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Note

You Don't Have a Home to Go to but You *Can* Stay Here: A Bill of Rights for Unhoused Minnesotans

*Daniel P. Sutor**

A mighty woman with a torch, whose flame
Is the imprisoned lightning, and her name
Mother of Exiles. From her beacon-hand
Glows world-wide welcome; her mild eyes command
The air-bridged harbor that twin cities frame.
"Keep, ancient lands, your storied pomp!" cries she
With silent lips. "Give me your tired, your poor,
Your huddled masses . . .
Send these, the homeless, tempest-tost to me,
I lift my lamp beside the golden door!"
— The New Colossus, Emma Lazarus¹

* J.D. Candidate, Class of 2022, University of Minnesota Law School. Symposium Articles Editor, MINN. LAW. REV., Volume 106. Thank you to my wife, Dana Peterson, for her indefatigable support. None of this would be possible without you. Thank you to Professor Richard Frase for his wise and generous advisement. I was lucky to benefit from your formidable knowledge and experience. Thank you to Tristia Bauman and Rian Watt for offering their expertise on homelessness law and policy. Thank you to Casey Epstein and Meredith Gingold for their encouragement and guidance as Note & Comment Editors. Notably, Mr. Epstein patiently accepted the late delivery of a 118-page draft around the time his first child was delivered. Thank you to my Volume 106 editors: Brandie Burris, Eura Chang, Marra Clay, Ashley Meeder, and Mollie Wagoner. It is an honor to be considered among your peers. For a further list of friends and family who made law school bearable, see Daniel P. Sutor, *Winning What's Owed: A Litigative Approach to Reparations*, 105 MINN. L. REV. HEADNOTES 391, 391 n.* (2021). This Note is dedicated to those who have experienced the violence and trauma of homelessness. Housing is a human right and it is to each of our great shame that we fail to meet this charge. I am sorry our society has treated you so unjustly. Finally, this Note is for Dana and my unborn child. I wish we could bring you into a kind and fair world, but that is beyond us. All we can do is work to make this world kinder and fairer until, someday, that mission becomes yours. We love you. Copyright © 2021 by Daniel P. Sutor.

1. Emma Lazarus, *The New Colossus*, NAT'L PARKS SERV.: STATUE OF LIBERTY (Aug. 14, 2019), <https://www.nps.gov/stli/learn/historyculture/colossus.htm> [<https://perma.cc/TMW9-2QPC>].

INTRODUCTION

Unhoused people² enjoy few of the rights their housed neighbors exercise. It is not enough that the poorest and most vulnerable among us must live on the streets: our society is determined to disenfranchise and persecute them at every turn. Without improved enforcement of their constitutional rights, unhoused people will continue to suffer at the hands of government as they did in Minneapolis, Minnesota in the summer of 2020.

In May 2020, as demonstrations in Minneapolis protesting the murder of George Floyd turned destructive, the denizens of those streets sought shelter.³ By the weekend following Floyd's death, scores of unhoused Minneapolitans occupied an empty Sheridan hotel on Chicago Avenue.⁴ Standing in the shadow of the Midtown Exchange building, and bathed in the smoke of a burnt-out bookstore across the street,⁵ the self-styled "Share-a-ton" provided refuge to 300 unhoused people while a "ragtag group of volunteers" distributed food and supplies.⁶ Within two weeks, however, the owner of the hotel evicted its

2. Some activists and service providers use the word "unhoused" in place of "homeless" when referring to people suffering the condition of homelessness. It is generally seen as less rhetorically punitive and personally exclusive. *See, e.g., Why Unhoused?*, UNHOUSED.ORG, <https://www.unhoused.org/overview> [<https://perma.cc/42QD-8EDJ>] ("The label of 'homeless' has derogatory connotations. . . . The use of the term 'Unhoused' . . . implies that there is a moral and social assumption that everyone should be housed in the first place."). "Homeless" remains the dominant term used by government, media, and service organizations. This Note will use "unhoused" as the term for people experiencing the condition, and "homelessness" as the term for the broader phenomenon. When referring to outside materials, this Note will preserve the original source's nomenclature.

3. *See* Julia Lurie, *They Built a Utopian Sanctuary in a Minneapolis Hotel. Then They Got Evicted.*, MOTHER JONES (June 12, 2020), <https://www.motherjones.com/crime-justice/2020/06/minneapolis-sheraton-george-floyd-protests> [<https://perma.cc/8MUY-TWF3>].

4. *Id.*

5. *See* Dylan Thomas, *His Bookstores Burned. Don Blyly Wants to Keep Selling*, MINNEAPOLIS/ST. PAUL BUS. J. (June 3, 2020), <https://www.bizjournals.com/twincities/news/2020/06/02/don-blyly-watched-his-bookstore-burn-and.html>, [<https://perma.cc/C3FB-3J8T>].

6. Lurie, *supra* note 3.

residents⁷ and, with nowhere else to turn, the unhoused began to settle in Minneapolis's public parks.⁸

After backing down from an initial eviction attempt,⁹ the Minneapolis Park & Recreation Board (MPRB) allowed the unhoused to take up residence in the city's parks.¹⁰ What became known as the "Minneapolis Sanctuary Movement"¹¹ peaked in mid-July 2020. Encampments sprang up in thirty-eight city parks, the largest being a settlement in Powderhorn Park where 282 residents lived divided among 560 tents.¹² The surrounding community initially rallied around its unhoused neighbors, working with encampment residents to support the sanctuaries.¹³ Soon enough, however, a certain portion of the

7. See Chris Serres & Miguel Otárola, *Homeless Evicted from Former Minneapolis Hotel After Drug Overdose*, STAR TRIB. (June 9, 2020), <https://www.startribune.com/homeless-evicted-from-former-mpls-hotel-after-drug-overdose/571135962> [https://perma.cc/3AR8-QLCZ] ("The hotel owner . . . has ordered the eviction of all the guests, according to volunteers at the site. The sudden eviction marks the second time in two weeks that large numbers of homeless people have been forced to vacate a temporary site . . .").

8. See Chris Serres, *'Nowhere Left to Go': Minneapolis Homeless Forced Out of a Hotel Face Uncertain Future*, STAR TRIB. (June 13, 2020), <https://www.startribune.com/minneapolis-homeless-forced-out-of-a-hotel-face-uncertain-future/571231192> [https://perma.cc/CD4W-Z828] ("Seeking safety in numbers, about 30 people pitched tents at the northwest corner of [Powderhorn] park . . .").

9. *Id.* ("A standoff was ultimately avoided when the Park Board late Friday rescinded its 72-hour vacate notice . . .").

10. MINNEAPOLIS PARK & RECREATION BD., RESOL. 2020-253 (2020), https://minneapolisparksmn.iqm2.com/Citizens/Detail_LegiFile.aspx?Frame=&MeetingID=2085&MediaPosition=&ID=5078 [https://perma.cc/UQ5Y-8D48] ("Be It Resolved, that the MPRB is committed to providing people currently experiencing homelessness refuge space in Minneapolis parks . . .").

11. See Miguel Otárola, *Months After Uprising, Minneapolis Sanctuary Movement Raises Alarm Over Homeless Crisis*, STAR TRIB. (Sept. 21, 2020), <https://www.startribune.com/months-after-uprising-minneapolis-sanctuary-movement-raises-alarm-of-homelessness-crisis/572473261> [https://perma.cc/W4L6-A4VJ].

12. *Minneapolis Park Board to Consider Resolution Providing Guidelines for Park Encampments*, MINNEAPOLIS PARK & RECREATION BD. (July 10, 2020), <https://www.minneapolisparcs.org/news/2020/07/10/minneapolis-park-board-to-consider-resolution-providing-guidelines-for-park-encampments> [https://perma.cc/LSP9-S8ZF] (discussing the size of the Powderhorn encampment). In addition to shelter, tents were used to provide storage for supplies and personal belongings or to administer support services. See *Encampments*, MINNEAPOLIS PARK & RECREATION BD., <https://www.minneapolisparcs.org/encampments> [https://perma.cc/SW95-AGL3].

13. See Rachel M. Cohen, *How the Largest Known Homeless Encampment in Minneapolis History Came to Be*, APPEAL (July 15, 2020), <https://theappeal.org/>

housed population soured on the idea of unhoused people living in the park next door.¹⁴ Beset by neighborhood complaints over the sanctuaries¹⁵—including a lawsuit filed by a nearby landlord alleging that “allowing and promoting the formation and continuation of tent encampments in Powderhorn [sic] Park” constituted “[n]egligent infliction of emotional distress”¹⁶—the MPRB ordered the largest sanctuaries broken up.¹⁷ When a number of Powderhorn Sanctuary residents declined to self-evict, the Minneapolis Park Police bulldozed their tents, threw any belongings left into dumpsters, and deployed pepper spray against demonstrators who gathered to support the encampments.¹⁸

The six-week rise and fall of the Powderhorn Sanctuary epitomizes the challenges facing the unhoused nationwide. People with few resources and nowhere else to turn are merely tolerated until the sight of them becomes inconvenient.¹⁹ Then, the comfortably housed

minneapolis-homelessness-crisis-powderhorn-park-encampment [https://perma.cc/N32Y-GPBP] (“Volunteers began organizing funds and coordinating daily meal deliveries, setting up laundry shifts, and donating blankets, water, and toiletries.”).

14. See Caitlin Dickerson, *A Minneapolis Neighborhood Vowed to Check Its Privilege. It’s Already Being Tested.*, N.Y. TIMES (July 21, 2020), <https://www.nytimes.com/2020/06/24/us/minneapolis-george-floyd-police.html> [https://perma.cc/CYA7-XCK3] (“The influx of [unhoused] outsiders has kept [one resident] awake at night. . . . I am afraid . . . I’m not feeling grounded in my city at all. Anything could happen.”).

15. See Al Bangoura, *Update: Refuge Space to People Currently Experiencing Homelessness*, MINNEAPOLIS PARK & RECREATION BD. 24 (July 15, 2020), <https://www.minneapolisparcs.org/wp-content/uploads/2020/07/07-15-20-Update-Refuge-Space-Presentation.pdf> [https://perma.cc/B5BZ-4L2S] (reporting that 80% of the 480 public comments received “were opposed to the encampments”).

16. Complaint at 5–7, *Sawyer v. Minneapolis Park & Recreation Bd.*, No. 27-CV-20-9518 (Minn. Dist. Ct. July 17, 2020), *dismissed with prejudice*, (Minn. Dist. Ct. Aug. 28, 2020).

17. See MINNEAPOLIS PARK & RECREATION BD., RESOL. 2020-267 (2020), https://minneapolisparcsmn.iqm2.com/Citizens/Detail_Legislation.aspx?Frame=&MeetingID=2087&MediaPosition=&ID=5115 [https://perma.cc/K9Y9-B8FM] (“[A]ny encampment that does not have a necessary permit [limited to 20 encampments citywide of no more than 25 tents each] pursuant to this resolution will be subject to removal from park property . . .”).

18. See Tim Harlow, *Minneapolis Officials Clear Powderhorn Park of Last Campers*, STAR TRIB. (Aug. 14, 2020), <https://www.startribune.com/officials-clear-powderhorn-park-in-minneapolis-of-last-campers/572113042> [https://perma.cc/36G8-J2CT].

19. See Britta Greene, *Powderhorn Residents Plead for Help to Manage Homeless Encampment*, MINN. PUB. RADIO NEWS (July 7, 2020), <https://www.mprnews.org/story/2020/07/06/powderhorn-residents-plead-for>

and comparatively wealthy turn the power of the state on these vulnerable and disenfranchised people.²⁰ Local governments' baroque cruelty towards unhoused people peacefully occupying a park²¹ does not treat the underlying causes of homelessness.²² The goal of municipal policies harassing and displacing unhoused people is not to solve the problem,²³ but to spare passersby from the thought that, "there, but by some stroke of luck, go I."²⁴

The fate of the Powderhorn Sanctuary, however, tells another tale; this one more hopeful than the first. With the aid of the American Civil Liberties Union (ACLU) of Minnesota and Zakat, Aid and Charity

-help-to-manage-homeless-encampment [<https://perma.cc/57TN-TY2U>] ("We're all liberals,' [a Powderhorn neighborhood resident] said. 'We're all sympathetic But this is not the answer.'").

20. See, e.g., *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1567 (S.D. Fla. 1992) ("The [police] supervisor reported that, to solve the problem [of homeless people gathering to collect food distributed by a charity], he had assigned a unit to 'arrest and/or force an extraction of the undesirables from the area,' and that the arrests 'produced immediate positive results.'"), *remanded for clarification and reconsideration*, 40 F.3d 1155 (11th Cir. 1994), *referred for settlement discussions*, 76 F.3d 1154 (11th Cir. 1996) (reaching settlement including a consent decree in 1998), *plaintiffs' attys. fees denied*, 2014 WL 2890061 (S.D. Fla. June 25, 2014), *aff'g denial of attys. fees*, 805 F.3d 1293 (11th Cir. 2015), *terminating consent decree*, 359 F. Supp. 3d 1177 (S.D. Fla. 2019).

21. E.g., Declaration of Patrick Berry in Support of Plaintiffs' Motion for Temporary Restraining Order at 3, *Berry*, No. 20-CV-02189, 2020 WL 6337706 (D. Minn. Oct. 29, 2020) ("People are already suffering so much. It is really cruel what the city is doing. The bulldozers are a ridiculous show of force. Why couldn't they just pull the tents up by hand?").

22. See *Loper v. N.Y.C. Police Dep't*, 802 F.Supp. 1029, 1046 (S.D.N.Y. 1992) ("If some portion of society is offended, the answer is not in criminalizing those people The root cause is not served by removing them from sight, however; society is then just able to pretend they do not exist a little longer.").

23. See Maria Foscarinis, Kelly Cunningham-Bowers & Kristen E. Brown, *Out of Sight—Out of Mind?: The Continuing Trend Toward the Criminalization of Homelessness*, 6 GEO. J. ON POVERTY L. & POL'Y 145, 146–47 (1999) ("[L]ocal governments have turned to the criminal justice system in an effort to drive homeless people from their streets. This is, at best, a misguided 'quick-fix' that addresses the visible symptoms of homelessness but not its underlying causes.").

24. Compare Neil Bhutta, Jesse Bricker, Andrew C. Chang, Lisa J. Dettling, Sarena Goodman, Joanne W. Hsu, Kevin B. Moore, Sarah Reber, Alice Henriques Volz & Richard A. Windle, *Changes in U.S. Family Finances from 2016 to 2019: Evidence from the Survey of Consumer Finances*, 106 FED. RSRV. BULL. 5, at 16 & tbl.3 (2020) (reporting that Americans had a median of \$5,300 in available cash assets in 2019), with Greta Kaul, *How COVID-19 Has Affected the Price of Rent in the Twin Cities*, MINNPOST (June 18, 2020), <https://www.minnpost.com/economy/2020/06/how-covid-19-has-affected-the-price-of-rent-in-the-twin-cities> [<https://perma.cc/XNX8-DCL6>] (reporting a real estate listing service's finding that the average rent in the Twin Cities was \$1,567 in May 2020).

Assisting Humanity (ZACAH)—a Muslim charity focused on aiding Minnesotans on the verge of homelessness²⁵—former residents of the Powderhorn Sanctuary and other park encampments filed a class action lawsuit against a host of civic defendants, including the City of Minneapolis, Hennepin County, the MPRB, and Mayor of Minneapolis Jacob Frey.²⁶ The unhoused plaintiffs in *Berry v. Hennepin County* alleged an array of constitutional rights violations—sounding in seizure, privacy, and due process grounds—stemming from the destruction of their property in the MPRB’s clearing of the encampments.²⁷ Along with their initial complaint, the plaintiffs moved for a temporary restraining order seeking to enjoin the city defendants from “clearing, sweeping, disbanding, or demobilizing encampments of homeless individuals living in public parks and other publicly-owned green space within Hennepin County.”²⁸

Ten days later, the U.S. District Court for the District of Minnesota denied the motion, reasoning that “the Encampment Plaintiffs will not experience irreparable harm in the event that the MPRB disbands an encampment”²⁹ The court further held that the plaintiffs did not prove their “alleged harm [wa]s sufficiently certain and concrete.”³⁰ Despite that holding, the City of Minneapolis proved sufficiently certain in its mission and continued to sweep encampments, seemingly in violation of a representation to the federal court in *Berry*.³¹ Furthermore, intentional conduct by the MPRB may have been responsible for

25. ZAKAT, AID & CHARITY ASSISTING HUMAN, <https://www.zacah.org> [<https://perma.cc/P5J4-LPKY>].

26. Class Action Complaint at 3–25, *Berry v. Hennepin Cnty.*, No. 20-CV-02189, 2020 WL 6337706 (D. Minn. Oct. 29, 2020) (listing parties to the case).

27. *Id.* at 46–49.

28. Plaintiffs’ Motion for Temporary Restraining Order at 1–2, *Berry*, 2020 WL 6337706.

29. *Berry*, 2020 WL 6337706, at *4.

30. *Id.*

31. *Id.* (“The City of Minneapolis, along with Minneapolis Mayor Frey [and other city Defendants] represented to [the] Court that encampments will not be removed unless . . . adequate shelter exists elsewhere.”). Less than two weeks after the *Berry* court denied the plaintiffs’ restraining order, activists reported that the City of Minneapolis cleared an encampment despite a lack of available shelter beds. See Lauren Josephine (@YoLarryJohnson), TWITTER (Nov. 11, 2020), <https://twitter.com/YoLarryJohnson/status/1326422330487296002> [<https://web.archive.org/web/20201111071300/https://twitter.com/YoLarryJohnson/status/1326422330487296002>] (“There are ZERO shelter beds, shelters are completely full. . . . Hennepin county & MPD delivered an eviction notice to an encampment today with zero alternatives given WHILE IT WAS HAILING ON US.”).

the plaintiffs' inability to prove the certainty of encampment sweeps.³²

The plaintiffs in *Berry* stepped forward in an attempt to protect the rights of all unhoused people in Minneapolis.³³ At the time of writing, the City of Minneapolis has revoked permission for unhoused people to form park encampments altogether.³⁴ The end of Minnesota's temporary coronavirus-response eviction protections hangs over its residents like the Sword of Damocles,³⁵ threatening to inflict homelessness on even more people than before.³⁶ Clearing an "illegal" en-

32. See Class Action Amended Complaint at 46 n.52, *Berry*, 2020 WL 6337706 ("In fact, internal MPRB emails show that the MPRB wanted to keep proposed dates of upcoming sweeps private, possibly to avoid giving protestors time to mobilize.").

33. *Id.* at 30 ("The plaintiff class consists of all homeless persons living within Hennepin County who have been, are now, or will in the future be living on public property.").

34. See *Encampments*, *supra* note 12 ("February 3, 2021 . . . Commissioners approve *Resolution 2021-122* which replaces and effectively repeals two previous resolutions on encampments in Minneapolis parks. . . . [T]he Superintendent no longer has authority to issue permits for encampments.").

35. At the beginning of the COVID-19 pandemic, Minnesota Governor Tim Walz issued an eviction moratorium which was extended each month until July 2021. See Minn. Emergency Exec. Order No. 20-14, at 2 (Mar. 23, 2020) ("Beginning no later than March 24, 2020 . . . the ability to file an eviction action under Minnesota Statutes . . . is suspended."); Minn. Emergency Exec. Order No. 21-24, at 2 (June 14, 2021) (extending Minnesota's eviction moratorium through July 14, 2021). On June 29, 2021, Governor Walz signed into law a graduated phaseout of the state's eviction protections. See 2021 Minn. Laws 1st Spec. Sess., ch. 8, art. 5. As of October 12, 2021, Minnesota law no longer restricted otherwise lawful evictions unless the eviction was for nonpayment of rent and the tenant had a pending application with a federally backed emergency rental assistance program. See *id.* ch. 8, art. 5, § 2, § 4 (extending the protections of that exemption until June 1, 2022). A federal eviction moratorium was issued in September 2020 by the Centers for Disease Control and Prevention (CDC) and expired on July 31, 2021. *Temporary Halt in Residential Evictions in Communities with Substantial or High Levels of Community Transmission of COVID-19 to Prevent the Further Spread of COVID-19*, CTFS. FOR DISEASE CONTROL & PREVENTION 7 (2021), <https://www.cdc.gov/coronavirus/2019-ncov/communication/Signed-CDC-Eviction-Order.pdf> [<https://perma.cc/V4ZM-V7EV>]. The CDC's second, less-expansive moratorium was set to expire after October 3, 2021, *id.* at 19, but on August 26, 2021, the Supreme Court allowed a federal district court to enjoin that second moratorium. See *Ala. Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 141 S. Ct. 2485 (per curiam) (vacating a stay of enforcement of the U.S. District Court for the District of Columbia's grant of summary judgment in favor of the plaintiff landlords).

36. Compare *Eviction Estimates When Minnesota Reopens*, LAWRENCE R. MCDONOUGH 16 (2021), [hereinafter MCDONOUGH] https://www.senate.mn/committees/2021-2022/3108_Committee_on_Housing_Finance_and_Policy/LAWRENCE%20R.%20MCDONOUGH%20Presentation.pdf [<https://perma.cc/>

campment during the frigid Minnesota winter could be a death sentence for its residents,³⁷ and the *Berry* plaintiffs argue that it violates their constitutional rights.³⁸ Their efforts are the latest iteration in a long tradition of legal advocacy by the unhoused. This line of homelessness case law is predicated on identical underlying logic: the unhoused have claim to the same fundamental rights as the rest of society but face overwhelming barriers to the enjoyment of those rights.³⁹

Yet how can the unhoused enforce their rights with few resources to afford legal counsel and even less respect from their community?⁴⁰ Enter the Unhoused Bill of Rights (UBR). Enacted by a small group of states and cities,⁴¹ these laws generally codify existing constitutional

X2VN-2PQU] (estimating that 13,330 Minnesotans are at risk of ejection when eviction moratoria expire), with Brian Pittman, Stephanie Nelson-Dusek, Michelle Decker Gerrard & Ellen Shelton, *Homelessness in Minnesota*, WILDER RSCH. 36 (2020) [hereinafter WILDER RSCH.], <http://mnhomeless.org/minnesota-homeless-study/reports-and-fact-sheets/2018/2018-homelessness-in-minnesota-3-20.pdf> [<https://perma.cc/29NG-ALRH>] (finding that eviction and trouble affording housing payments are the most common reasons people become unhoused in Minnesota).

37. See Declaration of Dennis Barrow in Support of Plaintiffs' Motion for Temporary Restraining Order at 3, *Berry v. Hennepin Cnty.*, No. 20-CV-02189, 2020 WL 6337706 (D. Minn. Oct. 29, 2020) ("I lost my tent and sleeping bag. I lost almost all my clothes, including my winter boots and winter coat. I lost my hygiene supplies and my medication for my mental health. . . . I have not been able to replace the things I lost.").

38. Class Action Amended Complaint, *supra* note 32, at 2 ("In sweeping these encampments, Defendants[] . . . violate the Fourth and Fourteenth Amendments to the United States Constitution . . .").

39. See, e.g., *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963) ("This noble ideal [that every defendant stands equal before the law] cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him."); *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1564 (S.D. Fla. 1992) ("[A]rresting the homeless for harmless, involuntary, life-sustaining acts such as sleeping, sitting or eating in public is cruel and unusual."); *Martin v. City of Boise*, 902 F.3d 1031, 1048 (9th Cir. 2018) ("[A]s long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter.").

40. See Dave Metz & Lori Weigel, *Perspectives on Homelessness in the Denver Metro Area*, DENVER FOUND. 19 (2017), <http://closetohomeco.org/wp-content/uploads/2017-Poll-Findings.pdf> [<https://perma.cc/389J-DSPU>] (finding that 58 to 87% of Denver-metro survey respondents believed that laziness, personal choice, or irresponsible behavior were sometimes, usually, or almost always part of the reason people were unhoused).

41. See *Homeless Bill of Rights*, NAT'L COAL. FOR THE HOMELESS, <https://nationalhomeless.org/campaigns/bill-of-right> [<https://perma.cc/58AF-5ZSD>] (select tab titled "Local Homeless Bill of Rights Measures") (providing a list of enacted UBR).

rights⁴² that homelessness makes more difficult to exercise.⁴³ Some unenacted UBR, however, have proposed more ambitious grants of positive rights and government mandates.⁴⁴ This Note proposes that Minnesota should enact an Unhoused Bill of Rights expanding on the rights safeguarded by prior states' UBRs, coupled with a robust set of remedies and procedural provisions to promote enforcement of unhoused peoples' rights through private and public litigation.

