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SARAH GOLABEK-GOLDMAN

Ban the Address: Combating Employment Discrimination Against the Homeless

ABSTRACT. This Note presents a study of obstacles to employment faced by homeless job applicants and offers potential solutions. Homeless job applicants confront discrimination when they provide the address of a shelter or do not have an address to provide on applications. Advocates should seek to protect homeless job applicants by encouraging businesses, nonprofits, and government agencies to provide homeless applicants with addresses or P.O. boxes. Most significantly, the proposed “Ban the Address” campaign would discourage employers from inquiring about an applicant’s address or residency history until after granting a provisional offer of employment. Advocacy efforts such as these can serve as a foundation for successful legal claims under new homeless person’s bills of rights, Title VII of the Civil Rights Act, and the Americans with Disabilities Act. This Note explains why requesting residency information might be deemed illegal under both state and federal causes of action. A combination of both legal and nonlegal tactics has the best chance of permitting homeless job applicants to obtain employment and to regain self-sufficiency.

AUTHOR. Yale Law School, J.D. 2016. Yale School of Management, M.B.A. 2016. Professor Michael Wishnie provided exceptional mentorship and guidance the past three years. This Note is published due to the commitment and partnership of *Yale Law Journal* editor Nathan Nash, who provided invaluable suggestions. I am indebted to Urja Mittal for her astute feedback, as well as to Grace Hart, Hilary Ledwell, Aaron Levine, and Anna Mohan for their vigilant editing. Service providers, employment specialists, homeless advocates, and friends assisted with research and provided encouragement. This includes Tristia Bauman of the National Law Center on Homelessness & Poverty, Jax Harris, Alex Harwin, Stefanie Kushner, Colson Lin, and Trisha Matthieu as well as the dedicated staff at Columbus House, especially Letticia Brown-Gambino and Carl Reynolds. I am thankful to my wonderful family and Dr. Michael Goldstein for their unconditional love and support. Finally, I am grateful to the homeless individuals who shared their stories and whose courage and resilience inspired my work.



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INTRODUCTION

“People yell to go get a job, but . . . when you don’t have an address, it is impossible for [an employer] to call you back.”¹ Anthony, a single father, became homeless after he was laid off from his job in 2013 and faced an increase in his rent. Since then, his ten-year-old son has stayed with a relative, and Anthony has been desperate to find a job so that he can live with his son again. Despite applying to hundreds of jobs, Anthony has not been optimistic that a reunion will be imminent: “Everyone uses the shelter address, but the moment they see that . . . there is a red flag – no, there is a black flag on your resumé.”²

The homeless confront significant and increasing barriers to employment. This Note is the first to focus on the fact that requiring job applicants to provide an address prevents homeless individuals from escaping a cycle of poverty and to argue that this practice should be deemed illegal. Original interviews with homeless individuals revealed the struggles that they encounter in securing employment. Interviews with homeless advocates and service providers further highlighted the unique challenges associated with helping homeless individuals obtain employment given pervasive discrimination based on housing status. A survey of homeless individuals, a focus group at a homeless shelter in New Haven, and a review of low-wage job applications offered additional insights on the challenges that homeless applicants experience.³ To date, no study has used both firsthand perspectives and legal analysis to look at how the job application process disqualifies and discourages homeless individuals from applying for employment.

To help address employment discrimination against the homeless, this Note proposes launching a “Ban the Address” movement. This movement would be partly modeled on the Ban the Box campaign, which encourages employers to remove the check box on applications that inquires about a conviction history. The campaign strives to enable people with a conviction history to demonstrate their qualifications during the job application process before employers can obtain their criminal records. A Ban the Address campaign would discourage employers from inquiring about an applicant’s living condition or

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1. Interview with homeless individual in New Haven, Conn. (May 24, 2014). The identities of homeless individuals interviewed in person in New Haven and through telephone surveys are kept anonymous for privacy purposes and in recognition of the strong stigma attached to homelessness. For a summary of the interview methodology employed for this Note, see *infra* Section I.A; Appendix I.
 2. Interview with homeless individual, *supra* note 1.
 3. For the interview questions and an overview of the subjects interviewed, see *infra* Appendix I.

housing history until they extend a provisional offer of employment. This application of the Ban the Box model to the homelessness context is entirely novel.⁴ In this way, this Note draws on themes from earlier sociopolitical movements and past homeless advocacy campaigns to recommend an original, integrated advocacy approach.

The common perception that homeless people are all unemployed and uninterested in finding gainful employment is not true. Indeed, reports from a number of shelters and communities across the country reveal that a considerable minority of residents hold part- or full-time jobs, and studies suggest that almost one-third of homeless people work at least part-time.⁵ Extensive research demonstrates that “people experiencing homelessness want to work.”⁶ Such research suggests that homeless individuals will benefit when employers remove barriers in the application process that limit their opportunities to obtain work.

Employers are often reluctant to hire the homeless or formerly homeless. The Chronic Homelessness Employment Technical Assistance Center has reported that provider staff members are “frequently challenged by pervasive negative stereotypes when approaching employers about hiring qualified homeless job seekers.”⁷ Employers harbor doubts about homeless applicants’ motivation, dependability, and ability to assimilate into the workplace, as well

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4. Nonetheless, others have noted a relationship between Ban the Box and homelessness—the National Employment Law Project includes “being homeless” as a measure of an applicant’s disadvantage. Nat’l Emp’t Law Project & P’ship for Working Families, *Community Hiring Model Language: Why Do We Need It and How Does It Work?*, NAT’L EMP. L. PROJECT 4 (Mar. 2014), <http://nelp.org/content/uploads/Community-Hiring-Description-and-Model-Language.pdf> [<http://perma.cc/Z5W4-42F4>].
 5. *Homelessness and Hiring: Employer Perspectives*, U.S. DEP’T HOUSING & URB. DEV. 3 (2013), http://www.hudexchange.info/resources/documents/AudioLecture6_Pamphlet.pdf [<http://perma.cc/B3WY-TZSN>].
 6. *Overcoming Employment Barriers for Populations Experiencing Homelessness*, NAT’L ALLIANCE TO END HOMELESSNESS 1 (Aug. 21, 2013) [hereinafter *Overcoming Employment Barriers*], <http://www.endhomelessness.org/page/-/files/Overcoming%20Employment%20Barriers%20for%20Populations%20Experiencing%20Homelessness.pdf> [<http://perma.cc/UTX9-4YW8>]; see also Olga Acosta & Paul A. Toro, *Let’s Ask the Homeless People Themselves: A Needs Assessment Based on a Probability Sample of Adults*, 28 AM. J. COMMUNITY PSYCHOL. 343, 363 (2000) (“[H]omeless adults are focused on future-oriented needs and ways to permanently help themselves out of their state of homelessness.”); John W. Trutko et al., U.S. DEP’T LABOR, *Employment & Training for America’s Homeless: Report on the Job Training for the Homeless Demonstration Project 2-16 ex. 2-15* (1993), <http://wdr.doleta.gov/opr/fulltext/94-homeless.pdf> [<http://perma.cc/2YB6-YUQD>] (reporting that homeless participants in a demonstration project identified “job loss” and “lack of work” as leading reasons for their homelessness).
 7. *Overcoming Employment Barriers*, *supra* note 6, at 1.

as concerns about their poor appearance, attire, behaviors, and hygiene.⁸ Homelessness is associated with stigmas such as mental illness and substance abuse.⁹ A survey conducted by the National Coalition for the Homeless reported that 70.4% of homeless respondents “felt that they had been discriminated against [by private businesses] because of their housing status.”¹⁰

A Ban the Address campaign would complement other initiatives designed to protect the homeless against discriminatory policies and help them regain self-sufficiency. Recent literature on the plight of the homeless has focused on the criminalization of homelessness in U.S. cities.¹¹ Some jurisdictions have adopted diverse policies that may reverse the trend by addressing underlying problems, such as a deficiency of shelters.¹² The Ban the Address movement could help further reduce criminalization. If homeless individuals were able to secure employment, they would be better positioned to afford housing and avoid violating discriminatory ordinances targeting those without homes. A Ban the Address movement would also further the aims of Housing First (where it exists) by increasing employment, mobility, and overall self-sufficiency among Housing First participants.¹³ Because a large proportion of homeless individuals become or remain homeless due to economic difficulties, a Ban the Address movement has the advantage of addressing a primary cause of homelessness while creating sustainable, long-term independence.

8. *Id.*

9. *Health and Homelessness*, AM. PSYCHOL. ASS'N (2016), <http://www.apa.org/pi/ses/resources/publications/homelessness-health.pdf> [<http://perma.cc/7YGA-V34S>].

10. *Discrimination and Economic Profiling Among the Homeless of Washington, DC*, NAT'L COALITION FOR HOMELESS 5 (Apr. 2014), <http://nationalhomeless.org/wp-content/uploads/2014/04/DiscriminationReport20141.pdf> [<http://perma.cc/FFK8-2K6S>].

11. Nat'l Law Ctr. on Homelessness & Poverty & Allard K. Lowenstein Int'l Human Rights Clinic, *Cruel, Inhuman, and Degrading: Homelessness in the United States Under the International Covenant on Civil and Political Rights*, NAT'L L. CTR. ON HOMELESSNESS & POVERTY 6 (Aug. 23, 2013), http://www.nlchp.org/Cruel_Inhuman_and_Degrading [<http://perma.cc/FY6Y-T85C>].

12. For examples, see Sara K. Rankin, *A Homeless Bill of Rights (Revolution)*, 45 SETON HALL L. REV. 383, 411-15 (2015); *Criminalizing Crisis: The Criminalization of Homelessness in U.S. Cities*, NAT'L L. CTR. ON HOMELESSNESS & POVERTY 10-11 (Nov. 2011), http://www.nlchp.org/Criminalizing_Crisis [<http://perma.cc/Q6PX-GXVA>]; and *No Safe Place: Advocacy Manual*, NAT'L L. CTR. ON HOMELESSNESS & POVERTY 6-7, http://www.nlchp.org/documents/No_Safe_Place_Advocacy_Manual [<http://perma.cc/47HD-A7S7>].

