

Nancy Markham v. City of Surprise, et al.
2:15-cv-01696-SRB

LODGED: PROPOSED

PLAINTIFF'S MOTION FOR A PRELIMINARY
INJUNCTION AND MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT ATTACHED

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

NANCY MARKHAM,

Plaintiff,

v.

CITY OF SURPRISE; MICHAEL
 FRAZIER in his individual and official
 capacities, and CHRISTOPHER TOVAR, in
 his individual capacity,

Defendants.

No. 2:15-cv-01696-SRB

**PLAINTIFF’S MOTION FOR A
 PRELIMINARY INJUNCTION AND
 MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT
 ATTACHED**

(ORAL ARGUMENT REQUESTED)

MOTION

Pursuant to Federal Rule of Civil Procedure 65, Plaintiff moves for a preliminary injunction:

1) Prohibiting Defendants from enforcing the Nuisance Policy against crime victims in rental properties for any alleged nuisance that is based on calls reporting or seeking police assistance regarding crime or on any criminal activity that is perpetrated against the tenant; and

2) Prohibiting Defendants from requiring the adoption of crime free lease provisions that permit and threaten eviction on the basis of criminal activity that is perpetrated against the tenant.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Nancy Markham (“Ms. Markham”) seeks a preliminary injunction to preclude Defendants from enforcing an unconstitutional policy that violates Ms. Markham’s First Amendment rights to seek police assistance by compelling her landlord to pursue her eviction when she exercises her rights.¹ The enactment and enforcement of this policy causes an undue chilling effect on Ms. Markham and other tenants in Surprise who wish to exercise the fundamental rights to petition the government for redress of grievances and to free expression. Absent an injunction, the First Amendment rights of tenants in

¹ The instant Motion for Preliminary Injunction focuses on Defendants’ violations of Ms. Markham’s rights under the First Amendment to the United States Constitution, including the right to petition. As discussed in the accompanying Verified Complaint, Ms. Markham also seeks injunctive relief to prevent Defendants’ threatened enforcement of the Nuisance and Crime Free Lease Sections of the Ordinance under the Fourteenth Amendment to the United States Constitution, their Arizona constitutional equivalents, federal and state statutory housing law, and on state preemption grounds. For the sake of judicial economy, Ms. Markham does not rely upon those additional bases for a preliminary injunction here.

1 Surprise to call the police to report incidents of crime or other emergency situations will
2 continue to be chilled.

3 Defendants – the City of Surprise (“Surprise” or “the City”), Surprise chief of police
4 Michael Frazier, and Surprise police officer Christopher Tovar – have enacted or enforced
5 Article III of the Surprise Municipal Code, which includes §105-104 (“the Nuisance
6 Property Section”) and §105-106 (“the Crime Free Lease Section”). These two sections,
7 hereinafter referred together as the Surprise “Nuisance Policy,” authorize Defendants to
8 penalize landlords and cause those landlords to remove their tenants from their homes if the
9 tenants have called or required the assistance of law enforcement more than four times in
10 thirty days, or if two crimes occurred at the rental unit at any time. This policy applies
11 regardless of whether the tenant was the victim of the crime, had no part in or responsibility
12 for crime committed by others at her home, or called the police in need of emergency
13 assistance. The City anticipated and intended that the provisions of the Nuisance Policy
14 would work in tandem to significantly deter calls to the police, which are constitutionally
15 protected petitions and speech.

16 Defendants vigorously enforced the Nuisance Policy against Ms. Markham and her
17 landlord on the grounds that police were called to her rental property (“the Property”) to
18 protect her from incidents of domestic violence. In the course of enforcing the Nuisance
19 Policy, Defendants warned Ms. Markham’s landlord that there had been numerous calls to
20 police at the Property and threatened the landlord with penalties under the Nuisance
21 Property Section unless the criminal problems there were “abated” to their satisfaction.

22 The Nuisance Policy provides a ready means for Defendants to compel such action.
23 The Crime Free Lease Section requires landlords to adopt lease provisions that entitle them

1 to evict tenants whenever police respond to crime at a rental property. The Nuisance
2 Property Section allows the imposition of penalties, including criminal prosecution, fines,
3 and rental license revocation, against landlords who fail to pursue evictions in response to
4 notice that their property has been the site of either four calls for police service or two
5 crimes that “negatively impact[] the quality of life or threaten[] the safety and/or health of
6 those in the area.” The City’s Nuisance Policy thus incentivizes and empowers landlords to
7 proactively evict tenants upon a single call to police made by a tenant to report crime
8 committed against her at a property.
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11 The Surprise Police Department, in actions undertaken by Officer Christopher Tovar
12 and under the direction and supervision of Police Chief Frazier, repeatedly pressured Ms.
13 Markham’s landlord and her property manager to abate the alleged nuisance at the Property
14 by evicting Ms. Markham and her two sons from their home. At all times, Defendants knew
15 and acknowledged that Ms. Markham was the victim of the domestic violence for which
16 police had been summoned. Defendants proceeded, undeterred, to seek the removal of Ms.
17 Markham from the Property until Plaintiff’s counsel interceded.
18

19 Defendants’ enforcement of the Nuisance Policy directly burdens and causes an
20 undue chilling effect on tenants in Surprise, including Ms. Markham, who wish to exercise
21 their First Amendment right to seek police assistance. Ms. Markham was threatened with
22 eviction pursuant to the Nuisance Property Section on the basis of her calls to the police to
23 report and request protection from crime committed against her. Although Ms. Markham
24 has moved to another rental property, she still lives in Surprise and remains subject to the
25 Nuisance Policy. As a result, Ms. Markham is unable to call the police, for fear that she will
26 again face eviction, either in response to a threatened nuisance citation at her new home or
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1 as a proactive means by a landlord who anticipates such a city response in the future.
2 Surprise can articulate no compelling or even legitimate interest furthered by this policy of
3 punishing tenants for crime committed against them and restricting their rights to request
4 police aid in an emergency.
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6 A preliminary injunction is necessary to vindicate the First Amendment rights of
7 tenants in Surprise, including Ms. Markham, and is warranted under the circumstances
8 presented in this case. First, Ms. Markham is likely to succeed on the merits of her First
9 Amendment claim given the well-established constitutional right to petition the government
10 for redress of grievances and to freedom of expression. Defendants' Nuisance Policy has
11 directly penalized and chilled the exercise of these rights by Ms. Markham and other
12 residents in Surprise by threatening penalties on the basis of calls to police or any activity
13 that would lead to a police response. Second, Ms. Markham and other Surprise residents
14 are irreparably harmed by Defendants' actions. The loss of First Amendment rights
15 constitutes irreparable harm as a matter of law; this loss is continuing and causes Ms.
16 Markham and other victims of crime in Surprise to choose between foregoing exercise of
17 their fundamental rights or facing eviction. Third, the lawful exercise of constitutional
18 rights presumptively serves the public interest, and the equities favor the party exercising
19 those rights. Here, in addition, granting injunctive relief serves the public interest by
20 ensuring that tenants in Surprise will be able to report incidents of crime and request police
21 assistance, increasing accountability of perpetrators of crime such as domestic violence,
22 and enhancing the safety of crime victims and the community as a whole.
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27 Failure to grant a preliminary injunction would stifle the First Amendment rights of
28 tenants in Surprise and reinforce the message that Surprise sends loud and clear to victims

1 of domestic violence through its Nuisance Policy – keep incidents of abuse secret or risk
2 eviction. The court should issue an injunction before the next crime victim faces the false
3 choice of staying silent about crime committed against her or losing her home.

4 **II. STATEMENT OF FACTS**

5 **A. The Nuisance Policy**

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7 In 2010, Defendants adopted and have since maintained and enforced the current
8 version of the Nuisance Policy, Article III §§105-104, 105-106 of the Surprise Municipal
9 Code, against landlords and tenants in Arizona.

10
11 The Nuisance Policy includes the Nuisance Property Section, §105-104, which
12 declares a property to be a nuisance upon the occurrence of the following “offenses,”
13 among others: 1) four or more calls for police to the same service address or unit within a
14 30-day period relating to commission of crime under Arizona or federal law or otherwise
15 reporting criminal activity; or 2) commission of any two or more crimes under Arizona or
16 federal law on the property that “negatively impacts the quality of life or threatens the
17 safety and/or health in the area.” Compl. ¶40. The Nuisance Property Section authorizes
18 Surprise to revoke or suspend a landlord’s business license and/or charge the landlord with
19 a civil or criminal violation if, after receiving notice that a tenant allows any nuisance
20 offense to occur at the property, the landlord fails to take steps against the tenant to
21 effectively abate the alleged nuisance violation. A companion Crime Free Lease Section of
22 the Nuisance Policy, §105-106, requires all owners, managers, or leasing agents in Surprise
23 to incorporate a lease provision that, on information and belief, permits them to evict
24 tenants upon a single occurrence of any criminal activity at the property. The Nuisance
25 Policy thereby requires landlords to adopt a lease provision that provides both a ready
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1 abatement measure and a proactive means to avoid any penalty under the Nuisance
2 Property Section – namely, the eviction of any tenant residing in an alleged nuisance
3 property or who has called police to report crime and request assistance.

4 Neither the Nuisance Property Section nor the crime free lease provisions required
5 by the Crime Free Lease Section distinguish between perpetrators and victims of crime or
6 between those who called the police frivolously and those who were in need of emergency
7 assistance. By mandating that landlords be prepared to take action against tenants
8 whenever police respond to crime at the rental property and then imposing penalties on
9 landlords if they fail to take action, Surprise established a statutory system that pressures
10 landlords to penalize any instance of crime occurring at the property, even when the tenant
11 was the victim of the criminal acts. While the Nuisance Property Section purports to
12 require that tenants “allow” the alleged nuisance offenses to occur on their property, and
13 the lease provisions mandated by the Crime Free Lease Section require that any penalized
14 crime be committed “within the tenant’s sphere of influence,” the emptiness of these
15 supposed limitations are borne out by Defendants’ aggressive enforcement of the Nuisance
16 Policy against Ms. Markham. She called the police to report violent crime that, while
17 perpetrated by someone known to her, was beyond her control. Markham Decl. ¶8.

18 The Nuisance Policy has several direct, adverse effects on Ms. Markham and other
19 victims of crime in Surprise. Before the Nuisance and Crime Free Lease Sections, as
20 currently amended, were jointly passed in 2010, Surprise, including the City Council and
21 Mayor, were repeatedly warned by interested stakeholders that these provisions could be
22 used to penalize residents who were victims of crime, including domestic violence victims,
23 and would encourage discrimination by landlords. Compl. ¶¶52-57, 62-67. Nevertheless,
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1 the City Council passed the current Nuisance Policy and took no steps to ensure that the
2 rights and safety of victims of domestic violence and persons in need of emergency
3 assistance were protected. Compl. ¶61.

4 Moreover, Surprise recognized and demonstrated its intent that the Nuisance
5 Property and Crime Free Lease Sections would work in tandem to deter tenants from
6 calling police. Compl. ¶¶70-73. For example, on its website, Surprise promotes its crime-
7 free housing program, of which the Crime Free Lease Section requirement is “one of the
8 key components,” and clearly articulates its intent to deter police calls, touting
9 “[m]easurable results in the reduction of police calls for service for properties participating
10 . . . have been seen nation wide. . . up to a 90% reduction. . .” Compl. ¶72. Surprise also
11 encouraged landlords to evict tenants as a means of abating criminal activity or police
12 responses to the property, even suggesting that this could be a proactive response to a single
13 instance of crime. Compl. ¶73.

