was "mind boggling," and that some of its provisions, while "well intentioned," were "very controversial."<sup>20</sup> But Tipper Gore's passionate interest had apparently made a critical difference, and Senator Gore agreed to be our first Senate sponsor; Senator Daniel Patrick Moynihan became the second. Finally, on June 26, 1986, some six months after I'd begun work on it, the Homeless Persons' Survival Act of 1986 was introduced in both the House and Senate, endorsed by almost 100 national, state, and local organizations.

So far, my lack of knowledge of the legislative process had helped give me the confidence to go to meetings based simply on the strength of my evidence and arguments, rather than political calculation. But now that I had to try to get pieces of the bill actually passed, I was out of my depth. I had been getting valuable pro bono advice from Akin Gump, a law firm with high-powered political connections,<sup>21</sup> but I needed more hands on deck. I knew that some law firms, especially in D.C., had legislative practices, and I made a cold call to Covington & Burling's pro bono coordinator. Rod DeArment, a partner in the government relations practice, responded to the call for volunteers and put together a team to work on the project.

A self-described conservative Republican, Rod had arrived at the firm right out of law school. Later, he signed up for a six-month program offered by the firm to work for Neighborhood Legal Services, representing poor people in Washington, D.C. Eventually, he left the firm to work on the Senate Finance Committee, then chaired by Senator Robert Dole; when Dole became Senate Majority Leader, Rod became his chief of staff, serving from 1985 to 1986. A seemingly unlikely ally, Rod had a deep religious faith and a personal connection to homelessness and poverty through his

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20. They feared that, if enacted, the bill would lead to an "outcry" for restoration of other benefits that had been cut, further adding to the expense. For example, with regard to a proposal to restore aid to students aged 18–21 as a way to prevent homelessness, a staffer noted that "it was just a couple of years ago that social security benefits were phased out for students after high school. We still hear from folks wanting these SS benefits restored. If AFDC student benefits were restored, there likely would be an outcry for restoration of SS benefits as well." Homelessness for young people is a pressing issue that is today getting renewed attention—at times as if it is brand new. *Advancing an End to Youth Homelessness*, U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, July 2017, [https://www.usich.gov/resources/uploads/asset\\_library/federal-national-youth-initiatives.pdf](https://www.usich.gov/resources/uploads/asset_library/federal-national-youth-initiatives.pdf). But its causes go back at least to these original cuts and the reluctance to address them.

21. Tim Davis, a lobbyist at Akin Gump Strauss Hauer & Feld, a big corporate law firm known for its political connections, especially to Democrats, helped me with the basics of developing a strategy and introductions to key people on the Hill.

pro-bono work. When I met him, he had recently returned to the firm as a partner and as chair of the firm's legislative practice.<sup>22</sup>

By then it was becoming clear to me that party affiliation was not necessarily an indicator of interest. At the time, a Republican majority controlled the Senate, and in order to get legislation enacted we would need bipartisan support. Rod's background and connections would be critical. We began meeting with key Senate Republicans, most notably Senator Pete Domenici, and getting some interest. Domenici, who was Catholic, had a daughter who was mentally ill, and because a significant minority of homeless people suffers from mental illness, he had taken a personal interest in the issue.<sup>23</sup> Also important was that we had an active local partner organization in New Mexico, his state, and it was able to engage key local officials to help lobby our case. Eventually, we impressed Domenici's staff enough that they arranged a meeting with the Senator himself.

I wasn't sure what to expect, but Domenici was very personable. Accompanied by Rod, I made the pitch for the Homeless Persons' Survival Act, explaining our view that homelessness was a national crisis that required a federal response. After the meeting, his staffer asked us to prepare a "Domenici package" consisting of the proposal's low and no-cost items. This included provisions to remove address requirements from a series of federal benefits programs,<sup>24</sup> opening access to such programs for homeless people. Also included were provisions to allow people to apply for benefits while they were in institutions (such as hospitals, jails, and prisons) so that they would have them upon release.

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22. Later, in 1989, he would again take a leave to serve as Deputy Secretary of Labor under Elizabeth Dole in the first Bush Administration.

23. He was especially interested in housing for the mentally ill.

24. Homeless Eligibility Clarification Act, Pub. L. No. 99-570, Stat. 3207-167 (codified at 7 U.S.C. § 2011 *et seq.*), <https://www.gpo.gov/fdsys/pkg/STATUTE-100/pdf/STATUTE-100-Pg3207.pdf>, at 168-71. It allowed homeless persons to use food stamps to buy prepared meals; explicitly included homeless persons as eligible for assistance under a federal job training program; and required the Social Security Administration to develop a process to make Supplemental Security Income (SSI) payments (federal disability benefits for poor persons) and to provide cards evidencing eligibility for medical assistance available (under Medicaid) to "an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address." It also required the Secretary of the Department of Health and Human Services to issue guidelines to the states for providing welfare payments (under the Aid to Families for Dependent Children program then in effect) to "a dependent child who does not reside in a permanent dwelling or does not have a fixed home or mailing address." It also provided that persons confined to public institutions could apply for food stamps and SSI benefits before their release in a single application. Finally, it provided that veterans' benefits could not be denied based on an applicant's lack of a mailing address and required the Veterans Administration to devise a method for delivering benefits to such applicants. *Id.*