Homelessness is a complicated socioeconomic issue with intersectional root causes not solvable by any one law. Other policy advances are necessary to end homelessness,⁴⁵ but a UBR could play a large role in accomplishing that goal. A call to action for the tired, the poor, "the homeless" is so deeply ingrained in our society that it has been cast in bronze and bolted onto one of the most important monuments to our national ideals.⁴⁶ Minnesota should correct its failure to protect the fundamental rights of its unhoused residents by passing a Bill of Rights for Unhoused Minnesotans. This law will far exceed the meager protections and non-existent enforcement mechanisms of already-enacted UBRs to propose the most progressive set of protections and policy proposals. The Bill of Rights for Unhoused Minnesotans will provide far stronger protections for the rights and dignity of the unhoused, and it may even reduce homelessness statewide.

42. See Jonathan Sheffield, *A Homeless Bill of Rights: Step by Step from State to State*, 19 PUB. INT. L. REP. 8, 11 (2013) ("The Rhode Island and Illinois laws use similar language and specify that a person who is homeless has the same rights and privileges as any other state resident Generally, the Connecticut law provides the same or similar protections.").

43. See Tristia Bauman & Sara Rankin, *From Wrongs to Rights: The Case for Homeless Bill of Rights Legislation*, NAT'L L. CTR. ON HOMELESSNESS & POVERTY 6-7 (2014), https://homelesslaw.org/wp-content/uploads/2018/10/Wrongs_to_Rights_HBOR.pdf [<https://perma.cc/Y24N-XYDR>] (discussing the enacted UBRs' goal of "safeguarding homeless persons' existing civil rights" because "available remedies to correct these violations have been limited in their effectiveness").

44. See, e.g., Sara K. Rankin, *A Homeless Bill of Rights (Revolution)*, 45 SETON HALL L. REV. 383, 413-14 (2015) (discussing provisions in a proposed California UBR which would have required the State to provide unhoused people increased access to public hygiene facilities and required local law enforcement authorities to track and report enhanced data on homelessness).

45. See, e.g., *Policy 40: Homelessness*, MINNEAPOLIS 2040, <https://minneapolis2040.com/policies/homelessness> [<https://perma.cc/7ZWK-SRAW>] (discussing the City of Minneapolis's intent to use progressive municipal housing regulation and supportive programs for those transitioning out of foster care or institutionalization "to eliminate homelessness").

46. See Lazarus, *supra* note 1.

Part I of this Note provides background on the condition, characteristics, and prevalence of homelessness before discussing the major public and private programs used to aid the unhoused. It continues with an examination of the treatment of the unhoused under the law, both local and constitutional. Part I concludes with a review of different forms of Unhoused Bills of Rights, and an analysis of their comparative strengths and weaknesses. Part II of this Note discusses the legal limitations of enacted UBR as well as their questionable efficacy in addressing homelessness. Part II also discusses the political and societal challenges militating against the enactment of legislation benefiting the unhoused.

Part III synthesizes the conditions and causes of homelessness, the legal framework around the rights of the unhoused, and previous attempts at enacting UBR to propose a Bill of Rights for Unhoused Minnesotans (BRUM). This Part positions BRUM as an incremental step towards ending homelessness by providing unhoused Minnesotans particularized negative rights protections, specific positive rights, and enhanced procedural rights to enforce them. The Appendix of this Note contains the proposed statutory text of BRUM, which should be taken under consideration by the Minnesota Legislature in their efforts to preserve the rights⁴⁷ and promote the well-being⁴⁸ of the state's most vulnerable residents.

I. HOMELESSNESS: THE CONDITION, THE DATA, AND THE LAW COMMAND ACTION

In order to devise a law which effectively vindicates the rights of unhoused people, it is vital to understand the practical and legal challenges those individuals face. This Part provides background on the conditions and prevalence of homelessness as well as the bodies of law most relevant to unhoused people. Section A discusses prevailing social science classifications of the condition of homelessness as well as major socioeconomic correlates with homelessness. It goes on to discuss statistical findings of the incidence of homelessness as well as demographic disparities in unhoused populations. Section A concludes with a discussion of major housing programs which form the backbone of the United States' response to homelessness.

47. See MINN. CONST. art. I, § 2 ("No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers.").

48. See *id.* art. I, § 1 ("Government is instituted for the security, benefit and protection of the people . . .").

Section B contemplates a corpus of homelessness law. It first discusses the past and present of enacted measures which target the unhoused by criminalizing basic life-sustaining activities. This Section continues by discussing judicial analysis of the constitutional rights of the unhoused. Section C concludes this Part by analyzing existing and proposed Unhoused Bills of Rights intended to remedy unhoused peoples' unequal treatment under the law. As this Part will show, a great many people are subject to indignities and violations of their fundamental rights as a result of their homelessness. Jurisdictions have taken a variety of approaches to safeguarding those rights, or opposing them, which can inform the drafting of future UBR.

A. PRIMER ON HOMELESSNESS

The word "homeless" is used to "describe[] a person who lacks a fixed, regular, and adequate nighttime residence."⁴⁹ Those experiencing homelessness in Minnesota (or "unhoused persons") are typically dealing with a disruption in their housing arrangements,⁵⁰ a disruption in their income⁵¹ or their personal life,⁵² or some combination thereof.⁵³ Chronic homelessness refers to individuals with a disability who have "been continuously homeless for one year or more or ha[ve] experienced at least four episodes of homelessness in the last three years" totaling twelve months.⁵⁴

49. See Meghan Henry, Tanya de Sousa, Caroline Roddey, Swati Gayen & Thomas Joe Bednar, *The 2020 Annual Homeless Assessment Report (AHAR) to Congress: Part 1: Point-In-Time Estimates of Homelessness*, U.S. DEP'T OF HOUS. & URB. DEV. 2 (2021) [hereinafter AHAR], <https://www.huduser.gov/portal/sites/default/files/pdf/2020-AHAR-Part-1.pdf> [<https://perma.cc/NNZ2-VRC6>]; see also Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, Pub. L. No. 111-22, div. B, § 1003(a)(2), 123 Stat. 1663, 1664 (2009).

50. See WILDER RSCH., *supra* note 36, at 36 (reporting that 41% of "homeless adults left their last housing" because of eviction, nonrenewal of their lease, or foreclosure of the home they owned or rented).

51. See *id.* (reporting that 47% of "homeless adults left their last housing" for "financial reasons," with 38% unable to "afford rent or house payments" and 31% because of a "[l]ost job or ha[ving] hours cut" by an employer).

52. See *id.* (reporting that 42% of "homeless adults left their last housing" because of "interpersonal issues" such as "[p]roblems getting along with other people [they] lived with" or a "[b]reakup with spouse or partner," while 22% cited "[a]buse by someone in household").

53. See *id.* (reporting that 25% of unhoused people cited "financial reasons and eviction or foreclosure," and that 20% cited "financial reasons and interpersonal issues").

54. AHAR, *supra* note 49, at 2.

The unhoused population is stratified by sheltering status. “Sheltered homelessness” covers individuals staying in emergency or transitional housing.⁵⁵ Meanwhile, unsheltered unhoused individuals are people whose nighttime residence is not ordinarily suited for human accommodation.⁵⁶ This encompasses unhoused people sleeping in vehicles, parks, or the streets as well as in certain public structures like public transit stations or in abandoned buildings.⁵⁷ Approximately 39% of unhoused people are unsheltered nationwide,⁵⁸ while estimates suggest that 59% of Minnesota’s unhoused may be unsheltered.⁵⁹

The root causes contributing to homelessness⁶⁰ are deeply intertwined with one another, often feeding back into and exacerbating each other.⁶¹ The coincidence of unaffordable housing prices and income deficiencies are a major contributing factor to homelessness, with “56% of adults experiencing homelessness [in Minnesota] report[ing] there was no housing they could afford.”⁶² Major health issues can be both a cause and a result of homelessness.⁶³ Diseases and disorders “that cause a person to become unemployed, or any major illness that results in massive healthcare expenses”⁶⁴ can precipitate

55. *Id.* at 2.

56. *Id.* at 3; Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, Pub. L. No. 111-22, div. B, § 1003(a)(2), 123 Stat. at 1665.

57. *See* Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009, § 1003(a)(2), 123 Stat. at 1665.

58. *See* AHAR, *supra* note 49, at 6 exhibit 1.1 (reporting that 226,080 out of 580,466 unhoused people nationwide were unsheltered).

59. *See* WILDER RSCH., *supra* note 36, at 4 fig.4.

60. These root causes include financial reasons, interpersonal issues, eviction or foreclosure, and safety issues. *See supra* notes 50–53 and accompanying text.

61. *See* WILDER RSCH., *supra* note 36, at 35 (“There is no single cause of homelessness, but there are often common and inter-related themes of economic, social, and safety issues . . .”). For example, a loss of income might lead to tension in the home, resulting in a person resorting to homelessness to escape domestic abuse. *See id.* at 36 (finding that “18% [of unhoused Minnesotans] reported financial reasons *and* safety issues” as the reason for leaving their last home).

62. *Id.* at 37.

63. Comm. on Health Care for Homeless People, *Homelessness, Health, and Human Needs*, INST. OF MED. 39 (1988), https://www.ncbi.nlm.nih.gov/books/NBK218232/pdf/Bookshelf_NBK218232.pdf [<https://perma.cc/MB2R-8X37>] (“Some health problems precede and causally contribute to homelessness . . . others are consequences of homelessness . . .”).

64. *Id.* at 40.

an income crisis that results in their becoming unhoused.⁶⁵ Once unhoused, even minor issues affecting an individual can develop into serious cases as a result of a lack of healthcare and the intersectional physical and mental complications of homelessness.⁶⁶ Homelessness is also highly correlated with serious health deficiencies.⁶⁷ As a result, the unhoused population suffers from mortality rates roughly five to ten times higher than that of the general population, depending on age, sex, and sheltering status.⁶⁸

The federal government's primary survey of homelessness, administered by the Department of Housing and Urban Development (HUD), estimates that nationwide 580,466 individuals were unhoused on a given night in 2020.⁶⁹ These point-in-time findings estimate that 4,726 Minnesotans were unhoused on a given night in 2020.⁷⁰ However, there are compelling reasons to believe that HUD's figures represent a drastic underrepresentation of the true prevalence of homelessness.⁷¹ Wilder Research's 2018 point-in-time survey found an

65. See *supra* notes 60–61 and accompanying text.

66. See, e.g., Comm. on Health Care for Homeless People, *supra* note 63, at 41 (reporting the case of an unhoused woman's swollen ankles developing open wounds, which she covered "with cloth and stockings—enough to absorb the drainage but also to cause her to be repugnant to others because of the smell" which became infested with maggots and required emergency room treatment).

67. See WILDER RSCH., *supra* note 36, at 23 (reporting that 81% of unhoused Minneapolisians suffered from at least one of a serious mental illness, chronic physical health conditions, or a substance use disorder).

68. See Travis P. Baggett, Stephen W. Hwang, James J. O'Connell, Bianca C. Porneala, Erin J. Stringfellow, E. John Orav, Daniel E. Singer & Nancy A. Rigotti, *Mortality Among Homeless Adults in Boston: Shifts in Causes of Death Over a 15-Year Period*, 173 JAMA INTERNAL MED. 189, 192 tbl.3 (2013) (reporting unhoused mortality rates by age and sex); Jill S. Roncarati, Travis P. Baggett, James J. O'Connell, Stephen W. Hwang, E. Francis Cook, Nancy Krieger & Glorian Sorensen, *Mortality Among Unsheltered Homeless Adults in Boston, Massachusetts, 2000-2009*, 178 JAMA INTERNAL MED. 1242, 1242 (2018) ("The all-cause mortality rate for the unsheltered cohort was almost 10 times higher than that of the Massachusetts population . . .").

69. AHAR, *supra* note 49, at 6. Notably, HUD's counts were conducted in January 2020, before the economic effects and related eviction moratoria associated with the COVID-19 could impact homelessness in America, for good or ill. See *id.*

70. *Id.* at 87.

71. HUD's methodology has been criticized for significantly undercounting the unhoused, while Wilder Research's triennial study of homelessness in Minnesota uses an expanded definition of homelessness which includes certain precariously housed individuals. Darrell Stanley, *Don't Count on It: How the HUD Point-in-Time Count Underestimates the Homelessness Crisis in America*, NAT'L L. CTR. ON HOMELESSNESS & POVERTY 15–16 (2017), <https://homelesslaw.org/wp-content/uploads/2018/10/HUD-PIT-report2017.pdf> [<https://perma.cc/N8U5-K4XG>]. When evaluating a measure to address homelessness in Minnesota, there are compelling reasons to utilize the Wilder

actual count of 11,323 unhoused Minnesotans, with an estimated total of 19,582 unhoused Minnesotans on a given night in 2018, almost five times higher than HUD's figures for that same year.⁷² Racial minorities

figures. Minnesota government entities have long relied on the Wilder study. *See, e.g., Policy 40: Homelessness*, *supra* note 45. Smudging the bright line drawn by HUD to include those on the precipice of becoming unhoused serves to support policy goals of preventing homelessness altogether. In addition, HUD only reports the actual count of observed individuals on the date of the study, while Wilder uses various estimation methodologies to account for individuals who drift in and out of homelessness throughout the year. *Compare* AHAR, *supra* note 49, at 4, *with* WILDER RSCH., *supra* note 36, at 50–52. Furthermore, while Wilder's figures were last collected in 2018, they may still represent an undercount. National homelessness has risen 5% since Wilder last conducted their study. AHAR, *supra* note 49, at 6 (reporting counts of 552,830 unhoused people in 2018 and 580,466 in 2020). Minnesota's rate of homelessness has grown rapidly despite national decreases over the same general period of study. *Compare* WILDER RSCH., *supra* note 36, at 2 (reporting a 32% increase in counted unhoused people from 2006 to 2018), *with* AHAR, *supra* note 49, at 6 (reporting a 14.6% decrease in counted unhoused people from 2007 to 2018). There is no compelling reason to think that Minnesota will dramatically deviate from these trends, and the national increase in homelessness since 2018 portends very poorly for the local incidence of homelessness. As such, the Wilder counts likely provide a more accurate picture of homelessness in Minnesota than the AHAR counts. Unfortunately, Wilder is unlikely to report updated figures until spring 2023. *Compare Wilder Research Postpones Minnesota Homeless Study Until 2022*, AMHERST H. WILDER FOUND. (June 8, 2021), <https://www.wilder.org/articles/wilder-research-postpones-minnesota-homeless-study-until-2022> [<https://perma.cc/9LSR-SC3D>] (“Wilder Research has decided to postpone its 2021 triennial study of homelessness by one year. The study will now take place in October 2022.”), *with Single Night Count of People Experiencing Homelessness: 2018 Minnesota Homeless Study Fact Sheet*, WILDER RSCH. 1 (2019), <http://mnhomeless.org/minnesota-homeless-study/reports-and-fact-sheets/2018/2018-homeless-counts-fact-sheet-3-19.pdf> [<https://perma.cc/J3Q6-EM63>] (reporting initial findings from the October 2018 study in March 2019).

72. *Compare* WILDER RSCH., *supra* note 36, at 4, *with* Meghan Henry, Anna Mahathey, Tyler Morrill, Anna Robinson, Azim Shivji & Rian Watt, *The 2018 Annual Homeless Assessment Report (AHAR) to Congress: Part 1: Point-in-Time Estimates of Homelessness*, U.S. DEP'T OF HOUS. & URB. DEV. 87 (2018), <https://www.huduser.gov/portal/sites/default/files/pdf/2018-AHAR-Part-1.pdf> [<https://perma.cc/YNS8-5KXL>] (estimating a total of 3,993 unhoused Minnesotans in 2018).

are disproportionately affected by homelessness, particularly in Minnesota,⁷³ as a result of the intersectional effects of systemic racism.⁷⁴ LGBTQ+ individuals also face a disproportionately higher risk of becoming unhoused,⁷⁵ with an even greater effect on LGBTQ+ youth.⁷⁶

Ultimately, the state of homelessness is predicated on not having access to fixed and adequate housing.⁷⁷ Programs intended to provide shelter or housing to unhoused people generally fall into three categories: temporary housing, permanent supportive housing, and housing policy. Temporary housing is the premier frontline measure in addressing homelessness. Over 61% of unhoused people nationwide

73. For example, Black people are 12% of the national population but comprise 42% of unhoused people in the United States; in Minnesota, they are 6% of the overall population and 37% of unhoused people. Native peoples' national four-to-one overrepresentation ratio rises to twelve-to-one in Minnesota. *Compare* Kaya Lurie, Breanne Schuster & Sara Rankin, *Discrimination at the Margins: The Intersectionality of Homelessness & Other Marginalized Groups*, SEATTLE UNIV. SCH. OF LAW: HOMELESS RTS. ADVOC. PROJECT iv (2015), <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1002&context=hrap> [<https://perma.cc/XL2H-LY2Q>], with WILDER RSCH., *supra* note 36, at 7.

74. *See, e.g.*, Lurie et al., *supra* note 73, at 5 (“Racial minorities are disadvantaged because of poverty, source of income discrimination, discriminatory federal housing programs and policies, and discriminatory lending practices; all of which are impacts of systemic racism. As a result of such systemic racism, racial minorities are discriminatorily impacted by homelessness.”). In particular, Black Minnesotans face extreme disparities in socioeconomic outcomes. The Twin Cities metropolitan statistical area (MSA) has the largest Black-White homeownership gap of any Census MSA that has over 40,000 Black residents. Jung Hyun Choi, Alanna McCargo, Michael Neal, Laurie Goodman & Caitlin Young, *Explaining the Black-White Homeownership Gap: A Closer Look at Disparities Across Local Markets*, URB. INST. vi (2019), https://www.urban.org/sites/default/files/publication/101160/explaining_the_black-white_homeownership_gap_2.pdf [<https://perma.cc/VWK4-V8K5>]. Or consider college readiness statistics. Minnesota is the top-ranked state for reading ACT scores and third-ranked for math ACT scores but has the fifth- and second-highest achievement gaps in the country, respectively, between White and Black students. Rob Grunewald & Anusha Nath, *A Statewide Crisis: Minnesota's Education Achievement Gaps*, FED. RSRV. BANK OF MINNEAPOLIS 19 fig.15 (2019), <https://www.minneapolisfed.org/~media/assets/pages/education-achievement-gaps/achievement-gaps-mn-report.pdf> [<https://perma.cc/DJY8-3V8X>].

75. *See* Virginia Pendleton, Walker Bosch, Margaret Vohs, Stephanie Nelson-Dusek & Michelle Decker Gerrard, *Characteristics of People Who Identify as LGBTQ Experiencing Homelessness*, WILDER RSCH. i (2020), https://www.wilder.org/sites/default/files/imports/2018_HomelessnessInMinnesota_LGBTQ_9-20.pdf [<https://perma.cc/R25D-PURR>] (reporting that 11% of unhoused Minnesotans identified as LGBTQ, while 4% of Minnesotans identify as LGBT overall).

76. *See* Lurie et al., *supra* note 73, at 18 (reporting that 20 to 40% of unhoused youth identify as LGBTQ, while 5 to 10% of the general youth population identifies as such).

77. *See* AHAR, *supra* note 49 and accompanying text.

utilize temporary housing, although that figure remains lower for Minnesota.⁷⁸ There are around 396,000 year-round temporary housing beds available nationwide, with another 36,000 seasonal, overflow, or voucher-based beds.⁷⁹ Minnesota has 6,730 temporary housing beds with another 487 seasonal, overflow, or voucher-based beds.⁸⁰ This inventory of temporary housing is grossly insufficient to meet national demand, with a roughly 26% shortfall according to HUD's counts.⁸¹ This deficit is even more severe in Minnesota, where there may be almost three times more unhoused people than temporary beds.⁸²

When available, these shelters are key resources for the unhoused, providing them a relatively safe place to stay out of the elements, often with access to meals, hygiene supplies and facilities, and case management personnel.⁸³ Still, they are not without limitations. Temporary housing is often designated for sole use by specific subsets of unhoused people such as single adults, families with children, or women escaping domestic violence.⁸⁴ They may only be open during the day or at night, exposing unhoused people to the elements during their unsheltered time.⁸⁵ There may be limits on the maximum length of a person's stay at a shelter.⁸⁶ The rules of available shelters may not

78. See AHAR, *supra* note 49, at 6 (reporting that 61% of unhoused people were sheltered); WILDER RSCH., *supra* note 36, at 4 fig.4. (reporting that 41% of unhoused Minnesotans for whom sheltering status was reported were sheltered).

79. HUD 2020 Continuum of Care Homeless Assistance Programs Housing Inventory Count Report, U.S. DEP'T OF HOUS. & URB. DEV. 1 (2021), https://files.hudexchange.info/reports/published/CoC_HIC_NatlTerrDC_2020.pdf [<https://perma.cc/68UR-A6C5>].

80. *Id.* at 13.

81. Compare *supra* note 79 and accompanying text, with *supra* note 69 and accompanying text.

82. Compare *supra* note 80 and accompanying text, with *supra* note 72 and accompanying text.

83. See, e.g., Ramsey County Homeless Shelters and Referral Information, RAMSEY CNTY. 1 (2019), <https://www.ramseycounty.us/sites/default/files/Work%20with%20Ramsey/Homeless%20shelters%20Rev-2.pdf> [<https://perma.cc/4UJ7-3LW6>].

84. See, e.g., Emergency Shelters, ME. HOUS., <https://www.mainehousing.org/programs-services/homeless/emergency-shelters> [<https://perma.cc/HR2U-RNKM>] (listing emergency shelters available in Maine by the subset of the population they serve).

85. See Ramsey County Homeless Shelters and Referral Information, *supra* note 83, at 1.

86. See, e.g., How Long Can You Stay at a Homeless Shelter?, STREETWORKS (Feb. 18, 2014), <https://www.streetworksmn.org/how-long-can-you-stay-at-a-homeless-shelter> [<https://perma.cc/UQC2-TH3T>] ("Some shelters can only provide a 3-5 day

fit a given person's needs,⁸⁷ or the conditions of their stay might be unacceptable to them.⁸⁸ Furthermore drug or alcohol use can disqualify an unhoused person from "attaining and maintaining housing,"⁸⁹ which may further reduce access to temporary housing for a large number of highly vulnerable unhoused people: those suffering from substance-use disorders.⁹⁰ Still, the 300% disparity in mortality rates between sheltered and unsheltered unhoused people makes a compelling argument for the efficacy of shelters at keeping unhoused people alive.⁹¹

Transitional housing allows individuals to live independently, is heavily subsidized by state and HUD grants, and often provides supportive services to identify and meet the various needs of residents.⁹² This allows individuals to stabilize their lives by "maintaining stable

stay. 30 days is more common. After that time, the staff will usually review your case, and either extend or end your stay.").

87. See *The Emergency Shelter Learning Series*, NAT'L ALL. TO END HOMELESSNESS 21 (2017), https://endhomelessness.org/wp-content/uploads/2017/04/Emergency-Shelter-Role-of-Shelter_Webpage.pdf [<https://perma.cc/H7BJ-KXF4>] (reporting the results of a survey of unhoused people with 23% saying they avoided shelters because they could not stay with their partner or family and 19% because there was nowhere to store their belongings). In addition, up to 25% of unhoused people may have pets and over 90% of those people "said that housing would not be acceptable if pets were not allowed," but most shelters do not allow pets inside. See Zanna Shafer, *Home Is Where the Dog Is: A Discussion of Homeless People and Their Pets*, 23 ANIMAL L. 141, 143, 150 (2016) (citations omitted).

88. See *id.* (reporting the results of a survey of unhoused people with 37% saying they avoided shelters because they were "too crowded," 30% because of "bugs," and 28% because there "[t]here are too many rules").

89. See Susan E. Collins, Seema L. Clifasefi, Elizabeth A. Dana, Michele P. Andrasik, Natalie Stahl, Megan Kirouac, Callista Welbaum, Margaret King & Daniel K. Malone, *Where Harm Reduction Meets Housing First: Exploring Alcohol's Role in a Project-Based Housing First Setting*, 23 INT'L J. DRUG POL'Y 111, 112 (2012) (discussing the "wet" shelter model, which permits alcohol and/or drug consumption, and the advantages it offers certain unhoused populations, including the need to avoid medically dangerous withdrawal symptoms).

90. See WILDER RSCH., *supra* note 36, at v (reporting that 24% of unhoused Minnesotans suffer from a substance use disorder).

91. See Roncarati et al., *supra* note 68, at 1242 ("[T]he all-cause mortality rate for the unsheltered cohort was . . . nearly 3 times higher than that of the [sheltered] adult homeless cohort . . .").

