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COMMENT

CRIMINALS BY NECESSITY: THE AMERICAN HOMELESS IN THE TWENTY-FIRST CENTURY

Lisa M. Kline[†]

Remember when homelessness itself was not a crime, until the homeless made themselves too visible by panhandling at ATMs? Only when they made affluent people uncomfortable were they locked up The criminalization of homelessness—one of the ways this society gets rid of the poor as well as a certain number of people with psychiatric disabilities—removes the daily reminders of the obvious injustice of the very existence of homelessness in the richest country in the world.¹

I. INTRODUCTION

As the economic condition of the nation worsens, the plight of the American homeless population continues to deteriorate. Since the beginning of the current recession, families across the nation have been forced into poverty. Between April of 2008 and April of 2009, there was a 32% increase in foreclosures nationwide.² Over six million jobs have been lost since the economic downturn, and that number continues to grow every day.³ In fact, the national unemployment rate peaked in October of 2009; at over 10%—its highest point since 1983.⁴ Often, the cost of living prevents these people from getting back on their feet. In every state, more than minimum wage is required to afford a one- or two-bedroom apartment at Fair Market Rent,⁵ making it virtually impossible for an entire fragment of

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1. TERRY KUPERS, PRISON MADNESS: THE MENTAL HEALTH CRISIS BEHIND BARS AND WHAT WE MUST DO ABOUT IT 259 (1999).

2. *Why Are People Homeless?*, NAT'L COAL. FOR THE HOMELESS, <http://www.nationalhomeless.org/factsheets/Why.pdf> (July, 2009).

3. *Id.*

4. Peter S. Goodman, *U.S. Unemployment Rate Hits 10.2%, Highest in 26 Years*, N.Y. TIMES, Nov. 6, 2009, at B1, available at <http://www.nytimes.com/2009/11/07/business/economy/07jobs.html> (last visited Feb. 16, 2010).

5. Fair Market Rent is the “amount needed to rent privately owned, decent, safe, and sanitary rental housing of a modest (non-luxury) nature with suitable amenities.” Final Fair Market Rents for Fiscal Year 2010 for the Housing Choice Voucher Program and Moderate

society to obtain permanent housing.⁶ Without any other options, many of these families have had to move to the streets and shelters.

It is estimated that over 12% of the nation's population lives in poverty.⁷ These individuals, if not already homeless, are teetering on the edge of homelessness.⁸ One car accident, one job loss, or one health issue would send any one of these people to the street in a matter of days.

As the problem of homelessness grows, so do laws criminalizing homeless activities. In a 2009 report, the National Law Center on Homelessness and Poverty surveyed 235 cities across the nation and compiled information about city ordinances criminalizing homelessness.⁹ Of those 235 cities, 33% prohibit "camping" in particular public places, 30% prohibit sleeping or lying in public places, 47% prohibit loitering in public areas, and 47% prohibit begging in particular public places.¹⁰ These laws are sometimes enforced selectively and are usually enforced without mercy.

When confronted with the issue of homelessness, many people respond with either apathy or disgust. The first images that spring to mind are those of drunken, lazy people who choose not to work. However, many times, that is simply not the case. Many people thrust into poverty today have no other option, yet they are viewed as failures too lazy to contribute to society. Throughout our nation's short history, the homeless and working poor have consistently been viewed with a certain level of disdain.¹¹ Many even contend that we should not care about the homeless, or that the treatment they are receiving is what they deserve. Why should we care about the homeless? The United States is a nation based on the principle of equality. The Declaration of Independence states:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain

Rehabilitation Single Room Occupancy Program, 74 Fed. Reg. 50,552. (Sept. 30, 2009). Housing and Urban Development (HUD) establishes FMRs in every locality in each of the fifty states.

6. NAT'L COAL. FOR THE HOMELESS, *supra* note 2, at 2.

7. *Id.*

8. *Id.*

9. *Homes Not Handcuffs: The Criminalization of Homelessness in U.S. Cities*, NAT'L COAL. FOR THE HOMELESS, <http://www.nationalhomeless.org/factsheets/criminalization.pdf> (July, 2009), (offering a more detailed analysis of the above summary http://www.nationalhomeless.org/publications/crimreport/CrimzReport_2009.pdf).

10. *Id.*

11. *See infra* Part II.

unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed¹²

The Founders believed that every individual is born with certain unalienable rights. These rights—often called fundamental rights—are those rights “implicit in the concept of ordered liberty” or “deeply rooted in [the nation’s] history and tradition.”¹³ The Founders believed that these unalienable rights come from God, our Creator, through Natural Law.¹⁴ Throughout the Bible, there are over 2,000 verses that address the issues of poverty and social justice.¹⁵ Many of those scriptures, like Micah 6:8, include admonitions such as: “[W]hat does the LORD require of you but to do justice, and to love kindness, and to walk humbly with your God?”¹⁶ Other verses illustrate God’s heart for the poor: “[L]earn to do good; seek justice, correct oppression; bring justice to the fatherless, plead the widow’s cause.”¹⁷

This Comment argues that certain cities violate the Fourteenth Amendment of the United States Constitution by the particular ways the cities criminalize homelessness. Therefore, courts should invalidate these laws, and legislatures should implement more constructive ways of dealing with the problem of homelessness. This Comment will not argue that the government has any obligation to provide housing to the homeless or that the homeless class deserves special benefit rights.¹⁸ Instead, this Comment argues that the government has a duty not to infringe on any individual’s basic freedom rights as outlined in the Fourteenth Amendment, whether that individual is homeless or not. Part II presents the history and development of homelessness in our nation and examines how the homeless have come to be viewed as a criminal class. Part II also surveys the judicial response to the criminalization of homelessness. Part III lays out the

12. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

13. *Lawrence v. Texas*, 539 U.S. 558, 593 (2003).

14. W. CLEON SKOUSEN, *THE 5,000 YEAR LEAP: THE 28 GREAT IDEAS THAT CHANGED THE WORLD* 46 (2007).

15. *The Bible That Reveals God’s Passion*, THE POVERTY AND JUSTICE BIBLE, <http://www.povertyandjusticebible.org.au/index.php> (last visited May 1, 2010).

16. *Micah* 6:8 (English Standard Version).

17. *Isaiah* 1:17 (English Standard Version).

18. *Harris v. McRae*, 448 U.S. 297, 316 (1980) (holding that the government may not preclude an individual from exercising his fundamental rights, but government “need not remove those not of its own creation”).

problems brought on by the criminalization of homelessness through an in-depth analysis of the ways these statutes violate the Fourteenth Amendment in two cities: Seattle, Washington and St. Petersburg, Florida. Part IV then presents an analytical framework based on the Fourteenth and Fourth Amendments, examining the issue through the Due Process Clause, the Equal Protection Clause, and the implied right to travel. Part V concludes the Comment with an overview of the work being done throughout the nation to repeal these laws and decriminalize homelessness.