The non-partisan Congressional Budget Office (CBO) had assigned a zero cost to these provisions. The Administration's reluctance to acknowledge homelessness as a problem had worked in our favor. CBO had gone to each of the federal agencies administering the benefits programs and asked them how many homeless people were denied benefits because they lacked a permanent address. In each case, the response was that the number was negligible; thus the cost of removing barriers would also be negligible.<sup>25</sup>

Several pieces of legislation were moving and were potential "vehicles"<sup>26</sup> for the bill, which was called the Homeless Eligibility Clarification Act. Among these was anti-drug legislation, which was moving quickly though Congress with strong bipartisan and Administration support.<sup>27</sup> By noting a connection between drug use and homelessness, Domenici was able to attach our pieces to it. Because he was the lead sponsor, other Republicans, including conservatives such as Senator Jesse Helms, signed on as co-sponsors. On October 26, 1986, the legislation was passed with strong bipartisan support; it was signed into law the next day.<sup>28</sup>

Passage of the bill was a milestone event. Just months earlier the Administration had explicitly disavowed responsibility for homelessness—and indeed denied its very existence as a social problem—while in Congress, many, including liberal Democrats, were reluctant to acknowledge it as an issue for federal legislative action. In this climate, the enactment of our legislation was a remarkable success. Constituent pressure, persistent "inside the beltway" lobbying, and personal interest by powerful, key players had made the difference.

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25. The question of numbers of homeless people was also highly controversial, with HUD estimating the number at 250,000 to 350,000 in a 1984 report to Congress, U.S. Dep't of Hous. & Urb. Dev., *A Report to the Secretary on the Homeless and Emergency Shelter*, at 18–19 (1984), and the Community for Creative Non-Violence (CCNV) putting the estimate at 2.5 to 3.5 million, MARY ELLEN HOMBS & MITCH SNYDER, HOMELESSNESS IN AMERICA: A FORCED MARCH TO NOWHERE xvi (CCNV 1983). It is still controversial. See, e.g., National Law Center on Homelessness & Poverty, *Don't Count on It: How the HUD Point-In-Time Count Underestimates the Homelessness Crisis in America* (2017).

26. Larger bills that were likely to move through the legislative process with a reasonable chance of being passed and signed into law and to which we could attach our pieces.

27. Another possibility we considered was a bill relating to insecticides. But we would be better off with something "germane," or related to our issues.

28. Two other important bills became law at about the same time. They created a small Emergency Shelter Grant program (funded at \$10 million) and a Transitional Housing Demonstration program (funded at \$5 million). See Maria Foscarinis, *Federal Legislative and Litigative Strategies: An Overview*, 1 MD. J. CONTEMP. LEGAL ISSUES 9, 17 (1990).

Soon after this victory, I began work on a more ambitious legislative proposal,<sup>29</sup> this time with a high profile and controversial partner, Mitch Snyder, de-facto leader of the Community for Creative Non-Violence (CCNV), a “radical-Catholic” activist group founded in 1970 by a Paulist priest. CCNV ran a large shelter—the largest in the country—in downtown Washington, and its members lived as well as worked there, preparing meals, running programs, and serving as advocates for their homeless residents and for homeless people generally.<sup>30</sup> Mitch was often in the media and was widely known, both for his devotion in living in a shelter, side-by-side with homeless people, and his confrontational tactics, which included hunger strikes and civil disobedience. Mitch had followed my efforts on the Hill and seemed offended that our bill had been deemed “no cost.” He proposed working together to push Congress to allocate \$500 million in aid to homeless people that winter with a campaign that would keep the urgency of cold weather front and center.

I feared this would further the prevailing view of homelessness as a temporary crisis that could be addressed with emergency measures, not a systemic problem with deeper causes. But I had just experienced the enormous difficulty of getting support for the mere introduction of the Homeless Persons’ Survival Act, and I knew that getting Congress to commit \$500 million would be a huge challenge; emphasizing the emergency nature of the need would surely help. Eventually, I agreed, calculating that I could also keep a focus on the need for comprehensive long-term policies. If we succeeded, it would be a step towards the bigger goal and I would frame it that way.

A number of developments had converged to focus a high degree of public attention on homelessness, making this an opportune time for our campaign.<sup>31</sup> A made-for-TV movie about Mitch and CCNV, starring Martin Sheen, previewed in Washington, D.C., with celebrities and politi-

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29. Meanwhile, I was also pursuing the second prong of the national campaign strategy, looking for potential federal litigation, and filed several cases, including a successful federal court suit against the Department of Defense challenging its failure to implement a program to offer surplus military real property to non-profit providers of services to homeless people. See Foscarinis, *Homelessness, Litigation and Law Reform Strategies*, *supra* note 12 at 113–14, for a discussion of this and other cases I filed during this time.

