

EXAMINING SOBER LIVING HOMES

HEARING

BEFORE THE
SUBCOMMITTEE ON THE CONSTITUTION
AND CIVIL JUSTICE
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

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The Honorable Steve King, Iowa, Chairman, Subcommittee on the Constitution and Civil Justice, Questions for the Record. This material is available at the Committee and can be accessed on the committee repository at:

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ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Letters Submitted by the Honorable Steve King, Iowa, Chairman, Subcommittee on the Constitution and Civil Justice. This material is available at the Committee and can be accessed on the committee repository at:

<https://docs.house.gov/meetings/JU/JU10/20180928/108684/HHRG-115-JU10-20180928-SD003.pdf> <https://docs.house.gov/meetings/JU/JU10/20180928/108684/HHRG-115-JU10-20180928-SD004.pdf>

Letters submitted by the Honorable Steve Cohen, Tennessee, Ranking Member, Subcommittee on the Constitution and Civil Justice. This material is available at the Committee and can be accessed on the committee repository at:

<https://docs.house.gov/meetings/JU/JU10/20180928/108684/HHRG-115-JU10-20180928-SD006.pdf>

Letters Submitted by the Honorable Ted Deutch, 21st District of Florida, U.S. House of Representatives. This material is available at the Committee and can be accessed on the committee repository at:

<https://docs.house.gov/meetings/JU/JU10/20180928/108684/HHRG-115-JU10-20180928-SD007.pdf>

EXAMINING SOBER LIVING HOMES

FRIDAY, SEPTEMBER 28, 2018

HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON THE CONSTITUTION AND CIVIL JUSTICE
COMMITTEE ON THE JUDICIARY
Washington, DC.

The Subcommittee met, pursuant to notice, at 9:07 a.m., in Room 2141, Rayburn House Office Building, Hon. Steve King [Chairman of the Subcommittee] presiding.

Present: Representatives King, Handel, Cohen, and Deutch.

Staff present: John Coleman, Counsel; Jake Glancy, Clerk; James Park, Minority Chief Counsel; Matthew Morgan, Minority Professional Staff Member; and Veronica Eligan, Minority Professional Staff Member.

Mr. KING. The Subcommittee on the Constitution and Civil Justice will come to order.

Without objection, the chair is authorized to declare recess of the committee at any time.

We welcome everyone to today's hearing on examining Sober Living Homes, and I now recognize myself for an opening statement.

According to the Centers for Disease Control, more than 115 people in the U.S. die after overdosing on opioids every day. In 2017, more than 72,000 Americans died from drug overdoses, overall. In addition to the vast number of families who are suffering the loss of a loved one, these numbers are staggering for us, as a Nation. It is clear that we need safe and effective recovery options to combat this epidemic to ensure that people have the opportunity to get the help they need.

One popular option is known as a sober living home. Sober Living Homes are group homes for recovering addicts or alcoholics in the later stages of treatment that provide a place from them—a place for them to live, while they receive outpatient care.

While sober living houses are modeled in different ways, one common feature is that these homes are located in single-family, generally middle class residential neighborhoods. While a well-run sober living home may provide a suitable environment for recovering individuals to integrate back into the community, some Sober Living Homes, according to testimony submitted to this committee, are either poorly managed, or are run by operators who dangerously exploit their residents, and that is for profit.

For example, Advocates for Responsible Treatment, which submitted a testimony to today's hearing, compiled a list of news arti-

cles from across the country. I would like to read a few of these headlines: “Milwaukee Addict Recovery Home Facing Questions After Five Overdose Deaths Since 2017”; “Owner of Drug Recovery Home Caught Selling Heroin and Fentanyl to Residents”; another is “Heroin Bust at Sober Home: Police Find Trove of Stolen Items and Drugs”; another one is “Pennsylvania Heroin Recovery Houses Often are ‘Drug Dealer’s Dream’”—and that is in quotes.

They are just a few of the many headlines provided by—to this committee. But all of them indicate that there is a very real problem that needs to be addressed. Indeed, many local governments have answered the call to regulate Sober Living Homes, but many have been sued under the Fair Housing Act and the Americans With Disabilities Act for doing so.

Today’s hearing will examine these laws, the concerns with their application, and proposed legislation that they are seeking to remedy the problem.

I look forward to all of our witness testimony, and I want to thank you in advance for that testimony.

And now I recognize the—I want to say acting—ranking member for today, the gentleman, Mr. Deutch, for his opening statement.

Mr. DEUTCH. Thank you, Mr. Chairman. I appreciate it. But it is a vitally important topic. I have some comments, but out of respect for our members who are here, I will defer.

Mr. KING. Okay, I thank the gentleman. And now I would like to introduce the witnesses. I would like to introduce our first witness, which is Representative Judy Chu from California. And also our second witness is Representative Dana Rohrabacher, also of California.

And you know the rules in this place, I am really confident. And so I would ask you, first, to stand to be sworn in, each of you.

Would you raise your right hand, please?

Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you, God?

Thank you, and let the record reflect that they have responded in the affirmative.

And I now recognize Ms. Chu for her opening statement. Ms. Chu—for her testimony, excuse me.

TESTIMONY OF THE HON. JUDY CHU, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA; AND THE HON. DANA ROHRABACHER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

TESTIMONY OF JUDY CHU

Ms. CHU. Chairman King and Acting Ranking Member Deutch, I want to start by thanking you for inviting me to testify on this important issue which has impacted all of our districts.

I appreciate that this subcommittee is examining the role of Sober Living Homes in our communities and how they contribute to the recovery process for those suffering from addiction.

Sober Living Homes, also known as recovery residences, offer a place to stay for those who have completed treatment and are trying to rebuild their lives. However, the lack of regulation around the operation of these homes is of serious concern, which means

that these facilities may be unequipped to handle patients at risk of overdose, or do not employ staff with specialty training.

In the worst cases, some bad actors do not encourage recovery at all, but exploit vulnerable individuals in order to collect insurance payments. This can mean life or death for people like Tyler from my district of Pasadena, California. Tyler died from an overdose after a sober home didn't recognize the symptoms of his overdose, nor did they have Naloxone, the medication that can reverse an overdose on hand. Tyler was only 23 years old.