II. BACKGROUND

A. *The Development of the Criminalization of Homelessness*

Vagrancy laws date back to feudal England, when the Statutes of Laborers were enacted in response to the depopulation caused by the Black Death.¹⁹ The Statutes of Labourers required every able-bodied person to work for wages fixed at a certain level.²⁰ These statutes essentially sought to turn every working class citizen into a serf.²¹ Under these laws, it was illegal to accept more than the set wage, to refuse an offer of work, or to give money to beggars who refused to work.²² In an effort to enforce these laws, the Act of 1414 gave justices of the peace the power to punish vagrants.²³ Despite the measures taken to criminalize vagrancy, the homeless population continued to grow.²⁴ Poor work conditions and a lack of work created an entire class of individuals who became a burden to society.²⁵ Therefore, laws were enacted that confined those unable to work to their own town; if they left, they would be forcibly removed, returning them to the town legally bound to support them.²⁶

In sixteenth-century England, the Slavery Acts mandated two years imprisonment for any individual who “live[d] idly and loiteringly, by the

19. Harry Simon, *Towns Without Pity: A Constitutional and Historical Analysis of Official Efforts To Drive Homeless Persons from American Cities*, 66 TUL. L. REV. 631, 635 (1992).

20. *Id.*

21. *Id.*

22. 23 Edw. 3, c. 7 (1349).

23. 2 Hen. 5, c. 4 (1414).

24. Simon, *supra* note 19, at 636.

25. *Id.*

26. Caleb Foote, *Vagrancy-Type Law and Its Administration*, 104 U. PA. L. REV. 603, 616 (1956).

space of three days”²⁷ By the nineteenth century, “the roads of England were crowded with masterless men and their families, who had lost their former employment through a variety of causes, had no means of livelihood, and had taken to vagrant life.”²⁸ The decay of the feudal system and the deteriorating economy exacerbated the problem.²⁹ The dissolution of the monasteries under King Henry VIII drastically affected the poor, taking away the religious institutions that had provided assistance.³⁰

These policies and prejudices carried over to early American law and helped shape the laws regarding the homeless.³¹ Paupers and vagabonds were specifically excepted from the privileges and immunities clause of the Articles of Confederation: “The free inhabitants of each of these States, *paupers, vagabonds, and fugitives from justice excepted*, shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State”³² This constitutes one of the earliest examples in America of the homeless being explicitly denied the right to travel—a right that the Supreme Court has since recognized as fundamental.³³

In *Mayor of New York v. Miln*, the United States Supreme Court held that New York could deny paupers arriving by ship entrance into the country:

We think it as competent and as necessary for a state to provide precautionary measures against the moral pestilence of paupers, vagabonds, and possibly convicts; as it is to guard against the physical pestilence, which may arise from unsound and infectious articles imported, or from a ship, the crew of which may be laboring under an infectious disease.³⁴

Forty years later, the Supreme Court described government efforts to exclude paupers as “a right founded . . . in the sacred law of self-defence.”³⁵ Society began to question laws prohibiting homelessness during the Great

27. Mark Malone, Note, *Homelessness in a Modern Urban Setting*, 10 *FORD. URB. L.J.* 749, 754 n.17 (1982).

28. *Ledwith v. Roberts*, 1 K.B. 232, 271 (1937).

29. *Id.*

30. *Id.*

31. *Papachristou v. City of Jacksonville*, 405 U.S. 156, 161 (1972).

32. ARTICLES OF CONFEDERATION of 1781, art. IV (emphasis added).

33. *Shapiro v. Thompson*, 394 U.S. 618, 634 (1969).

34. *Mayor v. Miln*, 36 U.S. (11 Pet.) 102, 142-43 (1837).

35. *R.R. Co. v. Husen*, 95 U.S. 465, 471 (1877).

Depression.³⁶ However, no real changes appeared until after World War II, when federal and state courts across the nation began to strike down vagrancy laws as void for vagueness.³⁷ Cities responded to these court decisions by enacting more specific ordinances.³⁸ Courts consistently upheld these newer ordinances until the early 1990s, at which point some courts began holding them unconstitutional.³⁹ Today, many of these types of ordinances are still enforced.⁴⁰ While these ordinances may not be as blatantly anti-homeless, the effects are the same—they make basic life activities necessary for existence on the street illegal.⁴¹

B. The Judicial Response to the Criminalization of Homelessness

Pottinger v. City of Miami was the first notable instance that a court applied the Fourth Amendment to a statute criminalizing homelessness.⁴² In *Pottinger*, a group of homeless individuals challenged the seizure of their personal belongings and alleged that the City had a policy of harassing homeless people for sleeping, eating, and performing life-sustaining activities in public places.⁴³ The district court found that the criminalization of essential acts performed in public when there was no alternative violated the plaintiffs' right to due process under the Fourteenth Amendment and right to be free from cruel and unusual punishment under the Eighth Amendment.⁴⁴ In addition, the court found that the City violated the plaintiffs' rights under the Fourth Amendment.⁴⁵ The court also found that approximately 6000 people were homeless in Miami, while there were fewer than 700 shelter spaces.⁴⁶ On review, the Eleventh Circuit Court of Appeals referred the case for mediation.⁴⁷ The parties negotiated a settlement requiring the City to institute a law enforcement protocol to

36. Simon, *supra* note 19, at 640.

37. *Id.* at 642.

38. *Id.* at 647.

39. *See, e.g., Pottinger v. City of Miami*, 810 F. Supp. 1551 (S.D. Fla. 1992).

40. *See generally Homes Not Handcuffs*, *supra* note 9 (noting the ongoing problem of the criminalization of homelessness).

41. *Id.*

42. *Pottinger*, 810 F. Supp. at 1569.

43. *Id.* at 1569-70.

44. *Id.* at 1583.

45. *Id.* (holding that the City's practices constituted an unlawful search/seizure under the 4th Amendment).

46. *Id.* at 1564.

47. *Pottinger v. City of Miami*, 76 F.3d 1154 (11th Cir. 1996).

protect the rights of the homeless.⁴⁸ As part of the settlement, the City agreed to conduct training for police officers, educating them on the plight of the homeless.⁴⁹ The City also instituted mandatory procedures for law enforcement officers to follow when dealing with the homeless to ensure the protection of the homeless population's legal rights.⁵⁰ Finally, the City set up a \$600,000 fund to compensate homeless citizens injured by the enforcement of the statutes.⁵¹

In the 1993 case *Joyce v. City and County of San Francisco*, plaintiffs challenged the City of San Francisco's "Matrix" program, a strict enforcement of a group of ordinances prohibiting homeless activities.⁵² The United States District Court for the Northern District of California found that homelessness is not a status, and therefore rejected the plaintiffs' claim that the program punished them for their status in violation of the Eighth Amendment.⁵³ The court also rejected the claims that the program violated the plaintiffs' rights to equal protection, due process, and travel.⁵⁴ On appeal, the Ninth Circuit Court of Appeals held that the case was moot because, under a new mayor, the City had eliminated the Matrix program.⁵⁵

In *Johnson v. Dallas*, a 1994 case, the United States District Court for the Northern District of Texas held a similar group of ordinances unconstitutional under the Eighth Amendment.⁵⁶ The plaintiffs alleged that the ordinances violated their Eighth, Fourth, and Fourteenth Amendment rights.⁵⁷ The district court granted the plaintiffs' motion for preliminary injunction in part, holding that the ordinances punished the status of homelessness, and as such, violated the Eighth Amendment.⁵⁸ In dicta, however, the district court rejected the Equal Protection claims, finding that the homeless are not a suspect or quasi-suspect class and that the laws were

48. *Pottinger v. City of Miami—Negotiations Lead to Settlement Agreement*, LAW LIBRARY—AMERICAN LAW AND LEGAL INFORMATION, available at <http://law.jrank.org/pages/24461/Pottinger-v-City-Miami-Negotiations-Lead-Settlement-Agreement.html> (last visited Mar. 30, 2011).