13. *Organizational Change: Adopting a Housing First Approach*, NAT'L ALLIANCE TO END HOMELESSNESS 1 (July 2009), http://www.endhomelessness.org/page/-/files/2489_file_Adopting_Housing_First_Approach_Aug_09.pdf [<http://perma.cc/SAG8-G7AZ>] (explaining that Housing First aims to “maintain households in housing . . . and rapidly re-house those for whom homelessness cannot be prevented”).

The sociopolitical change encouraged by a Ban the Address campaign could support subsequent lawsuits against discriminatory employment policies. Raising awareness about homeless applicants' challenges through concerted advocacy can lead to legislative reform and administrative policies that protect homeless individuals in seeking and maintaining employment. Such reform would garner momentum for victories in the courtroom. That policy initiatives and advocacy efforts can lay the groundwork for legal challenges is demonstrated by the Ban the Box campaign. In the early 2000s, grassroots organizers in San Francisco and Boston started encouraging local governments to remove inquiries about criminal history from job applications.¹⁴ Since then, dozens of jurisdictions have adopted Ban the Box measures and courts have begun to display receptiveness to disparate-impact claims.¹⁵ Other social movements have displayed a similar pattern, with successful legal challenges following coordinated advocacy campaigns.¹⁶ The Ban the Address campaign would restrict employers' access to applicants' residency information until they extended provisional offers of employment. This would make clear when an employer's rejection was based on the applicant's housing status, providing a basis for potential judicial relief.

This Note proceeds in three Parts, using original interviews with homeless individuals and employment specialists to prescribe a concerted sociopolitical and legal advocacy campaign. Part I of this Note begins by describing evidence of overt and invidious employment discrimination against the homeless. These findings were gleaned from interviews, a focus group, survey, and review of the

14. See Michelle Natividad Rodriguez & Anastasia Christman, *Fair Chance—Ban the Box Toolkit: Opening Job Opportunities for People with Records*, NAT'L EMP. L. PROJECT 4 (Mar. 2015), <http://www.nelp.org/content/uploads/NELP-Fair-Chance-Ban-the-Box-Toolkit.pdf> [<http://perma.cc/H88V-GRNB>].

15. See *infra* text accompanying notes 291-293 (discussing recent lawsuits against Dollar General and BMW); see also Tammy R. Pettinato, *Employment Discrimination Against Ex-Offenders: The Promise and Limits of Title VII Disparate Impact Theory*, 98 MARQ. L. REV. 831, 849-50 (2014) (discussing disparate-impact plaintiffs' success against a motion to dismiss for failure to state a claim in *Waldon v. Cincinnati Public Schools*, 941 F. Supp. 2d 884, 890 (S.D. Ohio 2013)).

16. The success of the same-sex marriage movement in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), is but the most recent example of this phenomenon. See, e.g., Suzanne B. Goldberg, *Obergefell at the Intersection of Civil Rights and Social Movements*, 6 CALIF. L. REV. CIR. 157 (2015) [hereinafter Goldberg, *Obergefell*]; see also Suzanne B. Goldberg, *Constitutional Tipping Points: Civil Rights, Social Change, and Fact-Based Adjudication*, 106 COLUM. L. REV. 1955, 1990-92 (2006) (describing how social movements' advocacy is critical to eradicating legal barriers to an individual group's equality); Douglas NeJaime, *The Legal Mobilization Dilemma*, 61 EMORY L.J. 663, 666-69 (2012) (surveying the three main bodies of social-movement scholarship and the close relationship between social movements and litigation).

largest low-wage employers' job applications. This Part concludes that discrimination against homeless job applicants is prevalent and can only be effectively addressed through a strategic combination of nonlegal and legal measures.

Part II sets forth nonlegal practices to combat employment discrimination against the homeless. Before Ban the Address policies are implemented, advocates might encourage businesses, nonprofits, or government agencies to provide homeless applicants with addresses or post-office (P.O.) box numbers where they can receive mail. This strategy would replicate the efforts of the Community Voicemail Program, an initiative of Springwire and later Feeding America that provided voicemail services to homeless individuals so that they had phone numbers to include on job applications.¹⁷ Such a program would provide important protections for homeless job seekers.

Due to funding constraints and other challenges associated with a P.O. box program, in the long term advocates should focus on obtaining Ban the Address reform. While advocating for employers to refrain from requesting an address until after granting a provisional offer of employment, homeless advocates could emulate advocates in the Ban the Box movement. Just as Ban the Box policies encourage people who have been convicted of a crime to apply for jobs because they are not automatically disqualified, such efforts would motivate homeless job applicants to search for work, as they would be more likely to have an opportunity to demonstrate their qualifications. An interview I conducted revealed that Walmart would consider supporting such a campaign. Other employers might follow suit, once educated about the positive impact such reform can have on their businesses, homeless job applicants, and society as a whole.

Part III explores potential legal arguments to combat this form of discrimination. First, the practice of discriminating against job applicants based on housing status arguably violates new state statutes implemented to protect currently or recently homeless individuals. As more states and localities adopt measures that directly protect homeless individuals—perhaps encouraged by Ban the Address advocacy—homeless applicants can pursue more straightforward challenges of discriminatory employment policies.

Second, employment discrimination against the homeless possibly violates federal law. With the passage of Title VII of the Civil Rights Act of 1964, Congress outlawed employment discrimination based on race, color, religion, sex,

17. The Community Voicemail Program ended on December 31, 2015 due to lack of funding. See Brian Davis, *Community Voice Mail Comes to an End*, NORTHEAST OHIO COALITION FOR HOMELESS (Oct. 26, 2015, 1:29 PM), <http://www.neoch.org/cleveland-homeless-blog/2015/10/26/community-voice-mail-comes-to-an-end.html> [http://perma.cc/6PLF-7Z3R] (reproducing a letter about the closure sent to partner agencies).

or national origin.¹⁸ Employers may violate Title VII when discriminatory practices have a disparate impact on the groups of people that these laws aim to protect.¹⁹ Discriminating against job applicants based on housing status may be illegal due to the disparate impact that such discrimination has on traditionally protected classes. Additionally, employers violate the Americans with Disabilities Act (ADA) when they intentionally discriminate based on the perceived handicaps of homeless job applicants. Homeless job applicants who have experienced discrimination due to perceived or actual disabilities that do not have a bearing on the position in question might find relief under the ADA. Advocates might also consider disparate-impact claims under the ADA. These existing federal antidiscrimination frameworks may provide indirect protection for homeless applicants inasmuch as discrimination against them disproportionately affects classes contemplated by these statutes.

Interviews with homeless individuals, employment specialists, and advocates for the homeless population reveal employment discrimination to be a major barrier to gaining economic self-sufficiency. A Ban the Address movement, in combination with other advocacy efforts, has the best chance of combating employment discrimination against the homeless and paving the path to legal success. A combination of political and legal advocacy is critical to creating the social, legislative, and judicial change necessary to meaningfully expand employment opportunities for homeless individuals. Along with other policies designed to increase economic, social, and personal stability, ending employment discrimination can provide a stable path to economic security for the millions of homeless and at-risk individuals in the United States.

I. EMPLOYMENT DISCRIMINATION AGAINST THE HOMELESS

Interviews with homeless individuals and service providers revealed that finding stable employment is often the most common barrier to achieving or regaining housing stability. While homeless participants in this study described a number of challenges to obtaining employment, they frequently referred to discrimination based on homeless status as one of their most pressing problems. Homeless individuals and service providers noted that the experience of discrimination results in discouragement and hopelessness in the job search. In

18. George Rutherglen, *Disparate Impact Under Title VII: An Objective Theory of Discrimination*, 73 VA. L. REV. 1297, 1306 (1987).

19. *Id.* at 1307; see *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971) (“The [Civil Rights] Act proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation.”).

addition to economic side effects, the inability to obtain work can have a significant adverse impact on job applicants' emotional wellbeing, contributing to depression and despair.²⁰ Participants' responses inspired interviews with employers as well as a review of job applications of the forty largest low-wage employers. This Part's investigation confirms that employers can and do discriminate against the homeless, offering support for reform such as Ban the Address policies that protect job seekers without homes.

A. Methodology

This Part describes how I gathered information from homeless individuals and service providers. Through one-on-one interviews with homeless individuals and service providers, a focus group, and a survey, I learned about the primary challenges that homeless individuals face. I interviewed homeless individuals at the New Haven Green, a park and recreation area in New Haven, Connecticut, as well as at a park and sidewalks in Washington, D.C. I randomly selected individuals in these locations to approach and request to interview. While I could not differentiate homeless from nonhomeless individuals based on personal appearance alone, when I explained to them the subject of my investigation, a number of those with whom I spoke self-identified as homeless. Many individuals recommended other homeless people in the vicinity whom I could request to interview. The focus group consisted of eight residents of Columbus House, a homeless shelter in New Haven, Connecticut. In thirty-five one-on-one interviews as well as the focus group, homeless individuals revealed that potential employers express reluctance to hire them once they discover that the applicants lack permanent housing.²¹ The one-on-one interviews and focus group revealed that such discrimination against the homeless is pervasive.

For the one-on-one interviews, I asked homeless interviewees about the most pressing problems facing homeless people and their thoughts on potential solutions. I then asked interviewees to comment on a range of issues facing

20. Linda Evans, *Ban the Box in Employment: A Grassroots History*, LEGAL SERVS. FOR PRISONERS WITH CHILD. 19 (2016), <http://www.prisonerswithchildren.org/our-projects/allofus-or-none/ban-the-box-campaign/ban-the-box-in-employment-a-grassroots-history-2016> [<http://perma.cc/9NRQ-VE8S>].

21. Columbus House facilitated the focus group by inviting all residents to join. The one-on-one interviews generally lasted approximately forty-five minutes, while the focus group lasted several hours. The interviews and focus group followed a semi-structured format so that participants could raise additional thoughts and concerns and, in the focus group, react to each other's comments. Additional sampling data is available in Appendix I.D.

the homeless population, including space, mental health, employment, police abuse, gang violence, private places open to the public, and veterans' health. Appendix I.B includes the focus group questions, with inquiries such as: "What is the biggest problem facing the homeless community in New Haven?" and "What are the biggest struggles that you face being homeless?"