92. See, e.g., MINN. STAT. § 256E.33 subdiv. 1, §§ (b)–(c) (2021) (defining transitional housing and providing such examples of supportive services as "educational, social, legal, advocacy, child care, employment, financial, health care, or information and referral services").

housing and treating substance abuse”⁹³ and is generally intended to facilitate a move to permanent housing within two years.⁹⁴ Studies show that transitional housing provides for a “higher probability of regular employment” and, perhaps most importantly, appears to greatly reduce the likelihood of future homelessness.⁹⁵ Permanent Supportive Housing (PSH) is a form of subsidized, indefinite housing intended for the chronically unhoused.⁹⁶ “PSH has emerged as the preferred intervention for addressing chronic homelessness,”⁹⁷ and there is strong evidence for both its effectiveness and efficiency in doing so.⁹⁸

Unfortunately, housing options are only as helpful as their availability permits. The national temporary housing deficit⁹⁹ means that shelters in many cities are filled to capacity every night,¹⁰⁰ while transitional housing and PSH providers have long waitlists of applicants.¹⁰¹

93. Martha K. Burt, *Life After Transitional Housing for Homeless Families*, U.S. DEP’T OF HOUS. & URB. DEV. OFF. OF POL’Y DEV. & RSCH. iii (2010), <https://www.huduser.gov/portal/publications/LifeAfterTransition.pdf> [<https://perma.cc/BVP2-VQ5J>].

94. See 24 C.F.R. § 578.3 (2021).

95. See Burt, *supra* note 93, at iii (“Only four of the [179] families with 12-month interventions became homeless within the year following [transitional housing].”).

96. See *Defining and Funding the Support in Permanent Supportive Housing*, CORP. FOR SUPPORTIVE HOUS. 2 (2008), https://www.csh.org/wp-content/uploads/2011/12/Report_HealthCentersRcs2.pdf [<https://perma.cc/CU4X-GR35>]. Chronically unhoused people are individuals with a disability who have “been continuously homeless for one year or more or ha[ve] experienced at least four episodes of homelessness in the last three years” totaling twelve months. AHAR, *supra* note 49, at 2.

97. Thomas Byrne, Jamison D. Fargo, Ann Elizabeth Montgomery, Ellen Munley & Dennis P. Culhane, *The Relationship Between Community Investment in Permanent Supportive Housing and Chronic Homelessness*, 88 SOC. SERV. REV. 234, 236 (2014).

98. *Id.* (“Studies have consistently shown that 2-year housing retention rates in PSH are above 80 percent and that the cost of providing PSH to chronically homeless people can be partially or completely offset by reductions in their use of . . . public services following placement in housing.”).

99. See *supra* notes 81–82 and accompanying text.

100. See, e.g., Jessica Lee, *Hennepin County Looks at Expanding Shelter Options to Address Growing Homeless Populations*, MINNPOST (Oct. 11, 2019), <https://www.minnpost.com/metro/2019/10/hennepin-county-looks-at-expanding-shelter-options-to-address-growing-homeless-populations> [<https://perma.cc/DKN2-Q66U>] (reporting that Hennepin County’s emergency shelters are “very close to a hundred percent utilization on a daily basis”).

101. See, e.g., *Higher Ground Minneapolis Residence*, CATH. CHARITIES OF ST. PAUL & MINNEAPOLIS, <https://www.cctwincities.org/locations/higher-ground-housing>

Creative non-shelter housing arrangements have been entertained by states, localities, and nonprofits to fill the gaps in short- and long-term needs.¹⁰² These programs are limited in scope, however, and only serve to meet demand, not prevent it. All of these strategies—from multibillion-dollar HUD grants to a \$5 bill handed to someone on the median strip at the intersection of Cedar and Franklin Avenues—are bottom-up solutions meant to palliate the symptoms of homelessness. Treating the underlying root causes of homelessness through progressive housing policy could prevent homelessness altogether.

No discussion of homelessness could be complete without a broad contemplation of housing policy. Then again, no discussion of housing policy could ever be complete at all. Countless words—scholarly,¹⁰³ legislative,¹⁰⁴ and informal¹⁰⁵—have been spilled concerning “the actions of government . . . which have a direct or indirect impact on housing supply and availability, housing standards and urban planning.”¹⁰⁶ This Note has and will tread on issues of housing policy, but its focus lies elsewhere. Other sources have expertly addressed hous-

[<https://perma.cc/69EX-66Z4>] (discussing wait-list procedures at a supportive housing provider).

102. See, e.g., *Encampments*, *supra* note 12 (discussing city-permitted encampments for the unhoused in parks, along with agency expenditures to provide hygiene facilities and site maintenance); Amy Pollard, *More Americans Are Sleeping in Their Cars than Ever Before. Should Cities Make Space for Them?*, SLATE (Aug. 20, 2018), <https://slate.com/business/2018/08/vehicular-homelessness-is-on-the-rise-should-cities-help-people-sleep-in-their-cars.html> [<https://perma.cc/EN8N-9878>] (discussing a parking lot run by a nonprofit in San Diego where unhoused people can sleep in their cars, with access to case management resources and bathroom facilities).

103. See, e.g., HOUS. POL’Y DEBATE, vols. 1–31 (1990–2021) (providing over three decades of analysis and scholarly innovation on housing policy).

104. See, e.g., *Search*, CONGRESS.GOV, <https://www.congress.gov/search> (limiting search to “Legislation;” then filtering “Congress” by “Check all;” then filtering “Bill Type” by “Bills (H.R. or S.);” then filtering “Subject — Policy Area” by “Housing and Community Development”) (last visited Oct. 18, 2021) (reporting 3,626 housing policy bills introduced to Congress since 1973).

105. See, e.g., Reed (@reedm), TWITTER (July 28, 2019), <https://twitter.com/reedm/status/1155703155058806784> [<https://perma.cc/48G9-4FL2>] (“Housing Twitter drives me nuts because everyone is always angry, everyone thinks they know everything, everyone is hypocritical, and everyone thinks anyone who disagrees with them on any aspect is the dumbest person alive.”).

106. *Housing Policy*, HOMELESS HUB, <https://www.homelesshub.ca/solutions/affordable-housing/housing-policy> [<https://perma.cc/XU8K-Y7HA>].

ing policy's effects on low-income Minnesotans at risk of becoming unhoused.¹⁰⁷ The UBR proposed by this Note will address other vital needs of the unhoused,¹⁰⁸ working in concert with progressive housing policy to combat homelessness from both the top down and the bottom up. Housing policy is one of the most powerful long-term solutions for ending homelessness,¹⁰⁹ but this Note is primarily concerned with the unconstitutional and inhumane conditions individuals suffer while unhoused. The poor treatment of unhoused individuals under our system of laws demands that Minnesota act to protect their fundamental rights by providing increased access to the litigation which can vindicate those rights and win remedies for violations thereof.

B. HOMELESSNESS AND THE LAW

Local government policies punishing homelessness are as old as the United States itself.¹¹⁰ While these laws have evolved¹¹¹ over the years,¹¹² their goal is ever the same: to make a “‘quick-fix’ that addresses the visible symptoms of homelessness but not its underlying

107. See, e.g., Myron Orfield, Will Stancil, Thomas Luce & Eric Myott, *High Costs and Segregation in Subsidized Housing Policy*, 25 HOUS. POL'Y DEBATE 574, 574 (2015) (“The analysis concludes that current policies are clearly not meeting the [Twin Cities'] responsibility to affirmatively further fair housing. The metropolitan area abandoned its role as a national leader in this area decades ago.”).

108. The proposed law provides for personal hygiene centers, which could improve the health and employment outcomes of unhoused people, and free storage of personal property, which could prevent the loss of belongings important to the practical and dignitary interests of the unhoused. See *infra* notes 358–63 and accompanying text.

109. See *Proven Solutions*, COAL. FOR THE HOMELESS, <https://www.coalitionforthehomeless.org/proven-solutions> [https://perma.cc/5W4T-CJTN] (“[R]esearch and experience have overwhelmingly shown that investments in permanent housing are extraordinarily effective in reducing homelessness . . .”).

110. See, e.g., KRISTIN O'BRASSILL-KULFAN, VAGRANTS AND VAGABONDS 21 (2019) (“Since 1771, the [Philadelphia municipal] legislature had tasked this force with apprehending ‘all night walkers,’ ‘vagabonds,’ and anyone found ‘disturbing the peace.’”).

111. See, e.g., *Papachristou v. City of Jacksonville*, 405 U.S. 156, 156 n.1 (1971) (“Jacksonville Ordinance Code § 26-57 provided . . . ‘Rogues and vagabonds, or dissolute persons who go about begging . . . shall be punished’ . . . by 90 days’ imprisonment, \$500 fine, or both.”).

112. See, e.g., *Martin v. City of Boise*, 902 F.3d 1031, 1035 (9th Cir. 2018) (“Boise City Code . . . makes it a misdemeanor to use ‘any of the streets, sidewalks, parks, or public places as a camping place at any time.’”).

causes.”¹¹³ Courts have often found these anti-unhoused laws unconstitutional,¹¹⁴ but cities continue to enact them unabated.¹¹⁵ This Section will discuss the legal corpus that particularly relates to unhoused people. Subsection 1 provides a brief overview of laws criminalizing homeless. Subsection 2 discusses judicial application of constitutional principles to such laws.

1. Laws Targeting the Unhoused

Colonial Era anti-vagrancy statutes “meted out punishments to vagrants and indigent transients” in order to provide free labor to their communities.¹¹⁶ Eventually, these laws were used to collect and remit fugitives from slavery¹¹⁷ as well as “to stem the tide of fugitive slaves . . . thus freeing the overseers of the poor from providing for them.”¹¹⁸ After the Civil War, states adapted these measures into “stringent laws to control” free Black people.¹¹⁹ Such laws were rarely “challenged on constitutional grounds . . . in part from the inability of vagrancy defendants to secure counsel.”¹²⁰ The Supreme Court’s ruling in *Gideon v. Wainwright* changed that, however, by guaranteeing all

113. Foscarinis et al., *supra* note 23, at 147.

114. See, e.g., *Papachristou*, 405 U.S. at 162 (citation omitted) (holding an anti-vagrancy law unconstitutional because “it ‘fails to give a person . . . fair notice that his contemplated conduct is forbidden under the statute,’ . . . and because it encourages arbitrary and erratic arrests and convictions.”); *Martin*, 902 F.3d at 1049 (holding that an anti-camping ordinance cannot constitutionally criminalize “such behavior consistently with the Eighth Amendment when no sleeping space is practically available in any shelter.”).

115. See, e.g., *Housing Not Handcuffs 2019: Ending the Criminalization of Homelessness in U.S. Cities*, NAT’L L. CTR. ON HOMELESSNESS & POVERTY 13 (2019) [hereinafter *Housing Not Handcuffs*], <http://nlchp.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf> [https://perma.cc/3L55-XW63] (finding a nationwide 103% increase in municipal anti-vagrancy laws from 2006 to 2019).

116. See O’BRASSILL-KULFAN, *supra* note 110, at 21, 114 (discussing early nineteenth-century laws which “criminalized the subsistence methods of the poor and migrant” in order to supply free labor, which was “viewed ‘as a common resource to which the community had rights’”).

117. See *id.* at 89 (“[F]ugitive slaves were often incarcerated . . . while awaiting transportation back to their place of enslavement . . .”).

118. *Id.* at 89–90.

119. See DOUGLAS A. BLACKMON, *SLAVERY BY ANOTHER NAME* 76–77 (2009) (quoting an 1865 letter from a “South Carolina planter”).

120. Robin Yeamans, *Constitutional Attacks on Vagrancy Laws*, 20 STAN. L. REV. 782, 783 (1968).

criminal defendants the right to counsel.¹²¹ Eventually, the Court dealt a major blow to vagrancy laws in *Papachristou v. City of Jacksonville*.¹²² That case articulated the “void for vagueness” rule which renders unconstitutional a law that “fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute” and “encourages arbitrary and erratic arrests and convictions.”¹²³ The doctrine set forth in *Papachristou* continues to militate against open-ended vagrancy measures decades after the fact.¹²⁴

Since *Papachristou*, cities have regulated unhoused people by adopting narrow measures targeted at specific conduct that have the effect of criminalizing homelessness. These laws “criminalize homelessness by making illegal those basic acts that are necessary for life.”¹²⁵ Modern anti-unhoused laws take a variety of forms, but they all converge on a common purpose: “to move visibly homeless people out of commercial and tourist districts or . . . entire cities.”¹²⁶ Some of the most commonly criminalized acts are the public performance of

121. See 372 U.S. 335, 344 (1963) (“The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.”).

122. See *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1971) (relying on due-process grounds to set a test for invalidating over-broad anti-vagrancy laws).

123. *Id.* (first quoting *United States v. Harriss*, 347 U.S. 612, 617 (1954); then citing *Thornhill v. Alabama*, 310 U.S. 88 (1940); then citing *Herndon v. Lowry*, 301 U.S. 242 (1937)).

124. See, e.g., *City of Chicago v. Morales*, 527 U.S. 41, 47 & n.2, 64 (1999) (Stevens, J.) (plurality opinion) (citing *Papachristou* to strike down an ordinance which allowed police officers to issue dispersal orders to any “person whom he reasonably believes to be a criminal street gang member loitering in any public place”).

125. *No Safe Place: The Criminalization of Homelessness in U.S. Cities*, NAT’L L. CTR. ON HOMELESSNESS & POVERTY 12 (2014) [hereinafter *No Safe Place*], https://nlchp.org/documents/No_Safe_Place [<https://perma.cc/A4UM-XV5S>].

126. *Id.*

camping,¹²⁷ sleeping,¹²⁸ begging,¹²⁹ and sitting or lying down.¹³⁰ Cities also commonly ban sleeping in vehicles,¹³¹ while a less common form of law bans sharing food with unhoused people.¹³² Such anti-unhoused laws are incredibly common and the use of such laws has increased dramatically over the past decade.¹³³ These measures can have an incredibly destructive effect on unhoused people, with fines and criminal penalties perpetuating a cycle of homelessness.¹³⁴

127. See, e.g., PORTLAND, OR., CITY CODE tit. 14, ch. 14A.50.020, §§ A–B (2020) (prohibiting the occupancy of “any place where any bedding . . . or any stove or fire is placed” on “any public property” “for the purpose of establishing or maintaining a temporary place to live”).

128. See, e.g., BAKERSFIELD, CAL., MUN. CODE tit. 9, § 9.70.010(B) (2021) (“[I]t is unlawful for any person: . . . [t]o sleep out of doors on any public property . . . between sunset and sunrise.”).

129. See, e.g., MINNEAPOLIS, MINN., CODE OF ORDINANCES tit. 15, ch. 385, § 385.60(b)(1), (c) (2021) (imposing restrictions on “any plea made in person where: . . . [a] person by vocal appeal requests an immediate donation of money or other item from another person”).

130. See, e.g., LAS VEGAS, NEV., CODE OF ORDINANCES tit. 10, div. X, ch. 10.86, § 10.86.010(A)–(B) (2021) (making it unlawful for a person to “[s]it or lie down” within “the full width of any dedicated street, alley, or highway, including any public sidewalk”).

131. See, e.g., LOS ANGELES, CAL., MUN. CODE ch. VIII, § 80.00, div. Q, § 85.02(A) (2021) (making it unlawful to “use a Vehicle for Dwelling . . . [b]etween the hours of 9:00 PM and 6:00 AM on any Residential Street”).

132. See, e.g., ORLANDO, FLA., CODE OF ORDINANCES ch. 18A, § 18A.09-2(a) (2021) (making it unlawful, except with city approval, “to knowingly sponsor, conduct, or participate in the distribution or service of food at a large group feeding at a park or park facility owned or controlled by the City”).

133. A survey of 187 cities found that a supermajority had at least one law criminalizing homelessness. Between 2013 and 2019, those cities saw a 92% increase in anti-camping laws, a 78% increase in anti-sitting or lying down laws, and a 103% increase in anti-begging laws. See *Housing Not Handcuffs*, *supra* note 115, at 12–13.

134. See *id.* at 64 (“In this way, an arrest or conviction can create a lifelong barrier to obtaining employment . . . Criminal convictions, even for minor crimes, can also make someone ineligible for federally subsidized housing.”); cf. Lucius Couloute, *Nowhere to Go: Homelessness Among Formerly Incarcerated People*, PRISON POL’Y INITIATIVE (Aug. 2018), <https://www.prisonpolicy.org/reports/housing.html> [<https://perma.cc/S33J-Q4VA>] (“[F]ormerly incarcerated people are almost 10 times more likely to be homeless than the general public.”).

Minneapolis and St. Paul are home to at least fourteen anti-unhoused laws,¹³⁵ while cities throughout Minnesota maintain a plethora of ordinances criminalizing homelessness.¹³⁶ These laws persecute the state's most vulnerable residents in the name of "the protection and preservation of [public] property . . . and for the safety and general welfare of the public."¹³⁷ This exclusion of unhoused people from "the public" violates their constitutional rights¹³⁸ and betrays the true goal of those cities: to use "the criminal justice system in an effort to drive homeless people from their streets."¹³⁹ A bill of rights for unhoused Minnesotans could provide better enforcement against the unconstitutional criminalization of homelessness, forcing cities to

135. See *Housing Not Handcuffs*, *supra* note 115, at 113. Some of these laws, "while not facially discriminatory, could be or have been enforced in a manner that disproportionately affects homeless individuals." *No Safe Place*, *supra* note 125, at 46. Anti-unhoused measures in the Twin Cities include the following: MINNEAPOLIS, MINN., CODE OF ORDINANCES tit. 12, ch. 244, art. I, § 244.60(a) (2021) (prohibiting camping on public property citywide); *id.* (prohibiting sleeping in vehicles on public property); *id.* tit. 18, ch. 478, art. I, §. 478.90 (restricting parking in certain places and at certain times); *id.* tit. 15, ch. 385, § 385.60(b)(1), (c) (prohibiting begging in certain places and in certain manners); *id.* tit. 11, ch. 227, art. II, § 227.180 (prohibiting public urination); MINNEAPOLIS, MINN., PARK & RECREATION BOARD OF ORDINANCES ch. 4, art. VI, § PB4-118 (prohibiting "[c]amping, cooking, and living" on the shore of the Mississippi River); ST. PAUL, MINN., CODE OF ORDINANCES tit. XV, ch. 157, § 157.03 (2021) (restricting parking in certain places and at certain times); *id.* tit. XII, ch. 111, § 111.01 (prohibiting standing or congregating on sidewalks "as to unnecessarily interfere with the free passage of pedestrians"); *id.* tit. XXVIII, ch. 280, § 280.01 (prohibiting "lurking," such as "[l]ying] in wait . . . with intent to do any mischief"); *id.* tit. XXVIII, ch. 280, § 280.06 (prohibiting "loiter[ing] about the streets after midnight"); *id.* tit. XXVIII, ch. 280, § 280.07 (prohibiting sleeping on another's private premises without permission); *id.* tit. XXVIII, ch. 280, § 280.08 (prohibiting public urination); *id.* tit. XXVIII, ch. 282, § 282.01 (prohibiting begging in certain places and in certain manners); *id.* tit. XXVIII, ch. 282, § 282.02-.03 (imposing a citywide ban on begging house-to-house, or so as to "stop and annoy people upon the streets"). This is not an exclusive list, as there are likely many more laws within the Twin Cities which could fail the void-for-vagueness test set forth in *Papachristou*. See *supra* notes 122-24 and accompanying text.

136. See, e.g., BROOKLYN PARK, MINN., CODE OF ORDINANCES tit. IX, ch. 95, § 95.06(A) (2021) ("It shall be unlawful for any person to: . . . [c]amp in a park without a written city permit."); ST. CLOUD, MINN., CODE OF ORDINANCES ch. II, § 236:65, subdiv. 5 (2021) ("No persons [in a park] will set up tents, shacks, or any other temporary shelter for the purpose of overnight camping . . .").

137. BROOKLYN PARK, MINN., CODE OF ORDINANCES tit. IX, ch. 95, § 95.01(A) (2021); see also ST. CLOUD, MINN., CODE OF ORDINANCES ch. II, § 236:14 (2021) (empowering the city to regulate public parks "consistent with the nature of the facility and the safety of the public and property").

138. See *infra* Part I.B.2.

139. Foscarinis et al., *supra* note 23, at 147.

take responsibility for addressing homelessness within their borders rather than push the problem out of sight.¹⁴⁰

2. The Constitutional Canon of Homelessness

Unhoused people are imbued with the same fundamental rights as any other American,¹⁴¹ even if they face practical barriers to the enjoyment of those rights.¹⁴² This Subsection will examine jurisprudence on the constitutional rights of the unhoused. These fundamental rights argue for the invalidation of most anti-unhoused laws, and they provide firm grounds for the codification of such protections in an Unhoused Bill of Rights.

Supreme Court void-for-vagueness due process doctrine, laid out by *Papachristou*, likely invalidates a great number of laws criminalizing homelessness. An ordinance is void for vagueness when “it encourages arbitrary and erratic arrests and convictions.”¹⁴³ Arbitrary enforcement is at the core of almost every modern anti-unhoused law. It is difficult to imagine the Boston Police Department arresting a well-dressed college couple lying together on a bench in Boston Common

140. See *Loper v. N.Y.C. Police Dep’t*, 802 F.Supp. 1029, 1046 (S.D.N.Y. 1992) (“The root cause [of homelessness] is not served by removing [unhoused people] from sight, however; society is then just able to pretend they do not exist a little longer.”); see, e.g., *infra* note 318 (discussing the common practice of cities paying for bus tickets to relocate unhoused people out of their jurisdiction).

141. See generally U.S. CONST. amends. V, XIV.

142. The high rates of mental illness, serious physical health conditions, and substance abuse disorders among unhoused people may require non-traditional, resource-intensive lawyering. Compare WILDER RSCH., *supra* note 36, at 23 (finding that “81% [of unhoused Minnesotans] have a chronic physical health condition, serious mental illness, or substance use disorder,” and that 50% have multiple chronic health conditions), with Jonathan L. Hafetz, *Homeless Legal Advocacy: New Challenges and Directions for the Future*, 30 FORDHAM URB. L.J. 1215, 1216 (2003) (arguing “that legal advocacy works best when combined with a holistic approach that addresses homeless clients’ non-legal needs”). Unhoused clients may be difficult to contact or fail to appear, see *infra* note 186, and likely do not have the funds to cover an attorney’s retainer. See WILDER RSCH., *supra* note 36, at 36 (finding “financial reasons” to be the largest category of issues resulting in a Minnesotan becoming homeless).

143. *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1971) (citing *Thornhill v. Alabama*, 310 U.S. 88 (1940); then citing *Herndon v. Lowry*, 301 U.S. 242 (1937)). *Papachristou* also holds void any statute which “fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden.” *Id.* (quoting *United States v. Harriss*, 347 U.S. 612, 617 (1954)). Modern anti-unhoused statutes are generally written more specifically to evade this prong, but some may still be void for failure to provide notice. See *supra* notes 122–34 and accompanying text (providing examples of municipal anti-unhoused laws).

on a crisp early-autumn day, but that is precisely what the city's ordinances purport to prohibit.¹⁴⁴ Scarce are the reports of police sweeping the sidewalks of downtown Phoenix on Sunday mornings to prevent the brunch crowds from "congregat[ing] upon any of the sidewalks in the City so as to obstruct the use of the sidewalks to pedestrians."¹⁴⁵ These disparities indicate that municipalities favor certain sorts of loitering and loafing over others, the very definition of unconstitutional "arbitrary enforcement."

The right of unhoused people to live in public spaces is supported by constitutional equal protection principles. In *Pottinger v. City of Miami*, the Federal District Court for the Southern District of Florida ruled that the city's "practice of arresting homeless individuals for performing essential, life-sustaining acts in public when they have absolutely no place to go effectively infringes on their fundamental right to travel in violation of the equal protection clause."¹⁴⁶ This reasoning can form the basis for challenging anti-unhoused laws everywhere. There are few more "essential, life-sustaining acts" than sleep and taking safe shelter. If cities attempt to deprive unhoused people of those necessities while no alternative remains,¹⁴⁷ *Pottinger* has mapped out a road to relief.

The Eighth Amendment has proven to be a powerful constitutional hook for unhoused plaintiffs seeking to live in public spaces. *Martin v. City of Boise* concerned the constitutional challenge of unhoused people cited under an anti-camping law and an anti-public sleeping law.¹⁴⁸ The Ninth Circuit held "that the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter."¹⁴⁹ However, the court only extended such protections

144. See BOSTON, MASS., MUN. CODE ch. XVI, § 16-19.1 (2021) ("No person shall, in or upon the Common, Public Garden . . . stand or lie upon a bench . . .").

145. PHOENIX, ARIZ., CITY CODE ch. 23, art. 1, § 23-8(a) (2021).

146. 810 F. Supp. 1551, 1554 (S.D. Fla. 1992).

147. See, e.g., BAKERSFIELD, CAL., MUN. CODE tit. 9, § 9.70.010(B) (2021) ("[I]t is unlawful for any person[] . . . [t]o sleep out of doors on any public property . . .").

148. 902 F.3d 1031, 1035 (9th Cir. 2018) (making "it is a misdemeanor to use 'any . . . public places . . . as a temporary or permanent place of dwelling'" and banning "sleeping in any building, structure, or public place, whether public or private . . . without [proper] permission") (third omission in original).