30. See CYNTHIA J. BOGARD, SEASONS SUCH AS THESE: HOW HOMELESSNESS TOOK SHAPE IN AMERICA 9–12, 40–43, 70–73 (2003).

31. There was an “explosion” of coverage during the period from 1981–87. ENCYCLOPEDIA OF HOMELESSNESS 304 (David Levinson ed., 2004), [https://books.google.com/books?id=q-PgHH8TJi8C&pg=PA302&lpg=PA302&dq=Media+homelessness+1980s&source=bl&ots=Bk7\\_GK\\_85p&sig=Oqq3MVicZ6\\_aOm18X\\_gmHv22rN4&hl=en&sa=X&ved=0ahUKEwinzfSzfUfUAhXBGz4KHcDfDcOQ6AEIOzAD#v=onepage&q=Media%20homelessness%201980s&f=false](https://books.google.com/books?id=q-PgHH8TJi8C&pg=PA302&lpg=PA302&dq=Media+homelessness+1980s&source=bl&ots=Bk7_GK_85p&sig=Oqq3MVicZ6_aOm18X_gmHv22rN4&hl=en&sa=X&ved=0ahUKEwinzfSzfUfUAhXBGz4KHcDfDcOQ6AEIOzAD#v=onepage&q=Media%20homelessness%201980s&f=false).

cians in attendance.<sup>32</sup> Hollywood comedians and HBO organized Comic Relief, a show to raise funds for aid to homeless people.<sup>33</sup> Hands Across America, a highly publicized event with millions of people joining hands in a single line across the country, raised awareness and funds to help homeless people. Mayors convened to discuss strategies for addressing homelessness, and a new advocacy organization of homeless and formerly homeless people, the National Union of the Homeless, was formed.<sup>34</sup>

That September, over 500 activists from around the country gathered, including those I had relied on to lobby Congress. As the gathering was ending, the Senate voted to pass the Homeless Eligibility Clarification Act, electrifying the group. The next day, CCNV sent letters to every member of Congress urging continued congressional action and especially funding, while I continued to build support for the Homeless Persons' Survival Act. Later that fall, Mitch set up camp on a heat grate outside the Capitol with a statue of a homeless nativity scene, an act of civil disobedience intended to draw attention to our campaign.

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The November elections brought potentially helpful changes. Control of the Senate had shifted from the Republicans to the Democrats.<sup>35</sup> The House remained under Democratic control, but Jim Wright replaced Tip O'Neil as Speaker.<sup>36</sup> The week after his election, Wright toured the CCNV shelter and met with Mitch, who agreed to remove the nativity scene statue from its spot outside the Capitol. Speaker Wright would make homelessness one of his top priorities,<sup>37</sup> a commitment that would prove instrumental to our efforts.

In early January, Mickey Leland re-introduced the Homeless Persons' Survival Act, with leadership support.<sup>38</sup> Two days later, the Foley-McKinney

32. *Samaritan, The Mitch Snyder Story* (CBS 1986).

33. It aired on March 29. The funds were distributed through the Robert Wood Johnson Foundation to fund health care services for homeless people across the country.

34. The mayors' convening focused on affordable housing, not emergency shelter; the group of homeless people echoed that demand. William K. Stevens, *U.S. Advocacy Group for Homeless Is Born*, N.Y. TIMES, Feb. 16, 1986, <http://www.nytimes.com/1986/02/16/us/us-advocacy-group-for-homeless-is-born.html>.

35. Robert Byrd taking over as Majority Leader from Bob Dole, who became Minority Leader.

36. Tom Foley as Majority Leader, and Tony Coelho as Majority Whip.

37. *Advocates for Homeless Will Stop Protest at Capitol*, L.A. TIMES, Jan. 11, 1987, [http://articles.latimes.com/1987-01-11/news/mn-4090\\_1\\_homeless-couple](http://articles.latimes.com/1987-01-11/news/mn-4090_1_homeless-couple)

38. Leland appealed to his colleagues to support his bill by specifically noting that "[a]s we approach the harshest days of winter, millions of Americans face the cold and windy nights without the comfort of basic shelter." Dear Colleague Letter, Jan. 5, 1987. But at the same time, in line with our agreed upon strategy, he called the Survival Act "definitive legislation expressing a long term federal commitment

Urgent Relief for the Homeless Act,<sup>39</sup> named after the new Majority Leader and the bill's primary Republican sponsor, Stewart McKinney, was introduced. That bill consisted of most of Part I of the Homeless Persons' Survival Act—the Emergency Relief part<sup>40</sup>—and authorized a total of \$500 million. Speaker Wright promised to “fast-track” its passage.