49. *Id.*

50. *Id.*

51. *Id.*

52. *Jones v. City and County of S.F.*, 846 F. Supp. 843, 845 (N.D. Cal. 1994).

53. *Id.* at 853-58.

54. *Id.* at 858-61.

55. *Joyce v. City and County of S.F.*, 87 F.3d 1320 (9th Cir. 1996).

56. *Johnson v. City of Dallas*, 860 F. Supp. 344, 347-48 (N.D. Tex. 1994), *rev'd in part, vacated in part* 61 F.3d 442 (5th Cir. 1995).

57. *Id.* at 351, 358.

58. *Id.* at 359.

rationally related to a legitimate state interest.⁵⁹ On review, the Fifth Circuit Court of Appeals reversed and declared the ordinances constitutional.⁶⁰ The Fifth Circuit held that the Eighth Amendment prohibition against cruel and unusual punishment applies only after conviction for a criminal offense, and the plaintiffs in this case had only been cited or fined, not convicted.⁶¹ The case was eventually dismissed.⁶²

In 2006, in *Fifth Avenue Presbyterian Church v. City of New York*, a church had invited homeless individuals to sleep on its outdoor property.⁶³ The City of New York forced the homeless to move, despite the fact that they were sleeping on private property.⁶⁴ The district court granted a preliminary injunction preventing the City's actions regarding the church property, but denied the injunction as to the public sidewalk bordering the church's property.⁶⁵ On appeal, the Second Circuit Court of Appeals affirmed the district court's decision, holding that the Church's provision of sleeping space to the homeless was the manifestation of a sincerely held religious belief deserving of protection under the Free Exercise Clause.⁶⁶ As such, the City's actions were subjected to strict scrutiny.⁶⁷ The Second Circuit also rejected the City's argument that its actions were necessary to address a public nuisance, because no evident health risk had been proved.⁶⁸

Jones v. City of Los Angeles, a 2006 case, is the most recent significant decision regarding homelessness statutes.⁶⁹ In *Jones*, six homeless individuals brought suit against Los Angeles, challenging arrests made for violating a statute that prohibited individuals to "sit, lie or sleep in or upon any street, sidewalk or other public way."⁷⁰ The Plaintiffs, relying on *Pottinger v. City of Miami*, argued that the ordinance violated the Fourteenth and Eighth Amendments of the United States Constitution.⁷¹

59. *Id.* at 355-58.

60. *Johnson v. City of Dallas*, 61 F.3d 442, 445 (5th Cir. 1995).

61. *Id.* at 444-45.

62. *Homes Not Handcuffs*, *supra* note 9, at 101.

63. *Fifth Ave. Presbyterian Church v. City of New York*, 293 F.3d 570, 572 (2d Cir. 2002).

64. *Id.*

65. *Id.* at 572-73.

66. *Id.* at 575.

67. *Id.*

68. *Id.* at 576.

69. *Jones v. City of Los Angeles*, 444 F.3d 1118 (9th Cir. 2006).

70. L.A., CAL., MUN. CODE § 41.18(d) (2011).

71. *Jones*, 444 F.3d at 1125.

The district court rejected the Plaintiffs' reliance on *Pottinger*, holding that the plaintiffs were not a certified class, and granted summary judgment for the City of Los Angeles following the reasoning in *Joyce v. City and County of San Francisco*.⁷² The plaintiffs appealed to the Ninth Circuit Court of Appeals, which held that the City of Los Angeles's treatment of these individuals—arresting them for sleeping on the streets when there was no other viable option—constituted cruel and unusual punishment under the Eighth Amendment.⁷³ In October of 2007, the City settled the lawsuit, agreeing not to enforce the law between 9:00 p.m. and 6:00 a.m. until 1,250 permanent housing units for the homeless were constructed.⁷⁴ The settlement also required that, before any arrests were made for violating the ordinance, the police officers had to provide adequate verbal warning and a reasonable time to move.⁷⁵

III. CRIMINALIZING HOMELESSNESS: THE PROBLEM

While many cities have criminalized the activities associated with homelessness in recent years, this Comment will focus on two cities that illustrate the greater national problem—Seattle, Washington and St. Petersburg, Florida. Other cities, such as Los Angeles, California,⁷⁶ Atlanta, Georgia,⁷⁷ and even Boise, Idaho,⁷⁸ are implementing similar programs.

72. *Id.*

73. *Id.* at 1137.

74. *Homes Not Handcuffs*, *supra* note 9, at 35.

75. *Id.*

76. A 2009 report named Los Angeles the “meanest” city in the United States with regard to the homeless. *Id.* at 33. In 2006, Los Angeles enacted the Safer City Initiative, a program designed to clean up the city. *Id.* at 34. Los Angeles spends \$6 million a year to implement the Safer City Initiative, but budgets only \$5.7 million a year for homeless services. *Id.* The Safer City Initiative added fifty police officers to patrol the Skid Row area. *Id.* These officers arrest homeless people for crimes like jaywalking and loitering, crimes that usually go unnoticed outside of Skid Row. *Id.* at 35. During one eleven-month period, twenty-four inhabitants of Skid Row were arrested on 201 different occasions, costing the city \$3.6 million for jail time, prosecutors, public defenders, and other court expenses. *Id.* at 34. While crime in Skid Row has dropped under the Safer City Initiative, the City has not come through on its promise to provide additional homeless services under the program, leaving many individuals without any options. *Id.* Since the implementation of the Initiative, homeless residents have moved to other areas that cannot supply needed services. *Id.* One study estimated that 1,345 people occupied the streets of Skid Row at the beginning of 2006. *Id.* One year later, that number had dwindled to 875. *Id.* While Skid Row's homeless population dwindled, the homeless populations of surrounding areas dramatically increased. *Id.* While many applaud the Safer City Initiative as a wonderful scheme that has brought

A. *Seattle, Washington*

Approximately 2,827 people are unsheltered on any given night in King County, where the city of Seattle, Washington is located.⁷⁹ In November of 2007, Seattle implemented a new policy aimed to remove homeless people from their camps throughout the city.⁸⁰ Despite the fact that the shelters throughout the city were at capacity and there was nowhere else for these people to go, city officials ordered all makeshift shelters destroyed, forced the residents to move, and destroyed their belongings.⁸¹ “Sweeps,” during which the police force would come through and destroy the shelters and possessions, happened twice in 2007.⁸² Announcements were made before a sweep in November, but several camps were cleared out in the summer without any notice.⁸³ In the cases where advance notice was given, signs were posted informing the homeless that they would need to leave the premises within forty-eight hours.⁸⁴ Many of these signs also listed an outdated phone number.⁸⁵ During the sweeps, after confiscating personal property, city crews were told to store personal items for up to sixty days and discard anything worth less than twenty-five dollars.⁸⁶

hope back to Skid Row, it has merely moved the problems elsewhere, oftentimes dramatically harming the homeless in the process. *Id.*

77. In 2007, the City of Atlanta enacted an ordinance outlawing panhandling in heavily visited downtown areas and anywhere after dark. *Id.* at 38. “The ordinance also prohibits panhandling within 15 feet of an ATM, bus stop, taxi stand, pay phone, public toilet, or train station. . . .” *Id.* Police officers dressed as tourists to catch people “aggressively begging” in the prohibited areas. *Id.*

78. The Boise Police began using bike patrol officers to enforce a strict anti-camping ordinance in 2007. *Id.* at 50. Although the number of unsheltered individuals exceeds the available shelter space, the police have cited hundreds of homeless individuals for violations of the anti-camping ordinance and a similar disorderly conduct ordinance. *Id.* In one extreme instance, a homeless individual was charged with theft for allegedly attempting to charge a cell phone at a park picnic shelter. *Id.* Homeless individuals are often arrested for failing to appear in court for these violations and failure to pay the required fines. *Id.* Sentences of up to ninety days have been imposed for violations of the ordinance. *Id.* Each day in jail comes with a twenty-five dollar fine for costs. *Id.*

79. *Id.* at 81.

