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## *ESSAY*

### CHRONIC NUISANCE ORDINANCES, IMPOSSIBLE CHOICES, AND STATE CONSTITUTIONS

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#### INTRODUCTION

When Lakisha Briggs’s partner attacked her in April 2012, her daughter called the police.<sup>1</sup> Their response ensured that neither Ms. Briggs nor her daughter would ever take that risk again. Once officers arrived at Ms. Briggs’s home, they told her that, even as a victim of domestic violence, she was “on three strikes,” and they were “gonna have

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<sup>1</sup> Lakisha Briggs, *I Was a Domestic Violence Victim. My Town Wanted Me Evicted for Calling 911*, *Guardian* (Sept. 11, 2015, 6:45 PM), <https://www.theguardian.com/commentisfree/2015/sep/11/domestic-violence-victim-town-wanted-me-evicted-calling-911> [<https://perma.cc/7NR4-Z269>]; Verified First Amended Complaint at 10, *Briggs v. Borough of Norristown*, No. 2:13-cv-02191 (E.D. Pa. Apr. 29, 2013). Because Ms. Briggs’s story was well-publicized compared to most evictions resulting from chronic nuisance ordinance (“CNO”) enforcement, other scholarly pieces about chronic nuisance ordinances have also highlighted her endeavor. See, e.g., Salim Katach, Note, *A Tenant’s Procedural Due Process Right in Chronic Nuisance Ordinance Jurisdictions*, 43 *Hofstra L. Rev.* 875, 875–78 (2015).

[her] landlord evict [her].”<sup>2</sup> Unfortunately, Ms. Briggs lived in Norristown, Pennsylvania, one of hundreds of municipalities across the country with a chronic nuisance ordinance (“CNO”) in effect.<sup>3</sup>

Under a CNO, a local government can deem a property a “nuisance” when a certain number of police visits—responding to everything from marijuana use to domestic violence calls—occur at the property.<sup>4</sup> If the landlord fails to “abate the nuisance,” often an implicit command to evict the tenant, the locality retains broad discretion to impose heavy fines upon the landlord, revoke their rental license, close the property temporarily, or even seize it.<sup>5</sup> With the threat of eviction looming over her and her children, Ms. Briggs was forced to suffer in silence.

Ms. Briggs’s troubles reached a new height two months later, when that same ex-partner stabbed her in the neck.<sup>6</sup> Despite her pleas not to call 9-1-1, concerned neighbors did so, and she was airlifted to the hospital.<sup>7</sup> Her fears were well-founded. When she returned home, her landlord informed her that she had to leave within 14 days: the town’s restrictive nuisance ordinance “gave him no choice but to file a case against [her].”<sup>8</sup> The town had revoked his license three days after Ms. Briggs was hospitalized.<sup>9</sup> Even though she subsequently succeeded in eviction court, the city insisted that Ms. Briggs leave.<sup>10</sup> The Norristown ordinance “gave

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<sup>2</sup> Briggs, *supra* note 1 (internal quotation marks omitted).

<sup>3</sup> Norristown, Pa., Mun. Code § 245-3 (2012). Norristown repealed this law as part of Briggs’s settlement, but its text remains available in Briggs’s complaint. Verified First Amended Complaint, *supra* note 1, at 1–2.

<sup>4</sup> See Scout Katovich, NYCLU & ACLU, *More Than a Nuisance: The Outsized Consequences of New York’s Nuisance Ordinances* 6 (2018) [hereinafter *More Than a Nuisance*], [https://www.nyclu.org/sites/default/files/field\\_documents/nyclu\\_nuisancereport\\_20180809.pdf](https://www.nyclu.org/sites/default/files/field_documents/nyclu_nuisancereport_20180809.pdf) [<https://perma.cc/QPG3-L6P2>] (explaining how CNOs operate in New York); see also Emily Werth, Sargent Shriver Nat’l Ctr. on Poverty L., *The Cost of Being “Crime Free”: Legal and Practical Consequences of Crime Free Rental Housing and Nuisance Property Ordinances* 2, 4, 8 (2013) (examining CNOs and other similar crime-free housing provisions in Illinois).

<sup>5</sup> *More Than a Nuisance*, *supra* note 4, at 6, 8; Matthew Desmond & Nicol Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*, 78 *Am. Socio. Rev.* 117, 118–20 (2012) (identifying potential punishments).

<sup>6</sup> Verified First Amended Complaint, *supra* note 1, at 15.

<sup>7</sup> Erik Eckholm, *Victims’ Dilemma: 911 Calls Can Bring Eviction*, *N.Y. Times* (Aug. 16, 2013), <https://www.nytimes.com/2013/08/17/us/victims-dilemma-911-calls-can-bring-eviction.html> [<https://perma.cc/QUX7-ZWYG>].

<sup>8</sup> Briggs, *supra* note 1.

<sup>9</sup> Verified First Amended Complaint, *supra* note 1, at 16.

<sup>10</sup> Briggs, *supra* note 1.

the city the power to condemn the property if [the landlord] did not remove me,” she explained.<sup>11</sup>

Fortunately, the American Civil Liberties Union (“ACLU”) soon took up Ms. Briggs’s case.<sup>12</sup> She reached a settlement with the city that included repealing the CNO.<sup>13</sup> Pennsylvania then passed a law prohibiting municipalities from punishing victims for calling emergency services.<sup>14</sup>

Although Ms. Briggs and the ACLU succeeded in repealing this CNO, hundreds like it remain in effect throughout the United States—from its largest cities to its smallest towns.<sup>15</sup> This Essay explores how CNOs harm marginalized groups and how local communities can stop that harm. Part I explains how CNOs typically operate and where they come from. Part II illustrates how CNOs can detrimentally impact communities of color, domestic violence victims, and people with physical and mental disabilities or illnesses. Finally, Part III examines how legal challenges and state-level reform can mitigate the harms of CNOs. This Essay intervenes in the scholarly discussion by arguing that state constitutional amendments—an undervalued instrument of reform—can limit harmful exercises of local power, invalidate CNOs, and strengthen individual rights. To that end, the Essay proposes model language for these amendments.

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<sup>11</sup> *Id.*

<sup>12</sup> Verified First Amended Complaint, *supra* note 1, at 38.

<sup>13</sup> Briggs, *supra* note 1; see also Press Release, ACLU, Norristown Will Pay \$495,000 to Settle Case on Behalf of Woman Threatened with Eviction for Calling Police (Sept. 8, 2014), <https://www.aclu.org/press-releases/pennsylvania-city-agrees-repeal-law-jeopardizes-safety-domestic-violence-survivors> [<https://perma.cc/GB3P-EV7Y>] (stating that Norristown voted to repeal the ordinance as part of the Briggs settlement).