To develop a lobbying strategy, I had to figure out a way to collaborate with Mitch, who had resolved to live on the heat grate until Congress passed legislation, while also continuing to work with Rod and his team at Covington. I arranged an initial meeting of the three of us on a Saturday at the firm's offices. Rod drove in from his suburban home in Virginia, Mitch came in from his heat grate, dressed in the clothes he had been living in, and I arrived from my downtown apartment. Despite my nervousness about this meeting between people who could hardly have been more different, all went smoothly, and after that first meeting we began going on Hill visits together. We made an impression: Rod and I in suits, looking like lawyers, Mitch looking like a homeless person. But despite our wildly different backgrounds and appearance, we had the same message. Homelessness was a national crisis and the federal government had to take action. The Urgent Relief for the Homeless Act was a much-needed step, and we wanted their support.

The House scheduled a hearing on the bill, signaling its importance and urgency.<sup>41</sup> Governor Mario Cuomo of New York, a powerful moral voice,<sup>42</sup> testified in support. So did Mayor Raymond Flynn of Boston, bringing to bear his Catholic faith as well as his leadership of the Task Force on Hunger and Homelessness of the U.S. Conference of Mayors, another important lobbying group.<sup>43</sup> Speaker Wright testified, showcasing

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to end this national disgrace,” noting that permanent affordable housing was exponentially cheaper than emergency shelter. News Release, Jan. 7, 1987.

39. Foley McKinney Urgent Relief for the Homeless Act, H.R. 558, <https://www.congress.gov/bill/100th-congress/house-bill/558>.

40. One major omission was the national right to shelter; our Hill allies felt it was too controversial and would torpedo the bill. Instead, funding shelter and transitional housing—without creating a right—through two small programs, enacted at the same time as the Homeless Eligibility Clarification Act, was added.

41. Held by the Subcommittee on Housing and Community Development, the subcommittee taking the lead on the bill. The bill had also been referred to Energy and Commerce Committee and its Subcommittee on Health. The Education and Labor Committee took up portions of the bill, but separate from the Urgent Relief Act.

42. He had earlier lent his name to an important report on the issue.

43. The Conference of Mayors, which represented big cities, had recently created a special task force to address the growing crisis of hunger and homelessness. Starting in 1984, and continuing to this day, the Task Force has conducted an annual survey of its members to assess the status of hunger and homelessness in their cities. See *U.S. Conference of Mayors' Report on Hunger and Homelessness* (Dec. 2016), <https://endhomelessness.atavist.com/mayorsreport2016>.

the leadership's commitment. Days later, the *New York Times* ran a national story headlined "The Homeless Become an Issue";<sup>44</sup> the influential "inside the beltway" *National Journal* followed with a piece along similar lines.<sup>45</sup> Our efforts were starting to be taken seriously, with coverage shifting away from exclusively "soft" feature, metro section stories to the national political pages. On March 5, 1987, the Urgent Relief for the Homeless Act passed the House with bipartisan support.<sup>46</sup>

But the bill that passed did not include critical provisions designed to ensure access to education for homeless children.<sup>47</sup> To my surprise, this part of the bill had been controversial with the education "establishment," and the education committee had kept it out to address their concerns.<sup>48</sup> Fundamentally, it seemed the education groups, generally Democratic,

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44. It highlighted key members of Congress and quoted me. *Washington Talk; the Homeless Become an Issue*, N.Y. TIMES, Feb. 7, 1987, <http://www.nytimes.com/1987/02/07/us/washington-talk-the-homeless-become-an-issue.html>.

45. It highlighted Leland, Domenici, Lowry and House Majority Whip Tony Coelho, and quoted Mitch and me. Julie Kosterlitz, *They're Everywhere*, NAT'L J. 19, Feb. 28, 1987.

46. The Rules Committee issued an open rule that waived all "points of order," fast-tracking the bill: amendments would be allowed but technical objections—such as those based on budget constraints—would not be. The vote was 264 to 121, with 43 Republicans voting in favor along with 231 Democrats (including five members of the Democratic Farm Labor (DFL) party). CONG. REC.—HOUSE (daily ed. Mar. 5, 1987).

47. Homeless children face myriad challenges, already well documented, even compared to housed children living in poverty; these include challenges in keeping up academically—or even going to school at all. Lacking a permanent address, homeless children were no longer considered "residents" of their original school district, but they were not considered "residents" of their current location either. They could be denied access to school or be forced to move from school to school as they moved from one shelter or temporary arrangement to another, disrupting their education and adding more instability to their lives.

48. The offending section required school districts to allow homeless children to enroll in either their original school or the school in the district they were currently living in and included specific provisions to make this possible, such as requiring school districts to pay for transportation back to the original school if necessary; it authorized a small amount of federal funding to help cover the costs. It included a right for parents to choose between the school of origin and the school in the district the family was living in, if these were different. Kirsten Goldberg & William Montague, 'Shelter Kids', ED. WEEK, Apr. 24, 1987, <http://www.edweek.org/ew/articles/1987/04/24/3030home.h06.html>. It required school districts to take other specific steps to make sure these kids got their education, such as making records immediately available for children who transferred. It provided for sanctions on school districts that did not comply and included a right to sue for violations.

were concerned about the potential cost of educating homeless children. Eventually,<sup>49</sup> we neutralized the opposition<sup>50</sup> and while we had to give ground on a number of issues,<sup>51</sup> we still achieved strong legal protections. But despite agreement on all sides on the need for increased funding, we were far less successful on that point. Even with a Democratic Congress and a highly supportive leadership, the lobbying might of the education “establishment” had been able to water down our language but not to increase funding for schools, a testament to the difficulty of building political support for impoverished children.