I also interviewed six social service providers and employment specialists in New Haven and Los Angeles to gauge their experiences with employment discrimination while assisting homeless clients in the job application process. These individuals worked at agencies that help the homeless find housing and employment. I located these interview subjects through contacts in the field, homelessness services websites, and relevant publications. Interviews lasted approximately an hour, with some spanning several hours. I conducted half of the interviews in person and the remainder over the telephone.

Additionally, I interviewed five low-wage employers in Los Angeles and inquired how they consider applicants who do not provide an address on an application or write down the address of a shelter. I located these employers by visiting the establishments of randomly selected low-wage employers in the fast food industry and asking to interview the managers on the condition of anonymity. These interviews occurred inside the employer's establishment and lasted about forty minutes. I also interviewed the Director of Human Resources Workforce Strategy and Innovation at Walmart, who is responsible for developing the company's long-term U.S. workforce strategy in order to attract and develop the best employees. During this interview, I asked whether Walmart would consider banning inquiries about an applicant's residency during the initial application stage and support other measures to combat discrimination against homeless job applicants. All of these employer interviews were semi-structured, granting sufficient flexibility to encourage interviewees to share additional insights and answer relevant follow-up questions.

I conducted interviews in New Haven, Washington, D.C., and Los Angeles largely due to my proximity to these locations over the course of this study and the large homeless populations in these cities. Los Angeles has one of the largest concentrations of homeless people in the United States.²² Additionally, the homeless population in Los Angeles has sharply increased in the last few years due to factors such as increasing rents, low wages, and high unemployment.²³

22. Gale Holland & Soumya Karlamangla, *Homelessness up 12% in L.A. City and County*, L.A. TIMES (May 11, 2015, 10:01 PM), <http://www.latimes.com/local/lanow/la-me-ln-homeless-count-release-20150511-story.html> [<http://perma.cc/J7ER-XLP8>].

23. *Id.*

New Haven's family poverty rate is twice the state's average,²⁴ leading New Haven to have the highest rate of family homelessness in Connecticut during 2014.²⁵ New Haven's chronically homeless population of single adults in shelters is also much larger than that in other Connecticut towns of comparable size, like Bridgeport and Stamford.²⁶ In 2009, eighteen percent of Connecticut's sheltered households were located in New Haven.²⁷ Finally, a 2016 annual survey found that Washington, D.C., experienced a fourteen percent increase in the number of people experiencing homelessness in the past year even as nationally the homeless population declined.²⁸ Because the homelessness epidemic in these locations is particularly acute, a number of individuals were willing to share their experiences searching for work while homeless, helping this population obtain jobs, or considering homeless job applicants. The reform suggested in this Note can have an especially significant impact on these jurisdictions.

In collaboration with Trisha Matthieu, the Springwire Program Manager of Feeding America, I also surveyed homeless individuals across the country to determine whether employment discrimination against the homeless is widespread and to inquire about a potential solution. We surveyed 2,339 users of the Springwire Community Voicemail program, which provided homeless and in-crisis individuals with a phone number and voicemail service.²⁹ Approximately sixty-one percent of those surveyed, or 1,426 people, were currently

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24. *A Tale of Disproportionate Burden: The Special Needs of Connecticut's Poorer Cities: Bridgeport, Hartford, New Haven, & Waterbury*, CONN. CONF. MUNICIPALITIES 8 (Oct. 2010), <http://hartfordinfo.org/issues/wsd/taxes/ccm-poorer-cities.pdf> [http://perma.cc/DED8-8FPC] (noting that Connecticut has the third-lowest family poverty rate in the United States).
 25. *Collaborating To End Homelessness: The Many Faces of Homelessness*, COMMUNITY FOUND. FOR GREATER NEW HAVEN (Apr. 2016), <http://www.cfgnh.org/About/NewsEvents/ViewArticle/tabid/96/ArticleId/226/Collaborating-to-End-Homelessness.aspx> [http://perma.cc/KLR2-YNZ4].
 26. *Connecticut Counts: 2016 Report on Homelessness in Connecticut*, CONN. COALITION TO END HOMELESSNESS 20 (May 2016), <http://cceh.org/wp-content/uploads/2016/05/CT-Counts-2016.pdf> [http://perma.cc/3KSF-ZVA5].
 27. *A Tale of Disproportionate Burden: The Special Needs of Connecticut's Poorer Cities: Bridgeport, Hartford, New Haven, & Waterbury*, *supra* note 24, at 5.
 28. *DC Homeless Population Has Jumped 14 Percent, Survey Says*, NBC4 WASHINGTON (May 11, 2016, 1:34 PM), <http://www.nbcwashington.com/news/local/DC-Homeless-Population-Has-Jumped-14-Percent-Survey-Says-379011131.html> [http://perma.cc/NV66-2DRL].
 29. For the script used for this survey, see *infra* Appendix I.C.

homeless.³⁰ Participants received the messages in eighteen locations.³¹ All of the surveyed locations had the Community Voicemail Program already in place.³²

I also reviewed entry-level job applications from forty of the largest low-wage employers, major U.S. staffing firms, and federal public employers to determine whether questions might disqualify or discourage homeless individuals from applying. Employers included Walmart, Starbucks, and Target.³³ For this analysis, I randomly selected an entry-level position that each of the companies provided through its website. By interviewing homeless individuals, employment specialists, and low-wage employers, as well as reviewing employment applications, I gained an understanding of how the employment application process can systematically disadvantage homeless applicants and the importance of achieving reform.

B. Interviews with Homeless Individuals and Employment Specialists

Interviewees most frequently referred to discrimination during the job application process as the most significant problem facing the homeless community.³⁴ This response was more prevalent than other issues of concern that arose during the interviews, including interactions with the police, a lack of

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30. 2011 *Data Snapshot*, SPRINGWIRE (2011), <http://www.homelesshouston.org/wp-content/uploads/2012/08/Springwire%202011%20Data%20Snapshot.pdf.pdf> [<http://perma.cc/QV6H-FT25>].
31. These eighteen locations were Illinois (Chicago), Ohio (Cleveland and Summit County), Oklahoma (Tulsa), and Oregon (Salem), Texas (Houston, Dallas, and San Antonio), and Washington State (Seattle/King County, Olympia/Bremerton, Tacoma/Pierce County, North Central Washington, South Central Washington, Bellingham/Whatcom County, Skagit County, Snohomish County, Spokane, and Vancouver/Clark County).
32. E-mail from Trisha Matthieu, Springwire Program Manager, Feeding Am. (Oct. 7, 2016, 01:19 EDT) (on file with author).
33. For a list of the largest low-wage employers as of 2012, see *Big Business, Corporate Profits, and the Minimum Wage*, NAT'L EMP. L. PROJECT 6-7 (July 2012), http://nelp.3cdn.net/24befb45b36b626a7a_v2m6iirxb.pdf [<http://perma.cc/C7T8-BBZC>]. A list of the forty largest employers also appears in Appendix II.B.
34. Notably, another survey found that employment applications present significant issues for homeless individuals. See Steven Lozano Applewhite, *Homeless Veterans: Perspectives on Social Services Use*, 42 SOC. WORK 19, 23 (1997) (“Veterans overwhelmingly identified job opportunities as the single most important resource necessary for attaining self-sufficiency. Among the barriers identified in seeking employment were the requirement of a permanent address, employers’ distrust of people residing in temporary shelters, employer rejection, and the lack of training opportunities for people who have been absent from the labor force.”).

shelters and public spaces to sleep, discrimination in private places open to the public such as coffee shops and restaurants, and insufficient mental health treatment. One individual noted, “Employment is the most pressing issue facing us. When you get a job and go every day, that gets you off the street. There are many guys here [on the New Haven Green] who are knowledgeable and experienced.”³⁵ Interviewees often explained that by obtaining jobs, they were able to begin to resolve the other urgent issues that they faced. These responses suggest that homeless individuals want to work and thereby gain the self-sufficiency necessary to address other challenges.

Both residents of Columbus House and individuals who live on the New Haven Green frequently noted that employers blacklist them when they, as applicants, provide the address of a homeless shelter or leave the address section blank on a job application. One applicant who lived on the Green but spent time in shelters noted:

There is a lot of [employment] discrimination. If you are homeless, you are assumed to be a bum. . . . You’re a druggie. It gives a first impression if you are set up at Columbus House. . . . You need a mailing address and people see [the] Columbus [House’s] address and they put mud on your name. Right when they see your address, all of the questions are about you being homeless even if you are experienced in that field.³⁶

Another applicant who lived at Columbus House also emphasized the danger of providing the address of a shelter on applications:

Nowadays when you fill out an application and put your address, they check to see how long you have lived there. I have no address. I gave this shelter’s address. And these jobs, that I was way overqualified for, they would ask me, “Ella T. Grasso Boulevard? Where do you live? Isn’t that a business district?” I knew what they were getting at. But it is the only place I know that is livable. And then they thank you for your time. It is awful. I’ve lost a lot of jobs this way. Every single [job application] asks for an address. It looks so bad when you give them a shelter address. Shelters have been stable foundations for so long that they all know [the addresses]. Why would you want to hire homeless people when [there is] so much prejudice against them? You can hire high

35. Interview with homeless individual in New Haven, Conn. (May 24, 2014).

36. Interview with homeless individual in New Haven, Conn. (May 24, 2014).

school kids who work for minimum wage. . . . [Employers] think all homeless people are drug or alcohol addicts.³⁷

Job applications are an initial screen and many candidates are rejected at this stage simply because they lack permanent housing. Those homeless job seekers who obtained interviews despite writing down the address of a homeless shelter on their applications revealed that the employers' interview questions focused on their homeless status. These questions may also involve accusatory comments about alleged drug and mental health histories. Because employers do not have to provide reasons for rejecting a candidate, the number of applicants who are denied a job due to their homeless status is unknown.