14 The statutory limits on tenants’ calls to police in turn strips domestic violence
15 victims – some of the most vulnerable citizens in the community – of police protection,
16 silences them from reporting acts of violence against them, and can empower their abusers
17 to continue to perpetrate acts of violence at their victims’ homes. Arnold Decl. ¶22;
18 Markham Decl. ¶¶49-55. Pursuant to the Nuisance Policy, victims of violence are
19 essentially forced to choose between eviction and calling for help. It is well-documented
20 that domestic violence is a primary cause of homelessness and housing instability for
21 women and children. Arnold Decl. ¶¶22, 40. Moreover, in most jurisdictions, domestic
22 violence makes up the primary category of calls police departments receive. Andrew R.
23 Klein, Nat’l Inst. Of Justice, Practical Implications of Current Domestic Violence Research:
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1 For Law Enforcement, Prosecutors, and Judges (June 2009),
2 [http://www.nij.gov/topics/crime/intimate-partner-violence/practical-implications-](http://www.nij.gov/topics/crime/intimate-partner-violence/practical-implications-research/Pages/welcome.aspx)
3 [research/Pages/welcome.aspx](http://www.nij.gov/topics/crime/intimate-partner-violence/practical-implications-research/Pages/welcome.aspx). The Nuisance Policy exacerbates the preexisting challenges
4 that victims of domestic violence already face in accessing police protection and
5 maintaining secure housing by encouraging their eviction on the basis of violence
6 committed against them. Arnold Decl. ¶42.

8 **B. Episodes of Domestic Violence**

9 Between March of 2013 and March of 2015, Ms. Markham rented the Property,
10 where she lived with her two sons. As required by the Crime Free Lease Section, Ms.
11 Markham's lease included a "Crime-Free Provision" that stated that "[t]enant, occupants,
12 family, guests, invitees, or other persons under the Tenant's control shall not engage in . . .
13 any criminal activity, including . . . any act of violence or threats of violence . . .
14 threatening or intimidating, unlawful discharge of firearms, or assault" and that any
15 violation of this provision would be a material and irreparable violation of the lease.
16 Compl. ¶77. While living at the property, Ms. Markham was the victim of domestic
17 violence that was perpetrated by her former boyfriend, R.V. Markham Decl. ¶8. These
18 included violent attacks and threats to kill. Ms. Markham could not control R.V. when he
19 was violent towards her. Markham Decl. ¶8.

23 As a result, Ms. Markham called the police to report the abuse and seek police
24 protection on several occasions from March through August 2014. Ms. Markham never
25 called the police to the Property for any reason other than domestic violence, except for one
26 occasion where she accidentally dialed 911 and hung up. She was not arrested for or
27 charged with any crime at the Property. In July and August 2014, Ms. Markham's home
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1 was the subject of four calls to the police, all of which related to domestic violence
2 committed against her. Compl. ¶¶ 90-108. Police also charged R.V. for crimes of domestic
3 violence at the Property on more than two occasions. These included: 1) a charge of
4 aggravated assault on March 13, 2014, after R.V. put his hands around Ms. Markham's
5 neck, choked her repeatedly, and punched her in the mouth; 2) charges of disorderly
6 conduct with a deadly weapon and possession of drug paraphernalia on July 31, 2014, after
7 R.V. brandished a gun in Ms. Markham's home and police found syringes on his person
8 after his arrest; and 3) charges of assault, assaulting a police officer, and obstructing justice
9 on August 20, 2014, when R.V. brandished a knife in Ms. Markham's home, and police
10 responded to arrest him. Compl. ¶¶ 85-88, 98-105, 128-130.

13 Despite her property being the site of both the triggering number of calls to police
14 and instances of criminal activity, at no point in any of the responses to the Property did
15 any police officer mention the Nuisance Policy or its Nuisance Property and Crime Free
16 Lease Sections to Ms. Markham or inform her that repeated calls to the police or instances
17 of criminal activity at the Property could result in her eviction or other penalty.

19 **C. Defendants' Enforcement of the Nuisance Policy Against Ms. Markham**

20 Under the direction of Defendant Frazier, the Surprise Police Department initiated
21 its enforcement of the Nuisance Policy against Ms. Markham through contact by Defendant
22 Tovar to Ms. Markham's landlord on August 4, 2014. Although the Nuisance Property
23 Section defines a nuisance as a situation where a tenant "allowed" a nuisance offense,
24 Defendants did not exempt Ms. Markham from enforcement, despite their knowledge that
25 police had only responded to her home regarding incidents of domestic violence in which
26 she was the victim.
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1 Officer Tovar informed Ms. Markham's landlord and the property manager that
2 "serious criminal problems" were occurring at Ms. Markham's rental home, which was the
3 subject of "numerous calls for various incidents." Compl. ¶¶111, 115. He shared a list of
4 calls for police service from the Property and warned that the Property may be deemed a
5 criminal nuisance under the Nuisance Property Section if the problems were not corrected.
6 Compl. ¶¶111-12, 114.

8 While Officer Tovar acknowledged and informed the property manager that Ms.
9 Markham "was the listed victim in each of these cases," at no point did Defendant Tovar,
10 Defendant Frazier, or anyone else at the Surprise Police Department directed by Chief
11 Frazier, instruct or advise the property manager or landlord that Ms. Markham should not
12 be the subject of negative action or penalty on the basis of domestic violence or related
13 police calls. Compl. ¶¶118, 121. Instead, Officer Tovar pushed for Ms. Markham's
14 removal by discussing the possible legal grounds for evicting her from the residence with
15 the property manager. Compl. ¶121.

18 On August 14, 2014, Chief Frazier received a letter from some of Ms. Markham's
19 neighbors that blamed Ms. Markham for the police responses to domestic violence at the
20 Property and demanded action against her. Defendant Frazier ordered that someone at his
21 department "take ownership of this issue . . . [and] keep [him] apprised." Compl. ¶¶122-
22 124. He then assured the neighbors that police "have a strategy in place that should result in
23 a permanent solution, but it is still a work in progress." Compl. ¶125.

26 As part of the "strategy" put in place by Defendant Frazier, and in response to the
27 direct contacts and threats by Defendant Tovar, the property manager told Ms. Markham on
28 August 18, 2014 that "[t]he Surprise P.D. has put the owner in a position where they can no

1 longer allow you to stay as a tenant.” Markham Decl. ¶30. The property manager told Ms.
2 Markham that if she did not voluntarily leave, the landlord would pursue her eviction.
3 Markham Decl. ¶31.

4 **1. Defendants Push for Eviction and Discourage Any Alternative**

5 From late August through September 2014, Defendant Tovar continued to pressure
6 the landlord and property manager to take action against Ms. Markham. On August 21,
7 2014, he inquired whether attempts to remove Ms. Markham from the property were
8 successful, informed the landlord and property manager that Ms. Markham had again called
9 911 regarding domestic violence on August 20, 2014, and described the neighbors’ letter.
10 Compl. ¶¶131, 133-135.

13 On August 26, 2014, Ms. Markham responded to the property manager’s threat of
14 eviction, assuring him that the problems at the Property had been resolved because she had
15 obtained a protection order against R.V., and he was now incarcerated. Markham Decl.
16 ¶36. The property manager was receptive and requested that Ms. Markham send him a
17 police report to verify this, indicating his willingness to work matters out and not require
18 Ms. Markham and her children to leave their home. Markham Decl. ¶37.

20 When, on September 2, 2014, Defendant Tovar again contacted the property
21 manager to confirm that he was proceeding to evict Ms. Markham, the property manager
22 asked Tovar to verify that R.V., the cause of the disturbances, had been arrested and served
23 with a protection order. Compl. ¶¶138-140. While Officer Tovar confirmed these facts, he
24 indicated that this was not an adequate solution and continued to urge that the property
25 manager evict Ms. Markham by suggesting that her eviction could be pursued on an
26 alternative basis. Compl. ¶¶141-145.

1 Despite Officer Tovar's coercive tactics, the property manager recommended to the
2 landlord that Ms. Markham be allowed to stay. Compl. ¶146. The landlord emailed
3 Officer Tovar on September 8, 2014, for feedback on the property manager's
4 recommendation and Officer Tovar reported having a phone conversation with the landlord
5 that same day. Compl. ¶¶147-148. His report indicates that he did not disclaim his
6 previous statements to the landlord and property manager, urging Ms. Markham's eviction.
7 Nor did he clearly state that action should not be taken against Ms. Markham on the basis
8 of domestic violence committed against her.
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10 **2. Eviction Notice**

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12 On September 9, 2014, the landlord directed the property manager to move forward
13 with evicting Ms. Markham. Compl. ¶149. On September 12, 2014, the property manager
14 told Ms. Markham that she would be evicted in the next month if she failed to move before
15 then. Markham Decl. ¶39. This threat was immediate and actionable, for, under Arizona
16 Landlord and Tenant Law, where there is a breach of lease through criminal acts such as
17 threatening, intimidating, and assault, the landlord may deliver a notice for immediate
18 termination of the rental agreement. A.R.S. §33-1368. In response to Ms. Markham's
19 repeated explanation that "[t]here was no criminal activity going on at [her] home, it was a
20 domestic violence issue and [the abuser] was not living at the home," the property manager
21 replied that, in the face of the threats from the City and under the Nuisance Policy, he had
22 no choice. Compl. ¶152; Markham Decl. ¶¶40-41.
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26 **D. Notice to Surprise**

27 Ms. Markham, through her undersigned counsel, sent Defendants a letter on October
28 2, 2014, notifying Defendants of the unconstitutionality of their actions under the Nuisance

1 Policy and demanding that Defendants cease enforcement of the Nuisance Property Section
2 against Ms. Markham and other tenants in Surprise. Compl. ¶172. Defendants responded
3 by denying they had taken any action against Ms. Markham or the landlord to abate a
4 “nuisance” at the Property. Compl. ¶173. Defendants did not respond to the request to
5 suspend enforcement and made no assurance that the Nuisance Property Section would not
6 be enforced against Ms. Markham or her landlord at a later date, or that they would not
7 again take action against Ms. Markham based on reported crimes or calls for police
8 assistance. Compl. ¶174.

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11 **E. The Nuisance Policy Continues to Violate Ms. Markham’s Constitutional**
12 **Rights**

13 The continued existence of the Nuisance Policy creates a chilling effect on Ms.
14 Markham’s ability to call the police or seek law enforcement assistance in the future, even
15 when she fears that her safety is threatened. Markham Decl. ¶¶49-52.

17 On March 1, 2015, Ms. Markham moved into a new rental property in Surprise.
18 Markham Decl. ¶¶5, 48. She remains subject to penalty, pursuant to the Nuisance Policy,
19 upon any further calls to the police to report crime or seek police services. Pursuant to the
20 Crime Free Lease Section, Ms. Markham’s new lease includes a nearly identical crime-free
21 provision, which empowers her new landlord to act against her in response to warnings or
22 threats from the Surprise Police department or the mere threat of the existence of the
23 Nuisance Policy. Markham Decl. ¶52.

25 Due to the continued existence of the Nuisance Policy and her experience with
26 Surprise officials’ aggressive enforcement of it against her, Ms. Markham’s freedoms of
27 petition and speech have been directly burdened, chilled, and she suffers an ongoing loss
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1 of her First Amendment rights to petition the government and freedom of expression.

2 **III. ARGUMENT**

3 A preliminary injunction is warranted if a plaintiff shows the likelihood of success
4 on the merits and her suffering of irreparable harm, and the balance of equities and public
5 interest favor an injunction. *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S.
6 7, 24 (2008). The Ninth Circuit has adopted a “sliding scale” approach. If a plaintiff can
7 show that there are at least serious questions going to the merits, then a preliminary
8 injunction may issue if the balance of the hardships tips sharply in plaintiff’s favor and the
9 other two *Winter* factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d
10 1127, 1134-35 (9th Cir. 2011).

13 Ms. Markham is entitled to a preliminary injunction because Defendants’ enactment
14 and enforcement of the Nuisance Policy unconstitutionally burdened, and now chills, her
15 First Amendment rights to petition the government and to freedom of expression, causing
16 irreparable harm. The balance of equities and the public interest always favor protecting
17 freedoms of petition and speech, and the public interest also favors blocking policies that
18 discourage reporting crime to the police, undermine accountability of perpetrators of
19 domestic violence, increase homelessness, and threaten the safety of domestic violence
20 victims, crime victims, and the community as a whole. Failure to grant an injunction would
21 send a frightening message to tenants in Surprise: reporting crime committed against you in
22 your home, including domestic violence, can result in eviction.

26 The Nuisance Policy should be enjoined to ensure that: a) Ms. Markham may seek
27 police assistance without fear of penalty to herself or her landlord; b) Ms. Markham and her
28 sons are not evicted for exercising their First Amendment rights; and c) no other crime

1 victim renting property in Surprise is penalized for seeking or requiring police assistance in
2 an emergency.