<sup>14</sup> 53 Pa. Cons. Stat. § 304 (2014).

<sup>15</sup> See, e.g., Cincinnati, Ohio, Mun. Code § 761-1-C-N (2013); Sumner, Wash., Mun. Code ch. 9.50 (2022). Over one hundred municipalities in Illinois have enacted CNOs and other harmful types of crime-free ordinances. Werth, *supra* note 4, at 26–28 app. A. A non-exhaustive study of Ohio CNOs and other crime-free ordinances revealed that at least forty municipalities have enacted them. Joseph Mead et al., Cleveland State Univ., *Who Is a Nuisance? Criminal Activity Nuisance Ordinances in Ohio* 19–20 app. A (2017). An investigation into New York CNOs revealed that twenty-five of the forty most populated municipalities outside of New York City have enacted them. *More Than a Nuisance*, *supra* note 4, at 10.

## I. CNOs IN PRINCIPLE AND PRACTICE

*A. How CNOs Operate*

Though CNOs are not uniform across the country, most share three attributes: (1) a system to designate properties as nuisances, (2) a broad list of offenses that, if the police visit to investigate, qualify as nuisance activity, and (3) a coercive abatement process that often forces landlords to evict tenants or pay harsh fines, among other possible consequences.<sup>16</sup>

CNOs establish a system to determine how properties come to be defined as nuisances. Some municipalities simply count the number of police visits to the property within a defined period. In Cincinnati, for example, the city is required to notify the owner of a property where “three or more nuisance activities” have occurred within a thirty-day period that their property is “in danger of becoming a chronic nuisance.”<sup>17</sup> After this point, if the city determines that an additional nuisance activity has occurred at the property, then the property is deemed a “chronic nuisance.”<sup>18</sup> Cincinnati also prorates the requisite number of nuisance activities that qualify a property over the course of a year depending on the number of residents: if a property with four to 19 residential units has accumulated over 14 nuisance activities in a one-year period, it may be deemed a chronic nuisance.<sup>19</sup> For premises with over 200 residential units, that number is anything over 30.<sup>20</sup> Other municipalities use a point-based system, where certain offenses merit a certain number of points. In Troy, New York, a property can be labeled a nuisance “if it accumulates 12 points within 12 months or 18 points within 24 months.”<sup>21</sup>

CNOs generally also include a long list of offenses—both civil and criminal—that are tallied against the property.<sup>22</sup> The list’s scope varies greatly by municipality. Troy assigns nuisance points for visits relating to “anything from gambling offenses to violation of the city’s recycling

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<sup>16</sup> Desmond & Valdez, *supra* note 5, at 120.

<sup>17</sup> Cincinnati, Ohio, Mun. Code § 761-3(a)(1) (2013).

<sup>18</sup> *Id.* § 761-5(a).

<sup>19</sup> *Id.* § 761-3(a)(3)(B); *id.* § 761-5(a).

<sup>20</sup> *Id.* § 761-3(a)(3)(F); *id.* § 761-5(a).

<sup>21</sup> *More Than a Nuisance*, *supra* note 4, at 11 (citing Troy, N.Y., Code § 205-18 (2010)).

<sup>22</sup> See, e.g., Milwaukee, Wis., Code of Ordinances § 80-10-2-c-1 (2019) (listing over 40 potential offenses); Chi., Ill., Mun. Code § 8-4-087 (2023) (listing 15 specific offenses, as well as catch-all provisions for any other public nuisance conduct or criminal behavior).

ordinance.”<sup>23</sup> Cincinnati takes an even broader perspective, penalizing tenants for calls related to “[a]ttendance at school violation[s]” and “[c]urfew violation[s].”<sup>24</sup> Conduct connected to domestic violence continues to be a nuisance activity in many jurisdictions.<sup>25</sup>

When the property has crossed the nuisance threshold, a coercive “abatement” process begins. Often, municipalities will send a letter to the landlord, urging them to abate the nuisance with the threat of fines, property seizure, or even imprisonment.<sup>26</sup> Sometimes, the police request an abatement strategy letter, where the landlord must detail how they will resolve the issue.<sup>27</sup> These letters are particularly instructive of how landlords abate nuisances. A 2012 study of Milwaukee CNOs analyzed 243 letters, and it found that nearly half of the landlords initiated a formal eviction process after receiving an abatement letter from the municipality.<sup>28</sup> Another third promised to evict after the next nuisance violation, and another tenth noted that informal eviction would soon follow.<sup>29</sup>

Still, not all CNOs are created equal.<sup>30</sup> Some municipalities have made good faith attempts to minimize harm by exempting domestic violence calls from counting towards a designation.<sup>31</sup> Some CNOs add a barrier of protection for landlords and tenants by requiring a formal citation or a

<sup>23</sup> More Than a Nuisance, *supra* note 4, at 11 (citing Troy, N.Y., Code § 205-19(B)(3), (D)(1) (2010)).

<sup>24</sup> Cincinnati, Ohio, Mun. Code § 761-1-N(e)–(f) (2013).

<sup>25</sup> See, e.g., Green Bay, Wis., Mun. Code § 24-75(1), (3) (2021) (counting “harassment” and “[b]attery, substantial battery, or aggravated battery” among nuisance activities); North Riverside, Ill., Code of Ordinances § 8.05.020 (counting “[a]ssault, battery or any related offense” among nuisance activities); Fairlawn, Ohio, Code of Ordinances § 680.01(j) (2015) (including “[d]omestic [v]iolence [o]ffenses” as a nuisance offense “regardless of whether such activities were engaged by an owner, occupant, or invitee”); Sandusky, Ohio, Codified Ordinances § 531.17(b)(3) (2022) (including “[a]ny offense against another person” including assault and menacing); Fairview Park, Ohio, Codified Ordinances § 509.18(a)(2) (2020) (counting “[a]ny disorderly conduct” or “disturbance of the peace” as a nuisance activity); Orrville, Ohio, Codified Ordinances § 521.13(a)(2) (2023) (same).

<sup>26</sup> Desmond & Valdez, *supra* note 5, at 122; see also More Than a Nuisance, *supra* note 4, at 22–24 (describing abatement letters sent in Fulton, New York); Mead, *supra* note 15, at 8–9 (providing links to examples of abatement letters in municipalities in Ohio).

<sup>27</sup> Desmond & Valdez, *supra* note 5, at 122.

<sup>28</sup> *Id.* at 131–32.

<sup>29</sup> *Id.*

<sup>30</sup> See Katach, *supra* note 1, at 883–89 (highlighting common features and variants of CNOs).