The reasons that people become homeless are frequently misjudged. While a widespread practice is to fault homeless people for losing their homes, research consistently reveals that the primary causes of homelessness include lack of affordable housing, unemployment, and domestic violence.³⁸ Research suggests that people who have lost their homes are often conscientious and reliable employees. Reports demonstrate that homeless people confront challenges to employment and even the chronically homeless and those with disabilities can excel at work with proper support and training.³⁹ Indeed, "[r]esearchers with the Department of Labor's seven-year Job Training for the Homeless Demonstration Program 'found that with the appropriate blend of assessment, case management, employment, [sic] training, housing and supportive services, a substantial proportion of homeless individuals can secure and retain jobs and that this contributes to housing stability.'"⁴⁰ Case studies and surveys have illustrated homeless individuals' determination to secure employment.⁴¹

As a consequence of discrimination, homeless interviewees explained that they often lost motivation and hope of obtaining employment. One interviewee noted: "You have to use a friend's address when applying for a job. If you don't have a friend with an apartment, you are out of luck. Most people here [on the

37. Focus Group Discussion at Columbus House in New Haven, Conn. (Apr. 18, 2014).

38. See Rankin, *supra* note 12, at 389.

39. David Long et al., *Employment and Income Supports for Homeless People*, U.S. DEP'T HOUSING & URB. DEV. 11-4 (2007), <http://www.huduser.gov/publications/pdf/p11.pdf> [<http://perma.cc/G9QR-BZYY>]; see also Trutko et al., *supra* note 6, at ES-4 (reporting that a significant portion of homeless participants were placed in short- and medium-term employment during a federal demonstration program).

40. *Overcoming Employment Barriers*, *supra* note 6, at 1 (quoting Gary Shaheen & John Rio, *Recognizing Work as a Priority in Preventing or Ending Homelessness*, 28 J. PRIMARY PREVENTION 341, 344 (2007)).

41. See Long et al., *supra* note 39, at 11-3.

New Haven Green] don't have friends with apartments."⁴² Another concluded, "I used to work but now I don't have an address."⁴³ Homeless job applicants living in other parts of the country shared similar experiences of discouragement through the Community Voicemail survey.

These findings enhance our understanding of the employment challenges that homeless people encounter. The responses confirm that employment discrimination against the homeless is common. Homeless individuals with relatives or friends who permit them to use their addresses have an advantage in the job search over other homeless job seekers.⁴⁴ Many homeless people do not have a nonshelter address to provide because homelessness often results from a lack of a support system. Regardless of whether employers have official policies against hiring homeless job applicants, homeless job seekers are aware that their lack of a permanent residence poses an insurmountable hindrance to obtaining employment. Job applicants experience discouragement, hopelessness, and a loss of dignity when they perceive that they are being discriminated against because of their homeless status.⁴⁵ Homeless individuals are especially discouraged because their lack of an address is the first piece of information that prospective employers learn about them when reviewing their applications. While a number of interviewees continued seeking jobs after several failed attempts, many explained that they ceased searching for employment because they did not believe employers would hire homeless job applicants.⁴⁶ Their stories resemble those of the applicants with a conviction history who stop applying for jobs because they doubt they will receive serious consideration after checking the box next to criminal history.⁴⁷ The homelessness perpetuates the hopelessness.

Interviews with homeless advocates and service providers also suggest that employment discrimination is pervasive. Nathan Fox, the former Project Su-

42. Interview with homeless individual in New Haven, Conn. (May 24, 2014).

43. Interview with homeless individual in New Haven, Conn. (May 24, 2014).

44. Interview with homeless individual, in New Haven, Conn. (May 24, 2014).

45. See *Int'l Bhd. of Teamsters v. United States*, 431 U.S. 324, 365 (1977) ("A consistently enforced discriminatory policy can surely deter job applications from those who are aware of it and are unwilling to subject themselves to the humiliation of explicit and certain rejection."); see also *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 22 (1993) ("A discriminatory work environment . . . can and often will detract from employees' job performance, discourage employees from remaining on the job, or keep them from advancing in their careers.").

46. See *supra* text accompanying notes 42-43.

47. See *The Benefits of Ban the Box: A Case Study of Durham, NC*, S. COALITION FOR SOC. JUST. 3 (2014), http://www.southerncoalition.org/wp-content/uploads/2014/10/BantheBox_WhitePaper-2.pdf [<http://perma.cc/BLR9-AVVK>].

pervisor for Faces of Homelessness Connecticut and a leader of the successful public campaign to enact Connecticut's Homeless Person's Bill of Rights,⁴⁸ explained that discrimination against homeless people who apply for jobs "[i]s almost like a status quo. Homeless people just know they are being discriminated against when applying for jobs."⁴⁹ One service provider in New Haven who helps homeless people find jobs explained, "There are so many problems facing the homeless. The most pressing problem is employment. For some, it is hard to get housing without employment. Even if you qualify for government aid, you still need an income to be able to live and work your way out of poverty."⁵⁰ The interviews revealed that stereotypes against homeless people are common and, when potential employers discover that an applicant is homeless, the applicant is often confronted with accusatory questions about alleged drug or alcohol abuse or a supposed history of mental illness.⁵¹ The service provider, who asked to remain anonymous due to concerns that employers would become even less receptive to job placements for his clients, described his experience with potential employers who are hesitant to hire people without stable residences:

I know for a fact that many homeless people have not been hired due to discrimination. I even sat down with employers who told me . . . [that they] will hire . . . [or] deal with someone with a criminal record but not these individuals [who are homeless] It is sad because people won't go out there and fill out an application because they think [a lack of an address] will be held against them.⁵²

Glynn Coleman, a coordinator at the Union Rescue Mission in Los Angeles, echoed this account of employment discrimination in New Haven, explaining:

Once employers find out that a job applicant lives in a homeless shelter, so many have told me that they can't hire them. Employers have told me quite a bit that they won't hire homeless people. I have given employers around the Los Angeles area tours of the Union Rescue Mission. I follow up with them and I ask them to consider hiring homeless individuals who want a second chance. Several employers refuse to en-

48. CONN. GEN. STAT. § 1-500 (2015).

49. Telephone Interview with Nathan Fox, Cmty. Organizer, Hands on Hartford (June 24, 2014).

50. Telephone Interview with New Haven Emp't Servs. Provider (June 3, 2014).

51. *Id.*

52. *Id.*

gage with our residents if they don't have an address or reside on Skid Row.⁵³

Glynn Coleman's experience suggests that the harmful effects from discrimination based on applicants' addresses also affect individuals who live in transitional housing or predominantly low-income, minority neighborhoods. Measures that help combat discrimination against the homeless might also assist applicants living in these disadvantaged areas. Together, these interviews consistently stress that addressing barriers to employment is a crucial early step in giving a broad range of job seekers the confidence to continue searching for work and achieve self-sufficiency.

Comments made by employers substantiate the idea that employers regularly engage in discrimination against the homeless when hiring. When I asked employers why they request an applicant's address in the initial application and whether they would hire homeless applicants, their responses conveyed a palpable unwillingness to hire homeless job applicants. The franchise owner of a Denny's restaurant (who wished to remain anonymous) explained:

I ask for an address because I want to see if they are stable and dependable, whether their roots are planted. I wouldn't hire a homeless person because he would be smelly and dirty. I sympathize with their plight, but in some cases it is their choice not to have a home.⁵⁴

Another business owner who spoke on the condition of anonymity asserted that he would "never hire a homeless person because I work with little children and their parents. They won't be impressed if they see that one of my employees is unkempt, smelly, a drug addict, alcoholic, and mentally ill."⁵⁵ Though a lack of affordable housing, declining job opportunities, domestic violence, and family disputes are frequent causes of homelessness,⁵⁶ these employers' comments highlight the prevalent viewpoint that homelessness inevitably results from addiction, physical and mental disabilities, or choice. Inasmuch as these statements indicate discrimination against homeless individuals based on per-

53. Telephone Interview with Glynn Coleman, Bus. Emp't Specialist, Union Rescue Mission (Feb. 2, 2015).

54. Interview with Franchise Owner, Denny's Rest., in L.A., Cal. (Jan. 5, 2015).

55. Interview with Bus. Owner, in L.A., Cal. (Jan. 4, 2015).

56. See *Homelessness in America: Overview of Data and Causes*, NAT'L L. CTR. ON HOMELESSNESS & POVERTY 3 (2015), http://www.nlchp.org/documents/Homeless_Stats_Fact_Sheet [<http://perma.cc/8CEC-Z6NA>] (listing the top causes of homelessness in decreasing order as lack of affordable housing, unemployment, poverty, and low wages; notably, at least two of these causes suggest that employment status and level are key drivers of homelessness).

ceived disability, they may run afoul of the ADA. However, employment applications and the application process may facilitate categorical discrimination against homeless individuals without allowing applicants the opportunity to learn why they were rejected or vindicate their rights.

C. Job Applications of the Largest Low-Wage Employers

Descriptions of discrimination encountered by homeless job applicants and service providers inspired a review of online job applications of forty of the largest low-wage employers.⁵⁷ Applications serve as an initial tool to screen individuals based on various characteristics, and the examination suggests that applications pose barriers to employment for people without permanent housing.

A number of the companies operate through franchisees, while others operate as chains.⁵⁸ Employees of franchisees have experienced a measure of success in asserting a franchisor's liability in discrimination claims.⁵⁹ A franchisor may be held liable under an apparent-agency theory by contributing to the appearance of an agency relationship or by failing to require adequate disclosure of franchisee status.⁶⁰ To prevail in a discrimination claim against the franchisor under Title VII, the employee must "produce evidence sufficient to prove that the franchisor controlled the franchisee's labor relations policy."⁶¹ Some companies exercise more control over the application process of their franchisees than others. Regardless of whether the franchisor or franchisee has ultimate control of the information required in a job application, or if they should be held jointly liable for hiring decisions, the impact of certain questions that discriminate against the homeless is the same.

Significantly, the job applications reviewed for this study each required the applicant to provide a current address. Applicants could not proceed to the next step of the online application without this information. This was true despite the fact that all of the applications, except two, required an email address,⁶² and

57. For a list of these employers as of 2012, see *Big Business, Corporate Profits, and the Minimum Wage*, *supra* note 33, at 6-7.