149. *Id.* at 1048.

to times when there are no available shelter beds and “in no way dictate[d] to the City that it must provide sufficient shelter.”¹⁵⁰ The Supreme Court’s denial of certiorari to the appealing city could indicate the widespread viability of such Eight Amendment claims.¹⁵¹

Protection of an unhoused person’s Fourth Amendment rights is directly tied to their very survival. Unhoused people have few belongings, and those they do have are precious to their day-to-day well-being¹⁵² and their ability to get out of homelessness¹⁵³ or may have deeply personal dignitary value.¹⁵⁴ The reasoning in *Pottinger* provides a strong basis for extending such protections against “unreasonable searches and seizures” to unhoused people.¹⁵⁵ That court found the unhoused plaintiffs “exhibited a subjective expectation of privacy in their belongings” because of the care they exhibited for their property,¹⁵⁶ as well as the precautions they took when not present.¹⁵⁷ It

150. *Id.* (restricting its Eighth Amendment protections to times and places where “there is a greater number of homeless individuals in [a jurisdiction] than the number of available beds [in shelters]”) (alterations in original).

151. *See City of Boise v. Martin*, 140 S. Ct. 674 (2019) (mem.).

152. *See, e.g.*, Declaration of Nadine Little in Support of Plaintiffs’ Motion for Temporary Restraining Order at 3, *Berry v. Hennepin Cnty.*, No. 20-CV-02189, 2020 WL 6337706 (D. Minn. Oct. 29, 2020) (“The one good thing that happened that night was a stranger giving me a coat and two blankets. The coat and blankets were so helpful. It was so cold outside, but I could never go indoors to warm up because everything was closed due to Covid-19.”).

153. *See* Declaration of Henrietta Brown in Support of Plaintiffs’ Motion for Temporary Restraining Order at 3, *Berry*, 2020 WL 6337706 (No. 20-CV-02189) (“I lost so much [in a police sweep:] my birth certificate, application for medical assistance, a photocopy of my ID, and family photos.”).

154. *See* Declaration of Patrick Berry, *supra* note 21, at 5 (“At some point, I went back to Portland to retrieve my property, which included sacred Native American objects and my dad’s ashes—really important things to me.”).

155. U.S. CONST. amend. IV, § 1.

156. *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1571 (S.D. Fla. 1992). The court explained:

Typical possessions of homeless individuals include bedrolls, blankets, clothing, toiletry items, food and identification, and are usually contained in a plastic bag, cardboard box, suitcase or some other type of container. In addition, homeless individuals often arrange their property in a manner that suggests ownership, for example, by placing their belongings against a tree or other object or by covering them with a pillow or blanket. Such characteristics make the property of homeless persons reasonably distinguishable from truly abandoned property

Id. (citation omitted).

157. *Id.* (“[W]hen [plaintiffs] leave their living areas for work or to find food, they often designate a person to remain behind to secure their belongings. Thus, whether

then found a “legitimate expectation of privacy” based on “notions of custom and civility” to accord “some measure of respect” protecting a unhoused person’s “last shred of privacy from the prying eyes of outsiders.”¹⁵⁸ Applying the Fourth Amendment’s protections to “the interior of bedrolls and bags or boxes of personal effects” belonging to unhoused people¹⁵⁹—perhaps even the interior of tents—could subject cities to a much higher standard when clearing encampments.¹⁶⁰

Despite the cases discussed above, cities continue to pass laws criminalizing homelessness at an ever-increasing rate,¹⁶¹ some of them in the very jurisdictions at issue in *Pottinger* and *Martin*.¹⁶² The vague threat of litigation is not enough to dissuade cities from violating the constitutional rights of the unhoused. States must intervene and provide improved legal avenues to challenge these municipal laws and remedy their harms. To that end, some states have contemplated or enacted such measures in the form of a bill of rights for unhoused people.

C. UNHOUSED BILLS OF RIGHTS

At their broadest level, Unhoused Bills of Rights are “laws that protect the civil rights of people experiencing homelessness.”¹⁶³ Some UBR function as restatements of existing federal and constitutional rights paired with procedural and remedies provisions to lower the barriers of entry to enforcing those rights.¹⁶⁴ Other UBR have proposed grants of specific positive rights vital to sustaining life in public as an unhoused person.¹⁶⁵ Yet other laws are something less complete

or not they are present at their living site, plaintiffs exhibit a subjective expectation that their property will remain unmolested until they return.”).

158. See *id.* at 1572 (quoting *State v. Mooney*, 588 A.2d 145, 161 (Conn. 1991)).

159. *Id.* at 1572.

160. See *supra* note 21.

161. See *supra* note 133 and accompanying text.

162. See *Housing Not Handcuffs*, *supra* note 115, at 109–10 (listing laws criminalizing homelessness in Miami, Florida and Boise, Idaho).

163. Sheffield, *supra* note 42, at 3.

164. See *id.* at 11–12 (describing UBR that “specify that a person who is homeless has the same rights and privileges as any other state resident” and authorize money damages and attorney’s fee awards).

165. See Rankin, *supra* note 44, at 413 (discussing a proposed California UBR which would have decriminalized public urination). That provision was replaced in a subsequent version of the bill by a measure requiring local governments to provide public hygiene facilities. *Id.* at 413 & n.195.

than an omnibus “bill of rights” but take an incremental approach in pushing forward one or two rights at a time.¹⁶⁶

Still, with only four UBR enacted at the state and territory level—in Connecticut, Rhode Island, Illinois, and Puerto Rico—along with a handful of municipal measures, laws criminalizing homelessness have expanded exponentially faster than protections against them.¹⁶⁷ Perhaps it is because the unhoused rarely have the capital, both financial and social, to make their case to governments or courts. Perhaps the stigmatization of homelessness,¹⁶⁸ the criminalization of that status,¹⁶⁹ and the social ills intersectional with homelessness¹⁷⁰ make the unhoused “unsympathetic” plaintiffs in the eyes of lawmakers and the judiciary alike.¹⁷¹ Perhaps interested advocates and policymakers have made a strategic decision to pursue other solutions.¹⁷² Broadly, this Section examines existing and proposed measures to survey important examples of the modes and methods Unhoused Bills of Rights can take. Subsection 1 considers the predominant mode of enacted UBR: the Rhode Island law and its descendants. Subsection 2 evaluates the Puerto Rican administrative scheme protecting the rights of the homeless. Subsection 3 concludes this Part by discussing the ambitious Californian UBR which failed to pass, perhaps in part because of its scale.

1. The Rhode Island Model

The three UBR enacted in mainland states (Connecticut, Rhode Island, and Illinois) are almost identical in form and effect.¹⁷³ As

166. See, e.g., S.B. 608, 2015–2016 Leg., Reg. Sess., at 1 (Cal. 2015) (“This bill would enact the Right to Rest Act, which would afford persons experiencing homelessness the right to use public space without discrimination based on their housing status.”).

167. Compare *Homeless Bill of Rights*, *supra* note 41 (providing a list of active and proposed UBR), with *supra* note 133 and accompanying text (discussing the increasing adoption of municipal measures penalizing homelessness).

168. See, e.g., *supra* note 40.

169. See *supra* notes 125–34.

170. See *supra* Part I.A.

171. Cf. *infra* note 297 (discussing study results finding that a large majority of survey respondents held punitive views of the unhoused).

172. See, e.g., *Policy 40: Homelessness*, *supra* note 45 (evinced the City of Minneapolis’s goal to use affordable housing policy to end homelessness); *Federal Funding for Homelessness Programs*, NAT’L ALL. TO END HOMELESSNESS, <https://endhomelessness.org/ending-homelessness/policy/federal-funding-homelessness-programs> [<https://perma.cc/5YXY-USU3/>] (focusing on lobbying Congress for increased HUD grant funding).

173. See Sheffield, *supra* note 42, at 11 (“The Rhode Island and Illinois laws use similar language and specify that a person who is homeless has the same rights and

Rhode Island was the first state to pass such a measure, this Note refers to this model of UBR as the “Rhode Island Model.” These measures all affirm the following rights for unhoused people:

- (1) the right to “move freely in public spaces . . . in the same manner as any other person;”¹⁷⁴
- (2) “the right to equal treatment by all State and municipal agencies;”¹⁷⁵
- (3) the right to avoid employment discrimination based on housing status;¹⁷⁶
- (4) the right to “[r]eceive emergency medical care;”¹⁷⁷
- (5) the right to vote and the rights necessary thereto,¹⁷⁸
- (6) broad privacy rights for their personal information,¹⁷⁹ and
- (7) “a reasonable expectation of privacy in [their] personal property to the same extent as personal property in a permanent residence.”¹⁸⁰

privileges as any other state resident Generally, the Connecticut law provides the same or similar protections.”).

174. 34 R.I. GEN. LAWS § 34-37.1-3(1) (2021); 775 ILL. COMP. STAT. 45/10(1) (2021); *see* CONN. GEN. STAT. § 1-500(1) (2021).

175. 34 R.I. GEN. LAWS § 34-37.1-3(2) (2021); 775 ILL. COMP. STAT. 45/10(2) (2021); *see* CONN. GEN. STAT. § 1-500(7) (2021).

176. *Compare* 34 R.I. GEN. LAWS § 34-37.1-3(3) (2021) (codifying the right to avoid discrimination “while seeking or maintaining employment” due to housing status), *with* 775 ILL. COMP. STAT. 45/10(3) (2021) (codifying the right to avoid discrimination “while maintaining employment” due to housing status), *and* CONN. GEN. STAT. § 1-500(2) (2021) (codifying the right of unhoused persons to “[h]ave equal opportunities for employment”).

177. CONN. GEN. STAT. § 1-500(3) (2021); *see* 34 R.I. GEN. LAWS § 34-37.1-3(4) (2021); 775 ILL. COMP. STAT. 45/10(4) (2021).

178. 34 R.I. GEN. LAWS § 34-37.1-3(5) (2021) (codifying the rights of unhoused people to vote, register to vote, and receive identification documentation necessary to vote); 775 ILL. COMP. STAT. 45/10(5) (2021) (same); *see* CONN. GEN. STAT. § 1-500(4) (2021) (codifying the rights of unhoused people to “[r]egister to vote and to vote”).

179. 34 R.I. GEN. LAWS § 34-37.1-3(6) (2021) (codifying the privacy rights of unhoused people by protecting the information they provide to shelters and service providers from government or private entities, as well as affirming protections under HIPAA, the Violence Against Women Act, and Federal Homeless Management Information Systems); 775 ILL. COMP. STAT. 45/10(6) (2021) (same); *see* CONN. GEN. STAT. § 1-500(5) (2021) (codifying the rights of unhoused people to “[h]ave personal information protected”).

180. 34 R.I. GEN. LAWS § 34-37.1-3(7) (2021); 775 ILL. COMP. STAT. 45/10(7) (2021). *But see* CONN. GEN. STAT. § 1-500(6) (2021) (declining to expressly recognize that “reasonable expectation of privacy” as equal to that of property in a permanent residence).

None of those rights are unique to unhoused people,¹⁸¹ but homelessness likely makes them more difficult to exercise. These measures are like a good trail guide: walking familiar ground while carefully pointing out items of particular interest to potentially insensitive passersby. Connecticut's law is written broadly.¹⁸² This construction could allow judges or regulators more discretion in interpreting its provisions and perhaps raise the ceiling on the gains it could offer unhoused people. Conversely, the Rhode Island and Illinois laws describe a more concrete and defined set of rights, leaving less room for interpreters to deflate their protections, in effect setting a higher floor.

Additionally, Rhode Island and Illinois codified specific remedies provisions,¹⁸³ while Connecticut did not. The two aforementioned states allow courts to award actual damages and equitable relief but not punitive damages.¹⁸⁴ Without lucrative damage awards, the enticement of contingent fee arrangements is likely unavailable to unhoused people seeking to attract counsel. Simply and sadly put: given that unhoused people rarely own anything the law recognizes as valuable, money damages for plaintiffs suing under these statutes is extremely limited. Both states do allow (but not mandate) the award of reasonable attorneys' fees and costs.¹⁸⁵ The limited rewards available to victors and logistical challenges attendant to working with unhoused clients,¹⁸⁶ compounded by attorneys' implicit and explicit biases, may cause potential litigators to shy away.¹⁸⁷

181. See, e.g., Sheffield, *supra* note 42, at 11 ("The [UBR] laws use similar language and specify that a person who is homeless has the same rights and privileges as any other state resident . . .").

182. See *supra* notes 176–80 and explanatory parentheticals.

183. 34 R.I. GEN. LAWS § 34-37.1-4 (2021); 775 ILL. COMP. STAT. 45/15 (2021).

184. 34 R.I. GEN. LAWS § 34-37.1-4 (2021); 775 ILL. COMP. STAT. 45/15 (2021).

185. 34 R.I. GEN. LAWS § 34-37.1-4 (2021); 775 ILL. COMP. STAT. 45/15 (2021).

186. See, e.g., Scott Greenstone, *After Losing Contact with Homeless Plaintiffs, ACLU Lawyers Ask Court to Dismiss Case Against the City of Seattle*, SEATTLE TIMES (Apr. 1, 2020), <https://www.seattletimes.com/seattle-news/homeless/after-losing-contact-with-homeless-plaintiffs-aclu-lawyers-ask-court-to-dismiss-case-against-the-city-of-seattle> [<https://perma.cc/HMR2-Z8MA>] ("One reason they asked for the dismissal: They can't find their plaintiffs. 'As you might imagine, it's difficult to keep in contact with them,' said . . . a staff lawyer for the ACLU of Washington."). *But cf.* Harmony Rhoades, Suzanne L. Wenzel, Eric Rice, Hailey Winetrobe & Benjamin Henwood, *No Digital Divide? Technology Use Among Homeless Adults*, 26 J. SOC. DISTRESS & HOMELESS 73, 73 (2017) (reporting the results of a study finding that 94% of unhoused people "currently owned a cell phone").

187. See *infra* Part II.B (discussing the dearth of litigation under Rhode Island Model UBR).

2. The Puerto Rico Model

In comparison to Rhode Island Model UBR, Puerto Rico's broad framework intended to reduce homelessness is outright radical in appearance, although it has been plagued by difficulties in implementing these policies. Drawing its authority from the Puerto Rican Constitution,¹⁸⁸ the Commonwealth forms its version of a UBR through a diffuse administrative scheme.¹⁸⁹ In 1998, Puerto Rico established a commission to devise a unified policy among "government agencies, the private sector, and nonprofits" to meet the needs of the unhoused.¹⁹⁰ In 2000, the territory passed an act focused on legal outcomes for the unhoused,¹⁹¹ but by 2007 the seams of Puerto Rico's scheme were showing. The 1998 "Commission had 'not developed models to address the homeless situation,'" so it was replaced with a new taskforce.¹⁹² Five years later, "another bill for the protection of the homeless . . . noted that . . . 'very little has been achieved in advancing the effort to improve the situation of homelessness.'"¹⁹³ Local advocates for the unhoused have characterized the agency implementation of the scheme as neglectful at best and compromised at worse.¹⁹⁴

Overall, the scheme "enumerate[d] several positive and negative rights" for the unhoused, largely imported from the Puerto Rican Constitution, but also affirmatively provided protections from police "mistreatment" as well as "free access to parks, town squares, and other public facilities."¹⁹⁵ The 2000 act required cheaper, informal court proceedings for unhoused people and allowed "advocacy groups to serve as 'intercessors' . . . and act on their behalf."¹⁹⁶ Violations of the

188. Puerto Rico's Constitution provides its citizens the right to work, housing, medical care, and welfare. P.R. CONST. art. II, § 20. It also prohibits discrimination based on "social condition." *Id.* art. II, § 1.

189. See Rankin, *supra* note 44, at 399–404 (describing Puerto Rico's homelessness remediation framework).

190. See *id.* at 400 (describing the commission's focus on "housing, health, employment and income, and access to government services.").

191. *Id.* at 401.

192. See *id.* at 402.

193. *Id.* at 403.

194. See *id.* at 403–04 (reporting that the responsible agency "has a broad set of responsibilities that distract it from sufficiently" carrying out the acts, while many of the members of the taskforce are also the heads of agencies which could be fined for violations of the scheme).

195. Compare *id.* at 402 (providing rights to shelter, workforce training, and medical attention), with P.R. CONST. art. II, § 20 (providing rights "to obtain work" and to "housing and medical care").

196. Rankin, *supra* note 44, at 401.

administrative scheme are punishable by a \$5,000 maximum fine.¹⁹⁷ Despite the implementation issues, the Puerto Rico legislature and advocates for the unhoused should be lauded for repeatedly pushing a progressive UBR framework forward.¹⁹⁸ Many of the provisions therein are practical measures which could make an immediate difference in the treatment of unhoused people and the vindication of their rights if adopted as a part of a bill of rights for unhoused Minnesotans.

3. The California Model (or Lack Thereof)

Written by unhoused rights advocates organizing as the Western Regional Advocacy Project and first proposed to the state legislature in late 2012 by Assembly Member Tom Ammiano,¹⁹⁹ Assembly Bill No. 5 (AB5) was California's first attempt at an Unhoused Bill of Rights.²⁰⁰ While it covered the same general negative rights grounds as the Rhode Island Model,²⁰¹ the California UBR also provided the affirmative right to a number of specific, life-sustaining behaviors for the unhoused. The California Model authorized the following rights, among others: the right to rest and sleep in public,²⁰² the "right to eat, share, accept, or give food or water in public,"²⁰³ the right to beg,²⁰⁴ the right to seek out and engage in self-employment,²⁰⁵ the right to pray or mediate or practice religion in public,²⁰⁶ the right to decline shelter space

197. *See id.* at 403–04.

198. The full extent of the "impact[s] of Puerto Rico's culture, civil law tradition, and demographics" on its attempts to remedy homelessness are not quite clear. *See id.* at 399 & n.83. Professor Sara K. Rankin highlighted this as a "rich and complex area for continued research" in 2015. *See id.* at 399 n.83 (collecting limited resources). However, it does not appear that substantive, relevant work has been produced since that time.

199. *See* John Thomason, *Can a 'Homeless Bill of Rights' End the Criminalization of LA's Most Vulnerable Residents?*, NATION (Oct. 23, 2014), <https://www.thenation.com/article/archive/can-homeless-bill-rights-end-criminalization-las-most-vulnerable-residents> [<https://perma.cc/CP9U-LZ8A>] (discussing the history of AB5).

200. Assemb. B. 5, 2013–2014 Leg., Reg. Sess., at 1 (Cal. 2012).

201. *Compare, e.g., id.* at 10 (ensuring the "right to move freely in the same manner as any other person in public"), *with* 34 R.I. GEN. LAWS § 34-37.1-3(1) (2021) (ensuring the right to use and move freely in public spaces).

202. Assemb. B. 5, 2013–2014 Leg., Reg. Sess., at 10 (Cal. 2012); *id.* at 9 (defining "rest" to include sitting, standing, sleeping, or lying).

203. *Id.* at 10.

204. *Id.*

205. *Id.* at 11 (including junk collecting, recycling redemption, and storage of goods for reuse).

206. *Id.*

or social services without criminal or civil sanctions,²⁰⁷ the right to occupy and sleep in a vehicle,²⁰⁸ and the right to counsel when charged with a violation of an anti-unhoused statute.²⁰⁹ In addition to regular damages, the measure provided statutory damages of \$1,000 per violation, punitive damages, and attorney fee awards.²¹⁰ AB5's most ambitious provision required every locality to "have sufficient health and hygiene centers available 24 hours a day, seven days a week, for use by homeless people," run with state funding.²¹¹

While AB5 failed to pass,²¹² its strength as a bill was the detail in which it elaborated the rights of the unhoused. By enumerating a list of the specific things that unhoused people can do, rather than merely list broad categories of what cannot be done to them, the California Model provided express protection for broad categories of conduct commonly criminalized by municipalities.²¹³ By expressly authorizing the proscribed conduct of the most common anti-unhoused statutes, AB5 would have resulted in one of the largest mass-invalidations of ordinances ever if passed.²¹⁴ Furthermore, its enhanced remedies provisions may well have provided unhoused people true recourse under the law.²¹⁵

AB5's requirement that cities furnish hygiene stations for unhoused people was a policy moonshot.²¹⁶ That provision that would have had a life-changing effect for unhoused people—both for the

207. *Id.*

208. *Id.* at 11–12.

209. *Id.* at 13 (providing a list of offenses entitling an unhoused person to representation, including loitering, sitting, lying down, camping, begging, sleeping in a vehicle, and bathing in public).

210. *Id.* at 15–16.

211. *Id.* at 14.

212. *Bill History: AB-5 Homelessness*, CAL. LEGIS. INFO. (Feb. 3, 2014) https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=201320140AB5 [<https://perma.cc/UYG4-YDLF>] ("01/31/14 Died pursuant to Art. IV, Sec. 10(c) of the Constitution.").

213. *Compare supra* notes 202–04, 208 and accompanying text, *with supra* notes 127–32.

214. *Compare supra* notes 202–04 and accompanying text *with Count of Anti-Homeless Laws by California City (All 82 Cities)*, W. REG'L ADVOC. PROJECT 2 (2018), <https://wraphome.org/wp-content/uploads/2018/01/Laws-chart-82cities.pdf> [<https://perma.cc/J43E-F485>] (counting 820 municipal anti-unhoused laws in California).

215. *See supra* note 210 and accompanying text.

216. *See supra* note 211 and accompanying text.

health benefits provided by personal hygiene²¹⁷ and the ability to better seek and maintain employment²¹⁸—but its cost likely played a part in AB5’s failure to pass.²¹⁹ When AB5 was reborn during the next legislative session, with a new name and a new sponsor, some of its ambition had dissipated. Far more practical than AB5, Senate Bill No. 876 still offered a series of strong protections, but gone were the hygiene stations, the right to beg, the right to decline shelter without being criminalized, the right to sleep in a vehicle, and a number of other tailored provisions.²²⁰ Still, the lessons that AB5 can teach a Minnesota UBR are invaluable. The specificity of enumerated rights, aggressive grants and carveouts, and ambitious with scope and scale of the bill provide a strong vision of what a progressive UBR might accomplish.

Enacted and proposed Unhoused Bills of Rights alike have sought to correct centuries of abuses of the fundamental rights of the unhoused.²²¹ While a great number (if not majority) of laws criminalizing homelessness are likely unconstitutional,²²² existing UBR have declined to provide effective enforcement mechanisms.²²³ Proposed UBR with more ambitious enforcement provisions, and progressive policy goals intended to aid unhoused people, were not passed by their respective legislatures.²²⁴ The next Part of this Note discusses

217. See *supra* note 66.

218. See Ralee Childers, *A Voice for the Houseless: Getting a Job Isn't that Simple*, REDHEADED BLACKBELT (Feb. 4, 2020), <https://kymkemp.com/2020/02/04/a-voice-for-the-houseless-getting-a-job-isnt-that-simple> [<https://perma.cc/2XQ3-TPZG>] (“[Y]ou need to be clean and presentable [to get a job]. . . . It can be hard for a lot of homeless people to be able to get a shower . . . [o]r have clean clothes, especially since we’re not allowed to have camps.”).

219. See CHUCK NICOL, ASSEMB. COMM. ON APPROPRIATIONS, AB 5 SUMMARY 2 (2013) (finding that AB5’s hygiene station provision would have cost \$216 million to start up and \$81 million to operate annually); Thomason, *supra* note 199 (attributing AB5’s death, at least “in part to questions about costs associated with the legislation, specifically the requirement for twenty-four-hour hygiene centers”).

220. See S.B. 876, 2015–2016 Leg., Reg. Sess., at 6 (Cal. 2016). Despite those compromises, S.B. 876 went unenacted. See *Bill History: SB-876 Homelessness*, CAL. LEGIS. INFO (Nov. 30, 2016), https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=201520160SB876 [<https://perma.cc/M3CW-FCF8>].

221. Compare, e.g., *supra* notes 212–15 and accompanying text (discussing the California UBR’s attempt to combat laws criminalizing homelessness), with *supra* notes 110, 116 (discussing laws criminalizing homelessness which date back to the Colonial Era).

222. See *supra* Part I.B.2.

223. See, e.g., *supra* notes 184–86 (discussing the limited remedies available under enacted UBR).

224. See, e.g., *supra* Part I.C.3 (discussing California’s proposed UBR).

the limitations of previously enacted or proposed UBR—as well as difficulties posed by the broader social, political, and economic environment surrounding homelessness—in order to inform the goals and methods of a proposed bill of rights for Unhoused Minnesotans.