<sup>31</sup> See, e.g., Milwaukee, Wis., Code of Ordinances § 80-10-2-c-2-a (2019); Chi., Ill., Mun. Code § 8-4-087(a)(2)–(6) (2023).

conviction to result from the visit for it to count against the property.<sup>32</sup> Others, though, are especially harsh. Some CNOs do not require that the police visit results in a conviction or even an arrest for it to count against the property.<sup>33</sup> Some give the police broad discretion to determine what constitutes a violation of the ordinance. Others have even been written specifically to target domestic violence victims.<sup>34</sup> Finally, some threaten incarceration to landlords who fail to abate nuisances—even if the nuisances are not themselves criminal offenses.<sup>35</sup>

### *B. Where CNOs Came From*

Cities and towns often cite budgetary reasons for enacting CNOs.<sup>36</sup> Because CNOs punish owners whose properties demand more attention than most from local emergency services, so goes the argument, those community members that place excessive burdens on local systems

<sup>32</sup> See, e.g., East Rochester, N.Y., Code § 144-13(A)(5)(a) (2009) (internal citations omitted) (stating that at least one of three public nuisance citations must have resulted in a conviction before the city can revoke the landlord’s rental license); Peoria, Ill., Code § 20-201(c)(2) (2020) (noting that conduct is tallied against the property only if it has “resulted in a criminal conviction, pending indictment, pending criminal charge, or ticket, as appropriate to the conduct in question”).

<sup>33</sup> See, e.g., Fairborn, Ohio, Codified Ordinances § 561.01(e)(1) (2015) (listing “conditions or defects” that constitute nuisance “regardless of whether there has been a conviction” for the act); East Liverpool, Ohio, Codified Ordinances § 507.01(a) (2011) (establishing that just an “investigation of illegal activity” can be tallied against the property); Akron, Ohio, Code of Ordinances § 139.03(G)(3) (2022) (establishing that, on appeal, the city must only show that the activity occurred “by a preponderance of the evidence,” and that the city “shall not have to show that there has been a conviction”); Niles, Ill., Code of Ordinances § 22-591(b) (2022) (“Proof of criminal violation shall be by a preponderance of the evidence.”); Fulton, N.Y., Code § 435-3 (2021); Danville, Ill., Code of Ordinances § 141.02(A) (2016).

<sup>34</sup> See Rebecca Licavoli Adams, Note, California Eviction Protections for Victims of Domestic Violence: Additional Protections or Additional Problems?, 9 *Hastings Race & Poverty L.J.* 1, 12 (2012) (discussing how the Coaldale, Pennsylvania, CNO specifically “target[ed] victims of domestic violence who refuse to ‘follow through’ with the prosecution of their partners” (citing Cari Fais, Note, Denying Access to Justice: The Cost of Applying Chronic Nuisance Laws to Domestic Violence, 108 *Colum. L. Rev.* 1181, 1191–92 (2008))).

<sup>35</sup> See Cari Fais, Note, Denying Access to Justice: The Cost of Applying Chronic Nuisance Laws to Domestic Violence, 108 *Colum. L. Rev.* 1181, 1189 n.42 (2008) (listing examples of CNOs that impose such penalties).

<sup>36</sup> See, e.g., Sumner, Wash., Mun. Code § 9.50.010 (2015) (“[N]uisance properties are a financial burden to the city by the repeated calls for service to the properties because of the nuisance activities that repeatedly occur or exist on such property, and this chapter is a means to ameliorate those conditions and hold responsible the owners or persons in charge of such property.”); North Riverside, Ill., Code of Ordinances § 8.05.010 (2015) (finding that nuisance properties have “received and required more than the general, acceptable level of village services and place[] an undue and inappropriate burden on the taxpayers of the village”).

should contribute more to their operation through fines. And because citizens often access these services through 9-1-1 calls, structuring penalties around police visits simplifies how local governments sort which properties are too burdensome.<sup>37</sup>

But local concerns about the budget are not adequate to explain the wave of CNOs passed nationwide in the past two decades.<sup>38</sup> Their sudden popularity coincides with two other paradigm shifts in the law: the growth of the public nuisance doctrine and the expansion of crime prevention methods since the War on Drugs.

### *1. The Long Creep of Public Nuisance*

Public nuisance has long been a part of the common law, but it evades easy definition. Because the doctrine draws from varied fields such as torts, property, and criminal law, nuisance has been characterized as “a chameleon word,”<sup>39</sup> a “catch-all low-grade criminal offense,”<sup>40</sup> and “the great grab bag, the dust bin, of the law.”<sup>41</sup> The first public nuisance suits can be dated to twelfth and thirteenth-century England, where the King took legal action against private individuals because they blocked the public’s access to roads and waterways.<sup>42</sup> Since then, the concept has expanded significantly to cover nearly any interference with public

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<sup>37</sup> See Anna Kastner, Note, *The Other War at Home: Chronic Nuisance Laws and the Revictimization of Survivors of Domestic Violence*, 103 *Calif. L. Rev.* 1047, 1061–64 (2015).

<sup>38</sup> See, e.g., Mead, *supra* note 15, at 19–20 app. A (providing a “non-exhaustive” list of forty-nine municipalities in Ohio alone that have adopted CNOs and similar measures since 2000); Werth, *supra* note 4, at 26–28 app. A (providing a non-exhaustive index of over 100 municipalities in Illinois that have adopted crime-free rental housing and nuisance property ordinances); *More Than a Nuisance*, *supra* note 4, at 10 (finding that twenty-five of the forty largest municipalities outside New York City have enacted CNOs); Nathan Tauger, *Drug House: A West Virginia Law Meant to Target Dealers May Punish Those Who Call for Help* (Updated), *Rewire News Grp.*, (Sept. 11, 2017, 5:27 PM), <https://rewirenewsgroup.com/2017/09/11/drug-house-west-virginia-law-meant-target-dealers-may-punish-call-help> [<https://perma.cc/Y8J5-5XFF>] (noting that municipalities in West Virginia are adopting CNOs); Sandra Park, *ACLU, How Local Nuisance Ordinances and Crime Free Leases Undermine Communities* 6, <https://www.justice.gov/ovw/page/file/906851/download> [<https://perma.cc/VNG4-5G6B>] (providing a “non-exhaustive” map identifying 14 states where the ACLU has worked on nuisance ordinance litigation and another 24 states where the ACLU has identified CNOs in effect).

<sup>39</sup> J.R. Spencer, *Public Nuisance—A Critical Examination*, 48 *Cambridge L.J.* 55, 56 (1989).

<sup>40</sup> William L. Prosser, *Private Action for Public Nuisance*, 52 *Va. L. Rev.* 997, 999 (1966).