3 **A. Ms. Markham Is Likely to Prevail on the Merits of Her First Amendment**

4 **Claim**

5 Ms. Markham will likely succeed on the merits of her First Amendment claim that
6 the Nuisance Policy unconstitutionally restricts her rights to petition the government and to
7 freedom of speech.

8
9 The right to petition the government for redress of grievances is fiercely protected
10 under the First Amendment (applicable to the states and their municipalities through the
11 Fourteenth Amendment) and its Arizona equivalent. *See, e.g., BE & K Const. Co. v. NLRB*,
12 536 U.S. 516, 524 (2002) (holding the right to petition is “one of the most precious of the
13 liberties safeguarded by the Bill of Rights); *United Mine Workers of Am., Dist. 12 v. Illinois*
14 *State Bar Ass'n*, 389 U.S. 217, 222 (1967) (describing the right to petition as “among the
15 most precious of the liberties safeguarded by the Bill of Rights. . . intimately connected
16 both in origin and in purpose, with the other First Amendment rights of free speech and free
17 press”); *McDonald v. Smith*, 472 U.S. 479, 482 (U.S. 1985) (holding that “the right to
18 petition is cut from the same cloth as the other guarantees of that Amendment, and is an
19 assurance of a particular freedom of expression.”).

20
21 Calls to the police to report information or request a police response constitute
22 legitimate exercises of the First Amendment right to petition. *See, e.g., Borough of Duryea*
23 *v. Guarnieri*, 131 S. Ct. 2488, 2498 (2011) (holding that the right to petition is “not limited
24 to petitions lodged under formal procedures”); *Eastern R.R. Presidents Conference v. Noerr*
25 *Motor Freight, Inc.*, 365 U.S. 127, 133, 139 (1961) (holding that, absent illegal purposes, a
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1 state actor may not penalize a person for exercising his/her right to petition the government
2 and influence law enforcement authorities); *see also United Mine Workers v. Pennington*,
3 381 U.S. 657, 670 (1965) (holding that a person may not be held liable for “a concerted
4 effort to influence public officials regardless of intent or purpose”); *Cal. Motor Transp. Co.*
5 *v. Trucking Unlimited*, 404 U.S. 508, 510 (1972) (holding that the First Amendment right to
6 petition is not limited to just influencing the legislative process but extends to every
7 governmental body); *White v. Lee*, 227 F.3d 1214, 1231 (9th Cir. 2000) (holding the right
8 to petition “applies equally in all contexts”).
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11 Accordingly, each call that tenants in Surprise make to the police truthfully reporting
12 incidents of domestic violence or any other criminal activity is protected by the First
13 Amendment’s right to petition clause. *See, e.g., Meyer v. Bd. of County Comm’rs*, 482 F.3d
14 1232, 1243 (10th Cir. 2007) (holding that reporting physical assault, reporting a danger of a
15 commission of crime, and filing a complaint with law enforcement are protected under the
16 First Amendment); *Forro Precision, Inc. v. Int’l Bus. Machs.*, 673 F.2d 1045, 1060 (9th
17 Cir. 1982) (holding that the right to petition is integral to law enforcement’s ability to
18 enforce the laws of the United States); *Doe v. San Mateo County*, Nos. C 07–05596 SI,
19 2009 WL 735149, at *6 (N.D. Cal. Mar.19, 2009) (holding that filing a police report to
20 complain about criminal activity – in this case police misconduct – is constitutionally
21 protected speech); *Mazzeo v. Gibbons*, 649 F. Supp. 2d 1182, 1194 (D. Nev. 2009) (holding
22 that plaintiff stated a retaliation claim under the First Amendment right to petition by
23 alleging that filing a police report about an attempted rape was the but-for cause of
24 Defendant police officers’ retaliatory action against her); *United States v. Hylton*, 558 F.
25 Supp. 872, 874 (S.D. Tex. 1982), *aff’d* 710 F.2d 1106 (5th Cir. 1983) (“There can be no
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1 doubt that the filing of a legitimate criminal complaint with local law enforcement officials
2 constitutes an exercise of the first amendment right.”).

3 Calls to police to report incidents of criminal activity or seek police assistance are
4 also protected on free expression grounds when the government disadvantages or penalizes
5 that form of speech. *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 642 (1994) (stating
6 that this requirement “appl[ies] the most exacting scrutiny to regulations that suppress,
7 disadvantage, or impose differential burdens upon speech because of its content”). This is
8 true whether the government restriction targets specific content on its face or whether, in its
9 operation or effect, it singles out or sweeps up constitutionally protected speech for control
10 or penalty. *Lind v. Grimmer*, 30 F.3d 1115, 1117 (9th Cir. 1994) (citing *Ward v. Rock*
11 *Against Racism*, 491 U.S. 781, 791 (1989)) (government regulation of expressive activity is
12 content-based if the state cannot “justify it without reference either to the content of the
13 speech it restricts or to the direct effect of that speech on listeners”); *Thornhill v. State of*
14 *Alabama*, 310 U.S. 88, 97-98 (1940) (holding that a penal statute “which does not aim
15 specifically at evils within the allowable area of State control but, on the contrary, sweeps
16 within its ambit other activities that in ordinary circumstances constitute an exercise of
17 freedom of speech . . . [and] which readily lends itself to harsh and discriminatory
18 enforcement by local prosecuting officials, against particular groups deemed to merit their
19 displeasure, results in a continuous and pervasive restraint on all freedom of discussion that
20 might reasonably be regarded as within its purview”).

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26 Ms. Markham and other residents of Surprise thus have a First Amendment right to
27 engage in communications with law enforcement free from express or effective limitations
28 on the subject matter or communicative impact of that speech, including communications to

1 report crime at a property, request police services, or relay other information the effect of
2 which would foreseeably lead to a police response. *See, e.g., Lind*, 30 F.3d at 1118-19 (9th
3 Cir. 1994) (holding that a state’s justification for a statute – deterring unmeritorious
4 complaints and public inquiries to the government – was invalid because it “stemm[ed]
5 from the direct communicative impact of speech”); *Coates v. City of Cincinnati*, 402 U.S.
6 611, 614 (1971) (holding that a city ordinance was unconstitutionally broad where the city
7 could have achieved the same end through penalties “directed with reasonable specificity
8 toward the conduct to be prohibited,” but instead adopted an ordinance that “authorize[d]
9 the punishment of constitutionally protected conduct.”).

12 **1. The Surprise Nuisance Policy Burdens and Creates an Undue Chilling**
13 **Effect on the Constitutionally Protected Right to Request Police Aid**

14 The enactment and enforcement of the Surprise Nuisance Policy directly penalizes
15 and unduly chills the First Amendment right of tenants in Surprise, including Ms.
16 Markham, to report crime to police and seek law enforcement protection. *Broadrick v.*
17 *Oklahoma*, 413 U.S. 601, 612 (1973) (holding that Plaintiffs may challenge the impact of a
18 policy on others because “the statute’s very existence may cause others not before the court
19 to refrain from constitutionally protected speech or expression.”); *see also United States v.*
20 *Stevens*, 559 U.S. 460, 473 (2010) (holding that “a law may be invalidated as overbroad if a
21 substantial number of its applications are unconstitutional, judged in relation to the statute’s
22 plainly legitimate sweep.”) (internal quotation marks omitted).

23 The Nuisance Policy pressures and coerces landlords to pursue eviction on the basis
24 of any calls to the police that report criminal activity or lead police officers to respond to
25 crime at a property, regardless of whether the tenant was the victim of that crime. Arnold

1 Decl. ¶58. Its Nuisance Property Section provides that it is a violation, subject to penalty,
2 “to rent or continue to rent . . . to a tenant when the [landlord] knew or becomes aware that
3 the tenant allows any [nuisance] offense to occur.” For these “offenses,” defined as four
4 calls to police in 30 days or two instances of criminal activity at the property, the Nuisance
5 Policy authorizes Defendants to penalize the landlord if he or she does not abate the alleged
6 nuisance. Its companion Crime Free Lease Section provides both a ready abatement
7 method and a proactive means to avoid such penalty, even before receiving any notice of
8 nuisance conduct by requiring all leases to include a provision that permits landlords to
9 evict tenants upon a single occurrence of crime at a property.
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12 Surprise anticipated and intended that these Nuisance Property and Crime Free
13 Lease Sections work in tandem to deter tenants from seeking police assistance at their
14 rental properties. *See Sloman v. Tadlock*, 21 F.3d 1462, 1469 (9th Cir. 1994) (finding a
15 violation of plaintiff’s First Amendment rights where a defendant police officer’s actions,
16 though linked to legitimate official powers to warn, cite, and arrest, deterred or chilled
17 plaintiff’s exercise of his First Amendment rights “and such deterrence was a substantial or
18 motivating factor in [the defendant’s] conduct in issuing citations and warnings to him.”);
19 *Mendocino Env’tl. Ctr. v. Mendocino Cnty.*, 192 F.3d 1283, 1300-01 (9th Cir. 1999) (intent
20 to inhibit speech. . . can be demonstrated either through direct or circumstantial evidence);
21 *Gibson v. United States*, 781 F.2d 1334, 1338 (9th Cir. 1986) (“State action designed to
22 retaliate against and chill political expression strikes at the heart of the First Amendment.”).
23 Materials that the Surprise Police Department uses to promote the Nuisance Policy
24 illustrate an overall goal of reducing calls to the police.
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28 The Nuisance Policy thus predictably chills crime victims’ First Amendment right to

1 seek police assistance for fear that any calls to police or speech that could result in a police
2 response will be deemed a nuisance offense or violation of a crime free lease provision and
3 lead to eviction. Arnold Decl. ¶¶22, 29, 31-34; *Mendocino Environmental Ctr.* 192 F.3d at
4 1300 (holding that government officials violate First Amendment rights when their acts
5 “would chill or silence a person of ordinary firmness from future First Amendment
6 activities”); *Clairmont v. Sound Mental Health*, 632 F.3d 1091, 1100 (9th Cir. 2011)
7 (internal citations and quotation marks omitted) (“First Amendment protection does not
8 depend on whether the governmental action is direct or indirect. Where the government
9 may not prohibit certain speech, it also may not threaten to exert economic pressure . . . in
10 order to produce a result which [it] could not command directly.”); *White*, 227 F.3d at 1228
11 (9th Cir. 2000) (quoting *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67, 83 S.Ct. 631, 9
12 L.Ed.2d 584 (1963)) (finding a violation of plaintiff’s right to petition and to free speech
13 through “[i]nformal measures, such as ‘the threat of invoking legal sanctions and other
14 means of coercion, persuasion, and intimidation’ . . .”).

18 This fear is real and palpable. Defendants doggedly pursued enforcement of the
19 Nuisance Policy against Ms. Markham and her landlord on the basis of her repeated calls to
20 the police to report incidents of domestic violence at the Property. Though the Surprise
21 Police Department was aware that Ms. Markham was the victim of this crime, Officer
22 Tovar repeatedly pressured her landlord to abate the alleged nuisance by removing Ms.
23 Markham from the property and discouraged any alternative abatement method. As a result
24 of Defendants’ threatened penalties and coercive tactics, Ms. Markham’s landlord directed
25 the property manager to move forward with an eviction against her. Ms. Markham
26 protested the eviction, explaining that she was the victim of the alleged nuisance activity,
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1 which was actually domestic violence perpetrated against her, and that the abuser who
2 caused the problem had been incarcerated and barred from her home. However, the
3 property manager told her that he had no choice; the action was coming from the City.
4 Defendants thus directly penalized Ms. Markham on the basis of calls to police to engage in
5 protected conduct, resulting in loss of rights, safety, and great emotional distress.
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7 While Ms. Markham's landlord relented in seeking Ms. Markham's eviction when
8 Plaintiff's counsel interceded, Defendants have made no assurance that the Nuisance Policy
9 would not be enforced against Ms. Markham or her landlord at a later date or that they
10 would not again take action against Ms. Markham based on 911 calls or police responses
11 relating to domestic violence. The continued existence of the Nuisance Policy has had a
12 chilling effect on Ms. Markham's ability to call the police to report crime or seek law
13 enforcement assistance in the future. Ms. Markham now fears that communications to the
14 police, even to report immediate threats to her safety, will once again place her at risk of
15 eviction. Markham Decl. ¶53. Accordingly, the threat of Defendants' enforcement of the
16 Nuisance Policy causes an ongoing loss and undue chilling effect on Ms. Markham's First
17 Amendment rights to petition and to freedom of expression.
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21 When the government restricts petition or speech, as done by Defendants' Nuisance
22 Policy and its enforcement, it has the burden of proving the constitutionality of its actions.
23 *United States v. Playboy Entm't Grp., Inc.*, 529 U.S. 803, 816 (2000). That cannot be done,
24 for Defendants are unable to articulate any legitimate interest in punishing tenants for crime
25 committed against them and restricting their rights to request police aid in an emergency.
26 The Nuisance Policy's burden on the expressive activity is thus prohibited by every
27 applicable judicial test. Here, Defendants are pursuing illegitimate ends by enforcing
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1 policies that penalize crime victims like Ms. Markham for seeking police assistance to
2 ensure their safety; there is no rational basis for such actions.