80. *Homes Not Handcuffs*, *supra* note 9, at 80.

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. *Homes Not Handcuffs*, *supra* note 9, at 80.

A new plan for addressing the homeless in Seattle was announced in April of 2008.⁸⁷ According to the plan, twenty shelter beds would be added, and during the camp sweeps, homeless residents would be given three days' notice to vacate the area.⁸⁸ Just a month later, however, a homeless camp in Queen Anne Park was swept and twenty-one tons of materials were removed.⁸⁹

After the demolition of the homeless camp in Queen Anne Park, a group of homeless individuals in Seattle banded together to create a new tent city.⁹⁰ They satirically christened their community "Nickelsville" after Mayor Greg Nickels, the man largely responsible for the new policies.⁹¹ Nickelsville houses from fifty to one hundred people each night.⁹² The camp has been housed at several different sites, including churches and public property.⁹³ Founded with the intention of providing a place where inhabitants would know they had a guaranteed place to stay, the community enforces strict rules regarding alcohol, drug use, and other behavior.⁹⁴ Shortly after Nickelsville's founding, Mayor Nickels ordered an eviction of the tent city for "safety and health concerns."⁹⁵ At that time, twenty-five residents were arrested.⁹⁶ Since then, Nickelsville has moved several times.⁹⁷ The group of homeless individuals set up camp, the City raids the camp, and they move again.⁹⁸ As recently as September 2009, Port of Seattle Police entered the tent city and evicted its inhabitants.⁹⁹ Police handcuffed twenty-two homeless persons and arrested them for trespassing on city property.¹⁰⁰ The inhabitants of the tent city have even been evicted

87. *Id.*

88. *Id.*

89. *Id.* at 81.

90. Patrick Oppman, *Tent City Becomes Home in Tough Times*, CNN (Apr. 13, 2009, 12:09 PM), <http://www.cnn.com/2009/LIVING/wayoflife/03/19/seattle.tent.city>.

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Homes Not Handcuffs*, *supra* note 9, at 81.

96. *Id.*

97. *Id.*

98. Oppman, *supra* note 90.

99. NICKELSVILLESEATTLE.ORG, <http://www.nickelsvilleseattle.org> (last visited Feb. 16, 2010).

100. *Id.*

from private property such as a church parking lot.¹⁰¹ Nickelsville leaders continue to look for a permanent location.¹⁰²

Despite the City of Seattle's promises to improve, conditions continue to worsen. Facing a \$56 million operating budget deficit for 2010, the King County Council made cuts across the board.¹⁰³ The funds allocated to address homelessness and homelessness prevention (including shelters, food banks, etc.) were cut from \$471,687 for 2009 to \$154,000 for 2010.¹⁰⁴ Shelters, counseling programs, food banks, and legal services provided for the poor were stripped of all funding.¹⁰⁵ Homeless youth shelters were completely cut from the budget.¹⁰⁶ These organizations will either have to cease operations or look to other sources for funding.

B. St. Petersburg, Florida

The National Law Center on Homelessness and Poverty named St. Petersburg, Florida the second "meanest city" towards the homeless in the nation in 2009, second only to Los Angeles.¹⁰⁷ According to surveys, there are 6,235 homeless individuals in Pinellas County, the area surrounding St. Petersburg.¹⁰⁸ That figure represents a 20% increase in the Pinellas County homeless population since 2007.¹⁰⁹ Approximately 2,232 of the 6,235 individuals experiencing homelessness are unsheltered, an 82.7% increase from 2007.¹¹⁰

On January 19, 2007, St. Petersburg police raided two homeless camps after giving residents a week's notice to vacate the premises.¹¹¹ During the

101. *Id.*

102. *Id.*

103. Chris Grygiel, *King County Could Cut All Human Services Funding*, SEATTLEPI.COM (Sept. 27, 2009, 10:00 PM), http://www.seattlepi.com/local/410589_budget28.html.

104. COUNCIL BUDGET RESTORATION (2009), *available at* <http://blogs.seattleweekly.com/dailyweekly/Council%20Budget%20Restoration.xls>.

105. *Id.*

106. *Id.*

107. *Homes Not Handcuffs*, *supra* note 9, at 3.

108. Complaint at 7, *Catron v. St. Petersburg*, No. 8:09-cv-00923-SDM-EAJ (M.D. Fla. May 20, 2009).

109. *Id.*

110. *Id.*

111. Abhi Raghunathan, *Homeless Fight Back with High Tech*, ST. PETERSBURG TIMES, (Feb. 2, 2007), http://www.sptimes.com/2007/02/02/Southpinellas/Homeless_fight_back_w.shtml.

raid, police used box cutters to slash and destroy tents,¹¹² earning St. Petersburg a new nickname: “a national poster child for cruelty against the homeless.”¹¹³ In December of 2007, Catholic Charities established a new tent city called “Pinellas Hope” in the outskirts of the city.¹¹⁴ Since that time, local government has taken on part of the burden of running the camp.¹¹⁵

In early 2007, St. Petersburg passed six new ordinances that essentially criminalize homelessness.¹¹⁶ These ordinances prohibit panhandling,¹¹⁷ sleeping on sidewalks or streets,¹¹⁸ sleeping near private property,¹¹⁹ lying on streets or sidewalks during the day,¹²⁰ constructing any temporary shelter,¹²¹ and storing personal property in public places.¹²² Since the passage of these ordinances, police officers regularly conduct sweeps throughout the city with signs instructing the homeless that they have thirty-six hours to remove their belongings from public property.¹²³ Removing personal belongings to other public property does not satisfy the requirement.¹²⁴ After thirty-six hours, the property is confiscated and taken to a storage facility where, after thirty days, it is destroyed.¹²⁵

The situation in St. Petersburg has escalated to the point where Bob Dillinger, the Pinellas-Pasco public defender, has refused to extend a contract with St. Petersburg and will no longer represent indigent people arrested for violating municipal ordinances.¹²⁶ Dillinger’s refusal was in

112. For video footage of this incident, visit *St. Petersburg Police Cutting Up Homeless Tents*, YOUTUBE, <http://www.youtube.com/watch?v=LrPdZmPB36U> (last visited Apr. 27, 2011).

113. Raghunathan, *supra* note 111.

114. *Homes Not Handcuffs*, *supra* note 9, at 36.

115. David DeCamp, *Vote Favors \$300K Infusion for Pinellas Hope Tent City for Homeless*, ST. PETERSBURG TIMES (Nov. 15, 2009), <http://www.tampabay.com/news/localgovernment/vote-favors-300k-infusion-for-pinellas-hope-tent-city-for-homeless/1051309>.

116. *Homes Not Handcuffs*, *supra* note 9, at 11.