II. THE LIMITATIONS OF CURRENT UNHOUSED BILLS OF RIGHTS

Since the three Rhode Island Model laws were enacted in the early 2010s, no state has passed an Unhoused Bill of Rights since 2013.²²⁵ To determine why these laws have fallen out of fashion, this Part will discuss the limitations and inefficacies of enacted UBR, as well as the challenges posed by the legal and social environment around homelessness. Section A examines the lack of novel rights and protections inherent in negative rights provisions of enacted UBR. Section B discusses the lack of litigation generated by enacted UBR, suggesting that they do not allow unhoused people adequate avenues to protect their rights. Section C analyzes relevant socioeconomic conditions to determine if Unhoused Bills of Rights contribute to reduced homelessness in adopting jurisdictions. Section D discusses the complicated tangle of socioeconomic issues that defy one-size-fits-all solutions to homelessness. Section E concludes this Part by considering the sociopolitical hurdles to enacting legislation benefiting the unhoused. This analysis seeks to weigh the strengths and weaknesses of existing or previously proposed UBR, as well as contextualize legal efforts on behalf of the unhoused Minnesotans, in an effort to draft an effective UBR for Minnesota.

A. ENACTED UNHOUSED BILLS OF RIGHTS DO NOT PROVIDE NOVEL PROTECTIONS OR RIGHTS

Enacted Unhoused Bills of Rights are the most practical place to begin analysis of a proposed Minnesota UBR. The most trenchant legal criticism of enacted Unhoused Bills of Rights is their duplicative nature.²²⁶ Simply put: enacted Rhode Island Model UBR have not meaningfully expanded the rights of unhoused people in their jurisdictions. All three of them contain express language framing their protections of unhoused people as “grant[ing] the same rights and privileges as

225. See *Homeless Bill of Rights*, *supra* note 41 (providing a list of enacted UBR).

226. See, e.g., Rankin, *supra* note 44, at 406 (“The [Rhode Island UBR] does not grant homeless Rhode Islanders any new or special rights; indeed, it expressly provides that these rights are ‘the same rights and privileges as any other resident’ of Rhode Island.” (quoting S. 2052, Sub. B, 2012 Gen. Assemb., Reg. Sess. § 34-37.1-3 (R.I. 2012))).

any other resident of this state.”²²⁷ The express negative rights provisions of the Rhode Island Model are all derivative of broader²²⁸ constitutional²²⁹ rights.²³⁰ Many of them contemplate matters that are of vital importance to unhoused people²³¹ or are particularly exacerbated by their condition,²³² but do nothing to implement those protections or reconcile them with existing legal and regulatory schemes.

For example, despite the voting protections in the Illinois UBR, the state still requires a “current address” and an “Illinois identification/driver’s license number or Social Security number” to register.²³³ Per local advocates, “a letter from a drop-in center, shelter, or [a] person” allowing the unhoused individual “to use their address for the

227. 34 R.I. GEN. LAWS § 34-37.1-3 (2021); accord 775 ILL. COMP. STAT. 45/10(a) (2021) (“[An unhoused] person shall be granted the same rights and privileges as any other citizen of this State.”); cf. CONN. GEN. STAT. § 1-500(a) (2021) (“The rights afforded homeless persons . . . are available only insofar as they are implemented in accordance with other parts of the general statutes, state rules and regulations, federal law, the state Constitution and the United States Constitution.”).

228. Compare, e.g., 34 R.I. GEN. LAWS § 34-37.1-3 (2021) (“A person experiencing homelessness . . . [h]as the right to equal treatment by all state and municipal agencies, without discrimination on the basis of housing status . . .”), with U.S. CONST. amend. XIV, § 1 (“No State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws.”).

229. Compare, e.g., 775 ILL. COMP. STAT. 45/10(a) (2021) (“No person’s rights, privileges, or access to public services may be denied or abridged solely because he or she is homeless.”), with U.S. CONST. amend. XIV, § 1 (“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States . . .”).

230. Compare, e.g., CONN. GEN. STAT. § 1-500(b) (2021) (“Each homeless person in this state has the right to . . . a reasonable expectation of privacy in his or her personal property . . .”), with U.S. CONST. amend. IV (“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . .”).

231. Compare 34 R.I. GEN. LAWS § 34-37.1-3(3) (2021) (barring employment discrimination on grounds of one’s homelessness) with Sarah Golabek-Goldman, Note, *Ban the Address: Combating Employment Discrimination Against the Homeless*, 126 YALE L.J. 1788, 1799 (2017) (“[Unhoused people and employment specialists] most frequently referred to discrimination during the job application process as the most significant problem facing the homeless community.”).

232. Compare 775 ILL. COMP. STAT. 45/10(a)(5) (2021) (ensuring “the right to vote, register to vote, and receive documentation necessary to prove identity for voting without discrimination due to his or her housing status”), with Declaration of Henrietta Brown, *supra* note 153, at 3 (describing the loss of an unhoused person’s birth certificate and identification in an early morning encampment sweep).

233. *When Voters Do (and Don’t) Need Identification (ID)*, COOK CNTY. CLERK’S OFF., <https://www.cookcountyclerk.com/service/when-voters-do-and-i-need-identification-id> [<https://perma.cc/D83F-UC4S>] (listing the requirements to register to vote and describing the identification documents necessary).

purpose of registering to vote” can suffice as identification.²³⁴ However, unhoused people may not be willing or able to stay in a shelter.²³⁵ Furthermore, there are circumstances where a voter needs two forms of identification, and many of those “acceptable forms of ID” may be difficult for unhoused people to obtain and keep.²³⁶ How can an unsheltered unhoused register honestly without an address? What happens if an unhoused person is required to produce two forms of identification and cannot? What recourse is there for anti-unhoused bias in the process, such as Election Judges challenging unhoused people at disproportionate rates, or the disenfranchising effects of voter identification laws?²³⁷ The Illinois UBR is silent on those details. This failure of implementation is shared by all three Rhode Island Model UBR, spanning the entire list of their negative rights provisions.

It could be argued that these UBR attempted to carve out homelessness as a quasi-protected class under state law in an attempt to extend safeguards similar to Title VII’s employment discrimination protections to unhoused people.²³⁸ The broader scope of topics contained in the UBR could have resulted in the application of a burden-

234. Niya K. Kelly, *Election Day 2020 Is November 3: Here’s How to Vote if You Are Experiencing Homelessness*, CHI. COAL. FOR THE HOMELESS (Sep. 25, 2020), <https://www.chicagohomeless.org/election-day-2020-is-november-3-heres-how-to-vote-if-you-are-experiencing-homelessness> [<https://perma.cc/B6HQ-JXHZ>].

235. See, e.g., Declaration of Patrick Berry, *supra* note 21, at 5–6 (declaring it “widely known that shelters are unsafe” and expressing concerns about the threat of COVID-19 in shelters); Lee, *supra* note 100 (describing Hennepin County’s shelters as “very close to a hundred percent utilization on a daily basis”); see also *supra* notes 87–89 and accompanying text (discussing reasons an unhoused person may not utilize temporary housing, such as undesirable shelter conditions, an inability to remain with family or pets, or the symptoms of withdrawal from substance abuse).

236. Compare *When Voters Do (and Don’t) Need Identification (ID)*, *supra* note 233 (allowing passports, driver’s licenses, leases or mortgages, insurance cards, credit or debit cards, and certain first-class mail addressed to a voter, among other documents, to serve as voter identification), with Greenstone, *supra* note 186 (“The [unhoused] plaintiffs . . . said they’d lost personal possessions such as identification documents . . . all seized and destroyed without adequate notice or a meaningful way to retrieve anything [when the city removed their encampments].”).

237. See Ben Rowen, “*The Oldest, the Lowest, the Slowest*”: *Why Voting Isn’t Easy for Homeless People in Texas*, TEX. MONTHLY (Mar. 3, 2020), <https://www.texasmonthly.com/news-politics/why-voting-is-not-easy-for-homeless-people-in-texas> [<https://perma.cc/PT6Q-V9N8>] (“One of the key effects of the [Texas] voter ID law is not to turn [unhoused] people back at the polls, but to keep them from ever heading there at all.”).

238. Compare, e.g., 34 R.I. GEN. LAWS § 34-37.1-3 (2021) (providing unhoused people “the right not to face discrimination while seeking or maintaining employment due to his or her lack of permanent mailing address, or his or her mailing address being that of a shelter or social service provider”), with 42 U.S.C. § 2000e-2(a) (“It shall be an

shifting framework akin to the *McDonnell Douglas* test²³⁹ applied to subjects beyond employment discrimination, but no such body of law has formed around these statutes.²⁴⁰ Absent such judicial interpretation of these provisions,²⁴¹ prospective plaintiffs are left with the plain text of the law. On that count, it remains difficult for unhoused plaintiffs to prove that their “rights, privileges, or access to public services [were] denied or abridged *solely* because [they were] homeless.”²⁴²

Ultimately, Unhoused Bills of Rights are mostly a collection of existing rights, reiterated for expressive purposes. One of the major organizations which argued for the adoption of UBR tacitly acknowledged as much at the time when UBR were most debated.²⁴³ There is great virtue in attempting to “draw attention to the plight of our nation’s homeless population,” as “the process of enacting [UBR]” was intended to do.²⁴⁴ Unfortunately, it appears that little legal utility has been generated in the process. While negative rights provisions are important to ground many vital areas of litigation for the unhoused, a Minnesota UBR should enumerate what its negative rights provisions entail in far greater detail than Rhode Island Model UBR.²⁴⁵ Further, it should provide positive rights which would go beyond duplicative

unlawful employment practice for an employer . . . to discriminate against any individual . . . because of such individual’s race, color, religion, sex, or national origin . . .”).

239. See *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973) (setting out a burden-shifting framework that allows a plaintiff to allege a prima facie case creating a presumption of discrimination and shifting the burden onto the defendant-employer to “articulate some legitimate, nondiscriminatory reason” for the adverse action).

240. See *infra* Part II.B (discussing the miniscule corpus of UBR case law).

241. We truly lack any meaningful judicial interpretation of Unhoused Bills of Rights. Only two trial courts have decided UBR cases on the merits and no UBR claim has ever received appellate review, per major legal databases. See *infra* notes 251–54.

242. 34 R.I. GEN. LAWS § 34-37.1-3 (2021) (emphasis added); see *infra* note 254 and accompanying text (discussing rulings against unhoused defendants on grounds that their adverse treatment was a result of neutral, generally applicable action).

243. See Bauman & Rankin, *supra* note 43, at 7 (acknowledging that the Rhode Island Model serves to “safeguard[] homeless persons’ existing civil rights,” but also arguing that “they can inspire needed public dialogue” and “combat[] the stigma of homelessness”).

244. *Id.*

245. The California UBR took this approach, coupling negative rights provisions nearly identical to Rhode Island Model UBR with provisions enumerating activities expressly protected by those negative rights. See *supra* notes 201–09 and accompanying text.

constitutional protections and establish new avenues for aiding unhoused people.²⁴⁶ These measures will ensure that a Minnesota UBR has more teeth than current UBR, which do not display any ability to create private enforcement of the rights of the unhoused.

B. ENACTED UNHOUSED BILLS OF RIGHTS DO NOT INCREASE ACCESS TO LEGAL REPRESENTATION

Even if the negative rights provisions in enacted UBR are largely duplicative,²⁴⁷ their remedies provisions could seemingly secure better access to legal representation. Providing for “reasonable attorney’s fees and costs to a prevailing plaintiff”²⁴⁸ would theoretically entice more lawyers to take cases where there may not be great potential for contingent fee awards.²⁴⁹ One would expect UBR claims to be pled alongside broader violations of rights or utilized in situations tailored to their narrow subject matter. However, in the twenty-five cumulative years that the three Rhode Island Model UBR have been on the books,²⁵⁰ they have generated shockingly little litigation.

Major legal databases report only four case citations for all three Unhoused Bills of Rights combined²⁵¹ and none for the Rhode Island

246. For example, while all enacted Rhode Island Model UBR prohibit employment discrimination because someone is unhoused, *see supra* note 176, these laws do nothing to actively prevent such discrimination. Prohibiting potential employers from requesting a home address as a part of job applications would prevent at least one aspect of employment discrimination against the unhoused. *See infra* notes 283, 422 and accompanying text.

247. *See supra* Part II.A.

248. 34 R.I. GEN. LAWS § 34-37.1-4 (2021); 775 ILL. COMP. STAT. 45/15 (2021). Connecticut’s UBR does not contain a remedies provision. *See* CONN. GEN. STAT. § 1-500 (2021).

249. Neither the Rhode Island nor the Illinois UBR provide for punitive damages. *See* 34 R.I. GEN. LAWS § 34-37.1-4 (2021); 775 ILL. COMP. STAT. 45/15 (2021). Given the plight of the unhoused, actual damages may be quite low. *See supra* notes 184–85 and accompanying text.

250. *See Rankin, supra* note 44, at 404 & nn. 126–27 (noting that the Rhode Island UBR was passed in 2012, with the Illinois and Connecticut laws following in 2013).

251. *See Uptown Tent City Organizers v. City of Chi. Dep’t of Admin. Hearings*, No. 17 C 4518, 2018 WL 2709431, at *1 (N.D. Ill. June 5, 2018) (alleging violations of the Illinois UBR in connection with the denial by a Chicago administrative agency of permission “to ‘erect a tent city’” when the city closed off the viaducts containing their current encampment); *Aldape v. City of Chi.*, No. 17 CH 12186, 2019 Ill. Cir. LEXIS 28, at *2 (Ill. Cir. Ct. Jan. 18, 2019) (alleging a violation of the Illinois UBR because the construction project “under the viaducts is a pretext for the true discriminatory motive of preventing Plaintiffs from using these sidewalks as a place to rest or take temporary shelter solely because they are homeless”); *Okeke Ewo v. YMCA of Metro. Chi. LLC*, No.

UBR itself.²⁵² With only two of these cases decided on the merits,²⁵³ the entire canon of reported Unhoused Bill of Rights caselaw can be dispensed with in one sentence: it is difficult to prove that a violation of rights occurred *solely* because someone is unhoused.²⁵⁴

It is unclear what causes this dearth of UBR litigation. It could be a result of the low potential rewards or the challenge of working with

2015 CH 05330, 2015 WL 8492435, at *1, *3 (Ill. Cir. Ct. Oct. 26, 2015) (alleging a violation of the Illinois UBR's prohibition on "access to public services" as a result of the non-renewal of a lease with, and subsequent eviction from, a YMCA-run housing program for the unhoused); *Schipke v. Tracfone Wireless, Inc.*, 146 F. Supp. 3d 455, 457 (D. Conn. 2015) (alleging that a telecommunications provider "terminated her service because she is homeless, and that doing so therefore violated . . . Connecticut's Homeless Person's Bill of Rights"). These are the only reported decisions citing any of the three enacted UBR on Lexis or WestLaw.

252. There are no reported decisions citing the Rhode Island UBR on Lexis or WestLaw. The law appears to have been cited in the pro se plaintiff's complaint in *Schipke*, although its reference was likely a mistake given that the case was originally filed in Connecticut state court. See Defendants' Memorandum of Law in Opposition to Plaintiff's Motion for Temporary Injunctive Relief at 10 n.1, *Schipke*, 146 F. Supp. 3d 455 (No. 15-CV-01244), 2015 WL 13504949; *Schipke*, 146 F. Supp. 3d at 456 (discussing the case's removal to federal court).

253. See *Uptown Tent City Organizers*, 2018 WL 2709431, at *2 (dismissing the UBR claim for lack of standing); *Okeke Ewo*, 2015 WL 8492435, at *3 (dismissing UBR claims for fact-pleading deficiencies).

254. See *Aldape*, 2019 Ill. Cir. LEXIS 28, at *12-13 (ruling that a city construction project displacing an unhoused encampment did not violate the Illinois UBR because it prevented everyone from living under the viaducts, not solely unhoused people); *Schipke*, 146 F. Supp. 3d at 458 (ruling for Tracfone because it was complying with a federal regulation that required all applicants for subsidized cellphone service to provide a residential address and thus was not acting "simply because [the plaintiff] is experiencing homelessness").

unhoused clients.²⁵⁵ Perhaps the difficulty in proving (or even alleging) plaintiffs' claims compounds those two factors.²⁵⁶ Of the four reported UBR cases, one was filed by a housed person on behalf of unhoused people,²⁵⁷ one was litigated pro se,²⁵⁸ and the remaining two secured counsel.²⁵⁹ While these findings amount to a very small sample size, those figures and the lack of other reported cases speak volumes about the enacted UBR's efficacy in vindicating unhoused peoples' rights through the legal system.

Whatever the reason, these UBR cases are not being brought or decided in meaningful numbers. It is likely that there are at least some litigated UBR cases which are simply not reported in major legal databases.²⁶⁰ Perhaps municipal or county courts in Rhode Island, Illinois, and Connecticut regularly deal with UBR claims. If they do, however,

255. See, e.g., Greenstone, *supra* note 186 (discussing some of the logistical challenges for lawyers working with unhoused clients); see also *supra* note 142 (discussing the physical and mental health challenges that may need to be accounted for in a lawyer's work with an unhoused client). The author has personally witnessed some of these difficulties. Counsel may struggle to find their client in order to conduct interviews or preparatory activities. The unhoused person may decline to attend hearings where they were intended to testify in fear of law enforcement and the legal system. The mental illness, addiction, physical ailments, and trauma that often accompany homelessness can make complying with the demands of our legal system difficult or impossible. See WILDER RSCH., *supra* note 36, at 23 (reporting that 81% of unhoused Minneapolitans suffered from at least one of a serious mental illness, chronic physical health conditions, or a substance use disorder); LIBBY PERL & ERIN BAGALMAN, CONG. RSCH. SERV., R44302, CHRONIC HOMELESSNESS: BACKGROUND, RESEARCH, AND OUTCOMES 5 (2015) (reporting that 67% of the participants in a study of the chronically unhoused "had a psychotic disorder or other serious mental illness," while 60% had alcohol abuse or drug abuse issues).

256. See *supra* note 254 and accompanying text.

257. *Uptown Tent City Organizers*, 2018 WL 2709431, at *1 ("[P]laintiff Andy Thayer, a 30-year resident of Uptown who is not himself homeless . . .").

258. *Schipke*, 146 F. Supp. 3d at 456 ("Mary Elizabeth Schipke, Milford, CT, pro se.").

259. *Okeke Ewo v. YMCA of Metro. Chi. LLC*, No. 2015 CH 05330, 2015 WL 8492435, at *1, (Ill. Cir. Ct. Oct. 26, 2015); *Case Information Summary for Case Number 2017-CH-12186*, COOK CNTY. CLERK OF THE CIR. CT., <http://www.cookcountyclerkofcourt.org/CourtCaseSearch/DocketSearch.aspx> (select "Chancery" from dropdown; then search case number "2017-CH-12186") [<https://perma.cc/7ENP-JUZB>] (reporting that the plaintiffs in *Aldape v. City of Chicago* were represented by counsel).

260. See William Lee, *In Test of State Law, Chicago Homeless Couple Sue City, Alleging Property Rights Violated*, CHI. TRIB. (Feb. 7, 2018), <https://www.chicagotribune.com/news/breaking/ct-met-homeless-harassment-suit-20180205-story.html> [<https://perma.cc/KB8F-66Q4>] (reporting that the Chicago Coalition for the Homeless has filed three UBR claims, at least one of which is separate from any of the reported decisions discussed above).

little evidence of that activity has reached the legal mainstream. If Unhoused Bills of Rights were intended to increase access to the legal system for their unhoused beneficiaries, they have not accomplished that goal. A Minnesota UBR must provide stronger remedies and enforcement mechanisms than current UBR in order to generate more litigation enforcing the rights of the unhoused. The near-nonexistence of UBR litigation in UBR-enacting states is a compelling argument for the need to incentivize plaintiffs and attorneys to bring such cases, and more generous damage awards will likely bring about that result. Further, allowing for public (and quasi-public) enforcement by the Minnesota Attorney General and homelessness nonprofits permits enforcement by entities concerned with the common good. Including these measures will likely result in a Minnesota UBR that better protects the rights of the unhoused through more active litigation.

C. THE PRECISE IMPACT ENACTED UNHOUSED BILLS OF RIGHTS HAD ON DECREASING HOMELESSNESS IN THEIR JURISDICTIONS IS DIFFICULT TO ISOLATE AND QUANTIFY

Regardless of their litigative utility, Unhoused Bills of Right are intended to serve broader social purposes, including “lay[ing] a legal foundation for ending homelessness.”²⁶¹ Society can thus judge UBR by their effects on homelessness in enacting jurisdictions. At first glance, it would appear there are strong benefits to be had from adopting an Unhoused Bill of Rights. From 2013 to 2020,²⁶² the three states that adopted UBR all saw their total homeless drop significantly more than the national decrease over the same period. While homelessness decreased around 10% nationwide during that time, Illinois and Connecticut saw decreases of over 30%, and Rhode Island’s rate decreased around 20%.²⁶³ That difference is dramatic, but it is difficult to determine how much credit UBR themselves can be allocated for those gains. There are other factors which may have contributed to

261. Bauman & Rankin, *supra* note 43, at 8.

262. A January 1, 2013 starting date was chosen as a rough midpoint between the effective dates of the three Rhode Island Model UBR. See Rankin, *supra* note 44, at 404 & nn. 126–27. A February 1, 2020 cutoff date was chosen because that date most closely coincides with the data collection period of the latest published HUD AHAR count results. See AHAR, *supra* note 49, at 4 (“The one-night counts are conducted during the last 10 days of January each year.”).

263. See *2007–2020 Point-in-Time Estimates by State*, HUD EXCH., <https://www.huduser.gov/portal/sites/default/files/xls/2007-2020-PIT-Estimates-by-state.xlsx> [<https://perma.cc/4MFH-LNVE>] (locating the data in the “Change” tab, in Column N, “Change in Total Homelessness, 2007-2020”).

decreased homelessness in those jurisdictions, and the existence of those UBR may itself be attributable to social conditions lending themselves to decreased homelessness.

Macroeconomic conditions over the interval in question may be largely responsible for decreased homelessness in those jurisdictions.²⁶⁴ UBR states saw their average private-sector hourly earnings increase around 17% from 2013 to 2020,²⁶⁵ and their average household incomes increased around 29%, greater than the national average.²⁶⁶ UBR states' unemployment rates fell around 58% during that same period²⁶⁷ while their gross domestic products rose around 20%,²⁶⁸ beating the national figures in both statistics.²⁶⁹ Household income rose much quicker than housing prices in UBR states,²⁷⁰ which

264. Data and statistics in this Section are retrieved from the Federal Reserve Bank of St. Louis' Economic Data portal (FRED). *FRED Economic Data*, FED. RSRV. BANK OF ST. LOUIS [hereinafter FRED], <https://fred.stlouisfed.org> [<https://perma.cc/K342-Q379>]. Individual figures will be cited as "FRED, *supra* note 264, at" followed by the name of the data series containing that information and the data series identifier in parentheses. Data was displayed for the dates ranged January 1, 2013 to February 1, 2020. See *supra* note 262 and accompanying text. Where data did not extend to the terminus of the date range, the latest reported information for that statistic was used.

265. See FRED, *supra* note 264, at *Average Hourly Earnings of All Employees: Total Private in Rhode Island (SMU44000000500000003SA)*, *Average Hourly Earnings of All Employees: Total Private in Illinois (SMU17000000500000003SA)*, *Average Hourly Earnings of All Employees: Total Private in Connecticut (SMU09000000500000003SA)*.

266. Compare FRED, *supra* note 264, at *Median Household Income in Rhode Island (MEHOINUSRIA646N)*, *Median Household Income in Illinois (MEHOINUSILA646N)*, *Median Household Income in Connecticut (MEHOINUSCTA646N)*, with *id.* at *Median Household Income in the United States (MEHOINUSA646N)*. This statistic is calculated annually, so these figures run from 2013 to end-of-year 2019.

267. See FRED, *supra* note 264, at *Unemployment Rate in Rhode Island (RIUR)*, *Unemployment Rate in Illinois (ILUR)*, *Unemployment Rate in Connecticut (CTUR)*.

268. See FRED, *supra* note 264, at *Gross Domestic Product: All Industry Total in Rhode Island (RINGSP)*, *Gross Domestic Product: All Industry Total in Illinois (ILNGSP)*, *Gross Domestic Product: All Industry Total in Connecticut (CTNGSP)*. This statistic is calculated annually, so these figures run from 2013 to end-of-year 2019.

269. See FRED, *supra* note 264, at *Unemployment Rate (UNRATE)*, *Gross Domestic Product: All Industry Total in the United States (USNGSP)*.

270. The median household income in UBR states grew 29.1%, but house prices only grew 21.8%. Compare *supra* note 266 and accompanying text, with FRED, *supra* note 264, at *All-Transactions House Price Index for Rhode Island (RISTHPI)*, *All-Transactions House Price Index for Illinois (ILSTHPI)*, *All-Transactions House Price Index for Connecticut (CTSTHPI)*. This statistic is calculated quarterly, so these figures are cut off at the fourth quarter of 2019.

was opposite to the national trend.²⁷¹ Where there are more jobs, better pay, and relatively more affordable homes, it follows that homelessness would decrease as a result of improved macroeconomic conditions.