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Meanwhile, we needed the Senate to introduce a counterpart to the Urgent Relief for the Homeless Act, and we would need bipartisan support.<sup>52</sup> Thanks to our work on the Homeless Eligibility Clarification Act, we had a strong relationship with Senator Domenici; thanks to Rod, we also had strong ties Senator Dole.<sup>53</sup> When Majority Leader Byrd introduced the Urgent Relief for the Homeless Act later in March, of the 27 original co-sponsors, ten were Republicans, including Dole and Domenici.<sup>54</sup> This put us in a good position to seek support for a budget waiver.<sup>55</sup>

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49. Senator Kennedy included them in the Senate version. This meant that negotiations could continue in the “conference committee” that would be constituted to resolve the differences. There the House leadership and Lowry leaned heavily on the committee to adopt strong language protecting the education rights of homeless children.

50. We agreed on very specific requirements, and I made sure that the language included as many “shalls” as possible. This mandatory and specific language was critical in establishing our ability to sue, even without an explicit right to do so. The National Education Association agreed to remain neutral—neither supporting nor opposing the bill. The School Board Association opposed it, but agreed to remain silent, and not actively oppose it. See Goldberg & Montague, *supra* note 48.

51. The education groups opposed parental choice, and we resolved that issue by agreeing that the decision would be made based on the “best interests of the child.” They also opposed a clear right to education for these kids; we had to accept a more muted statement that it was “the policy of Congress” that homeless children have a right to education. There was no explicit right to sue, and no sanctions for non-compliance.

52. To get support for the bill we would either have to find funds within the existing budget, which meant cutting something else, or get 60 Senators to support a budget waiver, which would require bi-partisan support.

53. Dole had been Majority Leader from 1985–87; now that the Senate had shifted to Democratic control, he was Minority Leader.

54. S.809. By April 9, 1987, when it was brought to the floor for a vote, there were a total of 40 co-sponsors, including one more Republican.

55. Unlike the House, the Senate did not have a process for a general budget waiver. Instead, each Senator would have to vote for it. CONG. REC. S4919 (daily ed. Apr. 9, 1987).

First, we had to overcome a challenge from Senator Gordon Humphrey, a Republican from New Hampshire, who proposed an amendment that nearly derailed the whole process. Humphrey wanted to repeal a congressional pay raise by President Reagan that had automatically gone into effect, without any member of Congress having to vote on it. His strategy was to offer an amendment to bills moving through Congress in order to force Members to go on record for or against it.<sup>56</sup> Byrd wanted to avoid this through a parliamentary maneuver that would require 60 votes and “unanimous consent.” We would need to get Humphrey to agree.<sup>57</sup>

Winter was slipping away and we feared losing our window for urgent action. Mitch’s idea was to stage a sit in at Humphrey’s office, a plan he claimed Byrd’s office supported as a “reasonable” way to put pressure on Humphrey and make everyone nervous. Dole’s staff, possibly having caught wind of this or simply just fearing Mitch’s known propensity for such tactics, warned me against attacking Republicans, and advised me to keep a low profile. Meanwhile, on Rod’s advice, I found allies in New Hampshire who could put pressure on Humphrey. I also put out a press release, not attacking anyone but calling on the Senate to act quickly to help homeless Americans.

Just before Easter recess, our bill passed, 85 to 12.<sup>58</sup> Was it because of Mitch’s threatened sit-in? Rod’s connection to Dole? My constituent pressure and focused press outreach? I think it may have been the combination.

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We spent the next few months working to persuade Congress to “appropriate” the funds it had “authorized,” a difficult process that also further illustrated the difference between political rhetoric and reality. As finally passed, the authorizing bill was for two years, 1987 and 1988, and appropriations for 1987 were especially tricky because we were already

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56. As a fiscal conservative, Humphrey was outraged by Reagan’s maneuver; he was working with Public Citizen, a liberal group that opposed it on government accountability grounds.

57. Both Byrd and Dole wanted to avoid forcing their colleagues to have to choose between forgoing a pay raise—which they wanted—and going on record to vote for it, which would make them look bad politically. Byrd moved to invoke “cloture” to preclude any amendments, including Humphrey’s, that were not relevant to the bill.