117. ST. PETERSBURG CITY CODE § 20-79 (2009).

118. ST. PETERSBURG CITY CODE § 20-74 (2009).

119. ST. PETERSBURG CITY CODE § 20-75 (2009).

120. ST. PETERSBURG CITY CODE § 20-82 (2009).

121. ST. PETERSBURG CITY CODE § 20-76 (2009).

122. ST. PETERSBURG CITY CODE § 8-321 (2009).

123. Complaint at 22, *Catron v. St. Petersburg*, No. 8:09-cv-00923-SDM-EAJ (M.D. Fla. May 20, 2009).

124. *Id.* at 16.

125. *Id.* at 22; ST. PETERSBURG CITY CODE § 8-321 (2009).

126. Abhi Raghunathan, *Public Defender Will Stop Working Homeless Cases in St.*

response to excessive arrests of homeless people throughout the city.¹²⁷ According to Dillinger's office, 676 of the 879 people arrested for violating these municipal ordinances were homeless individuals from the city of St. Petersburg.¹²⁸

The National Law Center on Homelessness and Poverty has filed a lawsuit in the United States District Court for the Middle District of Florida on behalf of several homeless individuals who have been cited or arrested for violating one or more of the ordinances prohibiting homeless conduct.¹²⁹ The first of the plaintiffs, Anthony Catron, was issued a trespass warning on August 23, 2006, which stated that Catron would be subject to arrest if he was found anywhere in a city park.¹³⁰ This warning is in place permanently.¹³¹ On August 29, 2007, an officer issued another trespass warning to Catron—this time, it applied to all public property in St. Petersburg, and would be in effect for one year. Neither warning specifically stated the violation cited.¹³² These warnings apply “curb to curb,” so that several public sidewalks are included.¹³³

Charles Hargis, another plaintiff in the case, was also issued two trespass warnings and arrested for being present in a park when it was open to the general public.¹³⁴ One of the warnings was to be in effect for two years. Hargis was also issued a “Notice to the Owner and All Persons Interested in Affected Property,” a notice which required Hargis to remove his personal belongings from public property.¹³⁵ The ordinance prohibiting public storage of personal belongings specifically states, “moving the unlawfully stored items to another location on public property shall not be considered to be removing the item from public property . . .” making it impossible for Hargis to have his belongings with him in any public place.¹³⁶

Petersburg, ST. PETERSBURG TIMES (Jan. 31, 2007), available at http://www.sptimes.com/2007/01/31/Southpinellas/Public_defender_will_shtml.

127. *Id.*

128. *Id.*

129. See Complaint at 2-3, 9-10, Catron v. St. Petersburg, No. 8:09-cv-00923-SDM-EAJ (M.D. Fla. May 20, 2009).

130. *Id.* at 11.

131. *Id.*

132. *Id.*

133. *Id.* at 12.

134. *Id.* at 14.

135. Complaint at 15.

136. *Id.*

Another homeless plaintiff, Ferdinand Lupperger, was also issued a trespass warning prohibiting his presence in St. Petersburg public parks.¹³⁷ A week later, Lupperger was arrested for being present in a public park, despite the fact that the park was open to the public at the time.¹³⁸ The report does not state the underlying violation.¹³⁹ The other plaintiffs in the case were cited for similar violations.

IV. A CONSTITUTIONAL ANALYSIS OF THE RIGHT TO BE HOMELESS

This Comment seeks to demonstrate that laws criminalizing homelessness violate the Fourteenth and Fourth Amendments to the United States Constitution and should therefore be invalidated by the courts and repealed by the legislatures.

A. *The Constitutional Framework*

1. The Fourteenth Amendment

Three important doctrines are found in the Fourteenth Amendment: Due Process, Privileges and Immunities, and Equal Protection.¹⁴⁰ Working together, these concepts guarantee each individual procedural protection of his fundamental rights.¹⁴¹

The Due Process Clause of the Fourteenth Amendment requires that before a State deprives a person of life, liberty, or property, the State must give that person notice of the case against him and opportunity to meet it.¹⁴² Due process is meant to protect each citizen's fundamental rights, which consist of any "fundamental principle of liberty and justice which inheres in the very idea of free government and is the inalienable right of a citizen of such a government."¹⁴³ To determine whether a person has been deprived of due process, courts must answer two questions. First, the court needs to

137. *Id.* at 19.

138. *Id.*

139. *Id.*

140. The Fourteenth Amendment provides:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend. XIV, § 1.

141. *Id.*

142. *Id.*; *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

143. *Twining v. New Jersey*, 211 U.S. 78, 106 (1908).

determine the nature of the interest.¹⁴⁴ The Supreme Court has held that to determine whether due process requirements apply, courts must look “not to the weight but to the nature of the interest at stake.”¹⁴⁵ Second, after a court has determined that the nature of the interest requires due process, it then must determine the type of notice required.¹⁴⁶ The Supreme Court has put forth three factors to determine the type of notice due in a given situation: the individual’s interest in retaining his property, the risk of error through the procedures used, and the government’s interest, including costs or burden of the additional process.¹⁴⁷

The Equal Protection Clause of the Fourteenth Amendment directs that “all persons similarly circumstanced shall be treated alike.”¹⁴⁸ However, the states still have the power to classify people groups as long as its action survives judicial scrutiny.¹⁴⁹ The Court uses three standards to judge whether classifications are valid: minimal scrutiny, strict scrutiny, and intermediate scrutiny.¹⁵⁰ Under the default minimal scrutiny standard (rational basis), which is the lowest level of review, “legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest.”¹⁵¹ Legitimate state interests include exercises of enumerated police powers, through which the state acts to protect the public health, welfare, morals, and safety of its citizens.¹⁵² The strict scrutiny standard, which is the highest level of review, is applied when a statute involves a suspect classification or violates a group’s fundamental rights.¹⁵³ Under that standard, the classification is presumed invalid and the state must prove it is valid.¹⁵⁴ The state must prove that the classification promotes a compelling governmental interest,

144. *Bd. of Regents v. Roth*, 408 U.S. 564, 570-71 (1972).

145. *Id.*

146. *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950).

147. *Eldridge*, 424 U.S. at 321.

148. *Plyler v. Doe*, 457 U.S. 202, 216 (1982) (citation omitted).

149. *Personnel Adm’r of Mass. v. Feeney*, 442 U.S. 256, 271 (1979).

150. *Johnson v. Dallas*, 860 F. Supp. 344, 351-52 (1994).

151. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985) (citing *Schweiker v. Wilson*, 450 U.S. 221, 235 (1981); *U.S. R.R. Retirement Bd. v. Fritz*, 449 U.S. 166, 174-75 (1980); *Vance v. Bradley*, 440 U.S. 93, 97 (1979); *New Orleans v. Dukes*, 427 U.S. 297, 303 (1976)).

152. BLACK’S LAW DICTIONARY 1446 (8th ed. 2004) (defining “state police power”).

153. *Johnson*, 860 F. Supp. at 352 (quoting *Qutb v. Strauss*, 11 F.3d 488, 492 (5th Cir. 1993)).