Even if there are economic factors more likely to have affected total homelessness rates in UBR states, it may be possible that the negative rights provisions of their laws protect the quality of life people experience while unhoused. There are little data available on trends in the conditions people experience while unhoused. However, some evidence suggests that unhoused people in UBR states have benefitted from improved conditions of homelessness. Despite a net national decrease in homelessness, rates of both unsheltered and chronic homelessness rose from 2013 to 2020.²⁷² However, UBR states saw their rates of unsheltered and chronic homeless decrease in step with their overall rates of homelessness.²⁷³ The causes of those decreases are difficult to disentangle from the overall socioeconomic conditions affecting homelessness, but it may be possible that UBR have positive effects on the quality of life people experience while unhoused. Other issues likely weigh on this factor, but there is at least some correlation (if not causation) between a state adopting a UBR and improved conditions for unhoused people of that state. While likely not remedial in nature, it is possible that UBR have some palliative effect on the conditions of homelessness that unhoused people experience.

The precise impact UBR have may be difficult to isolate. Optimistically, it could be that advocates' view of the case is true: "[T]he process of enacting [UBR] help[s] to draw attention to the plight of our nation's homeless population" and "provoke[s] important dialogue about the causes of homelessness as well as constructive solutions to help end it."²⁷⁴ While not a legal strategy, the policy benefits that stem from such attention and dialogue would be a useful benefit of UBR as

271. The median household income nationwide grew 38%, but house prices grew 41% over the same period. See FRED, *supra* note 264, at *Median Household Income in the United States (MEHOINUSA646N)*, *All-Transactions House Price Index for the United States (USSTHPI)*.

272. See *2007–2020 Point-in-Time Estimates by State*, *supra* note 263, at tabs 2013 & 2020 (reporting national data showing a 15.5% rise in unsheltered homelessness, and 17% rise in chronic homelessness, from 2013 to 2020, compared to a 1.7% decrease in overall homelessness).

273. See *id.* (reporting data for Rhode Island, Illinois, and Connecticut showing a combined 16.1% decrease in unsheltered homelessness, and 5.7% decrease in chronic homelessness, from 2013 to 2020, compared to a 25% decrease in overall homelessness).

274. Bauman & Rankin, *supra* note 43, at 7, 10.

a part of a greater strategy to combat homelessness.²⁷⁵ With Minnesota facing a homelessness crisis in the coming months and years,²⁷⁶ improved conditions of homelessness may save hundreds of lives.²⁷⁷ The attention and dialogue a campaign to adopt a UBR would create may furnish long-term benefits to Minnesota, especially if attitudes concerning the unhoused can be shifted from “sympathy” to a desire to actually help.²⁷⁸

D. HOMELESSNESS IS A COMPLICATED SOCIOECONOMIC ISSUE WITH INTERSECTIONAL ROOT CAUSES NOT SOLVABLE BY ANY ONE LAW

Homelessness is a staggeringly complicated problem to solve.²⁷⁹ “The structural issues that underlie the persistence of homelessness, as well as the heterogeneity of the homeless population, defy simple

275. On the issue of correlation versus causation, improved homelessness statistics in UBR states may indicate that states with a sociopolitical environment conducive to passing such laws may enact other laws and policies beneficial to unhoused people. However, a state-by-state survey of laws concerning homelessness and their correlation with rates of jurisdictional homelessness is beyond the scope of this Note.

276. Over 13,000 Minnesotans could be evicted as COVID-related eviction protections expire. *See* sources cited *supra* note 35 (discussing the impending expiration of state and federal restrictions on evictions); MCDONOUGH, *supra* note 36, at 16 (estimating eviction figures for Minnesota once protections expire). Evictions are the largest single cause of homelessness in Minnesota. *See* WILDER RSCH., *supra* note 36, at 36. Experiences of homelessness are often correlated with future periods of homelessness, meaning that the initial wave of evictions could produce aftershocks for years. *Id.* at 17 (finding that 77% of unhoused adults in Minnesota had experienced homelessness before).

277. Almost 60% of Minnesota’s unhoused are unsheltered, WILDER RSCH., *supra* note 36, at 4, and unsheltered unhoused people have mortality rates that are almost three times higher than the sheltered unhoused population. *See* Roncarati et al., *supra* note 68, at 1242. Reducing the unsheltered proportion of Minnesota’s unhoused population will have a direct life-saving effect.

278. *See* Greene, *supra* note 19 (quoting a Powderhorn neighborhood resident “sympathetic” to the plight of Minneapolis’ unhoused, but unwilling to tolerate them living in a public park).

279. For example, while strong economic conditions are seemingly correlated with reduced homelessness, *see supra* Part II.C, there is evidence that certain regions may see an increase in homelessness associated with macroeconomic improvements. *See* Maggie Stringfellow & Dilip Wagle, *The Economics of Homelessness in Seattle and King County*, MCKINSEY & CO. (May 18, 2018), <https://www.mckinsey.com/featured-insights/future-of-cities/the-economics-of-homelessness-in-seattle-and-king-county> [<https://perma.cc/FX8F-J2J5>] (suggesting that rising rents associated with economic growth in the Seattle metro area contribute to increased homelessness in the region).

solutions.”²⁸⁰ Homelessness can be attributed to the intersectional effects of poverty, lackluster healthcare solutions, and extremely deficient mental health care systems,²⁸¹ compounded by the effects of systemic racism.²⁸² Unhoused Bills of Rights cannot singlehandedly solve those issues. It will take a variety of remedial measures working in concert, given greater resources than they currently receive, to end and prevent homelessness.

To that end, UBR could serve as connective tissue, acting as a conduit between those different areas of policy and law. They may fill gaps in existing law that undermine the effectiveness of existing homelessness-remediation programs. For example, “ban the address” measures—barring the provision of an address for job applications—could greatly reduce employment discrimination against unhoused people.²⁸³ Preventing employment discrimination against unhoused people is already an express purpose of enacted UBR.²⁸⁴ A “ban the address” measure in an unhoused bill of rights would provide a particularized way of carrying out that purpose. It is unclear what purpose requiring an address to apply for a job serves, besides the extremely small group of jobs where living in close proximity to the workplace is an important job requirement.²⁸⁵ “Ban the address” measures are intertwined with criminal justice reform, as well. Formerly incarcerated people may be required to list their jail or prison as a former address, and the overcriminalization of homelessness

280. Martha R. Burt, Jenneth Carpenter, Samuel G. Hall, Kathryn A. Henderson, Debra J. Rog, John A. Hornik, Ann V. Denton & Garrett E. Moran, *Strategies for Improving Homeless People’s Access to Mainstream Benefits and Services*, U.S. DEP’T OF HOUS. & URB. DEV. 1 (2010), <https://www.huduser.gov/portal/publications/strategiesaccessbenefitsservices.pdf> [https://perma.cc/Z54H-ZNQ3].

281. *See id.*

282. *See supra* notes 73–74 and accompanying text (discussing the effects of systemic racism in perpetuating the disproportionate incidence of homelessness among racial minorities).

283. *See* Golabek-Goldman, *supra* note 231, at 1799–805 (conducting interviews attesting to the effects of homelessness on job applicants); *see also id.* at 1805–06 (finding that many online job postings at low-wage employers do not let an individual submit an application without providing an address).

284. *See supra* note 176 and accompanying text (discussing the employment discrimination protections of Rhode Island Model UBR).

285. For example, firefighters are often required to live close to their firehouse in order to facilitate quicker response times to incidents. *Cf.* MINN. STAT. § 415.16 subdiv. 3 (2021) (“A . . . city or county may impose a reasonable residency requirement on persons employed . . . as members of a nonprofit firefighting corporation . . . related to response time . . .”).

likely means that unhoused people would be among that group.²⁸⁶ Combined “ban the address” and “ban the box” anti-criminal history measures,²⁸⁷ whether included in a UBR or as standalone measures, could be instrumental in implementing the broader goal of preventing employment discrimination against unhoused people. By including such measures in a Minnesota UBR, that proposed law would surpass the duplicative, unelaborated negative rights of existing UBR and proactively prevent such discrimination.

Address-banning provisions provide an example of how a discrete and technical measure can aid existing programs. Greater employment opportunities for unhoused people would likely result in their escaping homelessness quicker, while reducing the financial outlay of aid organizations in the interim. Other more resource-intensive measures can have similar effects in supporting existing policies and programs. Guaranteeing unhoused people the right to storage²⁸⁸ could prevent the loss of documents²⁸⁹ required to apply for jobs, financial benefits, or housing solutions.²⁹⁰

Such rights are already contemplated at broader levels by existing UBR.²⁹¹ Enumerating these discrete, particularized rights merely

286. See *supra* notes 125–34 (discussing the extensive array of municipal anti-unhoused ordinances, often carrying criminal penalties).

287. “Ban the box” campaigns seek to prohibit employers from including “the check box on applications that inquires about a conviction history.” Golabek-Goldman, *supra* note 231, at 1790.

288. See Kriston Capps, *Can Cities Ease Homelessness with Storage Units?*, BLOOMBERG: CITYLAB (Aug. 25, 2014), <https://www.bloomberg.com/news/articles/2014-08-25/can-cities-ease-homelessness-with-storage-units> [<https://perma.cc/7X9A-W2KL>] (discussing San Diego’s Transitional Storage Center, which provides unhoused people with a secure area to store their belongings in numbered plastic tubs, supervised by city employees to prevent theft).

289. See Declaration of Henrietta Brown, *supra* note 153, at 3 (attesting that a sudden police sweep of an unhoused encampment resulted in the loss of an individual’s “birth certificate, application for medical assistance, [and] a photocopy of [her] ID”).

290. See, e.g., *Understanding Supplemental Security Income Documents You May Need When You Apply—2021 Edition*, SOC. SEC. ADMIN., <https://www.ssa.gov/ssi/text-documents-ussi.htm> [<https://perma.cc/2NCA-YDKM>] (requiring documents such as birth records, proof of income and resources, and the preceding 15 years of work history). In addition, if an unhoused person obtains a job, they will be required by law to complete a Form I-9, requiring identification documentation. See *Form I-9 Acceptable Documents*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/i-9-central/form-i-9-acceptable-documents> [<https://perma.cc/8DDT-QAE3>].

291. See e.g., 775 ILL. COMP. STAT. 45/10(a)(3) (2021) (“[Unhoused persons have] the right not to face discrimination while maintaining employment due to his or her lack of permanent mailing address.”).

goes a step farther in implementing the goals articulated in the negative rights provisions. These supplementary measures will not be a magical panacea for the social ill of homelessness, but they can enable the systems already in place to better serve the unhoused.

E. THERE IS LITTLE POLITICAL WILL TO ENACT PRO-UNHOUSED LEGISLATION

The legal efficacy of Rhode Island Model UBR is questionable,²⁹² and their effect on reducing the prevalence or conditions of homelessness is unclear.²⁹³ When faced with more ambitious models of UBR, jurisdictions either fail to implement and enforce those protections²⁹⁴ or decline to pass the law altogether.²⁹⁵ It may be that the most useful purpose of a UBR is the public education and sentiment that results from advocating for pro-unhoused legislation.²⁹⁶

However, strong biases against the unhoused in the lawmaking processes may doom these efforts before they can gain any traction. Public sympathy for the unhoused can be fickle,²⁹⁷ and legislatures may decide to invest their time in matters with a greater perceived return on investment.²⁹⁸ Securing buy-in and support from politicians

292. See *supra* Parts II.A–B.

293. See *supra* Part II.C.

294. See *supra* notes 192–95 and accompanying text (discussing Puerto Rico’s neglect of its UBR scheme).

295. See *supra* notes 200–12, 220 (discussing two versions of California’s proposed UBR, neither of which were enacted by the state legislature).

296. See *supra* note 274 and accompanying text.

297. See *supra* note 40, at 19 (finding that 58 to 87% of survey respondents believed laziness, personal choice, or irresponsible behavior were sometimes, usually, or almost always part of the reason people were unhoused); see also Kalyn Yasutake, *Study of Perceptions of Homelessness in Billings*, CITY OF BILLINGS-CMTY. DEV. DIV. 17 tbl.4 (2014), <https://www.ci.billings.mt.us/DocumentCenter/View/25824/PerceptionStudy-PDF> [<https://perma.cc/65CC-HQ5C>] (reporting that 47.6% of respondents to a Billings, Montana survey believed that a “Choice to be Homeless” contributed or strongly contributed to homelessness, and that 84.8% believed “Irresponsible Behavior and Bad Choices on the Homeless Person Themselves” played such a role).

298. See Maggie Mulvihill & Lillian Eden, *Homeless Bills of Rights Are a New Iteration of Anti-Discrimination Laws*, HOWARD CTR. FOR INVESTIGATIVE JOURNALISM: NOWHERE TO GO (June 29, 2020), <https://homeless.cnsmaryland.org/2020/06/29/homeless-bill-of-rights> [<https://perma.cc/Q3GZ-YZYW>] (“Attempts since 2013 to pass comparable [UBR] laws in several states, including Colorado, Oregon and California, were derailed because of a lack of votes or other pressing priorities. Vermont’s proposed law was headed for a committee vote this spring when COVID-19 hit.”); see also Becca Book, *Homeless Bill of Rights Fizzles Out This Session but Advocates Continue to Lay Groundwork*, URBANIST (Mar. 22, 2019), <https://www>

has been identified as a key step “in pursuing a homeless bill of rights.”²⁹⁹ But even with engaged politicians, the success of a UBR campaign is far from guaranteed. The substantive and procedural shortcomings of previous measures were likely shaped by the chiseling effect of the legislative process³⁰⁰ or affected by the positioning of UBR as an incremental part of a since-delayed or altered legal strategy.³⁰¹

The UBR campaign in Hawai‘i provides an instructive example. In 2014, a Rhode Island Model UBR—functionally identical to the Connecticut law—was introduced into the Hawai‘i House of Representatives.³⁰² The bill was passed out of committee and received three readings on the floor with no negative votes cast against it.³⁰³ The Hawai‘i Senate held a public hearing and passed the UBR out of committee with no negative votes, but it was referred to another committee and no further action was taken.³⁰⁴ The next year, an enhanced version of the bill,³⁰⁵ was introduced in the Hawai‘i Senate. That version received

.theurbanist.org/2019/03/22/homeless-bill-of-rights-fizzles-out-this-session-but-advocates-continue-to-lay-groundwork [https://perma.cc/SEB5-CBTB] (“[T]he [Washington] bill has faced pushback. Reiterating the civil rights of those experiencing homelessness requires us to confront deeply seated social stigmas This stirs fears in some that protecting those forced to live in public view could lead to safety and health concerns in these spaces.”).

299. Bauman & Rankin, *supra* note 43, at 7 (surveying “advocates across the nation” and citing the importance of “building a broad coalition of support for the bill, including legislators”).

300. *See, e.g., id.* at 15 (“In Rhode Island, although the initial draft of the bill of rights intended to include anti-criminalization measures, the final bill’s language did not mention law enforcement due to opposition from police.”).

301. *See, e.g.,* Mulvihill & Eden, *supra* note 298 (reporting that a 2013 attempt to enact a UBR in California was “derailed because of a lack of votes or other pressing priorities,” but that the 2020 legislature passed a bill making “housing a right for children and families” and is considering a constitutional amendment “declaring housing a human right”).

302. *See* H.B. 1889 H.D. 1, 27th Leg., Reg. Sess. (Haw. 2014). *Compare id.* at 1–2, with CONN. GEN. STAT. § 1-500 (2021).

303. *See* 2014 Archives: HB1889 HD1, HAW. STATE LEG., https://www.capitol.hawaii.gov/Archives/measure_indiv_Archives.aspx?billtype=HB&billnumber=1889&year=2014 [https://perma.cc/K7L6-WT3K].

304. *See id.*

305. The negative rights provisions of this bill more closely resembled the Rhode Island or Illinois UBR. *Compare* 34 R.I. GEN. LAWS § 34-37.1-3 (2021), with S.B. 1014 S.D. 1, 28th Leg., Reg. Sess. (Haw. 2015). However, it also contained a number of California-style positive rights such as “[t]he right to sleep in a legally parked automobile” and “[t]he equal opportunity to have twenty-four-hour access to public hygiene facilities.” *Compare* Assemb. B. 5, 2013–2014 Leg., Reg. Sess., at 11–12, 14 (Cal. 2012), with S.B. 1014 S.D. 1, 28th Leg., Reg. Sess., at 4 (Haw. 2015).

just three “no” votes across three committee hearings³⁰⁶ and passed its final Senate vote by a twenty-two to three margin.³⁰⁷ However, a house committee “recommend[ed] that the measure be deferred.”³⁰⁸ No further action was taken on that bill.³⁰⁹ The bill was introduced twice more over the years, whittling away at the positive rights provision each time,³¹⁰ but never received another final floor vote in any chamber.³¹¹ It does not appear that a UBR has been submitted to the Hawai’i Legislature since 2018.

The Hawai’i UBR tried multiple approaches to the law, and at times the measure advanced despite including ambitious positive rights grants, but the legislature never passed it despite a half-decade of efforts. Even with politicians dedicated to campaigning for the UBR and broad support in every chamber vote it received, Hawai’i’s UBR invariably fell by the wayside as each legislative session wore on. The pattern has repeated itself time and again in states and cities across the country. Bills are introduced but die in committee or see the clock run out on their legislative session.³¹² No statewide UBR has passed since 2013,³¹³ and there do not appear to be any challengers to that streak on the horizon.

While a UBR might be too heavy a lift for many state legislatures, with their myriad responsibilities and need to balance the competing interests of interest groups, political advocacy for such a law may be more effective at a local level. Four cities have passed local UBR, and

306. Compared to 17 “aye” votes. See *2015 Archives: SB1014 SD1*, HAW. STATE LEG., https://www.capitol.hawaii.gov/Archives/measure_indiv_Archives.aspx?billtype=SB&billnumber=1014&year=2015 [<https://perma.cc/L8WE-RPAF>].

307. *Id.*

308. *Id.*

309. See *id.*

310. See S.B. 589 S.D. 1, 29th Leg., Reg. Sess. (Haw. 2017) (forgoing the right to sleep in a parked automobile proposed in the 2015 bill); S.B. 2007 S.D. 1, 29th Leg., Reg. Sess. (Haw. 2018) (forgoing the hygiene facilities provision).

311. See *2017 Archives: SB589 SD1*, HAW. STATE LEG., https://www.capitol.hawaii.gov/Archives/measure_indiv_Archives.aspx?billtype=SB&billnumber=589&year=2017 [<https://perma.cc/RXL8-E8ZN>]; *2018 Archives: SB2007 SD1*, HAW. STATE LEG., https://www.capitol.hawaii.gov/Archives/measure_indiv_Archives.aspx?billtype=SB&billnumber=2007&year=2018 [<https://perma.cc/EV2D-8HB3>].

312. See, e.g., Bauman & Rankin, *supra* note 43, at 18–19 (summarizing the legislative posture of unenacted UBR in six states). There have been UBR formally proposed in at least four other states and Washington D.C. See *Homeless Bill of Rights*, *supra* note 41 (listing proposed UBR).

313. See *supra* note 225 and accompanying text.

there have been campaigns in at least four more.³¹⁴ There can be a strong rural-urban divide on how to address homelessness, as cities often disproportionately bear the expenses associated with caring for the unhoused of an entire state.³¹⁵ State-level officials must often reconcile this conflict between their cities and outstate areas, bargaining over the lives of unhoused people to appease recalcitrant municipalities.³¹⁶ The socioeconomic conditions that lead the unhoused to congregate in cities are unlikely to change. Given that cities already comprise a greatly disproportionate share of their states' economies,³¹⁷

314. Baltimore, Maryland; Traverse City, Michigan; Duluth, Minnesota; and Madison, Wisconsin adopted city-level UBR. *Homeless Bill of Rights*, *supra* note 41. New Haven, Connecticut; Knoxville, Tennessee; Detroit, Michigan; and Washington, D.C. have considered such a measure. *Id.*

315. Hennepin County, home to Minneapolis, contains 36% of the observed unhoused people in the entire state of Minnesota, despite being home to just 23% of the population of the state. This split is 17% to 10% for Ramsey County, home to St. Paul, and 60% to 55% when considering the seven-county Twin Cities Metro. St. Louis County, home to Duluth, exhibits a 6.7% to 3.5% split. Compare June Heineman & Michelle Gerrard, *Hennepin County: Characteristics and Trends of Those Experiencing Homelessness in Minnesota*, WILDER RSCH. 6 (2020), <http://mnhomeless.org/minnesota-homeless-study/reports-and-fact-sheets/2018/2018-hennepin-county-homeless-fact-sheet-1-20.pdf> [<https://perma.cc/4V89-TMZ6>] (listing actual counts of unhoused people by county in the Twin Cities Metro), and *Homelessness in Minnesota: A Count of Those Experiencing Homelessness: St. Louis County*, WILDER RSCH. 2 (2019), http://mnhomeless.org/minnesota-homeless-study/detailed-data-counts/2018/StLouis-2018-Homeless-Counts_3-19.pdf [<https://perma.cc/EY3G-M7WF>] (listing the actual count of unhoused people in St. Louis County), and WILDER RSCH., *supra* note 36, at ii (listing the actual count of unhoused people in Minnesota), with *QuickFacts*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts> [<https://perma.cc/6H52-E846>] (accessing 2020 Census population information for Minnesota and Hennepin, Ramsey, Anoka, Carver, Dakota, Scott, Washington, and St. Louis Counties).

316. See, e.g., Randy Billings, *New Law Is Aimed at Easing Burden of Homelessness on Portland*, PORTLAND PRESS HERALD (July 9, 2019), <https://www.pressherald.com/2019/07/09/mills-signs-bill-aimed-at-easing-burden-of-homelessness-in-portland> [<https://perma.cc/RW4X-SVTN>]. Maine Governor Janet T. Mills signed a law "oblig[ing municipalities] to provide shelter for their own residents." *Id.* However, the law does not require municipalities to *create* shelter, merely furnish shelter if it already exists. *Id.* The law only received the endorsement of local homelessness service groups after the City of Portland promised not to bill municipalities for the costs of providing shelter to their residents who seek services in Portland. *Id.*

317. For example: Hennepin and Ramsey Counties, largely predominated by the Twin Cities of Minneapolis and St. Paul, accounted for 49% of Minnesota GDP in 2019, but only 32% of its population. Compare FRED, *supra* note 264, at *Gross Domestic Product: All Industries in Hennepin County, MN (GDPALL27053)*, *Gross Domestic Product: All Industries in Ramsey County, MN (GDPALL27123)*, *Gross Domestic Product: All Industry Total in Minnesota (MNNGSP)*, with U.S. CENSUS BUREAU, *supra* note 315 (accessing 2019 Census population estimates for Hennepin and Ramsey Counties and Minnesota).

they should embrace their role as a destination for unhoused people by passing progressive homelessness policies on a local level. Such a model of hyperlocal federalism could result in a free-rider dilemma for cities, where unhoused-friendly municipalities take on an even more disproportionate share of the responsibility for solving homelessness when less compassionate cities pass the buck.³¹⁸ However, cities contemplating policies to aid unhoused people should accept the moral charge regardless of what other states and municipalities do. As the situation is now, cities nationwide would rather drive unhoused people away than help them in their time of need.³¹⁹ This Note proposes that Minnesota decline to take part in this endless shuffle of humanity. Instead, Minnesota should instead extend a hand to our unhoused neighbors and say, “You are welcome here.”³²⁰

There has not been an exhaustive sociopolitical history written about UBR campaigns nationwide, but the empirical results suggest

318. See, e.g., *Bussed Out*, GUARDIAN (Dec. 20, 2017), <https://www.theguardian.com/us-news/ng-interactive/2017/dec/20/bussed-out-america-moves-homeless-people-country-study> [<https://perma.cc/JZR7-J34W>] (reporting data from sixteen cities showing that they relocated 21,400 unhoused people by bus over seven years). “New York mayor Michael Bloomberg lauded his own city’s bussing scheme because it ‘saves the taxpayers of New York City an enormous amount of money.’” *Id.* Cities may also relocate unhoused people for expressive reasons. Now-Senator Willard “Mittens” Romney’s tenure as president of the organizing committee for the 2002 Salt Lake City Winter Olympics was criticized for indifference to the plight of that city’s unhoused. See, e.g., *SLOC Addresses Homeless Concerns*, ASSOCIATED PRESS (Apr. 5, 1999), <https://apnews.com/article/0ab938377349ac87d0c0c568e44d9a35> [<https://perma.cc/7WPL-WNQG>] (“‘We will not be building housing. We’ll be hosting people for 17 days and then they will be moving on,’ Romney said.”). As the Olympic Games approached, it was widely rumored and reported that Salt Lake City bussed thousands of unhoused people to Denver, Las Vegas, and Seattle. See, e.g., Robert L. Jamieson, Jr., Opinion, *Salt Lake Busing Its Poor Here? Not Likely*, SEATTLE POST-INTELLIGENCER (Feb. 11, 2002), <https://www.seattlepi.com/news/article/Salt-Lake-busing-its-poor-here-Not-likely-1080044.php> [<https://perma.cc/4XHN-AZ9X>] (reporting an unhoused person from Salt Lake City’s claim that “the homeless in Salt Lake City had been given a choice—either be escorted to the local jail or take a ticket to ride”). “‘Either Seattle, Los Angeles or Denver,’ [the unhoused man] explained. ‘And they said come back in March.’” *Id.* The Utah government, of course, denied this claim. Compare Timothy Pratt, *Utah Officials Deny Homeless Sent to LV*, LAS VEGAS SUN, (Oct. 25, 2001) <https://lasvegassun.com/news/2001/oct/25/utah-officials-deny-homeless-sent-to-lv> [<https://perma.cc/7T86-9A6C>], with Mike Ginn (@shutupmikeginn), TWITTER (Nov. 20, 2013), <https://twitter.com/shutupmikeginn/status/403359911481839617> [<https://perma.cc/EN8Q-J3YU>] (“My ‘Not involved in human trafficking’ T-shirt has people asking a lot of questions already answered by my shirt.”).