58. Cloture passed 68 to 29. A conference committee later worked to resolve differences between the House and Senate versions, with most of the negotiations focused on funding authorizations; the final conference committee report, filed June 19, included authorization for two years, with \$443 million for 1987 and \$616 million for 1988.

deep into the federal fiscal year.<sup>59</sup> But 1988 appropriations were also challenging, with the Democratic staff of the House committee initially claiming there was “just no money” and that he expected the 1987 funds to “carry over.” In the end, efforts by Speaker Wright, and key Democratic allies Mike Lowry and Bruce Vento, were instrumental in the House, while in the Senate, Republican Pete Domenici played a critical role.<sup>60</sup> Still, final funding fell short: Congress appropriated just over 72 percent of the funds it had authorized.<sup>61</sup>

Meanwhile, the authorizing legislation had been renamed the Stewart B. McKinney Homeless Assistance Act, in honor of its chief Republican sponsor, who had just died.<sup>62</sup> On July 10th, Congress sent the bill to the President. On the evening of July 22, on the very last day that he could act,<sup>63</sup> President Reagan signed our bill into law. There was no signing ceremony; according to anonymous White House sources quoted in the press, this omission was intended to signal Reagan’s “lack of enthusiasm.”<sup>64</sup>

The enactment of the new law made the front page of the *New York Times*. By then I was exhausted and had not put out a press release. But two days after the signing, Robert Pear of the *New York Times* called, asking for details and comment in his soft, feathery voice. He quoted me with this assessment: “The new law will provide material aid that is badly

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59. A bill for a much larger Supplemental 1987 appropriation was pending, and the House leadership made sure it included \$425 million for our bill. But it was more than \$2 billion over the budget limit, and even though the House had agreed to waive the budget rules, a moderate Democrat from Florida, Rep. Buddy McKay, was pushing an across-the-board cut to all programs. Mike Lowry, our key behind-the-scenes champion in the House, lobbied to exempt funding for our bill, and the Speaker made a deal: he would agree to the cuts if the homeless programs were exempted. Jonathan Fuerbringer, *Wright Accepts a Loss to Win a Spending Bill*, N.Y. TIMES, Apr. 25, 1987, <http://www.nytimes.com/1987/04/25/us/wright-accepts-a-loss-to-win-a-spending-bill.html>. In the Senate, the Democratic appropriations sub-committee chair had not included any funding for our bill’s shelter and transitional housing programs. A floor amendment by Senator Domenici, supported by Senator Cranston (D-CA), restored most of the funds.

60. For 1988, the relevant House subcommittee claimed there was just “no money” for 1988; it expected the 1987 funds to carry over. But we learned that NASA, the space program, had gotten \$1 billion in funding from the same subcommittee. With this information and help from the Speaker, Lowry, and Congressman Bruce Vento, we were able to get \$300 million for our bill.

61. Congress appropriated \$355 million for 1987, and \$365 million for 1988.

62. He had passed away from AIDS on May 7th. Michael Specter & Richard Pearson, *Rep. Stewart B. McKinney Dies of AIDS Complications*, WASH. POST, May 8, 1987.

63. U.S. CONST. art. I, § 7.

64. Robert Pear, *President Signs \$1 Billion Bill to Aid Homeless*, N.Y. TIMES, July 24, 1987.

needed. It also represents an important recognition of the federal responsibility to deal with homelessness. But it is only a first step. There must be longer-term efforts to address the causes of the problem, as well as the symptoms.”<sup>65</sup>

As enacted, the McKinney Act authorized over \$1 billion in federal aid for homeless people over two years.<sup>66</sup> It created 20 new programs to fund shelter, transitional housing, and a very modest amount of permanent housing, as well as health and mental health care, food, and drug abuse treatment; most operated by funneling federal funds to states, local governments, and private non-profits. The Act protected the right of homeless children to education and granted a right of first refusal to vacant federal properties to groups serving homeless people.

The McKinney Act made clear that the federal government did have a responsibility to address homelessness, with both its language and the fact of its enactment, shifting the existing paradigm. The findings specifically acknowledge that homelessness is a national crisis and that the federal government has a responsibility to address it. The Act created a new independent agency, the U.S. Interagency Council for the Homeless, to coordinate the federal response to homelessness,<sup>67</sup> defining a central point for federal accountability. Touching on many of the issues included in the original Homeless Person’s Survival Act, it suggested what a comprehensive solution might look like: embedded in the Act were amendments to larger social programs, such as job training, designed to ensure that homeless people could and would benefit from them, as well as “demonstration” programs—such as one for adult literacy—with small amounts of funds attached to them.

It was a huge accomplishment, but somehow I was less than overjoyed. I had knocked myself out, along with Mitch and many other allies, and mobilized high-powered pro bono support. But I knew that it would not be enough to solve the problem. At \$720 million over two years, appropriations were significant but short of authorizations.

And more importantly, the appropriations were way short of the need. In some cases, these discrepancies were enormous. For the Emergency Shelter Grants program, \$120 million was authorized for 1988, but only \$8 million was actually appropriated. For the Section 8 single room occupancy program, no funds at all were appropriated for 1988. Applications

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65. *Id.*

66. \$443 million in 1987 and \$616 million in 1988.