Unfortunately, this is not an isolated incident. I have heard from advocates in Arizona, Pennsylvania, Missouri, Florida, and Ohio who are concerned for their friends and family members living in unregulated sober living facilities.

I would like to submit for the record a New York Times article from 2015 and a recent report from the Department of Justice outlining abuse and fraud at Sober Living Homes in New York and Florida. These reports describe sober living facilities that lacked access to Naloxone, ordered unnecessary tests on residents to exhaust their insurance benefits, and required residents to relapse and re-enter treatment so resident directors could claim some of the Medicaid benefits.

Licensing for recovery residences, or sober living facilities, varies substantially from state to state, and there are facilities in every state that operate without the necessary licenses. Further, oversight of these licenses is minimal.

And so patients and their families struggle to distinguish good actors from bad ones. For some of these individuals, they may not discover that a facility is negligent until it is too late.

And that is why, after hearing about Tyler's death from his friend, Ryan Hampton, a recovery advocate in my district, I worked with the National Alliance for Recovery Residences to craft legislation that would help address this problem without further victimizing the people we are trying to help. As a result, I introduced H.R. 4684, the Ensuring Access to Quality Sober Living Act.

My bill directs the Department of Health and Human Services to develop a set of best practices for residential recovery facilities so that patients, families, and states can distinguish quality sober living facilities from sites that are fraudulent or unequipped to offer appropriate assistance to their residences.

H.R. 4684 requires HHS to disseminate these best practices to each state, and authorizes the agency to provide technical assistance and support to states that wish to adopt or implement these best practices.

In addition, the bill allows states who are struggling to address the opioid crisis and all of its consequences to work with HHS to help set up criteria to designate quality sober living facilities. These benchmarks include common-sense measures like requiring that all fees and charges be explained to residences before they enter a binding agreement; that paid work performed at the facility by the residences be completely voluntary, and not impede the recovery process; and to avoid deaths like Tyler's, the bill requires Naloxone to be available and accessible, and that staff and residences are trained to use it in emergencies.

H.R. 4684 also ensures that individuals looking for a place to stay will not be turned away because they have been prescribed medication-assisted treatment, or MAT, by their physician to help them recovery [sic].

H.R. 4684 provides an alternative to undermining existing civil rights laws by creating a new set of standards so that these facilities are bidding by best practices and are not presenting a harm to the surrounding communities.

H.R. 4684 is a bipartisan bill with cosponsors including Congressmembers Mimi Walters, John Lewis, and Greg Walden. It has been endorsed by the National Alliance for Recovery Residences, the American Psychological Association, and the Orange County Board of Supervisors.

Thank you again for taking the time to hear from us on ways to address this growing crisis.

Mr. KING. We thank the gentlelady from California, and the chair now recognizes the gentleman from California, Mr. Rohrabacher.

Mr. ROHRABACHER. Yes, thank you much, Chairman King, Ranking Member Cohen, and other members of the subcommittee. Thank you for holding this hearing. And before I begin I will note that I have received testimony from dozens of my constituents about this issue and how it affects their lives, and I ask that these statements be included in the hearing record.

Mr. KING. Without objection.

[The information follows:]

This material is available at the Committee and can be accessed on the committee repository at:

<https://docs.house.gov/meetings/JU/JU10/20180928/108684/HHRG-115-JU10-20180928-SD003.pdf> <https://docs.house.gov/meetings/JU/JU10/20180928/108684/HHRG-115-JU10-20180928-SD004.pdf>

Mr. ROHRABACHER. I also have letters from several city governments in my district on how they are affected by this problem, and I ask that they too be included in the record.

Mr. KING. Without objection, so ordered.

[The information follows:]

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TESTIMONY OF DANA ROHRABACHER

Mr. ROHRABACHER. As we are all aware, our country is enduring a crippling opioid epidemic. Many of our fellow citizens of all ages and social statutes are painfully struggling to seek ways to end their dependence on pills that have all too often been legally flooded into our towns and cities and rural communities. I come before you today to discuss the impact that this challenge has had on many suburban communities, including those in my district in Orange County, California.

Our challenge is different than just salvaging the lives of addicts. It seems alcoholics and drug addicts are being recruited throughout

our country to seek recovery in the wonderful environment of our Southern California residential neighborhoods. Residential recovery facilities, more commonly known as Sober Living Homes, have proliferated to the point that, in my home town in Costa Mesa, it has been labeled Rehab Riviera. Something is fundamentally wrong with this scenario.

Our Sober Living Homes are not actually homes, but businesses that operate out of single-family homes in residential neighborhoods zoned for families. There are no standards or criminal background checks on those who can operate such a business. A significant number are run by unscrupulous owners and operators who willfully disregard the well-being of the addicts they are supposedly saving, while simultaneously reducing the quality of life in communities where these homes are located.

Under normal circumstances this problem would be addressed by local government. But in this case, federal law shields the bad actors with the protections meant for their clients. Federal law designates recovering addicts and alcoholics as disabled. The Fair Housing Act protects them from discrimination in housing, and its protections have then been extended to the business servicing them. This has an unintended effect: states and local governments have been consistently rebuked by the courts that say laws and ordinances that target these facilities discriminate against the people who are living in the facilities.

Meantime and meanwhile, crooked owners and operators laugh all the way to the bank. They operate for-profit businesses posing as housing providers for the disabled—meaning drug addicts and alcoholics—who are being located in residential neighborhoods. All of this is happening without accountability or oversight.

Indeed, the Government Accountability Office issued a report showing that insurance fraud is rampant among these facilities in these states across the country. Tracking these recovery houses and the problems associated with them is impossible because unlicensed facilities are not registered, nor are they systematically inspected.

In short, there is a distinct lack of local oversight and authority. The situation has proven harmful to local residential communities. And, yes, those who are trying to free themselves from drug and alcohol addiction have also been mistreated by this. They are victims in more ways than one.