<sup>41</sup> *Awad v. McColgan*, 98 N.W.2d 571, 573 (Mich. 1959).

<sup>42</sup> See Leslie Kendrick, *The Perils and Promise of Public Nuisance*, 132 *Yale L.J.* 702, 713–21 (2023) (describing the historical origins of public nuisance).

rights.<sup>43</sup> The Second Restatement of Torts defines public nuisance broadly as “an unreasonable interference with a right common to the general public.”<sup>44</sup> Among these interferences are threats to “the public health, . . . the public safety, . . . [and] the public morals.”<sup>45</sup> Alongside judges having the power to determine that certain conduct is a nuisance as a legal conclusion—as was the case at common law—state legislatures today can establish per se nuisances.<sup>46</sup> Indeed, every state has codified the public nuisance doctrine, and the states have used it for a variety of social measures, like controlling prostitution, enforcing prohibition, and, today, curbing illicit drug use.<sup>47</sup>

While older public nuisance laws permitted actions against landlords who kept “disorderly houses” that “disturb[ed], annoy[ed], and scandalize[d] the public,”<sup>48</sup> CNOs stretch the doctrine quite thin. They demonstrate how nuisance has “crept into the home.”<sup>49</sup> Under CNOs, the government can impose harsh fines or seize property for conduct that occurs within the four walls of the home, even if it has no tangible third-party effects. In many cases, the only cognizable burden on the public is small: the government dedicates increased resources to respond to more calls at the property than it anticipated in the budget. Still, that burden is attenuated even further because it is distributed across all local taxpayers.

## *2. The Sudden Shift to “Third-Party Policing”*

CNOs also arose alongside a wellspring of crime-fighting initiatives that came from the War on Drugs. In the 1980s, states began regulating tenant behavior to halt rising crime rates and limit drug use.<sup>50</sup> They required landlords “to police their tenants by sanctioning and even evicting tenants for perceived transgressions, both criminal and noncriminal.”<sup>51</sup> Alongside mandatory minimum sentencing, the federal

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<sup>43</sup> Id. at 718.

<sup>44</sup> Restatement (Second) of Torts § 821B(1) (Am. L. Inst. 1979).

<sup>45</sup> Id. at cmt. b.

<sup>46</sup> See, e.g., *Mugler v. Kansas*, 123 U.S. 623, 672–73 (1887) (upholding a Kansas law and state constitutional amendment that made breweries per se nuisances).

<sup>47</sup> B.A. Glesner, *Landlords as Cops: Tort, Nuisance & Forfeiture Standards Imposing Liability on Landlords for Crime on the Premises*, 42 *Case W. Rsrv. L. Rev.* 679, 717, 723–24 (1992).

<sup>48</sup> Id. at 723 (internal quotation marks omitted).

<sup>49</sup> Kastner, *supra* note 37, at 1052.

<sup>50</sup> Id. at 1060.

<sup>51</sup> Id. (internal quotation marks omitted).



government passed an infamous “crackhouse statute” in 1986, imposing criminal sanctions on landlords whose properties served as the sites for drug manufacturing, distribution, or use.<sup>52</sup>

These laws were the forerunners to CNOs, and they symbolize a troubling shift in law enforcement: the trend towards third-party policing. Third-party policing models extend legal liability beyond “primary wrongdoer[s]” to local, related actors like parents, business owners, and landlords.<sup>53</sup> These models demand community members serve as additional “gatekeeper[s]” between potential wrongdoers and unlawful conduct; if these gatekeepers fail to do so, then they suffer penalties as well.<sup>54</sup> On its face, the theory might seem appealing: instead of the brute force of the state solving every problem, local actors have to take responsibility and collaborate to create community-based solutions. But collaboration quickly becomes coercion, and problems abound under this model. CNOs force landlords to “abate the nuisance” by evicting tenants who call 9-1-1—if the landlord does not do so, the municipality can impose heavy fines, revoke their rental license, or seize the property.<sup>55</sup> CNOs also illustrate how criminal law has infiltrated civil law, because they allow the state to punish individuals harshly for criminal offenses under lower civil standards.<sup>56</sup>

## II. THE EFFECT OF CNOs ON MARGINALIZED COMMUNITIES

### *A. Disproportionate Enforcement*

Like many laws that give the state broad enforcement discretion, CNOs are often disproportionately enforced in communities of color.<sup>57</sup> A 2012

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<sup>52</sup> *Id.* (internal quotation marks omitted) (citing Michael E. Rayfield, Note, Pure Consumption Cases Under the Federal “Crackhouse” Statute, 75 U. Chi. L. Rev. 1805, 1805 (2008)).

<sup>53</sup> Sarah Swan, Home Rules, 64 Duke L.J. 823, 830–31 (2015).

<sup>54</sup> *Id.* at 835 (internal quotation marks omitted).

<sup>55</sup> Desmond & Valdez, *supra* note 5, at 118–20, 122, 138; see also Werth, *supra* note 4, at 2–4 (discussing, among other things, how CNOs can affect rental licenses).

<sup>56</sup> See Swan, *supra* note 53, at 833–34.

<sup>57</sup> Kastner, *supra* note 37, at 1065–66 (citing Tracey Maclin, *Terry v. Ohio’s* Fourth Amendment Legacy: Black Men and Police Discretion, 72 St. John’s L. Rev. 1271, 1320 (1998)); see also The Worst of Cleveland: Criminal Activity Nuisance Ordinances, Cleveland Scene (Apr. 24, 2019, 1:00 AM), <https://www.clevescene.com/news/the-worst-of-cleveland-criminal-activity-nuisance-ordinances-30362202> [<https://perma.cc/X3QB-J3LC>] (quoting the mayor of Bedford, Ohio, who stated the following in support of a CNO in 2005: “We believe in neighborhoods not hoods. That is one of the reasons we passed that nuisance law tonight. I

Milwaukee study demonstrates as much.<sup>58</sup> While one in forty-one properties in majority-white neighborhoods and one in fifty-four properties in majority-Hispanic neighborhoods received a citation during the course of the study, a shocking one in sixteen properties in majority-Black neighborhoods received one.<sup>59</sup> When controlled for the amount of calls placed to emergency services, the results were the same: “[P]roperties located in [B]lack neighborhoods were consistently more likely to receive citations compared to those in non-[B]lack neighborhoods from which a similar number of calls were placed.”<sup>60</sup>

A study by the New York Civil Liberties Union (“NYCLU”) reveals the same trend.<sup>61</sup> In Rochester, the census tract district with the least nuisance “points”—none over the course of the study—was approximately 85 percent white, and the tract with the most points was approximately 50 percent Black, 43 percent Hispanic, and 5 percent white.<sup>62</sup> Tracts closer to the city’s center, where the population was increasingly composed of people of color, had increasingly high averages of points against the property.<sup>63</sup> The results from Troy were similar.<sup>64</sup> Moreover, throughout the period studied, controlled substance and marijuana use were the cause of citations more than 50 percent of the time in Rochester and over 30 percent of the time in Troy.<sup>65</sup> These patterns track with larger issues of law enforcement. For example, in 2010, Black and white Americans “reported using marijuana at roughly the same rates,” yet Black Americans were nearly four times as likely to be arrested for possession.<sup>66</sup> Simply put, CNOs allow the government to perpetuate the harms of the criminal justice system without its valuable checks.