67. The Council superseded a Task Force for the Homeless that had been created in 1983 by administrative action. *United States Interagency Council on Homelessness Historical Overview*, [https://www.usich.gov/resources/uploads/asset\\_library/USICH\\_History\\_final.pdf](https://www.usich.gov/resources/uploads/asset_library/USICH_History_final.pdf). Mitch especially thought the Council was important to create federal accountability. This would be an agency we could point to as responsible for responding to the crisis.

for the 1987 funds exceeded availability ten-fold, despite the newness of the program.

It was not just the funding shortfall that muted my reaction. From the beginning, I had made sure to include statements from our key supporters in the *Congressional Record* that the McKinney Act was intended as a first, emergency step only, and that longer-term measures would be needed to solve the problem. Speaking on the floor of the Senate when the bill was first introduced, Senator Gore said: “[This legislation] is an essential first step towards establishing a national agenda for action to eradicate homelessness in America. . . . No one in this body should believe that the legislation we begin considering today is anything more than a first step towards reversing the record increase in homelessness.”<sup>68</sup>

Clearly, there would be much more to do. Two years later, I founded the National Law Center on Homelessness & Poverty to carry the work forward.

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Today, thanks to our work and that of our allies, annual funding for the McKinney Act has grown to over \$2.8 billion, the vast majority of it allocated to shelter and housing programs.<sup>69</sup> The programs and the rights created by this landmark Act help millions of people each year; they have undoubtedly saved and improved many lives. Together with our allies, the Law Center has also worked to add protections for homeless people to other federal, anti-poverty, and civil rights programs. And while full compliance remains a challenge, thanks to sustained monitoring and repeated litigation, the rights the bill created have made a clear and measurable difference.

But despite this progress, many of the promised next steps remain largely unfulfilled. Allowing an emergency like homelessness to continue for decades without solving it leads to continued suffering and devastated lives for those directly affected. But it can also further a broader public perception that the problem is unsolvable, or that it is the fault of those affected. Indeed, laws that punish homeless people for living in public places—typically in the absence of any alternative—are on the rise across the country, often buoyed by a claim that help is available, but that people do not want to avail themselves of it and instead “choose” to live on the streets.<sup>70</sup>

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68. CONG. REC. S3683 (daily ed. Mar. 23, 1987).

69. Also included is funding for health and mental health care, education for homeless children, and a small job training program for homeless veterans. An additional \$2.3 billion now funds related programs for homeless veterans, bringing the total up to over \$5 billion. See National Alliance to End Homelessness, *FY 2018 Homelessness Assistance Budget Chart*, [https://endhomelessness.org/wp-content/uploads/2017/09/FY-2018-homeless-assistance-budget-chart\\_9.12.pdf](https://endhomelessness.org/wp-content/uploads/2017/09/FY-2018-homeless-assistance-budget-chart_9.12.pdf).

70. National Law Center on Homelessness & Poverty, *Housing Not Handcuffs* (2016), <https://www.nlchp.org/documents/Housing-Not-Handcuffs>.

These echoes of Reagan are not new, but the advent of the Trump Administration has intensified the dangers for poor and homeless people—and marginalized and disenfranchised people more broadly. Proposed cuts to housing and safety net programs threaten many more people with homelessness, and regulatory rollbacks and the focus on “law and order” threaten increased criminalization and further loss of basic rights.<sup>71</sup> The landscape has shifted considerably since the Reagan era, but as we face new challenges, we can remind ourselves that change is possible even in the face of seemingly insurmountable odds.

Several factors stand out in the success of our work for an initial federal response to homelessness against high political odds. First, we had an ambitious but actionable agenda. The Homeless Persons’ Survival Act laid out a comprehensive proposal while also including smaller more bite-sized pieces. The Urgent Relief for the Homeless Act made an ambitious but potentially achievable funding request. Both were critical to mobilizing local activists to lobby their representatives. Both looked past “conventional wisdom” about what was or was not politically realistic in an effort to change that reality.

Second, it was a multipronged effort. Our campaign brought together “direct action” such as Mitch’s camping out, media and events that brought public attention to the issues, and more traditional grassroots and “inside the beltway” lobbying. The grassroots lobbying was possible because of all the groups that had sprung up around the country to respond to the crisis—but also critical was having a common agenda to organize and energize them behind, accompanied by actionable pieces that they could lobby their political representatives to support. Media outreach targeted to national political pages, in addition to attention grabbing events and displays, helped elevate debate and capture the attention of policymakers.