Furthermore, the neighborhood impact is alarming. My constituents report increases in criminal activity, disturbances, emergencies, visits—emergency visits at all hours of the night and day, noise, and filth, and trash, and other issues around these particular homes, but not at the other homes in their neighborhood. The occupants are transient, and they are sheltered for only weeks, if not days. And in fact, there is no time—there is no commitment from these people at all about their community or their neighborhood.

Too many addicts relapse—and sometimes repeatedly they relapse—and illegally obtain drugs. After relapse, the individual often—and after they relapse from their treatment, they have no place else to go, and they end up homeless on our streets. This system, as is designed, to exploit people who desperately need help.

And it is unfair to require residential neighborhoods to bear the burden of shoddy, unregulated recovery by reducing the quality of life and decreasing the home values of the people who live in that neighborhood.

Let's do the right thing and balance the needs of communities and recovering addicts. This hearing is a good start.

I will note that I have introduced legislation that I believe would help fix the problem, not by furthering more government regulation at the federal level, but empowering local and state governments. H.R. 5724, the Restoring Community Oversight of Sober Living Homes Act, would be the first good step.

I would clarify that nothing in the federal law is protecting—and my bill would clarify that nothing in federal law protecting those with disabilities would prohibit local government from regulating or banning these facilities in residential neighborhoods. For that to work, the bill defines recovery facility in the federal code. And then those residential—those in residential zones are exempt from the definition of “dwelling” for the purpose of protecting under the Fair Housing Act.

Furthermore, my bill would bar federal money from being given to homes that are not licensed by local communities.

Lastly, it would remove the treatment of substance use disorder from the list of essential health benefits for the purpose of insurance. Now, that is a very difficult position for many of my colleagues to take. I understand that. But it would remove the unintended incentive for operators of these treatment centers to encourage patients to relapse and gravely endanger their lives in order to obtain more, and a lucrative insurance coverage.

I would appreciate the opportunity to work with this subcommittee on moving this bill forward so we can provide local government with the tools to help communities and to help addicts who are so poorly served by the status quo.

I thank you again for conducting this hearing. It is a complicated problem. It deserves our attention. And I appreciate your willingness to give this an honest look.

Mr. KING. The chair thanks the gentleman from California for his testimony and the gentelady from California for her testimony, as well. And, as is the practice of this committee, we appreciate you being here, and you will be dismissed without questions, as standard. And I would invite the other witnesses to be seated. I thank both of you.

[Pause.]

Mr. KING. I see that our witnesses are comfortably seated and familiar with the terrain around you.

First I would say that you recognize that when you speak you turn the light on on your microphone. That will give you—the light will be five minutes. That is four minutes of green light, one minute of amber light, and we will give you a little latitude to conclude your thoughts. We want to hear what those thoughts actually are.

And so, I would like to introduce our witnesses.

And then our first witness is Erik Peterson. He is the mayor pro tem of Huntington Beach, California.

The second witness is Todd Leishman, an attorney with the Best, Best and Krieger—Todd.

And our third witness, Sara Pratt, and—counsel with Relman, Dane and Colfax, PLLC.

And the fourth witness I am going to have to have a little help from Florida.

Mr. Deutch.

Mr. DEUTCH. Thank you, Mr. Chairman. It is my pleasure to welcome my constituent and friend, Palm Beach County State Attorney Dave Aronberg, to Washington this morning. Dave was born in Miami, attended public schools before going on to graduate with honors from Harvard College and Harvard Law School. He was an assistant attorney general, White House fellow, and we were colleagues together in the Florida State Senate.

In 2010 Mr. Aronberg joined the Florida Attorney General's office as special prosecutor for prescription drug trafficking. As the Attorney General's drug czar, he led an anti-pill mill initiative that helped clean up the pain clinic industry and reduce the record number of people dying every day from Oxycodone abuse. His work to save lives from drug overdoses continues as a top priority today.

He was elected state attorney for the 15th Judicial Circuit in November 2012, re-elected in 2016, where he has led a group of 120 prosecutors and 220 professional staff in 5 offices throughout Palm Beach County. His leadership has led to a significant increase in conviction rates for both felonies and misdemeanors.

I have a lot to say, and I intend to finish.

A decrease in the number of juveniles direct-filed into the court, and greatly improved his working relationship with local, state, and federal law enforcement agencies.

And finally, Mr. Chairman, in July 2016 Mr. Aronberg created a sober homes task force that has made more than 55 arrests for patient brokering and insurance fraud in the rehab industry, has led to new Florida laws and regulations that have become the model for other states.

Aronberg's efforts convinced Google to restrict advertisements and improve screening for addiction treatment. And as opioid deaths continue to rise nationally, Palm Beach County experienced a 62 percent decrease in opioid overdose deaths in the first 4 months of 2018, compared to the same period last year.

This committee thanks you for being here with us this morning, Mr. Aronberg, and we look forward to your testimony.

And I thank the chairman for indulging me with that introduction.

Mr. KING. I was expecting a superlative introduction, but it exceeded my expectations. [Laughter.]

Mr. DEUTCH. I thought it might.

Mr. KING. And I now ask the witnesses if you would stand to be sworn in, please, and raise your right hands.

Do you swear that the testimony you are about to give before this committee is the truth, the whole truth, and nothing but the truth, so help you, God?

Thank you, you may be seated—let the record reflect that the witnesses all responded with an affirmative.

And I now, for the beginning testimony, I would like to recognize Mayor Peterson.

Mayor Peterson, for your initial five minutes. Is your microphone on?

TESTIMONY OF ERIK PETERSON, MAYOR PRO TEMPORE, HUNTINGTON BEACH, CALIFORNIA; TODD LEISHMAN, ATTORNEY, BEST, BEST, AND KRIEGER; SARA PRATT, COUNSEL, RELMAN, DANE AND COLFAX, PLLC; AND DAVE ARONBERG, STATE ATTORNEY, 15TH JUDICIAL CIRCUIT, FLORIDA

TESTIMONY OF ERIK PETERSON

Mr. PETERSON. Good morning, esteemed members of the committee and staff. My name is Erik Peterson. I am the mayor pro tempore of the great city of Huntington Beach, California. I am here today to attempt to shine a light on the ever-increasing difficulties our city and many other jurisdictions have with addiction recovery housing, sometimes referred to as Sober Living Homes. I would like to start my testimony by reading a statement from a testimony you should have received from a California-based organization called Advocates for Responsible Treatment.