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have made mention of the students walking down the streets and those are predominantly African American kids who bring in that mentality from the inner city.”).

<sup>58</sup> See Desmond & Valdez, *supra* note 5, at 125–30.

<sup>59</sup> *Id.* at 125.

<sup>60</sup> *Id.*

<sup>61</sup> *More Than a Nuisance*, *supra* note 4, at 12.

<sup>62</sup> *Id.* fig.1.

<sup>63</sup> *Id.* at 13 fig.2.

<sup>64</sup> *Id.* at 14.

<sup>65</sup> *Id.* at 20–21 figs.11 & 12.

<sup>66</sup> *Id.* at 11 (citing Ezekiel Edwards, Will Bunting & Lynda Garcia, ACLU, *The War on Marijuana in Black and White* 21, 47 (2013), <https://www.aclu.org/wp-content/uploads/legal-documents/1114413-mj-report-rfs-rel1.pdf> [<https://perma.cc/B2MS-MA5H>]).

*B. Exacerbating the Harms of Domestic Violence*

Lakisha Briggs's story exemplifies how CNOs put domestic violence victims, most often low-income women of color, in an impossibly difficult situation.<sup>67</sup> CNOs implicate both practical and dignitary harms by labeling domestic violence victims as "nuisances."

The tangible effects are clear. CNOs force victims into the choice that Ms. Briggs faced: reporting the crime and risking eviction or suffering in silence. When an abuser learns about this sort of system—as Ms. Briggs's former partner did—they can use it against the victim, because they know the victim will be more hesitant to call the police. But the tangible harms do not stop there. Landlords are more skeptical to house victims of domestic violence in large part because they want to avoid nuisance citations and not be put in a position where they have to evict domestic violence victims solely on the grounds of that violence.<sup>68</sup> This incentive system contributes to a harsh reality: victims with limited access to financial resources "have reported staying in abusive relationships because they had no other housing options."<sup>69</sup>

But the normative theory behind labeling these victims as "nuisances" is equally troubling. At bottom, the laws punish domestic violence victims for not being able to control their abusers, a particularly perverse form of victim-blaming. The public discussion from one town in Pennsylvania that adopted a CNO depicts the point: locals felt that it was "a big waste of taxpayers' dollars when police have to respond to nuisance calls and then [go] to court without the benefit of cooperation from those who complained in the first place," because "the girlfriend drops the charges within a few days."<sup>70</sup> CNOs simultaneously stigmatize the victim and minimize the abuse, reducing suffering to a tax burden in the eyes of the public.

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<sup>67</sup> See *A Layered Look at Domestic Violence in the Black Community*, Coburn Place <https://coburnplace.org/stories/a-layered-look-at-domestic-violence-in-the-black-community/> [<https://perma.cc/W9Q7-9HWQ>] (last visited June 6, 2023) (discussing the intersection of race, poverty, and domestic violence).

<sup>68</sup> Kastner, *supra* note 37, at 1055, 1067–68 (citing Wendy R. Weiser & Geoff Boehm, *Housing Discrimination Against Victims of Domestic Violence*, 2002 *Clearinghouse Rev.* 708, 708).

<sup>69</sup> Fais, *supra* note 35, at 1197.

<sup>70</sup> Adams, *supra* note 34, at 12.

*C. Turning Health Crises into Hobson's Choices*

CNOs also pose great danger to a wider range of people—those who have physical or mental disabilities, or who otherwise suffer from physical or mental illness. This is so for three reasons. First, “[i]ndividuals with disabilities may call 911 or other hotlines for a variety of reasons related to their disability, including seeking medical assistance or mental health care,” and these calls can be tallied against the property.<sup>71</sup> As one scholar bluntly put it, under some CNOs, “[c]alling a suicide hotline can cost you your home.”<sup>72</sup>

Second, CNOs can “impose one-size-fits-all obligations” on landlords to evict tenants whose conduct has violated the CNO, without considering the context of that conduct and that tenant.<sup>73</sup> In practice, these evictions may deny persons with disabilities the opportunity to receive a reasonable accommodation under the Americans with Disabilities Act (“ADA”), and the CNOs do not give landlords an opportunity even to give an accommodation—potentially forcing the landlord to violate federal law.<sup>74</sup> These particular incidents have larger, rippling effects, leading to the final sort of harm: CNOs “can interfere with state efforts to enable persons with disabilities to live in integrated community settings.”<sup>75</sup> To that end, they risk contributing to the connection between homelessness and physical and mental disabilities.<sup>76</sup>

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<sup>71</sup> Alisha Jarwala & Sejal Singh, Note, When Disability Is a “Nuisance”: How Chronic Nuisance Ordinances Push Residents with Disabilities Out of Their Homes, 54 Harv. C.R.-C.L. L. Rev. 875, 883–84 (2019); see also Mead, *supra* note 15, at 14–15 (providing several accounts of CNOs harming individuals “seeking help for a mental health crisis or medical emergency”).

<sup>72</sup> Vince Grzegorek, How Northeast Ohio Nuisance Laws Harm Domestic Violence Victims, Minorities, Renters and People Experiencing Mental Illness, Cleveland Scene (Nov. 10, 2017, 10:36 AM), <https://www.clevescene.com/news/how-northeast-ohio-nuisance-laws-harm-domestic-violence-victims-minorities-renters-and-people-experiencing-mental-illness-12192447> [<https://perma.cc/8965-MGSE>] (quoting Joseph Mead).

<sup>73</sup> Werth, *supra* note 4, at 13.

<sup>74</sup> *Id.* at 9–11, 13–14 (discussing how CNOs threaten the rights of individuals with disabilities and providing relevant case law involving accommodations); see also Jarwala & Singh, *supra* note 71, at 903–06 (laying out another theory for how CNOs violate Title II of the ADA).

<sup>75</sup> Werth, *supra* note 4, at 14 n.56.