3 **2. The Nuisance Policy Is Subject to the Greatest Scrutiny**

4 The Nuisance Policy is subject to strict scrutiny review, as it both infringes on the
5 First Amendment right to petition the government by reporting crime or requesting police
6 assistance and establishes content-based limits on communications involving law
7 enforcement, in violation of the First Amendment right to freedom of expression. *See, e.g.,*
8 *Gibson v. Fla. Legislative Investigation Comm.*, 372 U.S. 539, 546 (1963) (“[I]t is an
9 essential prerequisite to the validity of an investigation which intrudes into the area of
10 constitutionally protected rights of speech, press, association and petition that the State
11 convincingly show a substantial relation between the information sought and a subject of
12 overriding and compelling state interest”); *Reed v. Town of Gilbert, Ariz.*, 135 S. Ct. 2218,
13 2222 (2015) (“Whether laws define regulated speech by particular subject matter or by its
14 function or purpose, they are subject to strict scrutiny.”).

18 To justify infringement of either the right to petition or to free speech, Defendants
19 must demonstrate that the Nuisance Policy serves a compelling governmental interest and
20 that it is the least restrictive means to further such an interest. *See, e.g., Wayte v. U.S.* 470
21 U.S. 598, 611(1985) (“Although the right to petition and the right to free speech are
22 separate guarantees, they are related and generally subject to the same constitutional
23 analysis.”); *Meyer v. Grant*, 486 U.S. 414, 424-25 (1988) (holding that the burden a State
24 must overcome when infringing First Amendment rights is “well-nigh insurmountable”); *cf.*
25 *Borough of Duryea*, 131 S. Ct. at 2495 (noting that the Right to Petition may extend further
26 than the right to speak “in cases where the special concerns of the Petition Clause would
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1 provide a sound basis for a distinct analysis; and if that is so, the rules and principles that
2 define the two rights might differ in emphasis and formulation.”). Defendants are unable to
3 satisfy either requirement.

4
5 There is no compelling interest that could justify punishing crime victims for
6 reporting crime committed against them or restricting their ability to request police aid in
7 an emergency. Indeed, the Nuisance Policy’s restrictions run counter to basic government
8 functions and undermine fundamental municipal goals of public welfare and safety. The
9 Nuisance Policy directly contradicts governmental interests established in Arizona state
10 law, which prohibits landlords from limiting or imposing penalties on a tenant’s recognized
11 “right to summon a peace officer or other emergency assistance in response to an
12 emergency.” A.R.S. §33-1315(A)(4), (5). Discouraging crime victims from seeking
13 emergency assistance from the police is not a legitimate public goal.
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16 The Nuisance Policy’s imposition of penalty upon calls to the police or police
17 responses, regardless of whether a tenant reported being the victim of a crime or urgently
18 required police assistance, authorizes Defendants to penalize crime victims for the crime
19 perpetrated against them. This predictably stops citizens of Surprise from reporting
20 criminal activity, even when they are facing imminent threat of violence or require police
21 assistance in an emergency. Arnold Decl. ¶¶56-58. It consequently places all tenants in
22 Surprise at enhanced risk and undermines accountability for individuals who perpetrate
23 crime. Arnold Decl. ¶55.
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26 The Nuisance Policy has a further predictable, negative impact on an already
27 vulnerable population: domestic violence survivors. There is ample evidence that the kind
28 of penalties imposed by Surprise harm domestic violence victims in myriad ways, including

1 by penalizing them for the abuse they experience, establishing significant barriers to
2 reporting violence perpetrated against them, emboldening perpetrators of violence, and
3 forcing victims to face escalating violence in silence. Arnold Decl. ¶¶70-71. The Nuisance
4 Policy’s limit on survivors’ ability to call police conflicts with law enforcement’s best
5 practices, undercuts efforts to hold abusers accountable, and runs counter to other
6 government policies that are intended to address domestic violence. Arnold Decl. ¶29.
7 This, in turn, undermines core societal interests in protecting the physical safety of
8 domestic violence victims in Surprise and in preserving their fundamental First
9 Amendment freedoms. *See, e.g., United States v. Lippman*, 369 F.3d 1039, 1044 (8th Cir.
10 2004) (holding that protecting the physical safety of domestic violence victims is a
11 compelling government interest recognized by Congress and multiple Courts of Appeals),
12 *cert. denied*, 543 U.S. 1080 (2005); *United States v. Sanchez*, No. CR09-1125-FRZ-GEES,
13 2009 WL 4898122, at *3 (D. Ariz. Dec. 11, 2009) (holding that reducing domestic violence
14 is a compelling government interest); *Meyer v. Bd. of County Comm’rs*, 482 F.3d at 1243
15 (holding that reporting incidents of domestic violence was “one of the most basic”
16 exercises of the First Amendment right to petition).

17 Accordingly, Defendants cannot show that the Nuisance Policy is consistent with
18 any government interest, let alone serves a compelling one. *Arizona Dream Act Coalition*
19 *v. Brewer*, 757 F.3d 1056 (9th Cir. 2014) (citing *City of Cleburne v. Cleburne Living Ctr.*,
20 473 U.S. 432, 446 (1985)) (holding that when a policy’s “relationship to an asserted goal. . .
21 is so attenuated as to render the distinction arbitrary or irrational,’ [it] is not likely to
22 withstand rational basis review.”). It is arbitrary and irrational that Defendants would seek
23 to reduce criminal activity by deterring crime victims from seeking police assistance.

1 The Nuisance Policy and its failure to differentiate between victims and perpetrators
2 of crime is strikingly broad, and its imposition of penalty upon reports of crime, requests
3 for police assistance, and any other petition or speech that would lead to a police response
4 necessarily burdens a significant amount of protected petition and speech. *See, e.g., White,*
5 *227 F.3d at 1237 (9th Cir. 2000)* (holding that defendants violated the first amendment
6 rights to petition and to freedom of expression where their actions “far exceeded what was
7 reasonable for the purpose” they gave, and that “[i]t is axiomatic that when the actions of
8 government officials so directly affect citizens' First Amendment rights, the officials have a
9 duty to take the least intrusive measures necessary to perform their assigned functions.”);
10 *Coates, 402 U.S. at 614* (holding that a city ordinance was unconstitutionally broad where,
11 although it encompassed conduct within the city’s constitutional power to prohibit, the city
12 was able to achieve the same end “through the enactment and enforcement of ordinance
13 directed with reasonable specificity toward the conduct to be prohibited” and the
14 challenged ordinance “authorize[d] the punishment of constitutionally protected conduct.”);
15 *Davenport v. City of Alexandria, Va., 748 F.2d 208, 210 (4th Cir. 1984)* (rejecting asserted
16 safety interests based on factual findings that the City’s total ban on street performances “is
17 much more broad than is necessary to satisfy any interest in public safety the city has [and
18 thus] there has been shown no safety interest substantial enough to outweigh plaintiff’s
19 First Amendment interests.”).

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Nothing in the Nuisance Policy protects Ms. Markham and other tenants when they
exercise their First Amendment right to call the police to report crime or seek police
assistance. Although the Nuisance Policy purports to base any penalty on a determination
that a tenant “allow” any offense to occur or that the crime was somehow within a tenant’s

1 “sphere of influence,” it is clear from Defendants’ enforcement against Ms. Markham that
2 this supposed exception is devoid of meaning. In this case, the triggering events for
3 enforcing the Nuisance Policy against Ms. Markham were instances of domestic violence
4 perpetrated against her and calls to police to report them. Defendants, acting pursuant to
5 the Nuisance Policy, had no concern for the circumstances of the call or police response. It
6 was of no consequence to Defendants that Ms. Markham was the victim of crimes reported,
7 or that there was no finding – nor could there have been – that she ‘allowed’ or was
8 otherwise responsible for the threats to her safety. As the target, Ms. Markham was not in
9 control of the actions of her abuser. Markham Decl. ¶8; Arnold Decl. ¶¶49-50. The failure
10 of Defendants to give weight to this key fact in assessing alleged nuisance offenses at the
11 property demonstrates the complete absence of any effective protections for victims of
12 crime in these provisions. *See, e.g., Thornhill*, 310 U.S. at 100 (finding that limiting
13 language that does not “in any effective manner restrict the breadth of the regulation” will
14 not adequately exempt protected First Amendment speech). Indeed, the one means that Ms.
15 Markham did have to try to influence R.V.’s conduct – calling the police – is the very
16 petition and speech that Defendants target and chill. In addition to the direct penalties it
17 imposes, the Nuisance Policy, as enforced by Defendants, incentivizes landlords to take
18 steps against any tenant who even arguably engages in the prohibited communications to
19 police, such as by calling 911 a single time to report a crime against him or her or because
20 of a crime occurring in the unit even if the tenant had no involvement. Compl. ¶73; Arnold
21 Decl. ¶¶49, 58.

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27 The Nuisance Policy thereby unconstitutionally chills Ms. Markham’s rights to
28 petition the government and to free expression under the First Amendment and withers

1 under strict scrutiny review. Indeed, its imposition of penalties on crime victims for
2 reporting crime against them or engaging in speech leading to a police response undermines
3 basic municipal goals of safety and security, is irrational, and cannot be supported at any
4 level of judicial review. Ms. Markham thus is likely to prevail on the merits of her First
5 Amendment claim.
6

7 **B. Ms. Markham Has Suffered and Continues to Suffer Irreparable Harm as a**
8 **Result of Defendants' Violations of her First Amendment Rights**

9 Unless Defendants are enjoined from enforcing the Nuisance Policy, Ms. Markham
10 will be irreparably harmed because the threat of its enforcement against her landlord, with
11 the inevitable impact on her, continues to chill her First Amendment right to seek police
12 protection and report crime. *See, e.g., Elrod v. Burns*, 427 U.S. 347, 373-74 (1976) (holding
13 that, as a matter of law, “[t]he loss of First Amendment freedoms, for even minimal periods
14 of time, unquestionably constitutes irreparable injury”); *see also Melendres v. Arpaio*, 695
15 F.3d 990, 1002 (9th Cir. 2012) (“[T]he deprivation of constitutional rights unquestionably
16 constitutes irreparable injury.”) (internal quotations omitted); *Thalheimer v. City of San*
17 *Diego*, 645 F.3d 1109, 1128 (9th Cir. 2011); *Klein v. City of San Clemente*, 584 F.3d at
18 1196, 1207-08 (9th Cir. 2009).
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22 Although Plaintiff’s counsel notified Defendants of the First Amendment violations
23 stemming from the Nuisance Policy, Defendants made no assurance that they will not
24 enforce the Nuisance Policy against Ms. Markham or her landlord in the future.
25 Defendants did not even indicate that actions would not again be taken against Ms.
26 Markham based on reported crimes or calls for police assistance relating to domestic
27 violence. The ongoing threat of enforcement of the Nuisance Policy against Ms. Markham
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1 and her current landlord thus continues to chill her First Amendment rights. *White*, 227
2 F.3d at 1233 (condemning state actors for chilling plaintiffs’ right to petition and to free
3 speech by informally threatening legal sanctions).