Addiction recovery housing takes many forms, one of which is businesses that provide commercial services to short-term, transient occupants, in permanent residential neighborhoods, where such uses are often prohibited by zonings. A myriad of overlapping federal and state law and case law unintentionally grants excess privileges to these businesses.

Essentially, businesses obtain rights superior to those of other households in the same neighborhoods. Local limits on operations of such businesses are interpreted by the court and the state to be discriminatory, regardless of whether the operations exceed reasonable accommodation or grant more than equal rights of neighboring homeowners. By granting these privileges to operate without distinction or restriction, the courts have failed to note that the houses do not even meet the spirit of ADA, which is to de-institutionalize the disabled and integrate the protected class into the community.

In just the last two years, recovery houses have been identified as a concern in municipalities in over 100 congressional districts. Citizens executing their right of free speech on the issue have been sued by businesses in an attempt to freeze public dialogue. Many municipalities have lost millions fighting lawsuits claiming housing discrimination, to which no disabled individual is party.

Unnecessary litigation drives investigations by the Department of Justice, Housing, and Urban Development. To meet requests of Members of Congress for clarification in 2016, the DOJ and HUD produced a 20-page document which reinstated the issue, but gave no clear guidance.

Congressman Rohrabacher's H.R. 5724, Restoring Community Oversight of Sober Living Homes Act of 2018 is the second bill in two years attempting to clarify local control to come to the Judiciary Committee. The first was proposed by Congressman Issa in September of 2016. We are grateful for the Judiciary Committee

moving forward to review this legislation, because this issue will not go away until it is finally addressed by Congress.

Ignoring the issue results in disastrous effects on long-term residential neighborhoods, and fuels an increase of abuse in—of the protected class. Better local and state regulations of recovery housing is very much a matter of life and death.

Ladies and Gentlemen, when I was asked to testify in front of this community [sic], I reached out to my constituents and asked them to submit their stories. I believe you have received many of them. What got me were the stories of the parents of the victims of some of these facilities.

In our city we have houses with multiple overdoses and deaths, and all we can do is send our firefighters in to pick up the pieces. A few Sundays ago, someone forwarded me a program from a funeral they were attending of a 21-year-old lady who died in a recovery home. She was dead for 12 hours before it was reported to the authorities.

The opioid crisis in our country is destroying the basis of our society, which is our families and communities. In an attempt to help or be companionate, we have further placed the burden on our communities and left thousands of people who need help at risk.

The City of Huntington Beach has found that many of our homeless have come from these facilities. Through what is referred to as body brokering, addicts are recruited from around the country and sent to places like Southern California, Florida, and Arizona. After the individual is placed in a home, many recovery companies sign them up for as much public assistance and insurance as possible, and offer bed vouchers for local resident homes. When the money runs out, they curb them. In other words, they kick them to the street, and many have not even received proper recovery.

Over the last year our city has had to help 65 people get home that were stuck.

I thank you again for letting us—for reviewing this legislation.

Mr. KING. Thank you, Mayor Pro Tem Peterson. I appreciate your testimony, and the chair now recognizes Mr. Leishman for his testimony.

Mr. Leishman, you are recognized.

TESTIMONY OF TODD LEISHMAN

Mr. LEISHMAN. Thank you. Good morning, Mr. Chairman and members of the committee. My name is Todd Leishman. I am an attorney with Best, Best and Krieger. We advise cities throughout the country on issues they face, including questions about Sober Living Homes. But these comments today are my own.

If I can only convey one message to you this morning, it is this: Congress must clarify federal law to make clear that local government may regulate recovery businesses to protect people in recovery.

People in recovery benefit most from living in residential facilities that are small, spread out, and well run. The least intrusive and most effective way to ensure this is through local regulation. If Congress fails to clear the way for local government to protect them, then more people will relapse in the very facilities that are

supposed to help them. More residents will be trafficked, abused, and raped. More will overdose, and more will die.

I wish this were hyperbole, but it is not. All of these things are happening in recovery facilities in communities in every congressional district in our Nation, and they are happening in large part because federal law leaves open a radical and, I think, perverse interpretation that insists that local government may not regulate recovery operators at all, even when it is to protect people in recovery.

Some operators argue that anti-discrimination laws prevent any regulation of their business because they serve disabled people. Recovering addicts are disabled under federal law. So, they say, their recovery business use must be treated for all purposes as if it were a single-family household. Congress needs to close this loophole to allow local government to protect the very social model that recovering addicts need.

You see, before the 1970s, care for recovering addicts was primarily provided in institutional medical settings. In this medical model, people were sent to hospitals to dry out and get clean. Many people ended up in these institutional settings, even though with just basic care they could function well in our community. That fact gave rise to a better alternative: a non-medical social model.

At the heart of the social model is this: we are trying to turn patients into neighbors. But for that to work, they have to be in a neighborhood that is actually residential. They need to live in a setting that closely approximates a residential household in scale and function. They need to be surrounded by neighborhood residents with whom they have opportunities to interact in normal, neighborly ways. And, of course, facilities need to be run responsibly.

In other words, recovering addicts need facilities that are small, spread out, and well run.

The social model does not work when recovering addicts live in large, institutionally-sized dorms, nor does it work when they are surrounded by other recovery facilities, effectively stuck in a recovery cul de sac or campus. Yet, to make more money, many operators increase occupancy, concentrate facilities together, and cut corners to the detriment of recovering residents.

When operators shield themselves from reasonable local regulation, claiming that size, separation, and operational standards don't apply to them because they serve recovering addicts, it is the people in recovery who suffer. With my written testimony I have included scores of examples of what happens when operators evade local regulation. The examples turn the stomach. We heard some of those headlines earlier: operators selling drugs to residents; house managers trading drugs to residents for sex; rapes; resident and house manager overdoses. And that doesn't even get into the human trafficking and fraud problems that are so common.