<sup>76</sup> *Id.*; see also U.S. Dep’t of Hous. & Urb. Dev., The 2022 Annual Homelessness Assessment Report (HAR) to Congress 24 (2022), <https://www.huduser.gov/portal/sites/default/files/pdf/2022-AHAR-Part-1.pdf> [<https://perma.cc/CR9L-BWZ4>] (“Just under a third (30%) of all individuals experiencing homelessness had chronic patterns of homelessness,

Three stories from recent studies of the harmful effects of CNOs on people with disabilities and illnesses illustrate the point.<sup>77</sup> First, a Lakewood, Ohio, resident called a mobile crisis center threatening to harm himself, and the center notified the local police.<sup>78</sup> After responding to the call, the police forwarded a report to the resident's landlord, explaining how the visit, along with two others, qualified the property as a nuisance.<sup>79</sup> And within weeks, the landlord initiated eviction proceedings.<sup>80</sup> Second, a parent in Baraboo, Wisconsin, called the police on two occasions after her daughter made suicidal statements, and the police "transferred [the daughter] to a crisis center."<sup>81</sup> Nearly a year later, the city notified the landlord that if he did not abate the nuisance—in other words, evict the tenant and her daughter for these mental health-related 9-1-1 calls—he would face penalties.<sup>82</sup> Finally, a Portland, Oregon, man living with AIDS faced an almost \$2,000 fine and a lien on his home after the city determined that trash in his yard violated the local CNO.<sup>83</sup> Because of his illness, he was unable to fully clean it himself, and before he could hire someone to do it, he was hospitalized with meningitis.<sup>84</sup> The city pressed on, even after the man's patient advocate made his situation clear.<sup>85</sup> The man had to sell his home to get the city to relent.<sup>86</sup>

### III. HOW WE CAN FIX CNOs

#### *A. Protecting Individual Rights: Litigation Strategies and Shortcomings*

At their worst, CNOs violate federal laws, such as the Fair Housing Act ("FHA") and the Violence Against Women Act ("VAWA"), and even

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meaning that they experienced homelessness for extended periods of time and have a disability.").

<sup>77</sup> For more stories of the impact of CNOs on people with disabilities, see Jarwala and Singh, *supra* note 71, at 884–91; Mead, *supra* note 15, at 14–15.

<sup>78</sup> Mead, *supra* note 15, at 14.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> Jarwala & Singh, *supra* note 71, at 885.

<sup>82</sup> *Id.* at 885–86.

<sup>83</sup> *Id.* at 887; see also *McGary v. City of Portland*, 386 F.3d 1259, 1260–61 (9th Cir. 2004) (explaining resident's story).

<sup>84</sup> *McGary*, 386 F.3d at 1260; Jarwala & Singh, *supra* note 71, at 887.

<sup>85</sup> *McGary*, 386 F.3d at 1260.

<sup>86</sup> *Id.* at 1261.

rights secured by the U.S. Constitution.<sup>87</sup> Individuals have sued on these grounds with some success. One victory came in 2017, when a New York state appellate court struck down the Village of Groton’s CNO under the First Amendment.<sup>88</sup> The court found that the ordinance was constitutionally overbroad because it had a “chilling effect” on tenants’ First Amendment right to petition the government, given that it applied to “every building, erection, or place in the Village” and thus deterred individuals throughout the area from contacting emergency services.<sup>89</sup> Other courts have struck down CNOs on due process grounds.<sup>90</sup>

These suits have also led to valuable settlements. The ACLU has settled several cases and caused the CNOs at issue to be repealed.<sup>91</sup> Ms. Briggs’s story is one such case: once the ACLU and the law firm Pepper Hamilton stepped in, the town repealed the law and agreed to a \$495,000 settlement.<sup>92</sup> In rare instances, the federal government has stepped in. For example, the U.S. Department of Justice (“DOJ”) filed suit against the Housing Authority of Lancaster County, California, alleging that it incentivized landlords to evict tenants with Section 8 housing vouchers under CNOs in an effort to drive low-income African American residents out of the city.<sup>93</sup> The DOJ and Lancaster County quickly reached a

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<sup>87</sup> Authors have explained the theory behind these litigation strategies at length. See, e.g., Jarwala & Singh, *supra* note 71, at 891–912 (laying out how potential plaintiffs could challenge CNOs under the Fair Housing Amendments Act of 1988, Title II of the Americans with Disabilities Act, and the First Amendment to the U.S. Constitution); Kastner, *supra* note 37, at 1069–72 (discussing how potential plaintiffs could challenge CNOs under the Fair Housing Act, the Violence Against Women Act, and using state and federal constitutional claims).

<sup>88</sup> *Bd. of Trs. of Groton v. Pirro*, 58 N.Y.S.3d 614, 623 (2017).

<sup>89</sup> *Id.* at 622–23 (internal quotation marks omitted).

<sup>90</sup> See *More Than a Nuisance*, *supra* note 4, at 29 n.8 (collecting cases).

<sup>91</sup> See, e.g., *Somai v. City of Bedford*, ACLU of Ohio, <https://www.acluohio.org/en/cases/somai-v-city-bedford> [<https://perma.cc/SNA4-6KSS>] (last visited Dec. 3, 2022) (repealing the CNO and resulting in a \$350,000 settlement); *Arizona City Repeals ‘Nuisance’ Law Challenged by ACLU on Behalf of Domestic Violence Survivor*, ACLU (Mar. 21, 2016), <https://www.aclu.org/press-releases/arizona-city-repeals-nuisance-law-challenged-aclu-behal-f-domestic-violence-survivor> [<https://perma.cc/QZT3-ETKV>] (repealing the CNO and mandating payment to the plaintiff).

<sup>92</sup> See *Briggs v. Borough of Norristown et al.*, ACLU (Sept. 18, 2014), <https://www.aclu.org/cases/briggs-v-borough-norristown-et-al> [<https://perma.cc/X4QW-RXYA>]. Note that the firm Pepper Hamilton merged with Troutman Sanders in 2020 to become Troutman Pepper. See Press Release, Troutman Pepper Hamilton Sanders LLP, Troutman Sanders and Pepper Hamilton Announce Plan to Combine (Jan. 9, 2020), <https://www.troutman.com/insights/troutman-pepper.html> [<https://perma.cc/U3YF-E5K4>].

<sup>93</sup> Complaint at 10–11, *United States v. Hous. Auth. of L.A.*, No. 15-cv-5471 (C.D. Cal. July 20, 2015).

settlement that included comprehensive reforms, nearly \$2,000,000 in monetary damages, and a civil penalty to boot.<sup>94</sup>

But the occasional win in court is still demanding and resource-intensive. It often requires the backing of an organization with money and time, placing it far out of the reach of those who face impending eviction and homelessness. Indeed, because the Sixth Amendment right to counsel does not extend to civil matters, tenants facing eviction often cannot access counsel to prevent their own eviction. Moreover, because CNOs are ultimately local laws, the results of any lawsuit challenging one will necessarily be limited in scope. As promising as CNO-based litigation can be, it has obvious shortcomings.