4 Ms. Markham now fears she and her two sons may lose their home if they contact
5 the police, even if she calls the police to protect their physical safety. Markham Decl.
6 ¶¶49-52. Subject to a “crime-free” lease mandated by the Nuisance Policy, she faces
7 eviction if she makes even a single call to the police. Markham Decl. ¶53. Effectively
8 stripped of her ability to contact the police for protection, Ms. Markham is made highly
9 vulnerable to further physical abuse at the hands of R.V., who has been released from
10 prison, another companion, or even a stranger. Moreover, Ms. Markham would be
11 irreparably harmed if the Nuisance Policy was again enforced against her landlord, and she
12 was evicted from her new home. *Park Vill. Apartment Tenants Ass’n v. Mortimer Howard*
13 *Trust*, 636 F.3d 1150, 1159 (9th Cir. 2011) (“Defendants’ threat to evict Plaintiffs created a
14 likelihood of irreparable harm in the absence of an injunction barring future evictions”).
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18 Thus, this Court should enjoin enforcement of the Nuisance Policy to prevent further
19 irreparable injury to Ms. Markham’s First Amendment rights and future threats to her
20 physical safety. Absent injunctive relief, other residents of Surprise will also have their
21 First Amendment rights burdened when they face eviction pursuant to threatened penalty
22 under the Nuisance Policy, or when they are chilled in calling the police to report crime or
23 request assistance, thereby leaving them vulnerable to further harm absent police
24 protection. Arnold Decl. ¶55.
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1 **C. The Balance of Equities and Public Interest Favor an Injunction to Prevent**
2 **Further Constitutional Violations**

3 The final two elements of the preliminary injunction test – whether the public
4 interest and the balance of the equities favor an injunction – merge when the government is
5 a party. *See League of Wilderness Defenders/Blue Mountains Biodiversity Project v.*
6 *Connaughton*, 752 F.3d 755, 766 (9th Cir. 2014). Ms. Markham satisfies both elements.

8 The balance of equities tips “sharply in favor” of an injunction when First
9 Amendment rights are at stake, *Klein*, 584 F.3d at 1208; *Arpaio*, 695 F.3d at 1002; *Am.*
10 *Civil Liberties Union of Ill. v. Alvarez*, 679 F.3d 583, 589-90 (7th Cir. 2012); *Sammartano*
11 *v. First Judicial District Court*, 303 F.3d 959, 973 (9th Cir. 2002); *see also Galassini v.*
12 *Town of Fountain Hills, Ariz.*, No. CV-11-02097-PHX-JAT, 2011 WL 5244960, at *6 (D.
13 Ariz. Nov. 3, 2011) (quoting *Shondel v. McDermott*, 755 F.2d 859, 869 (7th Cir. 1985))
14 (the “balancing of equities that is undertaken in a conventional equity case is out of place in
15 dealing with rights so important as the modern Supreme Court considers the rights of
16 expression to be”).

17 Enjoining the enforcement of the Nuisance Policy will also serve the public interest
18 by ensuring that Ms. Markham and other tenants in Surprise will be able to speak up and
19 report incidents of crime without fear of eviction or other penalty, potentially reducing the
20 occurrence of domestic violence, enhancing the safety of domestic violence victims, and
21 decreasing homelessness. Arnold Decl. ¶¶70-71. *See Forro Precision, Inc.*, 673 F.2d at
22 1060 (holding that reporting to law enforcement was in the public interest because “it
23 would be difficult indeed for law enforcement authorities to discharge their duties if
24 citizens were in any way discouraged from providing information”); *Consol. Delta Smelt*

1 *Cases*, 717 F. Supp. 2d 1021, 1069 (E.D. Cal. 2010) (noting a public interest in reducing
2 conditions that lead to homelessness).

3 The existence of First Amendment violations outweighs whatever burden the
4 injunction would impose on Defendants. The government is “in no way harmed by the
5 issuance of an injunction that prevents the state from enforcing unconstitutional
6 restrictions.” *Legend Night Club v. Miller*, 637 F.3d 291, 302-03 (4th Cir. 2011).
7 Moreover, the requested injunction would not interfere with Defendants’ ability to punish
8 perpetrators of crime and ensure order through existing laws that do not extend censure to
9 any tenant who calls for or requires police services. *Puente Arizona v. Arpaio*, 76
10 F.Supp.3d 833, 861 (D. Ariz. 2015) (holding that there is little burden on enforcement
11 officials when they have other laws with which to pursue the same ends). The balance of
12 equities additionally tips “sharply in favor” of an injunction where, as here, a party’s
13 actions infringe “on the free speech rights not only of [the plaintiffs], but also of anyone
14 seeking to express their views in this manner.” *Klein*, 584 F.3d at 1208; *Friendly House v.*
15 *Whiting*, 846 F. Supp. 2d 1053, 1062 (D. Ariz. 2012), *aff’d sub nom. Valle Del Sol Inc. v.*
16 *Whiting*, 709 F.3d 808 (9th Cir. 2013) (noting that “[t]he public interest inquiry primarily
17 focuses on the impact on non-parties, as opposed to parties” and holding that defendants
18 failed to show a competing public interest that was compelling enough to outweigh the First
19 Amendment concerns raised by “continuing enforcement of a regulation that likely violates
20 the First Amendment [and that] would infringe not only the rights of Plaintiffs” but also of
21 other similarly situated persons.). An injunction would not only protect Ms. Markham from
22 the penalties and attendant chilling on calls to police under the Nuisance Policy, but it
23 would enable all residents of Surprise to call police when in danger and report crimes
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1 committed against them. Failure to enjoin the Nuisance Policy would send a dangerous
2 message to tenants in Surprise: if you are assaulted in your home you have no right to seek
3 police assistance, so keep incidents of crime secret or risk eviction. The Nuisance Policy
4 should be enjoined before another crime victim is evicted based on attacks against her or is
5 made to suffer in silence, chilled from calling the police.
6

7 **IV. CONCLUSION**

8 For the foregoing reasons, Ms. Markham respectfully requests that the Court issue a
9 preliminary injunction, pursuant to Rule 65 of the Federal Rules of Civil Procedure,
10 prohibiting Defendants from: 1) enforcing the Nuisance Policy against crime victims in
11 rental properties for any alleged nuisance that is based on calls reporting or seeking police
12 assistance regarding crime or on any criminal activity that is perpetrated against the tenant;
13 and 2) requiring the adoption of crime free lease provisions that permit and threaten
14 eviction on the basis of criminal activity that is perpetrated against the tenant.
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17 DATED this 2nd day of September, 2015.

18
19 By /s/ Heather A. Macre

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Attorneys for Plaintiff

I hereby certify that on this 2nd day of September, 2015 I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and a copy was electronically transmitted to the following:

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/s/ Lisa Harnack _____

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

NANCY MARKHAM,

Plaintiff,

v.

CITY OF SURPRISE; MICHAEL
FRAZIER in his individual and official
capacities, and CHRISTOPHER TOVAR, in
his individual capacity,

Defendants.

No. 2:15-CV-01696-SRB

**[PROPOSED] ORDER GRANTING
PLAINTIFF’S MOTION FOR A
PRELIMINARY INJUNCTION**

Upon consideration of Plaintiff’s *Motion for a Preliminary Injunction* (the “Motion”) and good cause appearing,

IT IS HEREBY ORDERED that:

1. Plaintiff’s Motion is GRANTED;
2. Defendants are enjoined from enforcing Article III of the Surprise Municipal Code, which includes §105-104 (“the Nuisance Property Section”) and §105-106 (“the Crime Free Lease Section”), against crime victims in rental properties for any alleged nuisance that is based on calls reporting or seeking police assistance regarding crime or on any criminal activity that is perpetrated against the tenant; and
3. Defendants are also enjoined from requiring the adoption of crime free lease provisions that permit and threaten eviction on the basis of criminal activity that is perpetrated against the tenant, until further Order of this Court. No bond is required.

1 Sandra S. Park*
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22 ***Admitted pursuant to Ariz. Sup. Ct. R. 38(f)*
23 Attorneys for the Plaintiff

20 IN THE UNITED STATES DISTRICT COURT
21 FOR THE DISTRICT OF ARIZONA

22 NANCY MARKHAM,
23 Plaintiff,

24 v.

25 CITY OF SURPRISE; MICHAEL
26 FRAZIER in his individual and official
27 capacities, and CHRISTOPHER TOVAR, in
28 his individual capacity,
Defendants.

No. 2:15-cv-01696-SRB

**DECLARATION OF
NANCY MARKHAM**

1
2 I, Nancy Markham, hereby truthfully declare under penalty of perjury as follows:

3 1. I am over eighteen years of age and am a resident of Surprise, Arizona. I have
4 personal knowledge of the matters described herein.

5 2. I am the Plaintiff in this lawsuit and submit this Declaration in support of
6 Plaintiff's Motion for a Preliminary Injunction.

7
8 3. I have been a resident of Surprise for eleven years.

9 4. From March 1, 2013 until February 28, 2015, I lived at 15526 West Ocotillo
10 Lane in Surprise ("the Property"), where I lived with my two sons.

11 5. I currently rent another home in Surprise.

12
13 6. My landlord at the Property was Xiaoli Wang. She employed Adam Botticello
14 from AZ Rental Homes to manage the Property.

15 7. My lease at the Property included a "Crime-Free Provision" that stated that
16 "[t]enant, occupants, family, guests, invitees, or other persons under the Tenant's control
17 shall not engage in . . . any criminal activity, including . . . any act of violence or threats of
18 violence . . . threatening or intimidating, unlawful discharge of firearms, or assault" and that
19 any violation of this provision would be a material and irreparable violation of the lease.
20

21 8. While I was living at the Property, I was the victim of domestic violence that
22 was perpetrated by my ex-boyfriend, R.V., on several occasions. I could not control R.V.
23 when he was violent towards me.
24

25 9. R.V. is the father of my youngest child.

26 10. R.V. never lived at my home on West Ocotillo Lane but he did visit on
27 occasion and saw our child.
28

1 11. I only ever called the police for help because I was facing or threatened with
2 domestic violence; I never called the police to the Property for any other reason, except for
3 one time when I accidentally dialed 911 and hung up.
4

5 12. I was never arrested for or charged with any crime at the Property.

6 13. At no point did any Surprise police officer mention that I could face penalty
7 under any local ordinance or that repeated calls to the police or instances of criminal activity
8 at the Property could result in my eviction or other penalty.
9

10 14. I called the police the first time on March 13, 2014 when I was attacked by
11 R.V. and feared for my safety. Early that morning, R.V. put his hands around my neck,
12 choked me repeatedly, and punched me in the mouth.
13

14 15. R.V. left before the police arrived at the Property.

15 16. After this, Surprise police officers came to my property of their own accord,
16 looking for R.V. to serve him with a charge stemming from the March 13, 2014 attack.
17

18 17. In March and April 2014, I called the police three other times to request help
19 relating to R.V.'s violence against me. I called once in March because R.V. had been calling
20 me repeatedly and I believed he had returned to the Property; I asked police to check that he
21 was not there before I returned. I called twice in April when he again was at the Property,
22 threatening me and refusing to leave.
23

24 18. I called the police three times in July because of domestic violence.

25 19. On July 22, 2014, my son let R.V. into my home to get some of his
26 belongings that he had left there.
27

28 20. R.V. began arguing with me and then left, but he took my car without my
permission so I called the police.

1 21. Officers located R.V. and the vehicle, issued R.V. a citation for driving with a
2 suspended license, and impounded my car.

3 22. The officers did not serve R.V. with the charge for the March 13, 2014
4 domestic violence incident.

5 23. I called 911 twice on July 31, 2014 when R.V. returned to the Property,
6 brandishing a gun and refusing to leave.
7

8 24. I called the police and told the 911 operator that R.V. was refusing to leave
9 the property and had a gun.
10

11 25. When police responded, R.V. was already gone so I asked police to leave the
12 Property.

13 26. A couple of hours later, R.V. returned to the Property, armed with a shovel
14 and the handgun, and was again trying to get into my home but it was locked.
15

16 27. I called 911 a second time at approximately 11pm and reported that R.V. had
17 returned, was armed, and was trying to enter my home.

18 28. Surprise police officers responded and arrested R.V. on charges of disorderly
19 conduct with a deadly weapon.
20

21 29. When police searched R.V., they found two syringes in his pocket and also
22 charged him with possession of drug paraphernalia.