Local government is in the best position to prevent these abuses.

In sum, Congress needs to confirm that local government may reasonably regulate recovery businesses to protect the people they serve. Please make it plain that permissible regulation includes maximum occupancy limits, so that residents get the benefit of living somewhere that is comparable to a typical residential house-

hold; minimum separation requirements, so that residents get the benefit of living in an actual residential neighborhood, not in a recovery cul de sac or campus, and can have meaningful, normal interactions with neighbors; and minimum operational standards, so that those who care for recovering residents are qualified and accountable, and facilities are safe and well-run.

The social model is—of recovery is good. I think it is vital. And we need to protect it at the local level. Federal law needs to expressly allow that to happen. Thank you.

Mr. KING. Thank you, Mr. Leishman. And the chair now recognizes the gentlelady, Ms. Pratt, for her testimony.

Ms. Pratt, you are recognized.

Ms. PRATT. My apologies. Hear me now?

TESTIMONY OF SARA PRATT

Ms. PRATT. I am counsel at the law firm of Relman, Dane and Colfax, here in Washington. I previously served as deputy assistant secretary for enforcement and programs at the Department of Housing and Urban Development's office of fair housing. I retired in 2015 from that position.

My career spans 41 years in fair housing work. I have also worked to enforce state licensing and regulation requirements applied to nursing homes, day cares, and group homes in the State of Kentucky, as well as closing down illegal and unlicensed operations.

I have submitted written testimony for a more detailed discussion of the fair housing issues around sober home operations, and several attachments for the committee's consideration.

As the committee already knows, there is a large body of Fair Housing and Americans With Disabilities Act case law that constrains localities from completely excluding, or from limiting the location of sober homes, and also requires that, in general, they be treated as ordinary residential uses. This is well-established case law—all circuits, all district courts.

But the fact that there are Fair Housing and ADA protections for these group homes that house people with disabilities, including Sober Living Homes does not mean that there cannot be reasonable and legitimate regulation of group homes or sober living environments.

Local governments continue to say we can't—that the Fair Housing Act somehow protects or prevents operations of seriously concerning situations, that the Fair Housing Act protects local governments—sorry, prevents local governments from pursuing bad operators, essentially. And that is just not the case.

Scoundrels often say that they deserve the protection of the law. I have seen it throughout my entire career in fair housing. But there is no reason why a local government should be concerned about liability if it uses legitimate and reasonable regulations to operate, to constrain the operation of Sober Living Homes.

Now, I imagine, even amongst this panel, we might have some discussion about what exactly those criteria might look like to ensure effective operation, to protect residents, to protect neighborhoods. But it is not, in and of itself, a violation of the law to consider a regulation or certification process for Sober Living Homes.

And both the Fair Housing Act and the ADA, I think, are behind those two bedrock civil rights laws that protect the rights of people with disabilities—are also intended to protect them from abuse or neglect, not just from discrimination. But they also recognize that, without these Sober Living Homes, people with addictions, people with heroine addictions, opioid addictions, alcoholism will be out on the streets.

And so the recognition of the process is the balancing between providing protection for residences occupied by people with disabilities, and ensuring that those—the operations that are provided are safe and protected by the police power of state and local jurisdictions.

State and local jurisdictions can use any number of tools to protect the residents of Sober Living Homes and protect their neighbors without amending the Fair Housing Act or the Americans With Disabilities Act.

For example, Congress could encourage development of a national best practices for Sober Living Homes, using input from municipalities, from local organizations, from municipal groups, from disability organizations, and from the Department of Health and Human Services to look for criteria. They even could establish and make recommendations to this joint effort to prepare a local ordinance that would pass scrutiny under the Fair Housing Act and the ADA, but would also meet the needs of local communities. There are models for this approach, including an effort that took place in the 1990s that I saw when I was at HUD then.

It is acceptable under the Fair Housing Act to establish registration or certification programs based on the protection of health and safety, as long as they do not inappropriately burden sober homes or require unreasonable spacing burdens or unreasonable occupancy burdens.

Local law enforcement actions can, obviously, be taken to address criminal activity, and code enforcement can be used to address matters like littering and loud noise and alcohol and drug abuses in the community.

Thanks to the committee for considering these issues.

Mr. KING. Thanks for your testimony, Ms. Pratt. The chair now recognizes Mr. Aronberg for his testimony. And we do not expect it will live up to your introduction. [Laughter.]

Mr. ARONBERG. I just hope he didn't take any of my five minutes. [Laughter.]

TESTIMONY OF DAVE ARONBERG

Mr. ARONBERG. Thank you, Mr. Chairman. Thank you, members of the committee. And Congressman Deutch, thank you very much for your very kind and unnecessary introduction. My name is Dave Aronberg. I am the state attorney for Florida's 15th judicial circuit, which covers all of Palm Beach County.

Because of our tropical climate and long-established drug treatment centers, Palm Beach County has been a destination for individuals with substance use disorder.

[Slide]

Mr. ARONBERG. As you see from the first slide up there, this is the Florida model of drug treatment, where you have someone with

substance use disorder—usually it is heroine these days—they will come down to Florida for detox. Insurance will pay for about five days of detox and then about three weeks of inpatient treatment, followed by about four weeks of outpatient care. Three-quarters of the people who come down to Florida—excuse me, three-quarters of the people in recovery in Florida come from elsewhere.

So, since we have so many people from elsewhere, they need a place to stay. And so they live, very often, in a sober home. A sober home is just a house. As you said, Mr. Chairman, there is no treatment there, there is no insurance reimbursement. It is just a group home of people, hopefully in a drug-free, mutually supportive environment.

After the insurance benefits run out from outpatient care, then the hope is that the individuals are sober and can return home.

The charge is about \$300 a week, on average, to live in a sober home, paid out of pocket.

In recent years, however, we have had a surge of unscrupulous individuals enrich themselves by exploiting well-intended federal laws to prey on opioid addicts, who are often human-trafficked by marketers, sober homes, and facilities in exchange for illicit benefits such as cash, free rent, transportation, and even drugs themselves. This is the Florida Shuffle, the next slide that will come up here.