154. *Id.*

and that the statute is narrowly tailored such that there are no less restrictive means available to achieve the desired end.¹⁵⁵ The third standard, intermediate scrutiny is a middle standard that focuses on whether a particular government action is “substantially related to a legitimate government interest.”¹⁵⁶ Intermediate scrutiny is most often applied to cases involving quasi-suspect classifications.¹⁵⁷

There are two ways to evaluate legislation under Equal Protection analysis: either looking at it on its face or looking at its underlying purpose.¹⁵⁸ When evaluating a statute facially, courts consider the text of the statute itself.¹⁵⁹ If the text of the law is facially discriminatory, it will be struck down as invalid.¹⁶⁰ If the text of the law is neutral on its surface, an individual challenging its constitutionality must prove that the law was enacted with a discriminatory purpose in mind.¹⁶¹ Under this discriminatory purpose analysis, courts look to the function of the law in specific instances to determine if it has been applied with a discriminatory purpose.¹⁶² In *Crawford v. Board of Education*, the Supreme Court stated, “Under decisions of this Court, a law neutral on its face still may be unconstitutional if motivated by a discriminatory purpose.”¹⁶³

In *Attorney General of New York v. Soto-Lopez*, the Supreme Court held that the freedom to travel is a fundamental right secured by the Constitution through the Equal Protection Clause of the Fourteenth Amendment.¹⁶⁴ Freedom to travel from state to state and to enter or live in any state is a “virtually unconditional personal right, guaranteed by the Constitution to us all.”¹⁶⁵ In a 1969 case, *Shapiro v. Thompson*, the Supreme Court stated that the Court had “long ago recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or

155. *Id.*

156. *Id.* (quoting *City of Cleburne*, 473 U.S. at 441).

157. *Id.*

158. *Crawford v. Bd. of Educ.*, 458 U.S. 527, 536, 543-44 (1982).

159. *Id.*

160. *Id.* at 536.

161. *Id.* at 544.

162. *Id.*

163. *Id.*

164. *Attorney Gen. of N.Y. v. Soto-Lopez*, 476 U.S. 898, 901 (1986) (quoting *Dunn v. Blumstein*, 405 U.S. 330, 338 (1972) (citation omitted)).

165. *Shapiro v. Thompson*, 394 U.S. 618, 643 (1969).

restrict this movement.”¹⁶⁶ The Court held that any State action that attempted to restrict such movement was “constitutionally impermissible.”¹⁶⁷ In *Shapiro*, the Court applied strict scrutiny to the government action inhibiting the right to travel.¹⁶⁸ While the right to travel had traditionally been found implicit in the text of the Equal Protection Clause, in *Saenz v. Roe* the Supreme Court interpreted the Fourteenth Amendment’s Privileges and Immunities Clause to explicitly protect the right to travel.¹⁶⁹ Viewed as a whole, the case law regarding the right to travel indicates that, whether the right comes from the Equal Protection Clause or the Privileges and Immunities Clause, there is a fundamental right to travel which, when infringed upon, triggers strict scrutiny analysis.¹⁷⁰

2. The Fourth Amendment’s Right to Privacy

The Fourth Amendment to the United States Constitution guarantees each individual the right to privacy in his person and personal property.¹⁷¹ The Court has consistently held that the Fourth Amendment’s right to privacy is enforceable against the states through the Fourteenth Amendment’s due process clause.¹⁷² The Supreme Court summed up the principle in *Wolf v. Colorado*: “The security of one’s privacy against arbitrary intrusion by the police—which is at the core of the Fourth Amendment—is basic to a free society. It is therefore implicit in ‘the concept of ordered liberty’ and as such enforceable against the States through the Due Process Clause.”¹⁷³

The Supreme Court has put forth a two-fold test to decide uncertainties regarding the right to privacy. First, an individual must have a subjective

166. *Id.* at 629.

167. *Id.*

168. *Id.* at 634.

169. *Saenz v. Roe*, 526 U.S. 489, 501 (1999).

170. *Id.* at 499.

171. The Fourth Amendment provides:

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 no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV.

172. *See Mapp v. Ohio*, 367 U.S. 643, 655 (1961); *Wolf v. Colorado*, 338 U.S. 25, 27-28 (1949).

173. *Wolf*, 338 U.S. at 27-28 (quoting *Palko v. Connecticut*, 302 U.S. 319, 325 (1937)).

expectation of privacy.¹⁷⁴ Second, that expectation must be one that society is prepared to recognize as reasonable.¹⁷⁵ When these two requirements are met, the Fourth Amendment prohibits the state from infringing upon a citizen's right to privacy.¹⁷⁶ This right to privacy does "not vanish when the search in question is transferred from the setting of a home, an office, or a hotel room Wherever a man may be, he is entitled to know that he will remain free from unreasonable searches and seizures."¹⁷⁷ An individual's property has been "seized" when there is some meaningful interference with that individual's possessory interests in the property.¹⁷⁸

Twenty-five years after the Supreme Court established this privacy test, the Eleventh Circuit applied this standard to homeless individuals in *Pottinger v. City of Miami*, holding that homeless individuals have the required legitimate expectation of privacy in their personal belongings.¹⁷⁹

B. *Applying the Constitutional Framework*

1. Seattle, Washington

The City of Seattle, in expelling citizens from tent cities and destroying their property, violated the homeless persons' rights to due process. The Due Process Clause of the Fourteenth Amendment requires that before a person is deprived of life, liberty, or property, he must be given notice of the case against him and opportunity to meet it.¹⁸⁰ In determining whether government actions regarding homeless activity violate procedural rights, the Supreme Court's two-question due process analysis should be applied.

First, the nature of the interest must be determined.¹⁸¹ In *Poe v. Ullman*, Justice Harlan considered the scope of the rights guaranteed by the Due Process Clause:

This "liberty" is not a series of isolated points pricked out in terms of the taking of property; the freedom of speech, press, and religion; the right to keep and bear arms; the freedom from unreasonable searches and seizures; and so on. It is a rational

174. *Katz v. United States*, 389 U.S. 347, 361 (1967).

175. *Id.*

176. *Id.*

177. *Id.* at 359.

178. *Soldal v. Cook Cnty*, 506 U.S. 56, 61 (1992).

179. *Pottinger v. City of Miami*, 810 F. Supp. 1551 (S.D. Fla. 1992).

180. *Mullane*, 339 U.S. at 313.

181. *Roth*, 408 U.S. at 570-71.

continuum which, broadly speaking, includes a freedom from all substantial arbitrary impositions and purposeless restraints, . . . and which also recognizes, what a reasonable and sensitive judgment must, that certain interests require particularly careful scrutiny of the state needs asserted to justify their abridgment.¹⁸²

In other words, Harlan was suggesting that fundamental rights are not simply a list of rights found in the text of the Constitution, but include more broadly other rights that are so naturally fundamental as to demand a heightened level of scrutiny. In the Seattle tent cities, the interest at stake is the right to privacy in personal property—a right to freedom from arbitrary impositions. While a right to privacy is often found implicit in the Constitution,¹⁸³ even if it is not, it is one of those rights necessary to be free from “arbitrary impositions and purposeless restraints”¹⁸⁴ and is therefore fundamental.

In conducting the camp sweeps, the police destroy not only the inhabitants’ temporary shelters, but also much of their personal property.¹⁸⁵ The Fourteenth Amendment specifically states that no person shall be deprived of property without due process of law.¹⁸⁶ The Fourth Amendment deliberately guarantees “the right of the people to be secure in their persons, houses, papers, and effects”¹⁸⁷ The right to privacy in personal belongings is specifically addressed within the Constitution itself, and certainly qualifies as a principle “inherent in the fundamental idea of liberty itself.”¹⁸⁸ The United States is a nation founded on personal property interests.¹⁸⁹ Therefore, the homeless individuals’ privacy interest in their personal property is a fundamental right specifically protected by the Fourth Amendment. The seriousness of the loss of this property cannot be emphasized enough; these people have nowhere else to go or to store their

182. *Poe v. Ullman*, 367 U.S. 497, 543 (1961) (Harlan, J., dissenting).