23 30. On August 18, 2014, my property manager sent me an email that stated that
24 the Surprise police department had “put the owner in a position where they can no longer
25 allow [me] to stay as a tenant.”
26
27
28

1 31. The property manager told me that he and the landlord would return my
2 security deposit if I agreed to leave the Property and end my lease, but that if I did not
3 voluntarily leave, my landlord would formally evict me.
4

5 32. On August 20, 2014, R.V. again returned to the property and was intoxicated.
6 He refused to leave and waved a knife at me.

7 33. At this time, although I was not aware of the Nuisance Policy in Surprise or
8 that the City of Surprise could penalize me for calling 911, I knew that Surprise had
9 communicated with my landlord about police responding to the Property. For that reason, I
10 communicated with my landlord about police responding to the Property. For that reason, I
11 second-guessed whether I should call the police and did not immediately call even though I
12 felt threatened. However, because the situation was serious, I did end up calling the police.

13 34. Surprise police officers responded and finally arrested R.V. under the active
14 warrant for aggravated assault relating to the domestic violence incident against me on
15 March 13th. They also charged him with additional counts of assault, assaulting police
16 officers, and obstructing justice.
17

18 35. I got a protection order against R.V. that same day.
19

20 36. On August 26, 2014, I responded to the property manager's threat that he
21 would evict me and assured him that any problems at my home had been resolved because
22 of the protection order against R.V. and because R.V. was now incarcerated.

23 37. The property manager was receptive to this explanation and asked me to send
24 him the police report that would verify this. I sent the property manager the materials he
25 requested on September 2nd.
26
27
28

1 38. From our conversation, I believed that the property manager was willing to
2 work matters out, understood that I was the victim of any disturbance at the property, and
3 would not force me and my children to leave our home.
4

5 39. I was shocked when the property manager responded to me on September 12,
6 2014 and told me that my landlord was not willing to let me stay. The property manager told
7 me that I would be evicted the following month if I failed to move before then.
8

9 40. I asked the property manager why I was being evicted and explained that
10 there was no criminal activity going on in my home but that this was a domestic violence
11 issue. I made it clear that R.V., the perpetrator of this violence, was not living at the
12 property.
13

14 41. The property manager replied that he had no choice but to move forward with
15 an eviction. He stated that this action was at the direction of the city, which has a local law
16 that allows them to designate a home with police activity a public nuisance.
17

18 42. When I again asked for more information, the property manager suggested
19 that I contact the Surprise Police Department for more information. The property manager
20 explained that the police department was “threatening to deem the property a public
21 nuisance.”
22

23 43. Based on these statements, I believed that I would be evicted on or soon after
24 October 1, 2014.
25

26 44. I was extremely distressed to learn that I was being punished because of the
27 domestic violence perpetrated against me and my calls to the police to report this violence
28 and seek help.

1 45. With the assistance of the ACLU, I sent Defendants a letter on October 2,
2 2014 that notified them that their actions under the Nuisance Policy were unlawful and
3 demanded that they cease their enforcement of this policy against me and my landlord.
4

5 46. Defendants did not assure me that the Nuisance Policy would not be enforced
6 against me in the future. They did not even indicate that I would not face penalty for crimes
7 committed against me or calls for police assistance when I was the victim of domestic
8 violence.
9

10 47. The ACLU also contacted my landlord on my behalf. While I received no
11 initial response from the landlord or property manager, upon further communications with
12 my attorney, the property manager said that there was no pending eviction action against
13 me.
14

15 48. However, my landlord still declined to renew my lease in March 2015 and I
16 was forced to move to another property in Surprise.

17 49. Now that I know about the Surprise Nuisance Policy, its continued existence
18 has made me unable to call the police or seek police assistance in the future.
19

20 50. I have already decided not to call the police in situations where I otherwise
21 would have and I would not feel capable of calling the police in the future, even if I believe
22 that my safety is imminently threatened or if I was the victim of crime at the property that
23 was not related to domestic violence. For instance, if I came home and found that my home
24 had been robbed, my first response would be to avoid calling 911 if at all possible. I would
25 accept the loss of my possessions, rather than calling the police and risk the loss of my
26 home.
27
28

1 51. I always thought calling 911 or the police was what residents should do when
2 they are in danger, but I now live in fear because I cannot access emergency assistance or
3 protection.
4

5 52. Pursuant to the Surprise Nuisance Policy, the lease at my new home includes
6 another crime-free provision, nearly identical to that at the Property. It allows my current
7 landlord to evict me upon any criminal activity at the property.
8

9 53. Based on my previous experience, I know that any future calls to the police
10 could count as a nuisance offense at my home, alert my landlord to the Nuisance Policy, and
11 lead to my eviction. I also know that a single call to the police or occurrence of crime at the
12 property, even if I were the victim, would permit my landlord to evict me under the crime
13 free lease that is mandated by the Nuisance Policy.
14

15 54. This is especially distressing, as R.V. has been released from prison.

16 55. If the Nuisance Policy remains in force, I fear that I will be put in a situation
17 where I have to choose between calling the police in an emergency and losing my home, or
18 being attacked and seriously injured.
19
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1 I, Nancy Markham, hereby declare that I am the Plaintiff in *Markham v. City of*
2 *Surprise et al.*, and that I have read the foregoing Declaration, and that I know of the
3 contents thereof; that the same are true and correct to the best of my belief.

4 I declare under penalty of perjury that the foregoing is true and correct.

5
6 DATED this 31st day of August, 2015.

7
8
9 /s/ Nancy Markham
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 28 *****Admitted pursuant to Ariz. Sup. Ct. R. 38(f)***
Attorneys for the Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

NANCY MARKHAM,

Plaintiff,

v.

CITY OF SURPRISE; MICHAEL
 FRAZIER; and CHRISTOPHER TOVAR,

Defendants.

No. 2:15-cv-01696-SRB

AFFIDAVIT OF GRETCHEN ARNOLD

1 STATE OF MISSOURI)
2) ss.
3 City of St. Louis)
4

Gretchen Arnold, after having been sworn upon her oath, states the following:

5 1. I am over eighteen years of age and am a resident of St. Louis, Missouri. I
6 have personal knowledge of the matters described herein.

7 2. I am currently an Assistant Professor of Women and Gender Studies at St.
8 Louis University. A copy of my curriculum vitae is attached as Exhibit A.

9 3. I submit this Affidavit in support of Plaintiff’s Motion for a Preliminary
10 Injunction.

11 4. I have received no compensation for my service.

12 5. I have found through my research that local nuisance ordinances harm
13 domestic violence victims in a myriad ways, including by penalizing them for the abuse
14 they experience. As a result, these laws force many domestic violence survivors to stop
15 calling for police assistance.

16 6. My areas of academic concentration include gender and women’s issues;
17 gender-based violence and the law; social movements and political sociology; and social
18 theory and philosophy of social science.

19 7. I teach courses on topics including violence against women, gender and
20 society, research methods, law and society, social problems, and the structure of poverty.

21 8. I also supervise students’ applied research on the dynamics of domestic
22 violence as they play out in the courts, with law enforcement, and with domestic violence
23 advocates.

1 9. I have published a number of academic articles and presented in numerous
2 fora on domestic violence.

3 10. I have also engaged in research on alternative education and education
4 focused on systems change. I received the Robert A. Johnston S. J. Award for Excellence in
5 Undergraduate Teaching in the Social Sciences from St. Louis University.
6

7 11. I am currently a member of the National Women’s Studies Association, the
8 Midwest Sociologists for Women in Society, and Sociologists for Women in Society. I am
9 also an editorial associate for the journal *Theory and Society*.
10

11 12. I hold a B.A. in Sociology from Washington University in St. Louis and an
12 M.A. and Ph.D. in Sociology from Boston University.

13 13. Most intimate partner violence involves heterosexual relationships in which a
14 man commits abuse against his female partner. For that reason, I often refer to domestic
15 violence victims as battered women, and vice-versa.
16

17 14. Over the last five years, I have researched the impact of local nuisance
18 property laws on domestic violence victims. In particular, I have studied the experiences of
19 survivors of domestic violence who have come into contact with a nuisance property law in
20 St. Louis when they or others call 911 in response to a domestic violence situation. I also
21 studied police officers’ and domestic violence advocates’ conflicting interpretations of the
22 nuisance property law’s impact on domestic violence survivors.
23

24 15. My research on nuisance ordinances has thus far been pursued in two phases.
25 In the first phase of this research, I interviewed domestic violence advocates, as well as
26 police and prosecutors in the city of St. Louis to find out what these professionals thought
27 was the nuisance property law’s impact on battered women. My findings are available in a
28

1 paper that will be published in *Law and Social Inquiry*, a journal of the American Bar
2 Foundation. Exhibit B, Gretchen Arnold and Megan Slusser, *Silencing Women's Voices:
3 Battered Women and Nuisance Property Laws*, forthcoming in *Law & Social Inquiry*, Vol.
4 40, no. 4 (2015).

5
6 16. In the second phase of this research project, I interviewed battered women
7 themselves to better understand the events that bring domestic violence victims into contact
8 with nuisance laws, how the law is enforced, the ways in which it impacts their lives, and
9 how they interpret this experience. I identified twenty-seven subjects for semi-structured
10 qualitative interviews with the help of St. Louis area domestic violence and other social
11 services organizations. To qualify, domestic violence must have been a predominant factor
12 for an individual's involvement with the nuisance property law. My findings are detailed in
13 a forthcoming paper, which is currently available in draft form. Exhibit C, Gretchen
14 Arnold, *Do Nuisance Property Laws Harm Battered Women?*, unpublished manuscript.

15
16
17 17. While my work focuses in St. Louis, these types of nuisance property laws are
18 prevalent throughout the country and have been studied elsewhere. For example, scholars at
19 Harvard and Columbia Universities published a study of the Milwaukee, WI nuisance
20 ordinance and found that domestic violence was the third most commonly cited nuisance
21 offense, that the majority of property owners responded by evicting the victim of domestic
22 violence, and that there was disproportionate enforcement of the ordinance in communities
23 of color. Matthew Desmond & Nicol Valdez, *Unpolicing the Urban Poor: Consequences
24 of Third-Party Policing for Inner-City Women*, 78 Am. Sociological Rev. 117, 131 (2013),
25 http://scholar.harvard.edu/files/mdesmond/files/desmond.valdez.unpolicing.asr_0.pdf. A
26
27 supplement to their paper also summarizes nuisance ordinances from 59 cities across the
28

1 country but does not attempt to catalogue all existing nuisance ordinances.

2 18. My work has allowed me to identify patterns of enforcement and
3 consequences for survivors that would be relevant in jurisdictions with similar local laws.
4 This declaration describes my findings on the operation and consequences of nuisance
5 property laws for survivors of domestic violence.
6

7 19. I reviewed the Nuisance Policy adopted by the City of Surprise in Article III
8 of the Surprise Municipal Code, which includes §105-104 on nuisance properties (“the
9 Nuisance Property Section”) and §105-106 requiring crime free lease provisions (“the
10 Crime Free Lease Section”), together the “Nuisance Policy,” as well as the Complaint filed
11 by the Plaintiff, Nancy Markham.
12

13 20. Based on this review, which is discussed below, I have determined that the
14 Surprise Nuisance Policy is significantly similar to and in some ways more punitive than the
15 nuisance property law in St. Louis. Consequently, the Surprise Nuisance Policy can be
16 expected to have similar or more substantial negative impacts on domestic violence
17 survivors as those described in St. Louis.
18

19
20 The Impact of Local Nuisance Ordinances on Domestic Violence Victims

21 21. In my forthcoming paper, *Do Nuisance Property Laws Harm Battered*
22 *Women?*, I use evidence from interviews with domestic violence victims to assess how these
23 laws work in practice, as well as how and why they negatively affect domestic violence
24 victims’ lives.
25

26 22. Long-form interviews with participants reveal that, by chilling domestic
27 violence survivors’ ability to call the police or evicting them for doing so, these laws
28 increase survivors’ vulnerability to further violence, homelessness, and other dangerous or

1 unstable living conditions. They also re-traumatize victims by treating them as if they, not
2 the perpetrators of the crimes against them, are the problem.