[Slide]

Mr. ARONBERG. And you see from that that you have someone with substance use disorder who gets brought down to Florida through a marketer, usually through a free plane ticket, and deceptive marketing. And, by the way, the free plane ticket is illegal. It is a felony in Florida.

Then they go to detox and patient treatment, outpatient care. The money exchanges hands. There is lots of kickbacks. There is patient brokering. This is the corrupted model that you see, from the corrupted providers. And everyone is making money off of this corrupted model, including the rogue labs.

The only bubble there that is not profitable is sobriety. And you have individuals in sober homes, even living for free in some cases, because the sober home doesn't need to charge when they are getting a kickback from an outpatient treatment center, a market, or a lab to send their residents their way.

It is hard enough to remain sober as it is, let alone knowing that your sobriety is going to cost you your free housing and your transportation and your friends, and now you have got to move back home to a snowy climate, live with your parents, and find a job.

Good sober homes can improve treatment outcomes. But flophouses masquerading as sober homes only encourage relapse and failure.

Together, the Americans with Disabilities Act and the Fair Housing Act largely prevent the regulation or inspection of these residences. And so it is sadly ironic that the very laws intended to help people with addiction are being misused to shield them—excuse me, are being misused to shield those who would do them harm.

In July 2016 our office formed a sober homes task force—and led by my chief assistant, behind me, Al Johnson—to crack down on this fraud and abuse. We have made 55 arrests with 23 convictions

so far. We also empaneled a grand jury and created two additional citizens task forces, including members of the recovery industry to recommend legislative changes leading to the 2017 passage of the state law that tightened enforcement and oversight of the drug recovery industry.

The Florida legislature, however, largely avoided the subject of sober homes because of concerns over federal law. Meanwhile, our successful crackdown on rogue sober homes—and we are only talking about the rogue sober homes here—have scattered some of the bad actors to other locations, especially California.

We can't fix this problem alone at the state and local levels. We need the Federal Government to act.

First, my recommendation is to reissue the 2016 joint statement from DOJ and HUD with the proposed question and answer that I provided in my written submission to this committee. This would clarify that local and state governments can set reasonable sober home standards under the ADA and FHA for the protection of the residents in recovery.

Second, there are significant proposals pending before Congress that can make a real difference. There is legislation that would establish model criteria for sober homes and award grants to states that utilize them. There is the CARA 2.0 Act that directs HHS to develop best practices for sober homes. And there is important language that would extend DOJ's jurisdiction to prosecute unlawful kickbacks in the drug treatment and sober home industries.

These measures will save lives with minimal or no financial costs. They will finally address a part of the opioid crisis that has been fueled by a corrupt recycling of addiction.

Thank you for your time here today.

[The statement of Mr. Aronberg follows:]

Mr. KING. I thank you, Mr. Aronberg. I appreciate your testimony and all the testimony. The chair will now recognize himself for five minutes of questions.

First I would turn to—I would like to go to Mr. Leishman, primarily, so I could pronounce your name correctly for the first time. And I wanted to explore your thought process on this.

I am hearing some solutions be offered and a different combination of them. And part of our job is to sort those solutions out and maybe come up with some new ideas of our own—which I don't quite expect. But it is just that something has happened within our culture, and this is more or less a fairly recent intensity of this crisis that has gone on for some time. And I never hear anyone talk about how we actually fix that problem that is endemic within our culture. We talk about addressing it when it shows up.

Do you have any recommendations to this committee on how we might look at this big picture for the long term to try to get to where the cultural circumstances that enable the abuse, the drug abuse that we have, how we could address that so that one day we may see our children or grandchildren live in a society that gets it right?

Mr. LEISHMAN. Is your question how can we get at the cause of the opioid crisis?

Mr. KING. Yes.

Mr. LEISHMAN. Well, I usually spend my days dealing with the back end of that problem. But on a personal level, yes, I do. I think that strong families and communities are a bedrock to that.

I also think that over-prescription of opioids in the first place is—lies at the heart of the problem. And I think that is being addressed more now, thankfully.

A number of our city clients were approached by a group that is putting together a class action, or has put together a class action suit against opioid-producing pharmaceutical companies, much like the big tobacco litigation. I don't know if that is going to be effective. I think the culture among the medical profession is starting to change. They are starting to wise up to the danger that they create when they over-prescribe.

Other than that—

Mr. KING. Okay. Let me suggest that, first—I know you didn't expect that question, didn't come here to testify to that depth, but I know you have thought about it, and I appreciate that.

I would pose a follow-up question on this—and I think a very important part of that, when you mentioned the families and our neighborhoods—aside from that, which I agree with, then we have employment testing, for example, in many of the states. In Iowa we have employment testing that has been in law for over 20 years and it has never been litigated. It allows the private-sector employer to guarantee a drug-free workplace, and it has worked very, very well. That model works. We never transitioned that into testing in the workforce.

But when I am asked that question, here is my answer, that if I really—going to be the drug czar that had to solve this problem and had to lay out a plan to do that, there is a lot of personal privacy rights that would be in question, and it is delicate to approach that. But I put that little caveat out there and suggest this, that if we tested in the workplace, if we tested in welfare, and if we tested in education, the people left that would be using and abusing drugs would be dealers and stealers whom the law enforcement could address, and we would have a lot smaller universe of people that needed to go into sober homes.

How does that fit with your analysis?

Mr. LEISHMAN. Certainly, if it is proven to be effective in Iowa, I think it could have wider application.

Mr. KING. I thank you. And I would turn to the mayor pro tem, Mr. Peterson. And you have talked about the community, and how the community is developing. Are you comfortable, then, that if Congress enables it so that local government can regulate city, county, state, what levels would that be? How would that emerge in California, in your vision?

Mr. PETERSON. Well, our biggest thing is the bad actors hiding under a good program. So we can't get out there and inspect. And if we had the ability to get into—just know where they are—most of the time we know when the police are called, or the fire, but if we had that ability to regulate them—I mean even foster care is regulated, you can't have so many foster care in a certain neighborhood, but these people can buy three houses in a row and fill them.