319. See Foscarinis et al., *supra* note 23, at 146–47.

320. See Lazarus, *supra* note 1 (“Give me your tired, your poor . . . Send these, the homeless . . . to me . . .”).

that these measures are not sought out or prioritized by political bodies. Perhaps this reflects a cost-benefit analysis on the part of lawmakers. If negative rights-centric UBR do not significantly help unhoused people,³²¹ and positive rights UBR are unlikely to be enacted by a legislature,³²² why would most politicians decide to stick their neck out for the disenfranchised when public support for actually aiding the unhoused can be tenuous at best?³²³ Any strategy to pass an Unhoused Bill of Rights will require persistent and powerful advocacy to overcome the inertia against action in favor of the unhoused and make the case for an effective law.

Minnesota must pass a law to improve upon its abysmal protection of the fundamental rights of unhoused people. This bill of rights for unhoused Minnesotans will need more specific protections and powerful enforcement mechanisms than existing UBRs in order to generate the litigation needed to vindicate the rights of the unhoused.³²⁴ While existing UBR have questionable impacts on homelessness in their jurisdictions,³²⁵ and homelessness is an incredibly complicated issue resistant to silver-bullet solutions,³²⁶ including progressive policy proposals such as public hygiene centers in a Minnesota UBR would convey clear and measurable benefits to unhoused people.³²⁷ Minnesotan cities show no indication that they will stop

321. See *supra* Parts II.A–C.

322. See, e.g., *supra* notes 302–11 and accompanying text (discussing the failure of the Hawai'i legislature to enact a UBR that included certain positive rights provisions, representing over a half-decade of effort).

323. Polls suggest that while public support for the care of unhoused people is high, a lower proportion are willing to take local responsibility. See, e.g., Caroline Spivack, *Most New Yorkers Support Homeless Shelters in Their Neighborhood: Poll*, CURBED: N.Y. (Apr. 23, 2019), <https://ny.curbed.com/2019/4/23/18513079/new-yorkers-support-homeless-shelters-neighborhood-poll-win> [<https://perma.cc/D7LP-C6J4>] (“[Ninety-two] percent [of New York City residents] say shelter space should be offered to all who need it and 59 percent said they would support a homeless shelter opening its doors in their community.”). This sort of “not in my backyard” gap between expressed values and tangible action is extremely common. See, e.g., Greene, *supra* note 19 (“‘We’re all liberals,’ [a Minneapolis resident] said. ‘We’re all sympathetic and would love for these people to have dignified housing and to get the social services But this is not the answer.’”).

324. See *supra* Parts II.A–B.

325. See *supra* Part II.C.

326. See *supra* Part II.D.

327. See *supra* note 218 and accompanying text (discussing the potential impact of California’s proposed hygiene centers on health and employment outcomes for the unhoused).

their mistreatment of the unhoused.³²⁸ As they are unlikely to change course, the state must command them to do so, and a UBR is the clearest way to do so.

III. DRAFTING AN UNHOUSED BILL OF RIGHTS FOR MINNESOTA

Minnesota must enact an Unhoused Bill of Rights. Without action, the state's existing homelessness crisis³²⁹ will become even more dire once current federal and state eviction protections expire.³³⁰ Unhoused people in Minnesota are regularly subjected to inhumane and unconstitutional state action³³¹ with little recourse.³³² These are precisely the conditions a UBR is intended to remedy. A UBR with robust negative and positive rights provisions, and strong remedies to promote enforcement thereof, will provide unhoused Minnesotans with much more powerful protections than they currently enjoy. Any effort to enact an Unhoused Bill of Rights will face cultural and institutional challenges,³³³ but Minnesotans are charged with a moral imperative to help our less fortunate neighbors.

328. See *Minneapolis Police Review Force Used in Homeless Camp Clash*, ASSOCIATED PRESS (Mar. 19, 2021), <https://apnews.com/article/media-social-media-death-of-george-floyd-racial-injustice-arrests-5ae8bf31a6341931e6635ae1e3855544> [<https://perma.cc/UT6A-VMFV>] (reporting the use of police force in an attempt to disperse an encampment on the Near North side of Minneapolis, in the spring of 2021).

329. See *supra* notes 69–76 (discussing the scale and characteristics of Minnesota's unhoused population).

330. See *supra* note 35 (discussing the October 2021 expiration of most federal and state COVID-19 pandemic-related eviction protections); MCDONOUGH, *supra* note 36, at 16 (estimating that over 13,000 Minnesotans could be evicted when eviction protections expire).

331. Compare *supra* notes 17–29 and accompanying text (discussing Minneapolis' actions in breaking up the Powderhorn Park encampment), and Declaration of Patrick Berry, *supra* note 21, at 3 (“It is really cruel what the city is doing. The bulldozers are a ridiculous show of force. Why couldn't they just pull the tents up by hand? They just don't need bulldozers.”), with U.S. CONST. amend. IV (“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . .”), and MINN. CONST. art. I, § 10 (“The right of the people to be secure . . . against unreasonable searches and seizures shall not be violated . . .”), and *supra* Part I.B.2 (discussing the application of the Fourth Amendment to the living spaces and property of unhoused people).

332. *Berry v. Hennepin Cnty.*, No. 20-CV-02189, 2020 WL 6337706, at *4 (D. Minn. Oct. 29, 2020) (ruling that unhoused encampment residents seeking a temporary restraining order barring the clearing of park encampments did not prove that their “alleged harm [was] sufficiently certain and concrete”). The City of Minneapolis was “sufficiently certain and concrete,” however, when they cleared the encampment in question less than two weeks later. See *supra* note 29.

333. See *supra* Part II.E.

This Part proposes that Minnesota adopt an Unhoused Bill of Rights with a comprehensive negative rights provision, extensive positive rights provisions, and procedural grants to encourage litigation under the law. There is an argument to be made elsewhere for a sort of “stealth” UBR in which select provisions are enacted separately to effect incremental improvements for unhoused people at a lower political cost. This Note proposes an omnibus measure encompassing all of the discussed measures which would improve the lives of unhoused people. These policies are necessary no matter the political practicalities. This Note refers to the proposed law as the Bill of Rights for Unhoused Minnesotans (BRUM),³³⁴ and uses the present tense as this Note constitutes a proposal of the law. Section A outlines the negative rights provisions included in BRUM, while Section B enumerates BRUM’s positive rights provisions. Section C concludes this Part by proposing remedies and procedural provisions that will enable the enforcement of BRUM’s protections. The full text of the proposed statute is provided in the Appendix, on pages 171–78, formatted in accordance with the Minnesota Revisor of Statutes’ drafting practices.³³⁵

A. NEGATIVE RIGHTS

BRUM defines “unhoused individual” by incorporating portions of the U.S. Code’s general definition of homeless individual.³³⁶ Parts of this definition are used in other Minnesota laws, indicating the state’s acceptance of the definition as valid.³³⁷ Other UBRs have used this definition in setting the scope of their laws.³³⁸ BRUM is designed to extend protections to a broad group of people, and thus broadens the U.S. Code’s definition by excising certain limitations on coverage. This coverage includes a broadened version of the Code’s definition to people at imminent risk of losing housing, so that people at risk of actual

334. *Infra* Appendix [hereinafter BRUM]. When this Note cross-references provisions of the Bill of Rights for Unhoused Minnesotans, it cites the internal structure of the draft statute. For example, “*See infra* BRUM, subdiv. 3(A)(iv)” refers to the subsection preventing municipalities from criminalizing the act of sleeping in a lawfully parked vehicle. Please note that Minnesota Statutes use “subd.” as the abbreviation for “subdivision.” BRUM utilizes Minnesota’s preferred format while the footnotes maintain Bluebook formatting.

335. *See supra* note 334; *infra* BRUM.

336. 42 U.S.C. § 11302; *see infra* BRUM, subdiv. 1(A).

337. *See* MINN. STAT. § 116L.361 subdiv. 5 (2021).

338. CONN. GEN. STAT. § 1-500(1) (2021) (“For purposes of this section, ‘homeless person’ has the same meaning as in 42 U.S.C. § 11302, as amended from time to time.”).

homelessness can use the rights BRUM offers to avoid becoming formally unhoused.³³⁹

BRUM incorporates broadened negative rights provisions drawn from the Rhode Island Model UBR.³⁴⁰ While these provisions are largely duplicative of existing rights,³⁴¹ reiterating them in the context of BRUM serves two key purposes. First, they provide a basis for BRUM's positive rights provisions. Second, their inclusion brings violations of those rights which are not expressly enumerated as positive rights under the purview of BRUM's remedies and procedural provisions. BRUM strengthens these negative rights by prohibiting discrimination "solely or in part" because an individual is unhoused,³⁴² which seeks to improve on the legal deficiency of current UBRs' "solely because" standard.³⁴³

BRUM incorporates the seven negative rights contained in the Rhode Island Model UBR,³⁴⁴ the California UBR's right to decline shelter space or social services without criminal or civil sanctions,³⁴⁵ and a particularization of the Fourth Amendment to the person, area of residence, and personal property of unhoused people.³⁴⁶ The analysis of courts contemplating the constitutional rights of the unhoused indicates that these provisions would likely be upheld against a constitutional challenge.³⁴⁷ BRUM also makes retaliation against an unhoused person for exercising, enforcing, or insisting on their rights

339. Compare 42 U.S.C. § 11302(a)(5)(A)(i) (requiring that individuals imminently at risk of losing their housing be subject to a court order to vacate within 14 days in order to be considered unhoused), with *infra* BRUM, subdiv. 1(A)(vi)(a)(1) (requiring merely that the individual be "subject to any written or oral threat of eviction," in order to extend the law's protections to individuals while they are in a housing-insecure but still pre-eviction state).

340. *Infra* BRUM, subdiv. 2(A)–(B), (D)–(H).

341. See *supra* Part II.A.

342. *Infra* BRUM, subdiv. 2.

343. See *supra* note 254 and accompanying text. This language also contemplates the intersectionality of homelessness with other protected statuses such as race, sexual orientation, and gender identity. See *supra* notes 73–76 and accompanying text.

344. Compare *supra* notes 174–80 and accompanying text, with *infra* BRUM, subdiv. 2(A)–(B), (D)–(H).

345. Compare Assemb. B. 5, 2013–2014 Leg., Reg. Sess., at 11 (Cal. 2012), with *infra* BRUM, subdiv. 2(K).

346. *Infra* BRUM, subdiv. 2(C); see *supra* notes 164–73 and accompanying text.

347. See *supra* Part I.B.2.

under the law a violation thereof.³⁴⁸ The retaliation provision also authorizes damages for any person retaliated against for exercising, enforcing, or insisting on another's rights under BRUM.³⁴⁹

These rights benefit from BRUM's enhanced remedies and procedural provisions,³⁵⁰ encouraging BRUM violations to be pled alongside other constitutional or statutory violations. While not exhaustive of the rights unhoused people are entitled to, the listed negative rights provisions are vital to the life-sustaining activities and dignitary concerns of unhoused people. Expressly protecting an unhoused person's "right to use and move freely in public spaces" can prevent the overcriminalization of homelessness that pervades local municipal codes.³⁵¹ Recognizing the right of an unhoused person to be free from unreasonable searches and seizures, even if they live in a park,³⁵² reinforces "society's code of values and its notions of custom and civility" by protecting their "last shred of privacy from the prying eyes of outsiders."³⁵³ Homelessness is a condition which leaves its sufferers particularly disenfranchised and vulnerable. Traditional legal frameworks have often failed unhoused people but, by particularizing existing rights and protections to individuals experiencing homeless, BRUM ensures that they enjoy the full protections of the law.

Opponents of the statute may argue that the protections granted by BRUM will stifle bona fide law enforcement concerns.³⁵⁴ This worry is misplaced. The provisions of the law are tailored to permit un-

348. *Infra* BRUM, subd. 3(I).

349. *Id.* This provision is intended to promote enforcement of BRUM by preventing adverse action against organizations and individuals providing aid to the unhoused. *See, e.g.*, Class Action Amended Complaint, *supra* note 26, at 49 (providing newspaper photographs of Minneapolis policemen pepper-spraying individuals protesting the clearing of an unhoused encampment).

350. *See infra* Part III.C; *infra* BRUM subd. 4.

351. *Compare infra* BRUM, subd. 2(A), subd. 3(A), with *supra* notes 146–47 and accompanying text (discussing constitutional equal protection principles' safeguarding of the fundamental right to travel as grounds to protect unhoused peoples' right to perform "essential, life-sustaining acts in public" (quoting *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1554 (S.D. Fla. 1992))).

352. *See infra* BRUM, subd. 2(B)–(C).

353. *Pottinger*, 810 F. Supp. at 1572 (quoting *State v. Mooney*, 588 A.2d 145, 161 (Conn. 1991)); *see also supra* notes 152–60 and accompanying text (discussing the application of the Fourth Amendment to unhoused people).

354. *See, e.g.*, Book, *supra* note 298 ("Despite these benefits, the [UBR] has faced pushback. . . [it] did not pass out of committee. . . . Some residents who are in favor of sweeping homeless encampments try to imply that this would prevent law enforcement agents from so much as talking to homeless individuals.").

housed people to perform “essential, life-sustaining activities” without fear of criminal penalty.³⁵⁵ Nothing in the law prevents an arrest for violent crimes or even crimes against private property.³⁵⁶ BRUM merely preserves the rights of unhoused people to “enjoy the same rights and privileges as any other citizen of this State.”³⁵⁷ Just as any Minnesotan could be arrested for unlawful behavior, so could unhoused people if BRUM was enacted.

B. POSITIVE RIGHTS

BRUM’s positive rights enumerations provide unhoused people the right to storage of their personal property³⁵⁸ and the right to hygiene centers.³⁵⁹ These rights may well be controversial, as they are affirmative grants of services to unhoused people that are likely to incur significant costs.³⁶⁰ However, they are vital to both enabling basic life-sustaining activities and helping unhoused people to escape homelessness. The right to storage would allow unhoused people to protect important documentation—such as birth certificates, identification cards, or medical records—that are necessary to receive benefits or apply for jobs.³⁶¹ Hygiene stations could help prevent many of the diseases and conditions that affect unhoused people³⁶² and would work to prevent employment discrimination that can result from an inability to clean oneself.³⁶³

355. *Cf. Pottinger*, 810 F. Supp. at 1554.

356. *See infra* BRUM, subdiv. 1(B)(ii).

357. *Infra* BRUM, subdiv. 2.

358. *Infra* BRUM, subdiv. 2(J); *see supra* notes 288–90 and accompanying text (discussing the origins of this proposal).

359. *Infra* BRUM, subdiv. 2(K); *see supra* note 211 and accompanying text (discussing the origins of this proposal).

360. *See NICOL, supra* note 219, at 2 (finding that providing hygiene centers in California would have cost \$216 million to establish and \$81 million to operate annually).

361. *Compare, e.g., supra* note 290 (discussing the identification documents needed to apply for federal SSI and SSDI benefits or prove one’s eligibility to work by completing a Form I-9), *with* Declaration of Henrietta Brown, *supra* note 153, at 3 (describing the loss of an unhoused person’s birth certificate and identification in an early morning encampment sweep).

362. *See, e.g., supra* note 66.

363. *See Childers, supra* note 218 (discussing the importance of hygiene to the employment prospects of unhoused people).

Furthermore, both of these measures would help protect the dignity of unhoused individuals. Unhoused people are at risk of losing belongings of great emotional value to them,³⁶⁴ and some courts are loath to recognize this risk as worth protecting.³⁶⁵ Storage facilities would allow unhoused people to keep their most precious possessions safe, giving them a sense of security and an emotional tether to their lives before homelessness. Similarly, ensuring unhoused people can use the bathroom, wash themselves or their clothing, and safely and cleanly change or breastfeed their children protects universal personal needs that unhoused people often have trouble fulfilling.

BRUM also provides unhoused individuals the right to decline shelter space or social services without opening themselves up to the criminalization of their essential, life sustaining activities.³⁶⁶ This measure closes the loophole left by *Martin v. City of Boise*, which withholds Eighth Amendment protections against the criminalization of living in public places if there are shelter beds available.³⁶⁷ Courts and law enforcement authorities in Minnesota have relied on the availability of shelter beds, even when they were not actually available, to

364. See, e.g., Declaration of Henrietta Brown, *supra* note 153, at 3 (reporting family photos among items lost in the sweep of an unhoused encampment); Declaration of Patrick Berry, *supra* note 21, at 5 (reporting “sacred Native American objects and [his] dad’s ashes” among an unhoused person’s belongings).

365. See, e.g., *Berry v. Hennepin Cnty.*, No. 20-CV-02189, 2020 WL 6337706, at *4 n.2 (D. Minn. Oct. 29, 2020) (“Were they to lose essential possessions, the Encampment Plaintiffs argue that loss would be both devastating and traumatizing. . . . But . . . the record [does not] reflect, that the harm arising from such a loss would be irreparable.”).

366. *Infra* BRUM, subdiv. 2(I); see *supra* note 200 and accompanying text (discussing the origins of this proposal).

367. Compare *Martin v. City of Boise*, 902 F.3d 1031, 1048 (9th Cir. 2018) (confining its restriction on the criminalization of the use of public places to times and places where “there is a greater number of homeless individuals in [a jurisdiction] than the number of available beds [in shelters]”), and *City of Boise v. Martin*, 140 S. Ct. 674 (2019) (mem.) (denying certiorari, thus leaving the *Martin* rule in place for the Ninth Circuit), with Elizabeth Chou, *L.A. City Council Discusses ‘Anti-Camping’ Law Aimed at Homeless Encampments, but Tables It for Now*, L.A. DAILY NEWS (Oct. 30, 2020), <https://www.dailynews.com/2020/10/28/ban-on-sitting-lying-down-sleeping-in-public-areas-to-be-taken-up-by-the-la-city-council> [<https://perma.cc/V48V-SJJS>] (discussing a proposed ordinance in Los Angeles, California that would circumvent the rule in *Martin* yet still “prevent people from staying in public areas if they have been offered shelter”). See generally *supra* notes 148–51 and accompanying text (discussing the ruling and scope of *Martin*).

justify the clearing of encampments.³⁶⁸ In preventing dubious claims by city officials of available shelter space³⁶⁹ from being used as a pretext for unconstitutional treatment, BRUM allows unhoused individuals to better exercise their rights.

It is questionable whether provisions seeking to prohibit job applications from requiring an address or disclosure of a criminal history are best proposed as a part of BRUM.³⁷⁰ These measures are vital to executing BRUM's anti-discrimination provisions, but may have complicated enough implications to justify spinning them off into standalone laws. However, the fact that these provisions benefit a far broader group than just unhoused people could draw attention to BRUM, engender larger debate and discussion, and ultimately help BRUM pass. As a result, they are included in the proposed statute.³⁷¹

Certain measures were considered for inclusion in BRUM but deemed too unlikely to pass, even as a hypothetical bill.³⁷² Others deal with incredibly complicated policy areas that are not well-encapsulated in an unhoused bill of rights. For example, Minnesota should follow Seattle's example and enact an annual moratorium on evictions

368. *Compare Berry*, 2020 WL 6337706, at *4 ("If shelter space is available . . . the possible harm that the Encampment Plaintiffs might face if encampments are disbanded would be mitigated. . . . The City of Minneapolis and Hennepin County maintain that shelter options are available.") with Lauren Josephine (@YoLarryJohnson), *supra* note 31 ("There are ZERO shelter beds, shelters are completely full. . . Hennepin county & MPD delivered an eviction notice to an encampment today with zero alternatives given WHILE IT WAS HAILING ON US.").

369. *See Lee*, *supra* note 100 ("Hennepin County's network of [emergency] shelters . . . [is] very close to a hundred percent utilization on a daily basis.").

370. *See supra* notes 283–87 and accompanying text (discussing "ban the address" and "ban the box" proposals).

371. *Infra* BRUM, subdiv. 3(C)–(D).

372. For example, this Note initially considered a cause of action to compel the rental of vacant residential properties. Hundreds of residential properties in the Twin Cities remain empty year after year, despite city fines for such vacancies. *See Andy Mannix, Minneapolis Still Battling Against Vacant Properties—Even in Housing Shortage*, STAR TRIB. (June 2, 2018), <https://www.startribune.com/minneapolis-still-battling-against-vacant-properties-even-in-housing-shortage/484391031> [<https://perma.cc/45Y8-WK5Q>] ("Nearly 340 residential buildings sit empty and boarded across Minneapolis, despite a severe housing shortage and a steep vacant property fee that has raised \$20 million for city services over the past decade."). These properties could be put to use through a measure that allows a private right of action against property owners to compel the renting of unused residential properties at a reasonable market rate after a calendar year of vacancy, while simultaneously increasing the penalty on vacant properties to put pressure on landlords to comply. However, this provision could be subject to strong legal challenges as a regulatory taking, and could prove politically unpopular. Thus, it was too heavy a lift even for a student note.

during winter months.³⁷³ Such a moratorium would likely survive legal challenges,³⁷⁴ and could be a highly effective measure in preventing individuals from becoming unhoused during a time when the frigid weather could be dangerous to their health and safety to live outside.³⁷⁵ However, such an eviction ban would be incredibly controversial and require political and legal fights all its own.³⁷⁶ Narrower and more technocratic solutions—such as automatically expunging eviction filings which end in a settlement or victory for the tenant, thus lowering barriers to rental for those who have struggled with housing³⁷⁷—are likely best addressed as standalone legislative proposals.³⁷⁸

C. REMEDIES AND PROCEDURAL PROVISIONS

Key to the execution of BRUM's entire scheme is its collection of remedies and procedural provisions. BRUM first imports the Rhode

373. See Daniel Sutor, *It's Colder Day by Day: Adopting a Winter Eviction Moratorium in Minnesota*, MINN. L. REV.: DE NOVO (Apr. 16, 2021), <https://minnesotalawreview.org/2021/04/16/its-colder-day-by-day-adopting-a-winter-eviction-moratorium-in-minnesota/> [<https://perma.cc/9L5Y-TVXU>] (analyzing a Seattle ordinance that prevents most evictions from November through February each year).

374. See *Rental Hous. Ass'n v. City of Seattle*, No. 20-2-13969-6, slip op. at 20 (Wash. Super. Ct. Feb. 24, 2020) (upholding Seattle's winter eviction ban against a variety of facial challenges).

375. Compare WILDER RSCH., *supra* note 36, at 36 (finding that 41% of unhoused Minnesotans reported eviction or foreclosure as a reason for leaving their last home), with Andrew Krueger, *Temperatures Plummeted to as Low as 50 Below Zero in Minnesota on Saturday Morning*, MINN. PUB. RADIO NEWS (Feb. 14, 2021), <https://www.mprnews.org/story/2021/02/13/temperatures-plummeted-to-as-low-as-50-below-zero-in-minnesota-on-saturday-morning> [<https://perma.cc/7KX5-2HXX>].

376. See, e.g., Kriston Capps, *Landlords Challenge U.S. Eviction Ban and Continue to Oust Renters*, BLOOMBERG CITY LAB (Oct. 22, 2020), <https://www.bloomberg.com/news/articles/2020-10-22/landlords-launch-legal-attack-on-cdc-eviction-ban> [<https://perma.cc/5DLF-ZKRY>] (discussing a lawsuit filed by a nonprofit representing "some 85,000 landlords responsible for 10 million rental units" challenging the CDC's "national moratorium on evictions" during the COVID-19 pandemic).