3
4 23. While nuisance property laws can have slightly different structures or content,
5 most share three common features. First, they designate properties as “nuisances” based on
6 an excess of 911 calls, criminal activity, or police responses to a property within a certain
7 period of time. Second, nuisance laws list a number of different types of activity that
8 qualify as a “nuisance,” often making no exception where the tenant of the property was the
9 victim of, or could not control, the alleged nuisance activity. Third, nuisance laws require
10 that property owners “abate the nuisance” or face penalties that can include fines, property
11 forfeiture, or even incarceration. In response, property owners often direct the tenant to stop
12 calling 911 and will ultimately evict the tenant to avoid sanctions under the nuisance law.
13

14
15 24. In the typical pattern of enforcement of these laws, a victim who has made
16 multiple calls to 911 to report domestic violence is notified that further calls to the police
17 could result in fines or eviction. Next, one of two things usually happens: 1) either the
18 victim feels that she can no longer call the police due to threat of penalty and must face
19 increased violence on her own, or 2) the victim, her children, or the neighbors call 911 to
20 report another abusive incident and the victim faces eviction on this basis. Unfortunately,
21 the impact of nuisance property laws does not end there, but rather sets off a chain of
22 negative events that compounds the trauma of the domestic violence, enhances abusers’
23 power over victims, and renders victims and their children even more vulnerable to further
24 violence and poverty.
25
26

27 25. The St. Louis nuisance property law and its enforcement follow this basic
28 formula. The law defines a nuisance as “a continuing act or physical condition which is

1 made, permitted, allowed or continued by any person . . . which is detrimental to the safety,
2 welfare or convenience of the inhabitants of the City.” St. Louis, Missouri Municipal Code
3 §15.42.010.

4
5 26. The ordinance construes nuisance behavior very broadly to include any
6 activity that is considered a felony, misdemeanor, or ordinance violation under federal, state,
7 or municipal law, and it states that a public nuisance exists whenever two instances of crime
8 occur at a particular property within a 12-month period. St. Louis, Missouri Municipal
9 Code §15.42.020. Once a property is deemed a public nuisance, the property owner is sent a
10 cease and desist letter and informed that failure to abate the nuisance within thirty days can
11 result in fines or property closure. The property owner may set up a joint meeting with a
12 number of city officials to discuss the cause of the nuisance activity and develop a plan to
13 abate it under the direction of City officials. As discussed further below, domestic violence
14 survivors whose homes were the subject of a cease and desist letter were routinely evicted
15 or informally forced to move from their property under these abatement processes.

16
17
18 27. Even though the St. Louis ordinance does not explicitly define nuisance
19 properties based on calls to the police, in practice, I found that the ordinance is usually
20 triggered when there have been two or more calls to 911 reporting nuisance behavior at a
21 specific address. Consequently, after learning about the nuisance property law, the vast
22 majority of domestic violence victims I interviewed stopped calling 911 for fear of negative
23 repercussions, including eviction.

24
25
26 28. For many women, the police had been the sole means of protection from their
27 abusers’ physical violence. Lack of access to these police services left them extremely
28 vulnerable, with no recourse to further abuse. One survivor reported, “I’m barricading

1 myself more in the house, you know. Like put sticks and stuff behind the door and stuff
2 because I don't want anybody coming in there. Then if they do, you know, I'll be scared to
3 call the police or whatever." Others stated that they would avoid calling 911 if at all
4 possible and would only be willing to call 911 in dire circumstances, which most described
5 as life-or-death situations. This was the case even where a survivor was not the subject of
6 active enforcement of the nuisance ordinance. Mere knowledge of the existence of a
7 nuisance property law can chill crime victims' ability to seek police assistance.
8

9
10 29. As a result, nuisance property laws allow abusers to operate with impunity and
11 can lead to escalated levels of violence because abusers feel that they will not be held
12 accountable for the violence they perpetrate. By limiting victims' access to police services
13 and threatening eviction if they seek such services, nuisance property laws magnify abusers'
14 power to strip domestic violence victims of the ability to make decisions and take control
15 over some of the most basic conditions of life, such as where and how they live.
16

17 30. One survivor described such a situation, saying "[h]e punched me in my face
18 and I fell over the chair, broke the chair. He tried to choke me to death, but somehow, some
19 reason, I was able, where I had nails and try to scratch, to get him off of me, he's choking
20 me. And I couldn't call the police. Everything that has been going on, can't call the police.
21 So I think [my boyfriend] is taking advantage of that."
22

23 31. Chilling the reporting of crime to the police can have far reaching effects that
24 undermine law enforcement effectiveness and public safety as a whole. A number of
25 survivors reported that they felt unable to call the police for any reason. As one woman
26 stated, "If somebody breaks into my house, I feel like I can't call the police. I feel like I
27 can't call for anything! I feel like I'm going to get in trouble for it. . . That's basically what
28

1 the landlord told me. ‘If you call the police, you’re going to lose your apartment.’”

2 32. Another woman described how this chilling effect can be especially serious
3 for those who live in high-crime areas or have medical problems, saying, “Well where I
4 moved at, you cannot count on no police for help. If you getting abused, raped, stabbed,
5 shot, you’re not allowed to call the police ‘cause they say it’s a nuisance law. But I feel if
6 you need the police, you supposed to CALL the police, you know? But they said if we call
7 the police, we was gonna get evicted from our homes. . . . And I have a daughter that has
8 Crohn’s and is pregnant. And [the landlord] said I can’t call an ambulance because the
9 police come with the ambulance. . . So I just don’t feel – We just in danger. If anything
10 happen to us, we can’t call no police. We just got to deal with it. And I don’t think that’s
11 right.”
12
13

14 33. Nuisance property laws’ chilling effect on reporting crime to the police
15 conflicts with law enforcement’s best practices. Inhibiting survivors’ ability to reach out to
16 the police and treating such calls or police response as a nuisance runs counter to reforms in
17 domestic violence policing over the last three decades intended to address long-standing
18 problems of police dismissiveness or victim-blaming that can deter survivors from coming
19 forward and places them in greater danger. Police and other professionals are now trained
20 to encourage people to call the police if they experience or witness domestic violence and to
21 treat victims with sensitivity. Government policies that aim to strengthen law enforcement’s
22 response to domestic violence include policies that specifically address the investigation,
23 arrest, and prosecution of domestic violence offenses and federal housing protections that
24 bar eviction of domestic violence victims based on the abuse committed against them, such
25 as the Violence Against Women Act or the Fair Housing Act.
26
27
28

1 34. One survivor described the disconnect between the chilling effect of nuisance
2 ordinances and the instructions crime victims are typically given by police. She felt unable
3 to call police because she had already been evicted once under the nuisance property law on
4 the basis of domestic violence, but ultimately the abuse became so severe that she called
5 911. She explained the exchange saying, “I called the police and I said, ‘I just had to call
6 the police because he caught me comin’ in or out of my apartment like three days in a row
7 and jumped on me.’ I was all upset. I can’t take any more. I can’t even open my door to go
8 out for work, and he’s attackin’ me. He’s hidin’ in the bushes. . . [The police officer] told
9 me, ‘He jumped on you three days in a row and you’re just now callin’ us? Why didn’t you
10 call the first day?’ And that’s when I told her, ‘I lost my apartment because of the nuisance
11 law. I’m scared to call the police. That’s how I lost the other apartment, so I’m tryin’ not to
12 call the police.’”

13
14
15
16 35. Additionally, my studies indicate that the vantage point of law enforcement
17 officials may lead police officers to misinterpret dynamics of abuse and misperceive
18 survivors to be responsible for repeated incidents of domestic violence or uncooperative
19 with law enforcement efforts to maintain order. Police and prosecutors that I interviewed
20 use an incident-focused approach in which interactions with domestic violence victims
21 focus on physical abuse, and their objective is to eliminate this problem. This limits the
22 information that police receive about the victim’s situation beyond the immediate physical
23 abuse, such as coercive or controlling elements of a relationship, that would influence a
24 victim’s continued involvement with an abuser despite her desire to end the abuse.
25
26

27 36. Police, acting on incomplete information and misunderstandings about abused
28 women, may thus punish the victim of abuse for her perceived role in it and further

1 discourage victims from coming forward.

2 37. Local nuisance laws can entrench these misperceptions and increase the risk to
3 victims of reporting abuse.

4 38. Eviction is a looming and well-grounded fear for domestic violence survivors
5 who live in jurisdictions with a local nuisance property law. At the time of their interviews,
6 about half of the participants in my study had already been forced to move because of the
7 nuisance property law. Many women were evicted as a direct result of too many 911 calls.
8 Others were forced to move before a formal eviction action, or opted to move to avoid the
9 negative consequences of a possible eviction.
10

11 39. Regardless of whether the eviction was formal or informal, the nuisance
12 property law operated to penalize victims of domestic violence for calling the police and had
13 devastating impacts on their well-being and ability to access housing in the future.
14

15 40. Many of the survivors who were evicted ended up homeless or in unstable
16 living situations, often with their children. Some went to shelters (either battered women's
17 shelters or general homeless shelters), some slept on friends' or relatives' couches, and
18 some ended up in more dangerous living situations. For example, one survivor moved from
19 place to place during three months of a particularly frigid winter and had to split up her five
20 children between friends and relatives because at times she was sleeping in her car.
21 Explaining the distressing decision to be separated from her children, she said "after I . . .
22 was staying in the car, I didn't want my kids to be sleeping in a car. I figured like I could,
23 but it was dangerous for me, [so] it would also be dangerous for them also. So I made them
24 stay with relatives and friends, because I didn't want to drag them out. . . . And it was kinda
25 cold then, too, when that was going on."
26
27
28

1 41. Because of the short notice common with eviction, other survivors were
2 forced into significantly inferior and dangerous housing. One woman described the
3 dangerous boarding house that was the only housing she was able to secure when she was
4 evicted: “I didn’t feel comfortable down there at all. The first week I was down there, they
5 were shooting and I was up in the bed, and it was a very uncomfortable place to be. . . . It
6 was buggy. It wasn’t safe. No security on the doors. Then the other roomers . . . were just
7 lettin’ anybody in. I either had to be in the house before it got dark, or . . . look around and
8 make sure nobody is [in the room].”
9
10

11 42. Several women also described the long-term impact that a nuisance eviction
12 had on their ability to access housing going forward. The eviction was often revealed when
13 a potential landlord ran a background check on the prospective tenant. In most cases,
14 landlords who found out that survivors were the subject of nuisance violations then refused
15 to rent to them. With a nuisance eviction on their records, domestic violence survivors’
16 attempts to secure safety by calling the police could follow them for years. This was the
17 case for one survivor who explained that “a couple of people, when I tried to get an
18 apartment told me, ‘We see that there are some things in here about you calling the police.’
19 And they didn’t want to rent to me.”
20
21

22 43. Losing eligibility for low-income housing can be another devastating
23 consequence of eviction. Many low-income survivors need access to housing subsidies in
24 order to rebuild their lives. Loss of housing subsidies dramatically reduces a survivor’s
25 ability to obtain adequate, affordable housing in the future. After losing her Section 8
26 housing voucher because she was evicted pursuant to the nuisance property law, one
27 domestic violence victim was told that the waiting list to obtain another Section 8 voucher
28

1 was now ten years long. While it is possible to contest revocation of the rental subsidy, the
2 process can be difficult and many domestic violence survivors are unable to re-claim the
3 subsidy. Consequently, when facing the false choice between the long-term impact of a
4 nuisance eviction and enduring domestic violence without police protection, another victim
5 of domestic violence chose to leave before a possible eviction. She explained her situation,
6 saying “if I lose this apartment, then I won’t ever be able to get into another low income
7 apartment and I have one more violation to get [before I am evicted].” Although the path to
8 losing her housing was different from a formal eviction, this survivor was nevertheless
9 forced out of her home because of the nuisance property law.
10
11

12 44. In addition to the immediate difficulties of being forced from one’s home,
13 eviction and the housing insecurity that results can create a domino effect, destabilizing
14 multiple other areas of a domestic violence survivor’s life. Given the tenuous situation of
15 many victims of domestic violence, evictions pursuant to nuisance property laws trigger
16 adverse events for which these women are already at risk. The threat of eviction takes on
17 even greater consequence when coupled with existing conditions of poverty, dangerous
18 neighborhoods, resource-poor social support networks, and already compromised physical
19 and mental health. Threat of penalty under nuisance property laws thereby places a
20 correspondingly heightened chilling effect on survivors’ ability to seek police assistance and
21 an unmanageable burden on those who do call 911.
22
23

24 45. Many of the women interviewed lost all of their personal possessions when
25 they were evicted, either because they had no time or means with which to take their
26 belongings with them on short notice or because the landlords dumped their property on the
27 curb and passersby took them.
28

1 46. Some women reported that, once they were evicted, they could no longer go to
2 work because of the extreme stress and/or because they had to take time to find new housing
3 right away.