So having our ability to get out there, we don't have to have code enforcement peeking through windows, we don't have to be, you

know, late to the party with the police coming or the fire coming. But we can be a little proactive, and make sure that, one, the facility is doing what they are supposed to do, and—

Mr. KING. Just from—I will interpret this that in that—you would have in California, likely, a layer of regulations—if we went to Mr. Rohrabacher’s bill—that would have some state regulations, some county, and some city regulations working in some type of coordination?

Mr. PETERSON. Correct, correct.

Mr. KING. That is how I envision—

Mr. PETERSON. Yes, and I am sure we would be working with the county, because they are basically in charge of health and human services, not the municipality. So work out something where that is distributed more around the county in any type—

Mr. KING. And I would like to quickly turn to Mr. Aronberg and ask you if you had an opportunity to review the two bills that were testified to here by the two Members. And do you endorse either one of them? You have got some other alternatives here that you have offered today.

Mr. ARONBERG. Thank you, Mr. Chairman. Representative—Congresswoman Chu’s bill, I think, is very promising. I like the setting of guidelines. And I haven’t read the entire bill, but from what I have seen in the synopses, it was very promising.

I had some issues with Congressman Rohrabacher’s bill, because I thought that it goes too far. I don’t think you need to eliminate substance treatment disorder treatment entirely from the health care laws. I think that would probably lead to more harm than good.

Plus, I think if you eliminate the—if you allow local governments to just ban sober homes, I don’t think you are ever going to fix this problem. We are in an unprecedented opioid epidemic and, you know, you can’t arrest your way out of it. You need to have legitimate rehab. And there are legitimate sober homes out there that are doing good work. We are trying to get at the part of the industry that has been corrupted. And I think that his bill, in due respect, goes too far.

Mr. KING. We have got some work we can do. I thank you, and each of you witnesses, and the chair now recognizes the ranking member from Tennessee, Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chairman. First I want to follow up on your questions about the bills. Mr. Aronberg said he thought Ms. Chu’s bill was the better of the two.

And Ms. Pratt and Mr. Leishman, if I could—saw your heads nodding in a firm agreement. Would you state if I was correct in saying that you agree that the Chu bill would be preferable? Please don’t nod.

Ms. PRATT. So I—this is Ms. Pratt, and I do agree that the—Representative Chu’s bill heads in the right direction. And I would add to that my comment that I think a group representing a variety of different perspectives, including the perspectives represented here at this table would be useful to inform a process.

Mr. COHEN. Thank you.

Mr. Leishman.

Mr. LEISHMAN. I agree. Congresswoman Chu's bill is great. Congressman Rohrabacher's bill goes several steps too far, in my opinion. It is similar to, but not as good as, Congressman Issa's bill—I believe it was 472—and I highly endorse that bill.

Mr. COHEN. Thank you. And I am not going to put Mr. Peterson on the spot, because Dana is my friend, and I suspect Dana is your friend.

Mr. PETERSON. Yes, sir.

Mr. COHEN. Good, thank you.

I want to introduce on the record Mr. Nadler's statement, and a statement—a letter from the Consortium for Citizens with Disabilities. And I would like to—

Mr. KING. Without objection, so ordered.

[The information follows:]

This material is available at the Committee and can be accessed on the committee repository at:

<https://docs.house.gov/meetings/JU/JU10/20180928/108684/HHRG-115-JU10-20180928-SD006.pdf>

Mr. COHEN. And I would like to read my opening statement, and I am going to try to do that within the 3 minutes and 28 seconds.

Today's hearing focused on Sober Living Homes, which are group homes for persons who are recovering from alcohol or substance addiction. In particular, it focused on whether the Fair Housing Act and Americans With Disabilities Act, and potentially other federal civil rights statutes need to be amended to allow state and localities to regulate sober homes.

I take no position on the question of whether sober homes are the best means of integrating those recovering from addiction in society, nor do I have a view as to what might constitute best practices regarding the operation of sober homes. Those questions are beyond the jurisdiction and expertise of this subcommittee.

As the subcommittee with jurisdiction over our Nation's civil rights laws, however, we must be very wary of attempts to create exemptions to such laws or otherwise weaken their enforcement mechanisms.

Both the Fair Housing Act and the ADA prohibit discrimination against persons with disabilities with respect to housing and persons recovering from alcohol or substance addiction are considered to be disabled, and therefore, entitled to protections under those statutes. Congress passed these laws in order to counteract the effects of generations of stigma, negative stereotypes, social societal prejudice to keep persons with disabilities segregated and isolated from mainstream society.

As a person with a disability, I am sensitive to any attempt to weaken these protections for these laws. I share the goal of ensuring that persons with disabilities are able to integrate and participate fully in the important aspect of American life: namely, the chance to live in a residential area among members of the broader society.

Some municipalities claim they are too afraid to regulate Sober Living Homes because they fear being sued for violating the Fair Housing Act or the ADA. And indeed, cities have been sued successfully for violating those laws using zoning or land use regulations to restrict Sober Living Homes. Therefore, they seek an ex-

emption to these statutes with respect to the regulation of Sober Living Homes.

The fact is, however, that Sober Living Homes can be regulated without creating carve-outs to the civil rights laws. Indeed, group homes that serve persons with other types of disabilities are already regulated by states and localities without any need for a special exemption from the Fair Housing Act or the ADA. There is no reason Sober Living Homes cannot similarly be regulated within the existing confines of those statutes.

Towards the end of the Obama Administration the Department of Justice and Department of Housing and Urban Development issued updated guidance answering specific questions commonly asked by states and localities about how to apply zoning and land use laws in ways that do not violate the Fair Housing Act. This guidance, in turn, updated previous long-standing guidance issued in the 1999—governing group homes and the Fair Housing Act.

Moreover, the Fair Housing Act itself allows considerable flexibility for cities to address some of the very real abuses that sometimes occur with respect to the operation of for-profit Sober Living Homes. For instance, it would not violate the statute to deny housing to someone who would constitute a direct threat to the health or safety of others, or would result in substantial property damage. Also, it does not permit discrimination complaints by those who currently use a controlled substance.