Third, finding points of personal connection to the issue made a powerful difference and also brought together strange bedfellows. At times conservative Republicans unexpectedly supported us when liberal Democrats did not. Peter Domenici played a key role in the Senate, and Rod DeArment was a critical advisor and advocate. Expected allies like the education “establishment” at times became opponents. This underscores how difficult it is to find support for impoverished and politically powerless people, but it also shows how critical finding personal points of connection is: many of those who became supporters—Domenici, Tipper Gore, and Rod—did so

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71. Matt Zapotosky, *Sessions rescinds Justice Dept. letter asking courts to be wary of stiff fines and fees for poor defendants*, WASH. POST, Dec. 21, 2017, [https://www.washingtonpost.com/world/national-security/sessions-rescinds-justice-dept-letter-asking-courts-to-be-wary-of-stiff-fines-and-fees-for-poor-defendants/2017/12/21/46e37316-e690-11e7-ab50-621fe0588340\\_story.html?utm\\_term=.58efc6ce75f6](https://www.washingtonpost.com/world/national-security/sessions-rescinds-justice-dept-letter-asking-courts-to-be-wary-of-stiff-fines-and-fees-for-poor-defendants/2017/12/21/46e37316-e690-11e7-ab50-621fe0588340_story.html?utm_term=.58efc6ce75f6).

because they either had or could see a personal connection to homelessness that made them care about it. Those personal connections were key, not party affiliation.<sup>72</sup>

Questions also stand out. Chief among them is whether it was a correct strategic move to focus on the crisis nature of homelessness and push for an emergency response with the 1986–87 winter campaign. As I've said elsewhere, my view is that ultimately the problem was not so much that decision—we likely could not have succeeded otherwise—but the failure to follow up with long term solutions.<sup>73</sup> But I also think that the lack of a broader movement backed by institutional funders—and the “lone ranger” tactics favored by advocates at the time—may have allowed that to happen.

Today, despite very real threats, we also have strengths to build on. Many government agencies are invested in addressing homelessness. At the federal level, this includes a cadre of career staff. Secretary Carson has said publicly that homelessness is a solvable problem.<sup>74</sup> We also have many examples of programs, including many funded by the McKinney-Vento Act, that work. We have consensus that housing—together with any needed services—works, and the data to back it up.<sup>75</sup> And with increased focus on criminalization, and data that show that housing is not only more effective but also more cost effective, we also have many more potential allies—including “strange bedfellows,” such as law enforcement, to support a call for housing-based solutions.

We also have a much larger potential coalition with more familiar bedfellows. Funding cuts threaten a cross section of social programs. Increasing criminalization doesn't just affect homeless people, but poor people more generally. And homelessness disproportionately affects people of color, as does criminalization. Trump has spurred increased activism on many fronts, and we have the possibility of being part of and engaging a much broader progressive coalition and agenda across issues.

An ambitious, unifying policy agenda can be built around the consensus that housing is the solution to homelessness. Our movement started with

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72. The joint campaign that led to enactment of the McKinney Act could go only so far. We tried afterwards to continue our push for the longer-term solutions, but we did not have the capacity—the coalition, resources, staff, or the ability to navigate the suddenly more complex internal politics that came with success—to capitalize and build on our huge success. See Foscarinis, *supra* note 13, at 58–59.

73. *Id.* at n.77.

74. Dr. Ben Carson, *Ben Carson: We know how to end homelessness and housing shortages*, USATODAY, Dec. 15, 2017, <https://www.usatoday.com/story/opinion/voices/2017/12/15/we-know-how-end-homelessness-and-housing-shortages-ben-carson-column/951456001/>.

75. See, e.g., *Fact Sheet, Housing First*, NATIONAL ALLIANCE TO END HOMELESSNESS, <http://endhomelessness.org/wp-content/uploads/2016/04/housing-first-fact-sheet.pdf>; *Housing First*, UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS, <https://www.usich.gov/solutions/housing/housing-first>.

advocacy for a right to shelter; we got shelter, though not enough, not adequate, and rarely as a right. But we knew then and know now temporary shelter is not the solution; permanent housing is. We need to advocate for it not just as a program that works, but as a policy enshrined in law. To really end homelessness, housing must be treated—and funded—as the basic human right that it is. Just as health care is increasingly viewed as a right, we need to shift the paradigm towards accepting housing as a right.

The critical challenge is not as simple as partisan politics—that is clear from past experience—but rather power imbalance. Deepening inequality and increased influence of money in politics have exacerbated that imbalance. As advocates working to end homelessness, we can and should draw on the intersectional nature of our work to link to bigger coalitions both to resist new threats and to push for positive change. Strange bedfellows are also increasingly joining forces on issues like criminal justice reform, and we are making those links. Drawing on personal points of connection to homelessness, as well as self-interest, such as cutting costs, can help make those links. So can drawing on our power as lawyers. Rod's involvement was critical, not just because he was instrumental in getting Republican support, but also because he guided me with sophisticated legislative advice. Through his involvement I was able to bring to bear the resources and clout of a major corporate law firm, and I drew on my own background as a former big firm lawyer to help me engage him in this effort.

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This early work affirmed for me that law is a powerful tool for advocacy. At the National Law Center on Homelessness & Poverty, our mission is to use the power of the law for systemic reform to end and prevent homelessness in America. In the same way that I had first gotten involved, today dozens of law firms and corporate legal departments work with us. But law is not the only tool. An organized effort must also include strategies such as community organizing and public education, both essential to building the political support needed to advance an ambitious agenda. This requires the investment of resources in advocacy that can make the case for an agenda to really end and prevent homelessness—and to ensure the human right to housing. And that investment must be consistent and long term. It's needed more than ever.