*B. Reining in Local Governments:  
Amending State Constitutions*

Circumscribing municipalities' power to adopt harmful CNOs can prove more effective. When states incorporate local municipalities, they delegate some power to govern. States typically do so in one of two ways, either following Dillon's Rule or home-rule.<sup>95</sup> The doctrine of Dillon's Rule limits local powers to only those enumerated by state constitutions, statutes, and charters.<sup>96</sup> Home-rule provisions, conversely, are localized analogs to the Tenth Amendment: any powers not expressly claimed by the state are left to the local government.<sup>97</sup> No matter if the state subscribes to Dillon's Rule, home rule, or a mixture of the two, the state's constitution is an important source of the locality's authority, so amending it would be an effective way to limit localities' power to pass and enforce CNOs.<sup>98</sup>

Yet state constitutions are often neglected by legal scholars—undeservedly so. They are valuable instruments for securing rights that the federal Constitution might not guarantee, including protections against CNOs and their disparate effects. More than that, though, state

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<sup>94</sup> Press Release, U.S. Dep't of Just., Housing Authority of Los Angeles County and the Cities of Lancaster, California, and Palmdale, California, Agree to Settle Fair Housing Claims in the Antelope Valley for \$2 Million (July 20, 2015), <https://www.justice.gov/opa/pr/housing-authority-los-angeles-county-and-cities-lancaster-california-and-palmdale-california> [https://perma.cc/3MFD-XYGC].

<sup>95</sup> See Meredith Joseph, Note, Conflict Preemption: A Remedy for the Disparate Impact of Crime-Free Nuisance Ordinances, 54 U. Mich. J.L. Reform 801, 822 (2021).

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* at 822–23.

constitutions reflect the community's priorities. Professor A.E. Dick Howard put it best: "A state constitution is a fit place for the people of a state to record their moral values, their definition of justice, their hopes for the common good. A state constitution defines a way of life."<sup>99</sup> And it is indeed a lively time in state constitutional law. A glance at headlines from the 2022 midterm elections demonstrates so: Californians decided to amend their constitution to include protections for abortion rights;<sup>100</sup> voters from Nevada passed an equal rights amendment to their constitution;<sup>101</sup> and voters from Alabama decided to excise jarring language about slavery and long-invalidated poll taxes from theirs.<sup>102</sup>

These flexible documents may also prove valuable for tenants, landlords, and community members in their work as well. A state constitutional amendment can effectively limit a municipality's power to force evictions. It might do so by narrowing the definition of nuisance as follows:

- (1) Neither this state nor towns, cities, or municipalities incorporated within can classify any calls for emergency services as a nuisance, such that landlords, tenants, or others with an interest in the property face sanction for contacting those services.

Amendment 1 most clearly limits the state's power by forbidding emergency service calls from counting towards a designation, effectively gutting CNOs and forcing municipalities to raise their standards for determining a property to be a nuisance. Still, it may be unpopular, because it explicitly contravenes the most common rationale behind CNOs: that certain properties excessively burden local government and should thus bear additional costs. An amendment that still serves that

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<sup>99</sup> A.E. Dick Howard, *The Renaissance of State Constitutional Law*, 1 *Emerging Issues in State Const. L.* 1, 14 (1988).

<sup>100</sup> Lindsay Whitehurst, *Voters Uphold Abortion Rights in Michigan, California, Vermont Ballot Measures*, PBS NewsHour (Nov. 9, 2022, 9:26 AM), <https://www.pbs.org/newshour/politics/voters-uphold-abortion-rights-in-michigan-california-vermont-ballot-measures> [<https://perma.cc/9R37-6ZAF>].

<sup>101</sup> Camalot Todd, *With Question 1, Nevada Passes Most Inclusive States Equal Rights Amendment in Nation*, Nev. Current (Nov. 10, 2022, 1:27 PM), <https://www.nevadacurrent.com/2022/11/10/with-question-1-nevada-passes-most-inclusive-states-equal-rights-amendment-in-nation> [<https://perma.cc/NUX7-D2YD>].

<sup>102</sup> Sarah Swetlik, *Alabama Approves New State Constitution, Strips Racist Language From Text*, AL.com (Nov. 8, 2022, 10:13 PM), <https://www.al.com/election/2022/11/alabama-approves-new-state-constitution-strips-racist-language-from-text.html> [<https://perma.cc/45RA-WHEZ>].



rationale while protecting marginalized communities might be more politically expedient:

(2) Neither this state nor towns, cities, or municipalities incorporated within can coerce, encourage, suggest, or allow landlords to evict tenants in order to abate a nuisance or as a consequence of the tenant's violation of a chronic nuisance ordinance without first securing a criminal conviction against the tenant as a result of the visit. Further, neither this state nor towns, cities, or municipalities incorporated within may sanction a landlord or a tenant under nuisance laws for the conduct of non-residents. Nor can the above bodies sanction conduct under nuisance laws that led to the harm of the residents, including but not limited to domestic violence or health crises.

Amendment 2 still permits the state to force evictions, but the process makes it significantly harder. The government could only force an eviction (1) where a criminal offense has been committed by the tenant and (2) where the government has adequately proven its case in front of a jury. Further, it insulates tenants from facing sanctions resulting from the conduct of third-parties, like non-resident abusers. Finally, this amendment protects against sanction for conduct that otherwise would harm the resident, including the categories explored above, while including a catch-all for other similar situations. In sum, this amendment raises the state's burdens of proof, adds procedural hurdles, and likewise limits harm against domestic violence victims and those with physical and mental disabilities.

Of course, these are only two amendments of a panoply one might propose. Exemptions specifically for domestic violence victims could serve as the basis for another.<sup>103</sup> Salim Katach has argued that adding notice requirements or judicial review would effectively limit the harmful effects of CNOs.<sup>104</sup> Katach's proposed statutory language could easily be incorporated into a proposed amendment.<sup>105</sup>

One might object that a state constitutional amendment is excessive, because a law would preempt CNOs without any added hurdles of

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<sup>103</sup> But see Kastner, *supra* note 37, at 1064 (explaining shortcomings of exemptions for domestic violence victims).

<sup>104</sup> See Katach, *supra* note 1, at 898–907.