I recognize there are legitimate concerns with the conduct of some Sober Living Home operators. Those who engage in fraud and abuse of residents can and should be punished, and reasonable regulation can and should be adopted.

And I didn't know about the Florida Triangle, but that is shocking, that people do that.

Doing so, however, does not require exemptions to civil rights law. The prior legislative proposals to do so dating back to the 1990s have all died in committee, and rightly so.

I appreciate the witnesses for coming here, I apologize for being late. I am a big fan of Judy's, and I am a big fan of Dana's. So I appreciate them being here, and may God save the United States of America.

Mr. COHEN. I yield back the balance of my time.

Mr. KING. The chair thanks the gentleman, the ranking member from Tennessee.

And now I will recognize the gentleman from Florida, Mr. Deutch.

Mr. DEUTCH. Thank you, Mr. Chairman, and thanks to all of our witnesses for being here today.

Mr. Chairman, we have, as Mr. Aronberg pointed out, a lot of experience with sober homes in Florida. And to that end I ask unanimous consent to enter three letters that convey that experience from the City of Delray Beach, Florida; the City of Coconut Creek, Florida; and the Florida Association of Recovery Residences. I ask that they be entered into the record this morning.

Mr. KING. Without objection, so ordered.

[The information follows:]

This material is available at the Committee and can be accessed on the committee repository at:

<https://docs.house.gov/meetings/JU/JU10/20180928/108684/HHRG-115-JU10-20180928-SD007.pdf>

Mr. DEUTCH. Thank you, Mr. Chairman. In Florida, an average day means that 15 people die from an overdose. It is tragic, it is unacceptable, and we have got to do everything we can to stop it. We have to help Americans find sobriety and maintain recovery. We have to try to save lives.

Addiction is not about weak families, it is about a disease. And I would just point out that, because it is a disease, it is in our best interests to ensure that we do everything we can to help people get care, which is why the idea of repealing the Affordable Care Act and costing 2.8 million people with substance use disorders their access to health care, and 220,000 with opioid disorders losing their access would be an enormous step backward.

There is a battle and a war on overdose, and we have to end the stigma of addiction. Ending the federal housing protections won't win that battle. It is not theoretical. People with mental illness and substance abuse disorder suffer discrimination every day.

A 2017 study by the Department of Housing and Urban Development found that people with mental illnesses face serious barriers in their search for a home. Improper requests to disclose personal and disability-related information steering toward specific housing, based on the individual's disabilities [sic].

The Fair Housing Act was not, however, intended to protect businesses who take advantage of people struggling with substance use disorders to line their own pockets. So we can stop bad actors who encourage relapse and overdose and protect our communities, while maintaining discrimination protections at the same time. We can do both. Ms. Pratt talked about that, Mr. Aronberg talked about that.

Mr. Aronberg, I am proud to have you here today to share your work with the committee. And I would note that you appeared before the Energy and Commerce Committee of this House last December. Your testimony and the testimony of Assistant State Attorney Al Johnson was instrumental in the creation of legislation that supported information—legislation that was included in the final opioids legislation that this House will vote on in about an hour. That bill will make it illegal to pay kickbacks for getting people in the door at sober homes and clinics. So you have already helped advance federal efforts to stop these abuses, and we are grateful for that.

What I would like to know—you started touching on this—you talked about reissuing—the joint statement, you talked about reasonable standards and model criteria. Tell us how that can be helpful. Tell us how what we are doing today, together with those efforts, can help to stop the schemes that you described and showed on the slides.

Mr. ARONBERG. Thank you, Congressman Deutch, and thank you for your nice words. I really appreciate it.

As you can see from this panel, we come from different communities and different backgrounds. You could say different perspectives on this. But we seem to agree that you can work within the existing laws by clarifying them to really help fix a lot of these problems. And we may differ as to degree, but there—I think there

is a consensus on that. And one way to do it is through the joint clarification.

There was a joint statement issued by HUD and DOJ in December of 2016 that, in talking to local governments in Florida, wasn't very clarifying. It wasn't very helpful. And I can tell you from our law enforcement perspective, it has not been very helpful.

And I think that you may not even have to rewrite it, you can just add a 17th question. There were 16 questions and answers, and the 17th—and I have provided a sample in my written remarks, which allow local governments to implement licensing and reasonable regulations that are narrowly tailored to meet the actual needs of the occupants in recovery. And I think that would be consistent with the ADA and the FHA.

And you asked about what other communities are doing. In Delray Beach, which is in your district, or used to be in your district, actually, before the reapportionment, in order—they have a new ordinance there that, in order to obtain a reasonable accommodation, which is for more than three unrelated adults in Delray Beach, that the house, the sober home, needs to be certified or otherwise demonstrate adherence to recognize national standards. And there is two ways to do that: through NARR, National Association of Recovery Residences and its affiliate, FARR, which have nationally recognized standards; or through an Oxford House model. And so this is the way that Delray Beach is doing it.

Now, one reason why I am here, and I think others are here, is because local governments such as Huntington Beach are afraid to do what Delray Beach did because they could get sued. Delray Beach is doing it. They haven't been sued yet. But that is why the Federal Government needs to give more clarification to local governments, to let them know.

Can they do what Delray Beach did? Can they act in this way? I think they can, but right now local governments are going out there on their own, and we need to give them a little more protection and clarification.

Mr. DEUTCH. Mr. Chairman, this is a really important topic, and I appreciate your holding this hearing. And it means a great deal that the witnesses made time to be here, as—

Mr. KING. The gentleman is granted unanimous consent for an additional minute.

Mr. DEUTCH. No, I am through, Mr. Chairman. Thank you. It was just to express my thanks to you for holding this hearing.

Mr. KING. Okay, I appreciate that. And I want to express my gratitude to all the witnesses here this morning. And this concludes today's hearing.

And without objection, all members will have five legislative days to submit additional written questions for the witnesses or additional materials for the record.

I thank each of you, and this hearing is now adjourned.

[Whereupon, at 10:07 a.m., the Subcommittee was adjourned.]