58. A single parent company owns the business' various stores in a chain. In contrast, there are stores in a franchised business are independently owned.

59. Jeffrey A. Brimer & Bryan C. Bacon, *Franchisor Liability for Gender Discrimination and Sexual Misconduct*, 20 *FRANCHISE L.J.* 188, 188 (2001).

60. *Id.* at 192.

61. *Id.* at 193.

62. Applications for Pizza Hut and Dollar Tree did not require an email address.

many indicated that the employer would be in touch with the candidate via email. The two applications that did not require an email address asked for the applicant's phone number, and one of the two recommended that the applicant provide an email as well. While the applications all requested the applicant's current address, a few private employer applications required even more detailed information about the applicant's residency history.⁶³ Homeless individuals are often unable to provide this information, and blank spaces next to these questions are likely to catch the attention of potential employers or be detected by hiring software.⁶⁴

Four of the applications—Starbucks, Macy's, JCPenney, and Gap—required applicants to acknowledge that the company or its agent would conduct a background check on the applicant that could include an investigation of the applicant's "mode of living." The applications did not provide any information on the meaning of this phrase. It is unclear whether these companies were admitting to considering information about the applicant's housing status, including whether or not the applicant lived in a shelter. When I called JCPenney's corporate headquarters to inquire about the term, the company's representative stated that he was unsure what the term meant, but noted that the phrase "suggests that we are asking about living arrangements, like the applicant's mode of living, even though that obviously does not dictate how an applicant would do his job."⁶⁵ Even if employers do not admit intentional discrimination against the homeless by using this phrase, this type of statement may deter someone without a home from completing the application.

Interviewers often ask job applicants even more detailed questions about their residency history. One Pizza Hut employee confided that, during her job interview, the interviewer requested the addresses where she had lived for the

63. For instance, one McDonald's franchisee (with the application available through the McDonald's website) requested that job applicants reveal how long they have lived at their current address, as well as at their previous addresses. See *infra* Appendix II.B.

64. Martin Michaels, *Anti-Discrimination Legislation Protects the Homeless in Connecticut*, MINTPRESS NEWS (June 15, 2013), <http://www.mintpressnews.com/anti-discrimination-legislation-protects-the-homeless-in-connecticut/163639> [<http://perma.cc/63Z2-FG8V>] (quoting an interview with Nathan Fox); see also Lauren Weber, *Your Résumé vs. Oblivion: Inundated Companies Resort to Software To Sift Job Applications for Right Skills*, WALL ST. J. (Jan. 24, 2012), <http://www.wsj.com/articles/SB10001424052970204624204577178941034941330> [<http://perma.cc/MEL6-3L54>] (describing the widespread use of applicant-screening software and noting that many applications are never reviewed by a human recruiter but instead are automatically screened by the software).

65. Telephone Interview with Corp. Office Representative, J.C. Penney Corp. (Aug. 5, 2016). I contacted Accurate Background, Inc., JCPenney's consumer reporting agency, but did not receive further information.

last five years.⁶⁶ When asked the requirements were for working at Pizza Hut, the employee responded, “There are not many requirements. You need to be at the same address for a few years. Homeless people wouldn’t get a job here, which is sad because they want to help themselves.”⁶⁷ Whether Pizza Hut has an unofficial policy of requiring an applicant to have resided at the same address for a certain period of time, questions about residency history on applications or during interviews give job applicants the impression that they must have stable housing to gain employment. Such inquiries discourage individuals who have been homeless in the recent past from applying.

Other questions on job applications disqualify or deter homeless job seekers. Ten of the forty low-wage companies requested that job applicants provide a home phone number in addition to a cellular phone number.⁶⁸ Ten of the top forty asked job applicants whether or not they have reliable means of transportation.⁶⁹ Interviews suggest that employers ask follow-up questions regarding transportation during interviews. Often, employers equate homelessness with a lack of reliable or adequate transportation. For example, in April 2013, a Colorado woman hired to do “prep work” at a KFC restaurant was fired the day she began her job because she was homeless.⁷⁰ The restaurant’s franchise owner signed a letter informing her that the decision was “due to concerns of [a] lack of residence and transportation.”⁷¹ An official at the homeless shelter where the woman lived claimed that KFC’s policy was “not to hire people who do not have permanent housing or easy access to transportation.”⁷² Such instances suggest that some employers will screen homeless applicants based on housing status and mode of transportation, even if there is no indication that such applicants will not be punctual or perform their job satisfactorily. Only the Pizza

66. The employee wished to remain anonymous. Interview with Pizza Hut Employee, in L.A., Cal. (Jan. 5, 2015).

67. *Id.*

68. See *infra* Appendix II.B.

69. See *infra* Appendix II.B.

70. See Eunice Jasica Claims KFC Franchise Reneged Job Offer Because She Is Homeless: Report, HUFFINGTON POST BUS. (Mar. 28, 2013, 4:41 PM), http://www.huffingtonpost.com/2013/03/28/eunice-jasica-kfc-homeless_n_2974067.html [<http://perma.cc/2UZ2-NUYP>].

71. See *id.*; see also Jonathan Sheffield, *A Homeless Bill of Rights: Step by Step from State to State*, 19 LOY. PUB. INT. L. REP. 8, 8 (2013) (describing a homeless woman’s fear that if she admitted to being homeless, she would be immediately fired).

72. *Woman Fired for Being Homeless? KFC Manager Changes Story*, LITIG. BOUTIQUE LLC (Apr. 4, 2013), <http://www.thelitbot.com/blog/2013/04/woman-fired-for-being-homeless-kfc-manager-changes-story.shtml> [<http://perma.cc/8X2Q-XQJM>].

Hut application noted that reliable transportation includes public transportation.

A review of applications of the eight largest U.S. staffing firms also revealed that homeless job applicants are disadvantaged when seeking employment through these firms.⁷³ According to the American Staffing Association, “[i]n the first quarter of 2013, U.S. staffing companies employed an average of 2.86 million temporary and contract workers, or 2% of all nonfarm employment in the United States.”⁷⁴ Five staffing companies—ManpowerGroup, Kelly Services, Robert Half International, Express Employment Professionals, and TrueBlue—require a job applicant to create a profile and provide an address before applying for a job. I interviewed employment specialists who explained that staffing agencies often discriminate against the homeless by requiring individuals using their services to have cars or live at a particular location for a minimum length of time.⁷⁵ They also noted that such agencies do not make adequate efforts to find jobs near the bus lines, which would increase the possibility of employment for the homeless and low-income earners.⁷⁶

Additionally, a number of the largest federal public employers, including the U.S. Postal Service (USPS), require applicants to provide an address on job applications. While a number of state jobs request that applicants provide a permanent address, others permit an applicant to provide a P.O. box number instead. For example, the official State of Connecticut Application Form for Examination or Employment, CT-HR-12, allows an applicant to provide either a P.O. box number or house number and street as a mailing address.⁷⁷ Though a P.O. box number is permitted, employers may still draw conclusions if an applicant lists one.⁷⁸

73. See Timothy Landhuis, *2015 Largest Staffing Firms in the United States*, STAFFING INDUSTRY ANALYSTS 5 (July 9, 2015), <http://www.cornerstone-staffing.com/files/2015/07/2015-Largest-Staffing-Firms-in-the-US.pdf> [<http://perma.cc/3Q7G-CBF2>].

74. Ashe Schow, *Recovery Woes: America's Second-Largest Employer Is a Temp Agency*, WASH. EXAMINER (July 8, 2013, 12:00 AM), <http://www.washingtonexaminer.com/article/2532778> [<http://perma.cc/C6HN-X972>].

75. These employment specialists spoke on the condition of anonymity.

76. Even if staffing firms made a greater effort to locate employment accessible by public transportation, homeless job applicants would still face discrimination on the part of employers who consider public transportation to be unreliable and eliminate applicants who do not drive to work.

77. *State of Connecticut Application for Examination or Employment (Form CT-HR-12)*, CONN. DEP'T ADMIN. SERVS. 1 (Oct. 20, 2010), http://www.das.state.ct.us/HR/Forms/CT-HR-12_Application.pdf [<http://perma.cc/VWK4-FMK8>].

78. See *infra* Section II.A.

Job applications of low-wage employers, staffing firms, and federal public employers contribute to a better understanding of the barriers to homeless job seekers described in Section I.B. The analysis of these applications substantiates the intuitions and experiences of homeless individuals, employment specialists, and advocates, indicating that the job application process permits covert discriminatory practices. These findings suggest that the advocacy and legal strategies discussed in Parts II and III should be employed in order to address the barriers faced by people without permanent housing. Empowering homeless individuals to overcome discrimination necessitates changing the employment application process to reveal when discrimination occurs and utilizing new and existing legal avenues to expose, combat, and obtain relief from discrimination.

II. NONLEGAL TACTICS

Advocates should consider a variety of nonlegal measures to expand employment opportunities for and reduce discrimination against homeless individuals. Nonlegal measures can provide less contentious and more flexible relief than legal challenges while creating the sociopolitical and legislative change to support future litigation when necessary. This Part outlines various forms of nonlegal advocacy involving states and localities, private employers, and the public at large. Launching a Ban the Address advocacy campaign is one of the most promising solutions to combating the homelessness epidemic and offers a more immediate avenue of reform than a purely litigious or programmatic approach.