183. *Griswold v. Connecticut*, 381 U.S. 479, 483-84 (1965) (holding that there is a general right to privacy which emanates from the penumbras of the First, Third, Fourth, Fifth, and Ninth Amendments).

184. *Poe*, 367 U.S. at 542-43 (1961) (Harlan, J., dissenting).

185. *Homes Not Handcuffs*, *supra* note 9.

186. U.S. CONST. amend. XIV, § 1.

187. U.S. CONST. amend. IV.

188. *Twining v. New Jersey*, 211 U.S. 78, 106 (1908).

189. U.S. CONST. amend. IV.

belongings.¹⁹⁰ Because shelters are at capacity, their only option is to find refuge in tent cities.¹⁹¹

Second, if it is determined that the nature of the interest requires due process, the type of required notice must be determined.¹⁹² To determine the type of notice required, the Supreme Court has prescribed three factors: the individual's interest in retaining his property, the risk of error through the procedures used, and the costs or burden of the additional process.¹⁹³ The inhabitants of the tent cities have a great interest in retaining their property—these possessions are all that they own. Also, there is a very high risk of error in the current procedure. Without any investigation into the reason for the violation or the availability of alternate storage, innocent individuals' property may be destroyed. The City of Seattle, at times, has failed to provide notice to the homeless population of upcoming sweeps.¹⁹⁴ This type of notice would not be difficult to provide—it has already been provided in some circumstances.¹⁹⁵ Were a court to apply this framework, considering these three factors together and balancing each party's interests, it seems to be a logical conclusion that these sweeps and the destruction of personal property violate the fundamental right to due process.

In *Katz v. United States*, the Supreme Court put forth a test to determine when an individual's right to privacy is protected by the Fourth Amendment.¹⁹⁶ Under *Katz*, so long as the Nickelsville inhabitants have a "reasonable" expectation of privacy in their personal belongings, these government sweeps violate the homeless individuals' rights.¹⁹⁷ When the Eleventh Circuit held that homeless individuals do have a legitimate, reasonable expectation of privacy in their personal belongings, the court was referring to homeless individuals on the street.¹⁹⁸ The inhabitants of Nickelsville live in a fixed, semi-permanent location.¹⁹⁹ They conduct all of their daily living activities in this place, and are part of a larger

190. *Homes Not Handcuffs*, *supra* note 9, at 80.

191. *Id.* at 80-81.

192. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950).

193. *Mathews v. Eldridge*, 424 U.S. 319, 321 (1976).

194. *Homes Not Handcuffs*, *supra* note 9, at 80.

195. *Id.*

196. *Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring).

197. *Minnesota v. Olson*, 495 U.S. 91, 95-96 (1990) (citing *Katz*, 389 U.S. at 361 (Harlan, J., concurring)).

198. *Pottinger v. City of Miami*, 810 F. Supp. 1551, 1571-72 (S.D. Fla. 1992).

199. NICKELSVILLESEATTLE.ORG, <http://www.nickelsvilleseattle.org> (last visited Feb. 16, 2010).

community.²⁰⁰ Surely, if people on the street have a legitimate expectation of privacy in their personal belongings, these homeless individuals continue to have a legitimate expectation of privacy in their personal belongings when those possessions are stored in a semi-permanent structure inside of a larger community. If the right to privacy in these items is determined to be valid, the city's actions in confiscating personal property constitute a violation of the Fourth Amendment's protection against unlawful seizures.

The Supreme Court, in *Payton v. New York*, held that "[t]he seizure of property in plain view involves no invasion of privacy and is presumptively reasonable, assuming that there is probable cause to associate the property with criminal activity."²⁰¹ This concept is related to the "open fields doctrine," which holds that the special protection accorded by the Fourth Amendment to citizens in their persons, houses, papers, and effects does not extend to the open, public areas.²⁰² Some may argue that, because these individuals are in public places, the open fields doctrine applies and their right to privacy no longer applies. The difference here is that these individuals, in most instances, are not suspected of any criminal activity other than being in the wrong place at the wrong time. In conducting the sweeps, Seattle police did not seize personal belongings as evidence of some greater crime; the homeless individuals' possessions were seized simply because they were on public property. Furthermore, application of the open fields doctrine in this case conflicts with the very purpose of the Fourth Amendment as outlined in *Katz*: "[T]his effort to decide whether or not a given 'area,' viewed in the abstract, is 'constitutionally protected' deflects attention from the problem presented by this case. For the Fourth Amendment protects people, not places."²⁰³ The physical boundaries of the home are protected in order to prevent intrusion into the "privacies of the life within."²⁰⁴ As Justice Harlan stated in his dissent in *Poe v. Ullman*:

Certainly the safeguarding of the home does not follow merely from the sanctity of property rights. The home derives its pre-eminence as the seat of family life. And the integrity of that life is something so fundamental that it has been found to draw to its

200. *Id.*

201. *Payton v. New York*, 445 U.S. 573, 587 (1980).

202. *Oliver v. United States*, 466 U.S. 170, 176 (1984).

203. *Katz v. United States*, 389 U.S. 347, 351 (1967).

204. *Poe v. Ullman*, 367 U.S. 497, 551-52 (1961) (Harlan, J., dissenting).

protection the principles of more than one explicitly granted Constitutional right.²⁰⁵

The right to privacy, universally considered fundamental, prevents the government from seizing personal property without just cause.

Equal Protection guarantees that “all persons similarly circumstanced shall be treated alike.”²⁰⁶ In the case of Nickelsville, the Mayor developed a specific plan to address the homeless.²⁰⁷ This plan included police sweeps of homeless tent cities in order to demolish temporary structures and destroy individuals’ personal property.²⁰⁸ This law was put in place to affect the homeless and no one else. Therefore, it is discriminatory on its face. However, the states still have the power to classify people groups as long as the classification is rationally related to a legitimate government interest.²⁰⁹ The City of Seattle asserts that the sweeps and ordinances are in place to preserve the health and welfare of the city.²¹⁰ On its face, this is a legitimate government interest; the City of Seattle is exercising its enumerated police power in order to protect its citizens. However, the means implemented are not rationally related to the interest at hand—destroying a homeless individual’s personal property does not protect any citizen’s health or welfare, and only injures the homeless individual. Therefore, these sweeps violate the Equal Protection Clause of the Fourteenth Amendment.

Some would argue that these individuals’ personal property has no value and is in fact nothing more than an assortment of trash collected from the street. In some instances, these belongings may in fact be hazardous to public health. However, the Fourth Amendment does not protect an individual’s property from being seized so long as it has some objective value.²¹¹ In fact, the Amendment is deliberately broad: it protects “persons, houses, papers, and effects.”²¹²

As citizens of the United States, the homeless inhabitants of Nickelsville have a valid privacy interest in their personal belongings, despite the value or location of those belongings. When the government came in, without

205. *Id.*

206. *Plyler v. Doe*, 457 U.S. 202, 216 (1982) (quoting *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920)).

207. *Homes Not Handcuffs*, *supra* note 9, at 81.

208. *Id.*

209. *Personnel Adm’r of Mass. v. Feeney*, 442 U.S. 256, 271 (1979).

210. *Id.*

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

212. *Id.*

notice, and decided to summarily seize and destroy everything these individuals owned, it violated these individuals' constitutional rights of due process, privacy, and equal protection.