377. See Ashley Meeder, *Guilty Until Expunged: How Minnesota's Public Records Policies Needlessly Burden Renters*, MINN. L. REV.: DE NOVO (Nov. 23, 2020), <https://minnesotalawreview.org/2020/11/23/guilty-until-expunged-how-minnesotas-public-records-policies-needlessly-burden-renters/> [<https://perma.cc/U4ZW-Z9YJ>] ("If you have \$285 for a filing fee and 20 minutes to fill out a form in Minnesota, you can ruin someone's life.").

378. This sort of technical and relatively inoffensive—but highly effective—measure could likely be passed in a fraction of the time and with far less controversy than BRUM.

Island Model's basic permission of actual damages, injunctive and declaratory relief, and attorney's costs and fee awards for prevailing plaintiffs.³⁷⁹ It also makes punitive damages available to the extent allowed under Minnesota law.³⁸⁰ Furthermore, it authorizes treble actual damages for willful, wanton, or aggravated misconduct in violating BRUM as well as for retaliation when proved by clear and convincing evidence.³⁸¹ Finally, BRUM requires statutory damages of \$8,500 per violation.³⁸² The existence of statutory damages will not be submitted to jury, nor may they consider it in their damages evalua-

379. Compare *infra* BRUM, subdiv. 4(C), with 34 R.I. GEN. LAWS § 34-37.1-4 (2021).

380. *Infra* BRUM, subdiv. 4(E). Minnesota's punitive damages statute is as follows:

(a) Punitive damages shall be allowed in civil actions only upon clear and convincing evidence that the acts of the defendant show deliberate disregard for the rights or safety of others.

(b) A defendant has acted with deliberate disregard for the rights or safety of others if the defendant has knowledge of facts or intentionally disregards facts that create a high probability of injury to the rights or safety of others and:

(1) deliberately proceeds to act in conscious or intentional disregard of the high degree of probability of injury to the rights or safety of others; or

(2) deliberately proceeds to act with indifference to the high probability of injury to the rights or safety of others.

MINN. STAT. § 549.20 subdiv. 1 (2021).

381. *Infra* BRUM, subdiv. 4(D). The treble damages provision is intended to overcome the problem of small actual damages awards. Simply put, unhoused people have few belongings of great value to the law. While bulldozing a tent and its contents may destroy the entire net worth of an unhoused person, the monetary damages for such a violation may total only a few hundred dollars at most. See *e.g.*, Declaration of Henrietta Brown, *supra* note 153, at 3. The extension of treble damages to the retaliation cause of action creates a strong disincentive for police departments to use excessive force when members of the community protest the inhumane and unconstitutional treatment of the unhoused. See, *e.g.*, *supra* note 18 and accompanying text (discussing Minneapolis police's use of pepper-spray to disperse a crowd protesting the clearing of the Powderhorn encampment); *Minneapolis Police Review Force Used in Homeless Camp Clash*, *supra* note 328 (discussing an internal investigation into the use of police force on a crowd protesting the clearing of an encampment on the Near North side of Minneapolis).

382. *Infra* BRUM, subdiv. 4(F). This statutory damages figure was calculated to provide a life-altering sum of money after a 33% attorney's contingent fee award. See Bridgette Watson, *A B.C. Research Project Gave Homeless People \$7,500 Each—The Results Were 'Beautifully Surprising'*, CANADIAN BROAD. CO. (Oct 07, 2020), <https://www.cbc.ca/news/canada/british-columbia/new-leaf-project-results-1.5752714> [<https://perma.cc/WC6Q-DWHH>] (finding that the unhoused recipients of \$5,745 USD grants spent fewer days unhoused than a control group and moved into stable housing two months faster on average).

tions, in order to ensure that unhoused people are receiving full recompense on the merits of the violations against them.³⁸³ These damages provisions should create larger damage awards for the violations against unhoused people, thus enticing more lawyers to take on unhoused clients.

Critics of these remedies would likely portray them as excessive and complain about the ever-present boogeyman of “unnecessary and abusive litigation” and “frivolous lawsuits” burdening the legal system.³⁸⁴ These provisions are vital for two key reasons. First, existing UBRs do not generate sufficient litigation to vindicate the rights of unhoused people. That is, they cannot be said to generate *any* meaningful amount of litigation.³⁸⁵ There are practical difficulties to working with unhoused clients,³⁸⁶ but these individuals deserve the same opportunity to enforce their constitutional rights. Financially incentivizing lawyers to represent unhoused people in these cases is an acceptable method of enabling the effective vindication of the rights of the unhoused. Second, these remedies could help lift individuals out of homelessness. It takes a relatively meager sum of money to get individuals out of homelessness.³⁸⁷ By penalizing parties who mistreat unhoused people, BRUM shifts the financial burden of ameliorating homelessness onto bad actors. The prohibitive damages a city could face for repeated or large-scale violations of the rights of the unhoused may even incentivize municipalities to proactively invest in ending homelessness in their jurisdiction rather than risk damages from careless or callous law enforcement behavior.³⁸⁸

383. *Infra* BRUM, subdiv. 4(F). If the issue of statutory damages could be considered by the jury, it might result in reduced damage awards to account for “built-in” damages.

384. *See, e.g., Smith & Grassley Introduce Bill to Combat Lawsuit Abuse*, SENATE.GOV: CHUCK GRASSLEY (Feb. 5, 2015), <https://www.grassley.senate.gov/news/news-releases/smith-grassley-introduce-bill-combat-lawsuit-abuse-0>

[<https://perma.cc/J6GX-T8HM>] (“Lawsuit abuse is common in America because the lawyers who bring these frivolous cases have everything to gain and nothing to lose.”).

385. *See supra* notes 250–54 and accompanying text (finding four reported cases in twenty-five cumulative years of UBR coverage).

386. *See supra* notes 67, 186.

387. *See* Watson, *supra* note 382.

388. *But cf.* Walker Orenstein, *As Chauvin Trial Gets Under Way, Lawmakers Remain at Odds Over Paying for Security*, MINNPOST (Mar. 9, 2021), <https://www.minnpost.com/state-government/2021/03/as-chauvin-trial-gets-under-way-law-makers-remain-at-odds-over-paying-for-security> [<https://perma.cc/V9FJ-5GPM>] (discussing proposals to spend \$20 to \$35 million on security measures surrounding Derek Chauvin’s trial for the murder of George Floyd).

BRUM also authorizes a court to issue a restraining order against a party who is violating or will violate any provision of this statute.³⁸⁹ This restraining order is subject to a lower burden of proof in order to better protect unhoused people given the ability of local governments and law enforcement to suppress evidence of imminent harmful actions against them.³⁹⁰ Private civil enforcement is key to BRUM's scheme, but the law also provides the Attorney General's office with the power to investigate and file charges under the statute.³⁹¹ In addition, it provides the AG and homelessness-centric nonprofits the ability to intervene of right in BRUM cases.³⁹² The Attorney General likely cannot intervene against state officers and entities,³⁹³ but public enforcement would still be available against municipalities for their array of anti-unhoused laws.³⁹⁴

As proposed, BRUM is an omnibus measure including a wide array of legal structures and policy proposals which would improve the lives of unhoused people. This Note encourages the Minnesota Legislature to take up this law. Unhoused Minnesotans are Minnesotans all the same. BRUM's negative rights provisions, when coupled with its remedies and enforcement mechanisms, would help unhoused people actually enjoy the rights we all share. The policy proposals within would improve the lives of the unhoused and may even save a large number of lives. Even if some of BRUM's provisions were set aside in the inescapable chiseling of the legislative process, many could be taken up as standalone laws. Minnesota's cities systemically reject and harass unhoused people in an effort to foist them off to some other municipality.³⁹⁵ It is time for the North Star State to put an end to this unlawful and immoral treatment of its own people. Minnesota must adopt a bill of rights for its unhoused people. Failure to do so will

389. *Infra* BRUM, subdiv. 4(G).

390. *Compare supra* note 29 (discussing a court's finding that the harm posed by the clearing of an unhoused encampment was not "sufficiently certain and concrete," only for that encampment to be cleared less than two weeks later), *with* Class Action Amended Complaint, *supra* note 31, at 46 n.2 (discussing the Minneapolis Park & Recreation Board's efforts to keep the dates of encampment sweeps hidden from the public).

391. *Infra* BRUM, subdiv. 5(A)(i).

392. *Infra* BRUM, subdiv. 5(A)-(B).

393. *See* MINN. STAT. § 8.06 (2021) (emphasis added) ("The attorney general *shall* act as the attorney for *all* state officers and all boards or commissions created by law in *all* matters pertaining to their official duties.").

394. *See, e.g., No Safe Place, supra* note 125, at 63 (listing twelve laws criminalizing basic activities of unhoused people in Minneapolis and St. Paul).

395. *See supra* notes 135-40 and accompanying text.

strain the state's credibility as a protector of laws and permanently stain the conscience of its people.

CONCLUSION

Minnesota's homelessness crisis is not going anywhere. Try as they might, officials and offended residents will not rid themselves of unhoused people through cruel and inhumane treatment under the law. There is likely to be a post-COVID wave of homelessness brought on by widespread evictions once existing eviction protections expire. The self-perpetuating cycle of homelessness means that Minnesota must prepare to protect the rights of more and more unhoused people for years to come. A Bill of Rights for Unhoused Minnesotans will not solve homelessness alone, but it will protect homeless people while we improve the full range of social and economic programs intended to remedy and prevent homelessness altogether. We should not allow our friends, family, and neighbors to suffer the pain and indignity of homelessness without recourse. Our "tired, []our poor . . . the homeless" deserve better from our system of laws, and it is our moral duty to secure it for them.³⁹⁶

396. See Lazarus, *supra* note 1.

APPENDIX: A BILL OF RIGHTS FOR UNHOUSED MINNESOTANS
2022 Minnesota Statutes

___ A BILL OF RIGHTS FOR UNHOUSED MINNESOTANS

Subdivision 1. **Definitions.**

(A) **Unhoused Individual.** For the purposes of this law, “unhoused individual” means any of the following persons. Someone:

(i) who lacks a fixed, regular, and adequate nighttime residence;³⁹⁷

(ii) with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, sidewalk, abandoned building, bus or train station, airport, or camping ground;³⁹⁸

(iii) living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including hotels and motels paid for by Federal, State, or local government programs for low-income individuals or by charitable organizations, congregate shelters, and transitional housing);³⁹⁹

(iv) who resided in a shelter or place not meant for human habitation and who is exiting an institution where he or she temporarily resided;⁴⁰⁰

(v) fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions in their current housing situation, including where the health and safety of children are jeopardized;⁴⁰¹ or

(vi) who will imminently lose their housing, including housing they own, rent, or live in without paying rent, are sharing with others, and rooms in hotels or motels not paid for by Federal, State, or local government programs for low-income individuals or by charitable organizations.⁴⁰²

(a) A person will be presumed to imminently lose their housing when they are⁴⁰³

(1) subject to any written or oral threat of eviction;

(2) able to produce any credible evidence that the owner or renter of their current housing will not allow the individual or family to stay for more than 14 days, with any oral statement from the individual found to be credible constituting such evidence; or

397. 42 U.S.C. § 11302(a)(1).

398. 42 U.S.C. § 11302(a)(2).

399. 42 U.S.C. § 11302(a)(3).

400. 42 U.S.C. § 11302(a)(4).

401. Broadened version of 42 U.S.C. § 11302(b).

402. 42 U.S.C. § 11302(a)(5)(A).

403. Broadened version of 42 U.S.C. § 11302(a)(5)(A).

(3) lack the resources to maintain permanent or temporary housing for longer than one month.

(B) **Public Space.** For the purposes of this law, “public space” means any property that is owned or rented by any state or local government entity, or upon which there is an easement for public use and that is held open to the public.⁴⁰⁴

(i) Such property includes but is not limited to: parks, plazas, courtyards, parking lots, sidewalks, and public transportation vehicles or facilities.⁴⁰⁵

(ii) This definition does not include private business establishments or privately owned places of public accommodation.⁴⁰⁶

(C) **Retaliation.** For the purposes of this law, “retaliation” means to intentionally engage in any reprisal against an individual because they:

(i) opposed a practice forbidden under this statute;

(ii) filed a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this statute; or

(iii) associated with an unhoued individual or group of unhoued individuals.

(D) **Reprisal.** For the purposes of this law, “reprisal” includes but is not limited to any form of intimidation, harassment, discrimination, unlawful or objectively needless detainment or arrest, or causing of injury.

Subdivision 2. **Bill of Rights for Unhoused Minnesotans.** No person’s rights, privileges, or access to public services may be denied or abridged, solely or in part, because they are unhoued.⁴⁰⁷ An unhoued person shall enjoy the same rights and privileges as any other citizen of this State. These rights include:⁴⁰⁸

(A) the right to use and move freely in public spaces, including but not limited to public sidewalks, public parks, public transportation, and public buildings;⁴⁰⁹

(B) the right to a reasonable expectation of privacy in his or her personal property to the same extent as personal property in a permanent residence;⁴¹⁰

(C) the right to be secure in their person, place of residence, and personal property against unreasonable searches and seizures;⁴¹¹

(D) the right to equal treatment by all state and municipal agencies;⁴¹²

404. Broadened version of Assemb. B. 5, 2013–2014 Leg., Reg. Sess., at 9 (Cal. 2012).

405. *Id.*

406. *Id.*

407. Broadened version of 34 R.I. GEN. LAWS § 34-37.1-3 (2021).

408. Broadened version of *id.*

409. Broadened version of *id.* § 34-37.1-3(1).

410. *See id.* § 34-37.1-3(7).

411. *See* U.S. CONST. amend. IV.

412. *See* 34 R.I. GEN. LAWS § 34-37.1-3(2) (2021).

(E) the right not to face discrimination while seeking or maintaining employment;⁴¹³

(F) the right to emergency medical care;⁴¹⁴

(G) the right to vote, register to vote, and receive documentation necessary to prove identity for voting;⁴¹⁵

(H) the right to protection from disclosure of their records and information provided to homeless shelters and service providers to state, municipal and private entities without appropriate legal authority; and the right to confidentiality of personal records and information in accordance with all limitations on disclosure established by the Federal Homeless Management Information Systems, the Federal Health Insurance Portability and Accountability Act, and the Federal Violence Against Women Act;⁴¹⁶

(I) the right to decline shelter space or social services without criminal or civil sanction, arrest, harassment, deprivation of rights, or any form of discrimination;⁴¹⁷

(J) the right to storage of a reasonable volume of personal property, without reasonable restrictions on access to one's property, at no cost to the individual, in all municipalities with a population greater than 25,000;⁴¹⁸ and

(K) the right to sufficient hygiene centers available twenty-four hours a day, seven days a week, at no cost to the individual, in all municipalities with a population greater than 25,000.⁴¹⁹

Subdivision 3. **Enumerated Rights Under the Bill of Rights for Unhoused Minnesotans.** The following provisions flow from the rights recognized in Subdivision 2. These enumerated rights do not comprise the full scope of exclusive rights recognized by Subdivision 2.

413. *See id.* at § 34-37.1-3(3).

414. *See id.* at § 34-37.1-3(4).

415. *See id.* at § 34-37.1-3(5).

416. *See id.* at § 34-37.1-3(6).

417. *See* Assemb. B. 5, 2013–2014 Leg., Reg. Sess., at 11 (Cal. 2012); *see also supra* note 367 (discussing the ruling in *Martin v. City of Boise* which allows cities to criminalize the essential, life-sustaining activities of unhoused people if an individual declines to utilize an available emergency shelter).

418. *See supra* notes 288–90 and accompanying text. This population threshold means less than 6% of the municipalities in Minnesota would be affected while covering 58% of the state's population. *See Historical Estimates of Minnesota and its Cities' and Townships' Population and Households (2020)*, MINN. STATE DEMOGRAPHIC CTR. https://mn.gov/admin/assets/mn_cities_townships_historical_estimates_sdc_2000-2019_tcm36-442551.xlsx [https://perma.cc/D6KV-3SA6]. The 25,000 figure is somewhat arbitrary, but it serves as a pragmatic limit that may help this provision of BRUM survive the legislative process. While some municipalities that could (and should) support a hygiene center would not be required to do so, that cutoff may help avoid backlash against accusations of imposing undue costs on smaller towns and cities.

419. *See supra* note 418.

(A) **Protection from Anti-Unhoused Laws.** Pursuant to Subdivision 2(A), no law, ordinance, administrative rule or regulation, or government policy may restrict, penalize, or impose either civil or criminal liability, nor may any person arrest or harass an unhoused person, for their lawful use of public spaces. Such unlawful ordinances et al. include, but are not limited to, restrictions et al. on:⁴²⁰

- (i) sitting or lying down in public spaces;
- (ii) resting or sleeping in public spaces;
- (iii) camping or establishing living spaces in public parks;
- (iv) resting or sleeping in a lawfully parked vehicle;
- (v) providing, sharing, accepting, eating, or drinking food and water in public spaces;
- (vi) begging, soliciting, panhandling, or requesting food or drink, money, items, or any form of assistance on public spaces, in a manner that is not objectively obstructive or threatening to a reasonable person;
- (vii) seeking out and engaging in self-employment, including trash collecting and removal, recycling redemption, storage of goods for reuse, and resale of non-perishable goods; and
- (viii) praying, meditating, or otherwise practicing religion in public spaces.

(B) **Right to Counsel.** Any unhoused person subject to unlawful criminal or civil suit as described in Subdivision 3(A) has the right to assistance of counsel, without cost to the unhoused person. The accused shall be advised of this right to counsel when charged, served process, and before entering a plea. Any waiver of this right shall be explicit.⁴²¹

(C) **Prohibition on Address Information in Job Applications.** Pursuant to Subdivision 2(E), no written, electronic, or oral job application or interview may request nor require that an applicant provide a residential or mailing address.⁴²²

(D) **Prohibition on Criminal History Information in Job Applications.** Pursuant to Subdivision 2(E), no written, electronic, or oral job application or interview may request nor require information concerning an applicant's criminal history, including charges, investigations, or convictions.⁴²³ This provision shall not abridge the ability of an employer to perform a criminal background check once an applicant has been offered employment.

(E) **Valid Address for Voter Registration.** Pursuant to Subdivision 2(G), an unhoused individual may provide as a valid address for voter registration the address of a shelter, home of friend or family, or any other location where the unhoused person is sleeping. If that location is

420. See *supra* notes 125–34, 202–09 (discussing anti-unhoused ordinances and affirmative grants in the original California UBR).

421. See *supra* note 209 and accompanying text.

422. See *supra* notes 283–87.

423. See *supra* Golabek-Goldman, note 231.

outside or otherwise a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, the unhoused individual may write a description of the location, such as “In the NW corner of Jefferson Park near the intersection of Winston Ave. and Smith St.”⁴²⁴

(F) Valid Identification for Voter Registration. Pursuant to Subdivision 2(G), an unhoused individual may provide as valid identification documentation for voter registration a letter from a social services provider, drop-in or warming center, shelter, or person with whom the individual is staying that confirms permission for the individual to use said entity or person’s address to register to vote.⁴²⁵

(G) Requirements for Storage Facilities. Pursuant to Subdivision 2(J), each qualifying municipality shall maintain sufficient facilities to provide all unhoused individuals residing in said municipality with twelve cubic feet of storage space.⁴²⁶ Said storage shall be waterproof and able to be locked. Said facilities shall be monitored and reasonably secured from theft and damage by the administering municipality. Unhoused persons shall have the same privacy interest in this storage space as they would any personal property under Subdivision 2(B)–(C). Such facilities need not operate twenty-four hours a day, but they must allow for uninterrupted storage and reasonable access to the individual’s property.⁴²⁷

(H) Requirements for Hygiene Facilities. Pursuant to Subdivision 2(K), each qualifying municipality shall maintain sufficient facilities to provide all unhoused individuals residing in said municipality with safe and secure facilities that allow unhoused individuals to meet their basic bodily hygiene needs. At a minimum, these facilities shall contain public bathroom, shower, and diaper-changing facilities, along with separate breastfeeding or breastmilk-pumping facilities.⁴²⁸ Minimally acceptable hygiene facilities shall also contain facilities allowing for the handwashing of clothing. Unhoused individuals shall not be unreasonably denied access to such facilities.

(I) Retaliation. Retaliation against an unhoused person for exercising, enforcing, or insisting on their rights under this statute shall constitute a separate per se violation of Subdivision 2. Retaliation against any person for exercising, enforcing, or insisting on another’s rights under this

424. This provision is a codification of existing Minnesota Secretary of State policy. See *I’m Homeless*, OFF. OF THE MINN. SEC’Y OF STATE, <https://www.sos.state.mn.us/elections-voting/register-to-vote/im-homeless> [<https://perma.cc/ZH5U-9EMQ>].

425. See *supra* note 234 and accompanying text.

426. Twelve cubic feet roughly accords with the volume of the ninety-six gallon totes utilized by the City of San Diego in its storage facilities for unhoused people. See Capps, *supra* note 288.

427. Expanding on San Diego’s program by allowing unhoused people to continuously store their belongings, rather than requiring that the property be removed every day before the facility closes, better serves the goal of this provision. See *supra* note 288 and accompanying text.

428. Broadened version of Assemb. B. 5, 2013–2014 Leg., Reg. Sess., at 14 (Cal. 2012).

statute shall constitute a separate violation punishable as a violation of Subdivision 2.

Subdivision 4. Available Remedies Under the Bill of Rights for Unhoused Minnesotans.

(A) **Any unhoused person** as defined under Subdivision 1(A) may bring suit in district court for violations of Subdivisions 2 and 3, for suitable relief as described below.

(B) **Any person** may bring suit in district court for violations of Subdivision 3(I) for suitable relief as described below.

(C) **Damages.** In any civil action alleging a violation of this statute, the court may award appropriate injunctive and declaratory relief, actual damages, and reasonable attorney's fees and costs to a prevailing plaintiff.⁴²⁹

(D) **Treble Damages.** In any civil action alleging a violation Subdivision 2(A)–(I) of this statute, the court shall award treble actual damages for willful, wanton, or aggravated misconduct. The court shall award treble actual damages when retaliation under Subdivision 3(I) is proved by clear and convincing evidence.

(E) **Punitive Damages.** In any civil action alleging a violation of this statute, the court may award appropriate punitive damages in accordance with Minn. Stat. § 549.20.⁴³⁰

(F) **Statutory Damages.** In any civil action under this statute, each violation of this statute shall be punishable by statutory damages of \$8,500 per violation. The existence and nature of statutory damages under this statute shall not be put to a jury.

(G) **Unhoused Restraining Order.** The court may issue a temporary restraining order that enjoins a respondent to cease or avoid a violation of this statute. The court may issue the restraining order if it finds reasonable grounds to believe that the respondent has or will violate this statute. A petitioner need not allege an immediate and present danger of a violation of this statute, merely that a reasonable person could believe a violation to be probable to occur within a reasonable period of time and likely to cause injury to the petitioner. A court may order relief for a period of two years under this section. Violation of such a restraining order shall constitute retaliation under Subdivision 3(I).⁴³¹

Subdivision 5. Additional Parties to Litigation Under the Bill of Rights for Unhoused Minnesotans.

429. 34 R.I. GEN. LAWS § 34-37.1-4 (2021).

430. Punitive damages will likely better protect the rights of unhoused people by helping them to secure counsel. The potential for large damage awards will likely increase the use of contingent fee arrangements with unhoused clients. *See supra* notes 183–86, 380 and accompanying text.

431. Based on Minnesota's harassment restraining order statute, MINN. STAT. § 609.748 (2021), this provision incorporates a reduced showing requirement inspired by the temporary restraining order proceedings in *Berry v. Hennepin County*. *See supra* note 29 (discussing a court's finding that the harm posed by the clearing of an unhoused encampment was not "sufficiently certain and concrete," only for that encampment to be cleared less than two weeks later).

(A) **Public Enforcement.** The Attorney General of Minnesota may investigate violations of the statute and shall have the power to bring suit on behalf of the unhoused individual or the People of Minnesota for violations of this statute. The Attorney General shall have the right to intervene as a plaintiff in any suit brought under this statute.

(i) The Bill of Rights for Unhoused Minnesotans shall be added to the list of laws in Minn. Stat. § 8.31, subd. 1.⁴³²

(ii) A judgment or settlement in a case brought by the Attorney General for a violation under this statute shall not preclude a plaintiff from bringing their own civil action for the same violation.⁴³³

(B) **Intervention of Right.** Bona fide nonprofit providers of services or financial or material support to unhoused individuals shall have the right to intervene as plaintiffs in any civil action under this statute, provided such intervention would not unreasonably delay said civil action.⁴³⁴

432. MINN. STAT. § 8.31 subd. 1 (2021) (providing a list of statutes for which the Minnesota Attorney General may investigate offenses and assist in the enforcement of).

433. Redundant codification of a provision found in *id.* at subd. 3a.

434. *See supra* note 197 and accompanying text (discussing a provision of Puerto Rico's UBR allowing "advocacy groups to serve as 'intercessors'" for unhoused people in legal proceedings).