Helping the homeless obtain housing is the most direct method of eliminating employment discrimination against this population. Utah was the first state to adopt a Housing First policy, which essentially provides permanent housing to the homeless, and the program has helped participants regain self-sufficiency while saving the government money over the long term.⁷⁹

However, as not all jurisdictions have the resources for such programs and employers might still discriminate based on residency history, advocates, employers, and service providers should employ a number of practices to enable

79. Alex Hartvigsen et al., *Comprehensive Report on Homelessness: State of Utah 2015*, ST. COMMUNITY SERVS. OFF. (2015), <http://jobs.utah.gov/housing/scso/documents/homelessness2015.pdf> [<http://perma.cc/E95S-GTKN>]; see also Malcom Gladwell, *Million-Dollar Murray*, NEW YORKER (Feb. 13, 2006), <http://www.newyorker.com/magazine/2006/02/13/million-dollar-murray> [<http://perma.cc/7FU3-XHLH>] (describing some of the costs the government incurs in taking care of the homeless and programs that benefit the homeless and reduce these costs).

homeless individuals to regain self-sufficiency. These include launching a Ban the Address movement that would reform the job application process, providing homeless job applicants with addresses, and pursuing affirmative litigation along with legislative and administrative reform. Such measures should be part of an appropriate blend of support, which includes effective job training and placement services.⁸⁰ Additionally, advocates should continue combating the criminalization of homelessness, which makes it more difficult to obtain employment. A combination of these efforts has the best chance of eliminating unnecessary barriers that stymie homeless individuals' efforts to escape a cycle of poverty.

Advocates are bound to face obstacles to implementing reforms such as Ban the Address policies. Convincing politicians or employers to adopt homeless-friendly hiring policies will be challenging and time-consuming. In order to encourage widespread change, homeless advocates might find early adopters that recognize the benefits of policies that help the homeless secure employment. These early adopters would agree to request home addresses only after granting provisional offers of employment. A similar wave of adoption occurred among low-wage employers and even states and localities with the Ban the Box movement. When Target and Walmart eliminated inquiries about conviction history from initial job applications, other businesses followed suit, including companies that have traditionally supported conservative causes.⁸¹ Perhaps the growing alignment of conservatives and liberals behind the campaign can be attributed to the recognition that employers and taxpayers also benefit from policies that facilitate workforce integration of the unemployed.⁸² Companies that have since adopted such policies include American Airlines, The Coca-Cola Company, Facebook, Google, The Hershey Company, PepsiCo, Prudential, Starbucks, Uber, and Xerox.⁸³ The diverse Ban the Box coalition successfully

80. Trutko et al., *supra* note 6, at ES-4 to ES-5 (“[I]t takes more than employment and training to help many homeless individuals to find and keep jobs.”).

81. Marianne Levine, *Koch Industries To Stop Asking About Job Candidates' Criminal History*, POLITICO (Apr. 27, 2015, 3:02 PM), <http://www.politico.com/story/2015/04/koch-industries-brothers-criminal-history-job-applicants-ban-the-box-117382> [<http://perma.cc/8WLT-77PA>].

82. See Tessie Castillo, *Why Are Conservatives Signing on to Ban the Box?*, HUFFINGTON POST (May 14, 2016, 10:10 AM), http://www.huffingtonpost.com/tessie-castillo/why-are-conservatives-sig_b_7283160.html [<http://perma.cc/K4KP-K3LQ>] (noting the alignment between Ban the Box and traditional conservative values).

83. Office of the Press Sec'y, *Fact Sheet: White House Launches the Fair Chance Business Pledge*, WHITE HOUSE (Apr. 11, 2016), <http://www.whitehouse.gov/the-press-office/2016/04/11/fact-sheet-white-house-launches-fair-chance-business-pledge> [<http://perma.cc/87NJ-HGPZ>].

encouraged over one hundred cities and counties, twenty-four states, and the District of Columbia to adopt Ban the Box policies.⁸⁴ President Obama issued an Executive Order in November of 2015 to delay when the Office of Personnel Management asks federal job applicants about their conviction history.⁸⁵ With the right advocacy campaign, massive change in the application process is feasible.

Before Ban the Address policies are implemented, advocates should consider interim approaches to combating discrimination, such as providing homeless job seekers with addresses. A number of logistical challenges would arise with a program to provide homeless job seekers with P.O. boxes, including issues associated with recycling boxes of individuals who secure employment and permanent addresses. More importantly, providing P.O. boxes would address only the consequences of discrimination, rather than its root causes. Advocates might recruit community members to help manage logistical challenges and continue to educate employers about the stereotypes surrounding homeless job applicants. Additionally, a number of homeless interviewees expressed a desire to volunteer and help manage the logistics of such a program. The program could be implemented relatively quickly and might provide additional momentum for Ban the Address policies by highlighting the benefits of preventing discrimination against the homeless.

This Part proceeds by first discussing this interim solution of providing homeless applicants with an address before describing the broader Ban the Address campaign. Just as the interim measures can support the more substantive, permanent reform that the Ban the Address campaign would seek, these nonlegal measures together can create the sociopolitical momentum necessary for litigant success.⁸⁶

A. Providing Homeless Job Applicants with Addresses

Until Ban the Address policies are adopted, both service providers and homeless advocates should provide qualified homeless applicants with housing services. This intervention might only involve providing a nonshelter address

84. Michelle Natividad Rodriguez & Beth Avery, *Ban the Box: U.S. Cities, Counties, and States Adopt Fair Housing Policies To Advance Employment Opportunities for People with Past Convictions*, NAT'L EMP. L. PROJECT 3-4 (Oct. 2016), <http://www.nelp.org/content/uploads/Ban-the-Box-Fair-Chance-State-and-Local-Guide.pdf> [<http://perma.cc/WER2-JDNE>].

85. Evans, *supra* note 20, at 14.

86. Cf. William N. Eskridge, Jr., *Channeling: Identity-Based Social Movements and Public Law*, 150 U. PA. L. REV. 419, 423, 475 (2001) (discussing the interplay between social movements and judicial as well as administrative interpretation and implementation of statutory law).

that applicants can provide on their job applications. A number of advocacy organizations, churches, and businesses might be willing to allow homeless job seekers to use the street address of their establishments when applying for jobs. As easy as it may be for an employer to determine that an address is associated with a business, a better option might be for advocacy organizations and businesses to donate P.O. boxes to shelters that in turn can provide the boxes to homeless residents.⁸⁷ Either homeless P.O. box owners or shelter employees can collect the mail on a regular basis.

A few organizations, including the Union Rescue Mission in Los Angeles, California, have encouraged homeless individuals to provide nonshelter addresses on job applications. According to Glynn Coleman, a business employment specialist at the Union Rescue Mission, this has helped numerous people gain an opportunity for employment. Coleman explained that if a homeless job applicant does not have a relative or significant other who is willing to provide an address for the applicant to use on job applications, he urges them to rent a P.O. box with USPS.⁸⁸

Some homeless individuals fear that providing a P.O. box number on an application indicates the applicant's homeless status. One noted, "I don't think P.O. boxes are the answer. I think employers extrapolate from P.O. boxes potential homelessness so another solution needs to be looked at."⁸⁹ Despite concerns that providing a P.O. box on a job application attracts an employer's attention and suggests that an applicant lacks a street address, Coleman asserted that he has not seen this fear materialize. He explained:

It does not raise red flags when a job applicant provides a P.O. box number instead of a street address. People use P.O. boxes for a number of reasons, not just because they are homeless. In my position as a jobs coordinator, my coworkers and I haven't had any negative responses from employers when people put down a P.O. box number when applying for jobs. We have helped numerous people find jobs, from janitorial

87. I considered General Delivery service, but this option provides almost no camouflage of an applicant's homeless status. See U.S. POSTAL SERV., PUBLICATION 28—POSTAL ADDRESSING STANDARDS § 26 (2015), http://pe.usps.gov/text/pub28/28c2_033.htm [<http://perma.cc/3HXG-C3PX>]; see also Margot Adler, *A Post Office Lifeline for the Homeless*, NPR (Mar. 12, 2006, 8:00 AM), <http://www.npr.org/templates/story/story.php?storyId=5258553> [<http://perma.cc/64GV-KXEP>] ("Ten thousand or so people go to the general delivery window at New York City's main post office and . . . 80 percent of them are homeless.").

88. Telephone Interview with Glynn Coleman, *supra* note 53.

89. Telephone Interview with Client, Cmty. Voicemail Program (Feb. 11, 2015).

work to a position in a Toyota office, after guiding them to provide the address of a P.O. box.⁹⁰

While interviews with service providers suggest that providing P.O. boxes is an attractive option, applicants who believe that providing a P.O. box number raises suspicion of homelessness might utilize the “street addressing option” at USPS, where box holders can use the street address of the post office followed by the box number.⁹¹ While this type of “street addressing option” might offer an additional layer of protection, an employer can easily determine that the address provided is not that of the applicant’s permanent residence through a simple Internet search. Furthermore, with the USPS “street addressing” arrangement, the entire P.O. box number must be used in the address; when the box number exceeds a certain number of digits, the address clearly does not resemble that of a permanent residence.⁹² These shortcomings in providing homeless applicants with a usable, nonobvious address suggest that homeless job applicants will be better protected if employers refrain from asking for an address in the initial application stages.

In addition to concerns with camouflage, this type of program is limited in scale due to funding constraints for supportive services. Coleman explained that homeless individuals must pay the full amount to rent a P.O. box from USPS on a monthly basis.⁹³ Homeless applicants might also rent a P.O. Box from UPS, but that this option can be even more expensive. Though each UPS franchisee charges a different rate for providing a mailbox with a street address, some are costly and require an upfront payment that covers a certain number of months. For example, a UPS store in New Haven charges \$20 a month for such a mailbox, and requires a buyer to pay for either six or twelve months up front.⁹⁴ For the unemployed and homeless, making these monthly payments can be burdensome. Receiving a discounted rate on a P.O. box or a P.O. box free of charge would make this option viable for a number of homeless job seekers, but securing a sustainable funding source would be a limiting factor.⁹⁵

90. Telephone Interview with Glynn Coleman, *supra* note 53.

91. “Street Addressing” Now Available for USPS P.O. Box Holders, GIANT PRINTSHOP (Feb. 1, 2012), <http://www.giantprintshop.com/2012/02/01/street-addressing-now-available-for-usps-p-o-box-holders> [<http://perma.cc/4CBC-JU3P>].

92. *Sections of Customer Agreement Related to Street-Style Addressing Option*, U.S. POSTAL SERV. (2012), http://ribbs.usps.gov/mtnsa/documents/tech_guides/PBSACustomerAgreement.pdf [<http://perma.cc/24YL-JWKS>].