<sup>105</sup> *Id.* at 900–01, 903–04, 907.

amending the state constitution.<sup>106</sup> Though many states can amend their constitutions through their legislature, plenty also have other democratic, responsive processes that allow groups to put the issue before the people directly.<sup>107</sup> For example, a number of states allow ballot initiatives for state constitutional questions, where only a small portion of the state's population must sign-on for it to appear on the ballot.<sup>108</sup> Other states have recurring ballot questions on whether to hold a state constitutional convention.<sup>109</sup> If advocates effectively campaigned to get a state constitutional convention through this process, these sorts of amendments could be brought directly to the attention of the people. An “unlikely alli[ance]” between landlords and tenants would be instrumental here.<sup>110</sup> As of 2019, there were more than 48 million rental units across the United States, and approximately 20 million of these units were owned by

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<sup>106</sup> Thanks to Richard Schragger for raising this point in an early conversation about this piece. For a discussion of preemption in the CNO context, see Joseph, *supra* note 95, at 823–26.

<sup>107</sup> Amending State Constitutions, Ballotpedia, [https://ballotpedia.org/Amending\\_state\\_constitutions](https://ballotpedia.org/Amending_state_constitutions) [<https://perma.cc/V4PW-6RQZ>] (last visited Nov. 13, 2022). Further, securing these rights against municipalities via a constitutional amendment would make the rights much harder to lose than if they were simply state law. See generally Jamelle Bouie, *There is a Way to Break Out of Our Constitutional Stagnation*, N.Y. Times (Nov. 18, 2022), <https://www.nytimes.com/2022/11/18/opinion/midterms-states-constitutions.html> [<https://perma.cc/Z2GN-PDER>] (discussing how state constitutions are a place “where Americans have tried to place social and economic rights directly into the structure of their political arrangements”).

<sup>108</sup> Currently, eighteen states allow for initiated amendments. Initiated Constitutional Amendment, Ballotpedia, [https://ballotpedia.org/Initiated\\_constitutional\\_amendment](https://ballotpedia.org/Initiated_constitutional_amendment) [<https://perma.cc/9SRA-P5K2>] (last visited May 16, 2023). These states include Arkansas, California, Florida, Ohio, Nevada, Nebraska, and Oklahoma. *Id.* But in some states, further limitations apply to this process. For example, initiated amendments in Mississippi cannot alter the state's bill of rights, so an amendment limiting CNOs there would have to be written to conform with that requirement. Amending State Constitutions, *supra* note 107. Still, the language proposed above arguably does. Further, initiated amendments in Illinois must pertain to “structural and procedural subjects” from Article IV of its state constitution, so CNO reform through initiated amendments in that state is not viable. *Id.* Still, in these states, other constitutional avenues for reform remain available. See Amending State Constitutions, *supra* note 107 (describing other processes to change state constitutions).

<sup>109</sup> Automatic Ballot Referral, Ballotpedia, [https://ballotpedia.org/Automatic\\_ballot\\_referral](https://ballotpedia.org/Automatic_ballot_referral) [<https://perma.cc/ERG6-EAH3>] (last visited May 16, 2023).

States have these reoccurring questions at different intervals: ten years (Alaska, Hawaii, Iowa, New Hampshire, and Rhode Island), sixteen years (Michigan), and twenty years (Connecticut, Illinois, Maryland, Missouri, Montana, New York, Ohio, and Oklahoma). *Id.*

<sup>110</sup> One author has noted how this alliance would be valuable for effective long-term litigation campaigns. Joseph, *supra* note 95, at 831–32. The same principle is applicable here.

individual landlords.<sup>111</sup> Recognizing their common interests in repealing these laws would prove useful, because even a smidgen of those populations in a single state could make the difference.

#### CONCLUSION

Though CNOs are widespread, and their defects are obvious, they are often neglected in scholarly conversations about inequality and the law. In part, this is because legal academics generally favor “the study of federal courts and state appellate courts.”<sup>112</sup> But beyond that, studying CNOs poses real challenges.<sup>113</sup> Tracing their effects can be difficult. Because third-party policing involves so many informal encounters, collecting records is especially challenging. The paper trail left behind by the most vulnerable, especially if they are forced into homelessness, is often scant.<sup>114</sup> Even so, there is a more fundamental problem, as Matthew Desmond and Nicol Valdez make clear. Much like vagrancy laws of decades past, CNOs are ignored or tolerated in large part because of a sad truth: “[F]amilies struggling to make ends meet in the low-income housing market are simply too poor or too vulnerable to assert their obvious rights.”<sup>115</sup>

Still, some progress has been made. Individual challenges have been effective, and both the federal government and influential non-profits have begun to take action. Yet plenty of work remains. Building on the work of others, this Essay has argued that state constitutional amendments

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<sup>111</sup> Drew DeSilver, *As National Eviction Ban Expires, a Look at Who Rents and Who Owns in the U.S.*, Pew Rsch. Ctr. (Aug. 2, 2021), <https://www.pewresearch.org/short-reads/2021/08/02/as-national-eviction-ban-expires-a-look-at-who-rents-and-who-owns-in-the-u-s> [https://perma.cc/TW3J-6WLT].

<sup>112</sup> Ethan J. Leib, *Localist Statutory Interpretation*, 161 U. Pa. L. Rev. 897, 898–99 (2013).

<sup>113</sup> For further discussion of the problems surrounding the study of CNOs and similar ordinances, see Swan, *supra* note 53, at 827–28; see also Risa Goluboff, *Vagrant Nation: Police Power, Constitutional Change, and the Making of the 1960s* 9–11 (2016) (explaining challenges involved in writing a comprehensive study of vagrancy laws, a forerunner to CNOs in the criminalization of poverty).

<sup>114</sup> See generally L. Scott Harrell, *Finding Indigent and Homeless People*, Pursuit Mag., (Oct. 29, 2012), <https://pursuitmag.com/searching-for-and-finding-indigent-and-homeless-people> [https://perma.cc/UV43-WGR9] (explaining challenges that private investigators face in attempts to locate homeless individuals); U.S. Dep’t of Hous. & Urb. Dev., *A Guide to Counting Unsheltered Homeless People* 8–10 (2004), <https://www.hudexchange.info/sites/onecpd/assets/File/Guide-for-Counting-Unsheltered-Homeless-Persons.pdf> [https://perma.cc/58J3-HUGE] (explaining how the federal government attempts to track homeless populations).

<sup>115</sup> Desmond & Valdez, *supra* note 5, at 139.

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offer a new path forward for protecting marginalized groups from the harmful effects of CNOs. If state constitutions truly “define[] a way of life,” then they must be used to better the lives of others.<sup>116</sup> Amending them to restrict the power of local governments—to say that no person, no matter their condition, station, or status, is a nuisance—is one way we should do so.

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<sup>116</sup>Howard, *supra* note 99, at 14.