2. St. Petersburg, Florida

Because an analysis regarding the personal property issues would be the same in St. Petersburg as in Seattle, the analysis of St. Petersburg will focus on the trespass warnings issued to various homeless individuals. Trespass warnings prohibiting presence in any city park have been issued to several homeless individuals, often without notice of the underlying violation. Some of these warnings prohibit an individual from entering a city park for a year, while others prohibit any entrance indefinitely.

To determine whether the trespass warnings violate the Due Process Clause, the Supreme Court's two-question analysis should be utilized. First, the nature of the interest must be determined. Upon examination, it becomes apparent that the interest at stake here is very much a fundamental right. These individuals are being deprived of their right to freedom of movement and travel, a right implicitly found in the Constitution and generally considered to be fundamental.²¹³ Whether the fundamental right to travel is found in the Equal Protection Clause or the Privileges and Immunities Clause, it is indeed a fundamental right which, when infringed upon, subjects a government action to strict scrutiny.²¹⁴

Second, after the court finds that the nature of the interest requires due process, it must then determine the type of notice required.²¹⁵ Three factors to determine the type of notice due are: the individual's interest in retaining his right, the risk of error through the procedures used, and the costs or burden of the additional process.²¹⁶ The state's interest, the public health and welfare, does not exceed the homeless individual's personal interest in being allowed to exist in public areas. The risk of error is great because homeless individuals who do not purposely violate any ordinance or do not, in fact, violate any law may be banned from public areas for indefinite periods of time. The St. Petersburg police provide notice to the homeless through the issuance of the warnings themselves. However, that notice is not sufficient. No hearings are scheduled, and many of the individuals issued citations do not understand the full import of the situation. Without any procedural protection of the right to exist in public places, the homeless

213. *Shapiro v. Thompson*, 394 U.S. 618, 629 (1969).

214. *Id.*

215. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950).

216. *Mathews v. Eldridge*, 424 U.S. 319, 321 (1976).

of St. Petersburg will continue to be pushed out of public areas and receive citations for violation of trespass warnings. Fines accompany every citation and these individuals cannot afford to pay and criminal records these people cannot afford to accumulate. The ordinances themselves perpetuate homelessness because by criminalizing activities these people must engage in to survive, the city is making it virtually impossible for the homeless to find work or permanent housing. Few employers are willing to hire those with long criminal records, and few landlords are willing to rent to those with unfortunate financial and criminal backgrounds.

All citizens have the right to “travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict.”²¹⁷ Yet these trespass warnings prohibit a class of individuals from traveling in public areas, even when these areas are open to the non-homeless public. Because the right to travel is fundamental, government actions affecting this right are subject to strict scrutiny review.²¹⁸ The state must prove that the action promotes a compelling government interest, and that the statute is narrowly tailored such that there are no less restrictive means available to achieve the desired end.²¹⁹ St. Petersburg’s alleged objective is protecting the public health and welfare. While the government has a legitimate interest in protecting the public health and welfare, that has not been considered a compelling government interest. The Court has not established a bright-line test for whether a government interest is compelling, but it usually involves some level of necessity.

Even if St. Petersburg’s objective in issuing trespass warnings constituted a compelling government interest, there are certainly less restrictive ways of accomplishing the same goal. Prohibiting an individual from entering any public park or any public area for a year or longer is an extreme measure. Several of the plaintiffs in *Catron* were prohibited from entering any public area for a year or more.²²⁰ Therefore, prohibiting these homeless individuals’ entrance into any public area is a violation of their fundamental right to freedom of travel.

Although the Equal Protection Clause guarantees that “all persons similarly circumstanced shall be treated alike,”²²¹ the officers enforcing the

217. *Id.*

218. *Saenz v. Roe*, 526 U.S. 489, 501 (1999).

219. *Johnson v. Dallas*, 860 F. Supp. 344, 352 (1994).

220. Complaint at 10-21, *Catron v. St. Petersburg*, No. 8:09-cv-00923-SDM-EAJ (M.D. Fla. May 20, 2009).

221. *Plyler v. Doe*, 457 U.S. 202, 216 (1982).

trespass warnings in St. Petersburg are targeting a specific class—the homeless. Because homelessness is not a suspect or quasi-suspect class, minimal scrutiny applies.²²² Therefore, if St. Petersburg can prove that the practice of issuing trespass warnings to homeless individuals is rationally related to the legitimate government interest of protecting the public health and welfare, this practice would not violate the Equal Protection Clause, even though it appears to violate the fundamental right of homeless people to freedom of travel.

V. CONCLUSION

The history of homelessness and its criminalization is decidedly mixed. Throughout the last fifty years, some courts have held statutes criminalizing homelessness constitutional, while others have struck them down on a variety of grounds. While in some cases these laws are struck down as unconstitutional, the real problem lies in the way these cases almost always end. Many times, after a court hands down a decision unfavorable to a city and its actions concerning the homeless, a city will offer the homeless plaintiffs generous settlements in exchange for vacating the adverse judgment.²²³ For instance, the Eleventh Circuit decision *Jones v. City of Los Angeles* would have gone a long way toward shifting the tide regarding the criminalization of homelessness, but that decision was vacated after the parties reached a settlement.²²⁴ *Pottinger v. Miami*, another case which could have had even greater effects in this area of the law were it not settled, ended with an agreement in which the city implemented training for law enforcement and set up a \$600,000 compensation fund for injured parties.²²⁵

The problem of homelessness is one that affects virtually every city throughout the nation. Organizations like the National Law Center on Homelessness and Poverty, the National Coalition for the Homeless, and many others have been working with homeless individuals in an effort to end homelessness. Some cities have set up initiatives to provide housing for those in need: for instance, Portland, Oregon has implemented a program where city funding enables outreach agencies to offer permanent housing to

222. *Johnson*, 860 F. Supp. at 352.

223. See, e.g., Jack Noldon, *Judge Approves Multi-million Dollar Settlement with Fresno Homeless*, KSEE NEWS (June 6, 2008, 4:50 PM), <http://www.ksee24.com/news/local/19609404.html>.

224. *Jones v. City of Los Angeles*, 505 F.3d 1006 (9th Cir. 2007).

225. *Homes Not Handcuffs*, *supra* note 9, at 111.

people while they work to find employment.²²⁶ Private organizations have also been able to reach out to the homeless in order to improve their plight. In St. Petersburg, a new initiative called “Project Homeless Connect” was launched on January 30, 2010.²²⁷ Through this project, about 1,200 homeless individuals received medical care, job and housing assistance, legal services, and other personal services.²²⁸ As part of the initiative, Pinellas County held the state of Florida’s first “Homeless Court,” through which the county hopes to settle minor criminal cases with homeless defendants.²²⁹

Things are slowly improving, but this issue will not be put to rest until these laws are completely eradicated. Instead of criminalizing homelessness and pushing those in the greatest need deeper into poverty, Americans need to band together and do something to address the homelessness pervading their cities. After all, in a country founded on the doctrines of equality and liberty that is the least we can do.

226. *Id.* at 31.

227. *Project Homeless Connect Needs 700 Volunteers for Pinellas Event*, ST. PETERSBURG TIMES, (Jan. 24, 2010), <http://www.tampabay.com/news/briefs/article1067659.ece>

228. *Id.*

229. Victoria Benchimol, *Florida’s First Homeless Court*, ABC ACTION NEWS (Jan. 30, 2010), http://www.abcactionnews.com/content/news/local/pinellas/south/story/Floridas-first-Homeless-Court/a5gBliKvoEaYJnf3L_5Y7w.csp.