93. Telephone Interview with Glynn Coleman, *supra* note 53.

94. Telephone Interview with Employee, UPS (Jan. 7, 2015).

95. Telephone Interview with Glyn Coleman, *supra* note 53.

Despite the challenges associated with providing this type of address, homeless people suggested to me that this option is preferable to not providing an address or offering the address of a shelter. One formerly homeless job applicant noted, “I stayed in the Salvation Army for over 30 days because my husband and I lost our jobs at the same time. But we always had a P.O. box. So we didn’t face discrimination like a lot of people do . . . Regardless of whether we were homeless, or staying in a car, or before we got an apartment, I always used my P.O. box and it never caused a problem in getting a job.”⁹⁶ Responses such as these illustrate that nonlegal tactics to combat employment discrimination, such as providing homeless job applicants with mailing addresses or discounted P.O. boxes, can have a positive impact on these applicants’ confidence and job prospects.

This approach would be based on the same concept as the Springwire Community Voicemail Program, which began in 1991 and was acquired by Feeding America in 2014⁹⁷ before closing at the end of 2015 due to lack of funding.⁹⁸ The program provided homeless and in-crisis individuals with phone numbers, which were indistinguishable from other local telephone numbers, and free voicemail. The service helped participants in their job and housing searches by allowing them to receive messages from potential employers and landlords as well as removing the stigma of appearing phoneless and homeless.⁹⁹ At its height, the program served more than 40,000 people in 372 cities and 23 states (in addition to Washington, D.C.).¹⁰⁰ In all, the program “helped more than 500,000 individuals experiencing homelessness or otherwise in cri-

96. Telephone Interview with Springwire client (Feb. 17, 2015).

97. E-mail from Trisha Matthieu, Springwire Program Manager, Feeding Am. (Nov. 11, 2016, 5:02 PM) (on file with author).

98. While the programs would share a similar impetus, factors that led to the downsizing of the Springwire Community Voicemail program would not be applicable to a P.O. box program. The Springwire Community Voicemail program encountered the advent of affordable online voicemail services and the growth of the federal Lifeline program, which provides support to telecommunications companies that offer discounts to millions of eligible, low-income subscribers.

99. *Community Voice Mail: Now the Homeless Don’t Have To Be Phoneless*, FREE GOV’T CELL PHONES, <http://www.freegovernmentcellphones.net/community-voice-mail-free> [<http://perma.cc/NK38-LNRU>].

100. 2011 *Data Snapshot*, *supra* note 30, at 1; *see also* Telephone Interview with Trisha Matthieu, Springwire Program Manager, Feeding Am. (Jan. 23, 2015) (“Case managers have frequently told me about employment discrimination against homeless people who put down the phone number of a homeless shelter on job applications and that a number of homeless applicants are embarrassed to put down a number of a shelter. The program has certainly helped with that.”).

sis, find jobs, housing, health care, social services, and generally stay connected.”¹⁰¹ Along similar lines, providing a P.O. box would potentially allow homeless individuals engaged in employment searches and other necessary activities to avoid the stigma attached to homelessness.

In order to gain further information on whether a P.O. box program would benefit homeless job seekers, I collaborated with Trisha Matthieu, a program manager at Springwire, to leave a voicemail message with homeless and in-crisis participants in the national Community Voicemail Program.¹⁰² The message asked whether homeless individuals experience discrimination in the application process due to the lack of a permanent address and if obtaining shared or private P.O. boxes at a discounted rate would be useful in the individual’s job search.¹⁰³ The responses revealed not only that discrimination against homeless job seekers is prevalent but also that P.O. boxes can make a meaningful difference in these applicants’ job search.

These individuals expressed a high degree of confidence in the potential for P.O. boxes to ameliorate their job search prospects. One individual stated: “[O]f course there is discrimination. We have to go beyond that and not ignore discrimination but make sure that the decisions we make can combat it. And I think that a personal P.O. box would be the best choice, at a nominal fee.” The vast majority of the 127 homeless users who responded expressed their view that obtaining a personal P.O. box would facilitate their job search. One respondent noted:

I ended up being in a position of being homeless. I do have a private P.O. box and it has been a godsend to me. The P.O. box idea is brilliant. I know that people with more of a network have their friends or family donate a home address but not everyone has that. Maybe there can be some type of work that people can do for it, even volunteering for a

101. E-mail from Trisha Matthieu, Springwire Program Manager, Feeding Am. (Oct. 12, 2016, 12:23 PM) (on file with author).

102. I received 127 responses, sixty-five from men and sixty-two from women, translating to a response rate of approximately nine percent. Matthieu noted that the response rate was comparable, if not higher, than past surveys. E-mail from Trisha Matthieu, Springwire Program Manager, Feeding Am. (Oct. 6, 2016, 8:19 PM). The homeless population, due to numerous factors, is one of the most difficult to reach or track. See Jonathan Lemire, Associated Press, *Once-a-Year Homeless Count Draws Criticism, Defenders*, ORANGE COUNTY REG. (Feb. 10, 2016), <http://www.ocregister.com/articles/homeless-703480-city-count.html> [<http://perma.cc/VP3U-ADQX>].

103. For the interview script, see *infra* Appendix I.C.

food bank . . . kind of like a barter system. So people are working for it and feel good about themselves and helping the community.¹⁰⁴

Other respondents also remarked that a discounted P.O. box system in which participants contribute would be ideal:

I think the P.O. box is a very good idea. I have had a P.O. box for eight years. It is very effective for me. No questions ever asked. However, some homeless people do not receive a check like me I think a program where a homeless individual pays half the fee would be great. They could be given a box and, after the second or third pay roll, would be required to go back and pay.¹⁰⁵

Another noted:

The idea of a P.O. box is very important. For many years I had to use P.O. boxes even when I was not homeless because I had to move around a lot and it was really useful. I recommend getting reduced rates for people to have individualized P.O. boxes, even if they have to volunteer for a few hours a week to work it off. It is something that they can keep with them as they get on their feet. It would be their own private real estate that they could have.¹⁰⁶

Respondents expressed a willingness to make financial contributions to the program and also to approach businesses that might be willing to make donations:

I never left a message previously but this is a great issue and I am glad you broached the subject. To be quite honest, employers are not mailing out anything to you before you get hired. So as far as a resumé is concerned, any address would suffice. Providing discounted postal boxes is a great idea. I am in Houston, Texas, and will be mindful of any businesses that might be willing to donate in the future.¹⁰⁷

A number of the participants concluded that obtaining a personal P.O. box would provide them with motivation when filling out job applications and improve their self-esteem. One observed:

^{104.} Telephone Interview with Springwire client (Feb. 14, 2015).

^{105.} Telephone Interview with Springwire client (Feb. 13, 2015).

^{106.} Telephone Interview with Springwire client (Feb. 14, 2015).

^{107.} Telephone Interview with Springwire client (Feb. 17, 2015).

Being homeless, I definitely experienced my own low self-worth by using a shelter address for mail and even for resumés. In my town, employers here know the shelters. It creates a feeling of low self-worth, just knowing that we don't have our own mailbox. I think the shared or discounted P.O. box ideas are excellent and should be followed up with the city council, the mayor, wherever we can get funding, whatever public service agencies are available. That and bus tickets, I believe, should be the two top priorities for this city in order to help people get jobs.¹⁰⁸

Similarly, another homeless job applicant stressed the positive contribution that discounted mailboxes could have on an applicant's confidence: "My self-esteem when I go and fill out an application is a big factor. I never thought about asking an agency to donate a P.O. box. It would help tremendously but I never dreamed of it. Splendid suggestion."¹⁰⁹ Another commented: "I think getting people a private P.O. box, whether it is shared or individual, is great. I think it helps overall with a person's self-esteem and it doesn't much matter that it is a P.O. box."¹¹⁰

Despite some concerns, most respondents believed that a discounted personal P.O. box program would aid homeless job seekers. Of the 127 respondents, 35 men and 48 women indicated that they believe employers discriminate against homeless job applicants. Without being prompted to talk about their personal experiences, seven men and eight women referenced instances where they encountered employment discrimination for being homeless. Only six men and four women expressed hesitancy with a discounted personal P.O. box program. One of these individuals cited his concern that homeless individuals would not be able to afford the P.O. boxes at discounted rates; two individuals expressed apprehension about logistical difficulties; and the remaining seven individuals who voiced hesitation with the program feared that providing P.O. box addresses on applications would raise red flags that the applicants are homeless. Nevertheless, most of the respondents agreed with Glynn Coleman¹¹¹ that providing the number of a P.O. box on job applications would appear professional and would not raise suspicions.

Though most respondents reacted positively to the idea of providing discounted personal P.O. boxes, several were less enthusiastic about a shared P.O.

108. Telephone Interview with Springwire client (Feb. 17, 2015).

109. Telephone Interview with Springwire client (Feb. 14, 2015).

110. Telephone Interview with Springwire client (Feb. 13, 2015).

111. See *supra* text accompanying note 90.

box program. Ten women and five men expressed concerns about privacy and worried they might not receive important mail in a timely manner under this approach. One woman suggested that, in order to address some of these concerns, participants should be required to present identification before picking up their mail. Respondents shared their perspective that paying a discounted rate for private P.O. boxes, more than sharing a communal P.O. box, would offer an opportunity to build self-reliance.

While many homeless people now have phone numbers, most lack addresses that they can provide on applications. The impetus behind the Community Voicemail Program applies with equal force to a program that provides addresses to homeless individuals. The program would offer an important safeguard against the rampant employment discrimination facing homeless job applicants and improve their chances of employment and self-sufficiency. The Director of Human Resources Workforce Strategy and Innovation at Walmart suggested that the Walmart Foundation and similar foundations might consider donating P.O. boxes to an organization such as Goodwill, which in turn would provide them to homeless job applicants.¹¹² Government agencies might establish a program that provides discounts on monthly P.O. boxes for low-income individuals, in the same way the federal government offers discounts on monthly telephone services through Lifeline. In addition to providing homeless individuals with protection against employment discrimination, such a program would help them access important documents related to social services,¹¹³ childcare, and other pressing matters.