4 47. For others, evictions exacerbated physical illness and not having a permanent
5 residence made it difficult for some women to get proper health care. One survivor of
6 domestic violence explained that she had diabetes and, after her eviction, wasn't able to get
7 the medical care she needed for her foot, which became infected and eventually required
8 surgery: “[D]uring that time when [I was homeless and] I first started getting the blisters and
9 all that, they wanted to send a home health nurse out. Well I couldn't get a home health
10 nurse because I didn't have any address to send a home health nurse. . . to come out and
11 make sure to check my blood and do whatever it was supposed to be done.”

12 48. Eviction also triggered or aggravated existing mental health problems for
13 several of the women interviewed, as the lack of stable housing made it hard for them to
14 function effectively. Eviction also compounded the trauma that resulted from the abuse they
15 suffered. For example, one woman who had previously been hospitalized for mental illness
16 stated that flashbacks from the abuse, coupled with her inability to find stable housing after
17 the nuisance eviction, was making it very hard for her to cope. Similarly, another victim of
18 domestic violence described how eviction heightened the trauma of the rape that had been
19 perpetrated by her abuser. She stated that the eviction ultimately caused her to fall into a
20 deep depression and try to commit suicide: “[B]y then, well, I was trying to black out what
21 had happened with the rape. I didn't want to think about that and the fact that I was being
22 evicted.”

23 49. Accordingly, nuisance property laws that encourage or require evictions based
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1 on police responses to a property directly punish domestic violence survivors for reaching
2 out to police and create substantial, tangible barriers to reporting the violence perpetrated
3 against them. Survivors are forced to either 1) face escalating violence in silence, chilled
4 from calling 911 to seek protection from abuse; or 2) leave their housing, risking long-term
5 housing insecurity and homelessness.
6

7 50. Because these laws broadly fail to distinguish between the perpetrator and
8 victim of crime, they have been shown to have a similar impact on crime victims and other
9 individuals who are blamed for crime outside their control, inhibiting their ability to call the
10 police and resulting in evictions.¹
11

12 51. These nuisance laws and the enforcement processes that flow from them are
13 designed to focus attention on victim's calls to 911 or their need for police services, rather
14 than on the violence or crime that precipitated it. This places crime victims in a situation
15 where they are made responsible for stopping the violence or other crimes committed
16 against them but are denied the most basic institutional supports for doing so.
17

18 52. In domestic violence situations, the abuser exercises power and control over
19 the partner. Nuisance laws can deprive survivors of domestic violence the ability to rely on
20 a primary means of changing the power and control exerted by the abuser – namely, police
21 assistance. And, if they ask for help anyway, the law punishes the victims, thus re-
22 victimizing them after the abuse.
23

24 53. Because these laws characterize calls to the police as the problem and
25 downgrade the actual domestic violence to a “nuisance,” they drastically alter the categories
26

27 ¹ Desmond & Valdez, *supra* at 136; Erik Eckholm, *Victims' Dilemma: 911 Calls Can Bring Eviction*, N.Y. Times, Aug.
28 17, 2013, at A1.

1 of “victim” and “offender.” The result is that nuisance property laws obscure the real crime
2 of gender-based violence and turn the victim into the offender. Under this rubric, law
3 enforcement’s goals shift away from intervening in abuse to protect the survivor and focus
4 instead on eliminating the “nuisance” by stopping repeat 911 calls at whatever cost.
5

6 Surprise, AZ Nuisance Policy

7 54. Based on my research and review of Article III of the Surprise Municipal
8 Code, I have significant concerns about the impact of both its Nuisance Section and its
9 Crime Free Lease Section on survivors of domestic violence.
10

11 55. The Surprise Nuisance Policy mirrors, and in some ways is more expansive
12 than, the St. Louis ordinance, and thus predictably burdens domestic violence survivors’
13 ability to seek police assistance. In doing so, the Nuisance Policy is likely to similarly
14 increase domestic violence survivors’ vulnerability to existing violence, allow their abusers
15 to operate with impunity, and leave them with no recourse in the face of severe and
16 escalating abuse.
17

18 56. First, like the St. Louis nuisance property law, the Nuisance Property Section
19 of the Nuisance Policy defines a nuisance as any two instances of crime under federal or
20 Arizona law that “negatively impacts the quality of life or threatens the safety and/or health
21 of those in the area and which occurred on or near the property.” This is strikingly similar
22 to the nuisance property law in St. Louis in its broad definition hinging on safety and
23 welfare, its low trigger of two crimes under federal or state law, and its lack of any
24 distinction for situations in which the tenant is the victim of the criminal activity. Like the
25 law in St. Louis, the Nuisance Property Section is likely to be triggered by police calls to
26 report crime at the property and will consequently deter domestic violence survivors from
27
28

1 reporting crime perpetrated against them.

2 57. Moreover, Surprise’s Nuisance Property Section goes a step beyond the
3 nuisance provisions in St. Louis by explicitly defining a nuisance property based on calls to
4 the police. By imposing a citation after four calls reporting any criminal activity that
5 impacts the quality of life or threatens the safety or health of those in the area, the Nuisance
6 Property Section directly burdens the ability of survivors of domestic violence to report
7 crime against them to police and request police assistance in the face of violence.
8

9 58. Finally, Surprise imposes a similar deterrent through its Crime Free Lease
10 Section that requires landlords to adopt leases that would permit eviction upon a single
11 instance of crime on the property. While this restriction operates through a landlord’s lease
12 as opposed to police enforcement of an ordinance, the effect is the same. The crime free
13 lease provisions would be triggered whenever police are called to respond to crime at the
14 property, just like the nuisance definition that is based on multiple instances of crime
15 without any distinction for situations in which the tenant is the victim of the criminal
16 activity. Thus, simply by requiring that such a provision is included in all leases, Surprise’s
17 policy works to chill tenants from calling the police and reporting crime.
18
19
20

21 59. The Nuisance Policy, in both its definitions of a nuisance offense and in the
22 crime free lease requirement, authorizes penalties when a tenant “allows” the occurrence of
23 criminal conduct committed by herself or others or when it occurs within her “sphere of
24 influence.” However, in failing to indicate or enforce the Nuisance Policy in such a way that
25 no crime victim could be deemed to have “allowed” the crime against her, Surprise’s
26 Nuisance Policy necessarily engages in victim blaming and encourages police to consider
27 ways that the victim of a crime might be seen as at fault. The Nuisance Policy also creates
28

1 opportunities for police bias that is already all too common in many departments, in which
2 police inaccurately perceive continued contact with an abuser as within a survivor's control
3 and blame the survivor for any subsequent violence against her.

4
5 60. The Nuisance Policy also imposes process and penalties similar to those
6 established in the St. Louis law, which gives landlords an opportunity to abate a nuisance,
7 after which they are threatened with property closure, as well as civil and criminal penalties.
8 Surprise's Nuisance Property Section directs that the "responsible party" will be notified of
9 the alleged nuisance and, if the nuisance is not abated after an opportunity to do so, Surprise
10 may revoke or suspend the property owner's business license and impose additional fines
11 and criminal penalties.

12
13 61. In establishing this process, the Nuisance Policy will likely lead to what
14 happened in St. Louis: the routine eviction and removal of tenants from alleged nuisance
15 properties, often before any formal nuisance adjudication occurs. Indeed, the Nuisance
16 Property Section states that it is a violation for "a property owner, agent, or manager to rent
17 or continue to rent . . . to a tenant when the property owner, agent, or manager knew or
18 becomes aware that the tenant allows any offense [that amounts to a nuisance violation]."

19
20
21 62. The Nuisance Property Section, coupled with the Crime Free Lease Section
22 that establishes the right of all landlords to evict tenants upon a single incident of criminal
23 activity at the property, strongly indicates the City's preferred method for landlords to
24 address alleged nuisances at their properties.

25
26 63. From the complaint that was provided to me, I understand that, in practice,
27 notices about alleged nuisance activity are only provided to the property owners. This was
28 the case in St. Louis and renters were typically shut out of the process of nuisance

1 abatement unless and until the City issued a summons for them to appear in court. As a
2 result, tenants were given no information about their rights and had no opportunity to
3 meaningfully advocate on their own behalf in communications with the City.
4

5 64. This lopsided exchange of information also allowed tenants to be taken
6 advantage of by landlords. With the landlord as the primary source of information, tenants
7 were vulnerable to landlords who wanted to charge them additional money (ostensibly to
8 cover fines under the ordinance) or tried to evict them illegally or encourage them to move
9 for fear of future penalty.
10

11 65. The Nuisance Policy is likely to result in a similar silencing of domestic
12 violence survivors who are the subject of enforcement actions and makes them vulnerable to
13 unlawful actions by their landlords. Though property owners and managers are routinely
14 informed about alleged problems at their properties, the tenants who are the subject of these
15 complaints are given no notice or opportunity to advocate on their own behalf. The police
16 officers that enforce the Nuisance Policy may thus operate on less than full information.
17 Moreover, landlords may feel pressured to abate regardless of extenuating circumstances
18 that show the tenant is not the cause of the problem, calculating that the only way to
19 completely avoid the risk of penalty is to evict the tenant at issue.
20
21

22 66. This is apparent in the description of Surprise's enforcement of its Nuisance
23 Property Section against Ms. Markham.
24

25 67. Surprise officials never notified Ms. Markham about the existence of the
26 Nuisance Property Section or the potential for Surprise to impose penalties on her or her
27 landlord based on her calls to police. Instead, her first indication that this might be the case
28 came when the property manager informed her that Surprise had put the landlord in a

1 position where they could not continue to rent to her. With this incomplete information, Ms.
2 Markham was then told that she had a choice: either leave voluntarily or she would face
3 eviction, housing insecurity for herself and her children, and the long-term impact an
4 eviction record would have on her ability to access other housing in the future. She
5 protested, explaining that she was not the source of any problems at her property and that
6 the true reason for any disturbance – her abuser – had been arrested and would be barred
7 from the property. However, with the background threat of penalty upon a future nuisance
8 designation, the landlord nevertheless reaffirmed her intent to evict Ms. Markham.
9
10

11 68. While Ms. Markham sought legal assistance to challenge this threatened
12 eviction, my research in St. Louis shows that many survivors in the same position would
13 feel they had no recourse or would not have the resources or capacity to challenge the
14 operation of the Nuisance Policy against them. Others in Surprise may thus feel forced to
15 stay silent in the face of violence and will be vulnerable to landlords who take improper
16 action pursuant to the Nuisance Policy.
17

18 69. My research demonstrates the multiple ways that local policies like that
19 established and enforced through the Nuisance Property and Crime Free Lease Sections of
20 the Nuisance Policy harm victims of domestic violence.
21

22 70. The Surprise Nuisance Policy’s threat and imposition of penalties based on
23 911 calls and police responses to criminal activity at a property predictably establish
24 significant barriers to domestic violence survivors’ ability to report the violence perpetrated
25 against them.
26

27 71. As a result, the Nuisance Policy forces domestic violence victims to face
28 escalating violence in silence. Survivors that do call the police face penalties, such as

1 eviction and its consequent risk of homelessness and long-term housing insecurity, which
2 can fundamentally destabilize their lives and undermine their efforts to live free from abuse.

3 Further Affiant sayeth not.

4
5 DATED this 25th day of August, 2015.

6
7
8 /s/ Gretchen Arnold

9 SUBSCRIBED AND SWORN TO before me this 25th day of August, 2015, by
10 Gretchen Arnold.

11 /s/ Tamara R. Lackland
12 Notary Public

13 My Commission Expires:

14 02-24-2017