B. Launching a Ban the Address Campaign

While a program to provide P.O. boxes to homeless job applicants has the potential to significantly improve their prospects of employment, challenges such as funding constraints and camouflage concerns necessitate a longer-term Ban the Address movement. Under Ban the Address policies, employers would only ask for a ZIP code on initial applications and refrain from asking for a street address until after granting a provisional offer of employment. By eliminating a question on initial applications that leads to systematic exclusion of

112. Telephone Interview with Dir. of Human Res. Workforce Strategy & Innovation, Wal-Mart Stores, Inc. (Feb. 9, 2015).

113. Furthermore, barriers faced by homeless people in accessing public services and benefits include the difficulty of completing applications without a mailing address. Martha R. Burt et al., *Strategies for Improving Homeless People's Access to Mainstream Benefits and Services*, U.S. DEP'T HOUSING & URB. DEV. 4-5, 97 (Mar. 2010), <http://www.huduser.gov/publications/pdf/StrategiesAccessBenefitsServices.pdf> [<http://perma.cc/XAZ9-AS4G>].

the homeless rather than merely attempting to camouflage housing status, Ban the Address policy will lead to a more promising and permanent solution to combat discrimination against this population.

While judicial relief might become more forthcoming for reasons discussed in Part III, the limited success of people with a conviction history in federal courts suggests that a nonjudicial method, such as a Ban the Address campaign, might be the most effective avenue. While the homeless have faced significant discrimination, the growing Homeless Bill of Rights (HBOR) movement is laying the groundwork for protecting and vindicating homeless persons' rights. Notably, this foundation may surpass the protection and support available to those with previous convictions in the nascent stages of the Ban the Box campaign. Furthermore, the recent recession has shored up public support for programs assisting the homeless.¹¹⁴ Thus, a Ban the Address campaign could likely garner as much, if not more, public support than Ban the Box achieved. Though constituents often encourage politicians to be tough on crime, legislatures would experience less political pressure to block policies to assist those without homes. Legislatures and employers would likely be more receptive to altering policies that discriminate against homeless applicants.

Lessons from the Ban the Box movement should be employed in order to achieve an effective Ban the Address campaign. Three recent studies suggest that an unintended early consequence of Ban the Box policies is greater racial disparities in hiring.¹¹⁵ Nevertheless, advocates have countered that such studies do not demonstrate a causal relationship between Ban the Box policies and the diminished hiring of minorities.¹¹⁶ "Indeed, all three studies found that

114. See, e.g., Melody Finnemore, *The Changing Face of Homelessness: As the Homeless Population Grows, So Do the Forms of Legal Advocacy for Vulnerable Populations*, OR. ST. B. BULL. (June 2013), <http://www.osbar.org/publications/bulletin/13jun/homelessness.html> [<http://perma.cc/ES79-U8QN>].

115. See *Pandora's Box*, ECONOMIST (Aug. 13, 2016), <http://www.economist.com/news/finance-economics/21704757-americas-ban-box-laws-are-harming-those-they-are-meant-help-allowing-job> [<http://perma.cc/84Y3-RSWM>] (citing Abigail K. Wozniak, *Discrimination and the Effects of Drug Testing on Black Employment*, 97 REV. ECON. & STAT. 548 (2015); Amanda Y. Agan & Sonja B. Starr, *Ban the Box, Criminal Records, and Statistical Discrimination: A Field Experiment* (Univ. of Mich. Law & Econ. Research Paper No. 16-012, 2016), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2795795 [<http://perma.cc/ZC7Q-YBJY>]; and Jennifer L. Doleac & Benjamin Hansen, *Does "Ban the Box" Help or Hurt Low-Skilled Workers? Statistical Discrimination and Employment Outcomes When Criminal Histories Are Hidden* (NBER Working Paper No. 22469, July 2016), <http://www.nber.org/papers/w22469.pdf> [<http://perma.cc/J9QF-L8YB>]).

116. Maurice Emsellem & Beth Avery, *Racial Profiling in Hiring: A Critique of New "Ban the Box" Studies*, NAT'L EMP. L. PROJECT 5 (Aug. 2016), <http://www.nelp.org/content/uploads/Policy>

people of color were called back for interviews or employed at higher rates after a ban-the-box policy took effect.”¹¹⁷ Advocates argue that even if the conclusions that Ban the Box policies increase racial disparities in hiring were accepted, they should lead to more stringent antidiscrimination law enforcement rather than a repeal of progressive policies.¹¹⁸ New HBORs, discussed in Part III, create a broad antidiscrimination regime that would permit more direct monitoring of discrimination against homeless job applicants. Moreover, these studies hypothesize that employers following Ban the Box policies discriminate against minorities due to the belief that they are more likely to have a conviction history.¹¹⁹ There is inadequate research to suggest that employers believe that minorities are more likely to be homeless and, therefore, would be more likely to discriminate against them. These studies do not provide an adequate rebuke of Ban the Box policies, let alone Ban the Address measures.

Proponents of the Ban the Box movement at the National Employment Law Project (NELP) suggested that homeless advocates might adopt an approach similar to the one outlined in the *Fair Chance—Ban the Box Toolkit*,¹²⁰ which they created in order to provide advocates with suggestions and strategies to build Fair Chance or Ban the Box campaigns in their jurisdictions. Adapting the steps recommended in the toolkit and applying lessons from various campaigns on behalf of the homeless, advocates could build an effective Ban the Address campaign by (1) performing research, education, and outreach; (2) recruiting key partners; (3) developing policy proposals for private employers; (4) increasing momentum by using the media to highlight success stories and noncompliance; and (5) developing policy proposals for and creating meaningful engagement with local, state, and federal governments.¹²¹ The early steps of the campaign would illustrate the positive impact that Ban the Address policies have on homeless job applicants and communities at large. Later steps would help build the private and public support necessary to con-

-Brief-Racial-Profiling-in-Hiring-Critique-New-Ban-the-Box-Studies.pdf [http://perma.cc/NP35-P6X7].

117. *Id.*

118. *Id.* at 3.

119. See Doleac & Hansen, *supra* note 115, at 24.

120. See Rodriguez & Christman, *supra* note 14.

121. These steps toward building a Ban the Address campaign are a combination of the eight steps identified by the NELP for a successful Fair Chance campaign: (1) identify a core group of Fair Chance advocates and organizers; (2) get the facts to support that Fair Chance is needed; (3) gather research to support a Fair Chance campaign; (4) develop the goals and strategy for a Fair Chance campaign; (5) launch a Fair Chance campaign; (6) draft a Fair Chance policy; (7) cultivate voices in support of Fair Chance; and (8) amplify Fair Chance through the media. See *id.* at 2.

vince government officials that reform is desirable. Advocates might modify the order of these steps. Ban the Box founders, for example, first focused on eliminating questions about criminal history in public employment in hope that the public sector is more susceptible to community pressure and that private employers would follow suit.¹²² Either type of framework would lead to robust Ban the Address policies that could bolster future legal challenges by identifying where discrimination based on housing status has occurred.

1. Perform Research, Education, and Outreach

Gathering and disseminating evidence that demonstrates the extent of current discrimination against the homeless and the benefits of expanding employment opportunities is a critical first step of a successful Ban the Address campaign. The data and narratives gathered here can provide a useful launching point. Research has demonstrated the high costs of homelessness in communities.¹²³ For example, “[t]he cost of an emergency shelter bed funded by HUD’s Emergency Shelter Grants program is approximately \$8,067 more than the average annual cost of a federal housing subsidy (Section 8 Housing Certificate).”¹²⁴ Studies have highlighted cost-savings associated with helping individuals obtain employment.¹²⁵ Advocates should attempt to develop region-specific estimates of the number of homeless job seekers who are impacted by employment discrimination in order to frame the issue locally for their legislatures.¹²⁶

122. Evans, *supra* note 20, at 10.

123. See, e.g., *A Plan: Not A Dream – How To End Homelessness in Ten Years*, NAT’L ALLIANCE TO END HOMELESSNESS 7-9 (2006), http://www.endhomelessness.org/page/-/files/585_file_TYP_pdf.pdf [<http://perma.cc/HKV4-7THN>]. One of the “most difficult cost[s] to quantify is the loss of future productivity.” *Id.* at 8. For example, many homeless children face diminished career prospects. See *id.* at 8-9.

124. *Id.* at 8.

125. *Id.* at 7; see also Off the Sts. & into Work & Ctr. for Econ. & Soc. Inclusion, *The Costs and Benefits of Formal Work for Homeless People*, CTR. FOR ECON. & SOC. INCLUSION 13-14 (Dec. 2006), http://www.crisis.org.uk/data/files/TMD_London/costs_and_benefits_of_work.pdf [<http://perma.cc/ST6Y-9NEZ>] (documenting substantial cost savings from providing sustainable employment to the homeless in London).

126. Cf. Rodriguez & Christman, *supra* note 14, at 9-10 (describing how to use publicly available information to develop region-specific estimates of populations with criminal records). Additionally, advocates should conduct research into the difference in response rates between applications with permanent addresses and those without addresses or ones that use P.O. box numbers instead of physical addresses. The experiment could be loosely modeled after the research described in Cate Matthews, *He Dropped One Letter in His Name While Applying for Jobs, and the Responses Rolled In*, HUFFINGTON POST (Sept. 2, 2014, 2:43 PM), <http://www>

As these estimates would likely be harder to obtain than Ban the Box estimates due to difficulties associated with surveying the homeless,¹²⁷ emphasis should be placed on obtaining anecdotal evidence of particularly striking instances of discrimination against the homeless. Additionally, organizers of the campaign should ensure that there is sufficient infrastructure to process complaints from homeless job seekers who have experienced employment discrimination. There will likely be challenges associated with attracting enough advocates to assume these cases, especially where damages are not available. Nevertheless, anecdotal evidence is crucial in order to highlight the need for and benefits of a Ban the Address campaign.

Service providers must play a crucial role in encouraging homeless people who are capable of working to apply for jobs and informing them of their right not to be discriminated against during the application process. For too long, homeless individuals have been discouraged from seeking employment because they feel that the lack of a stable residence makes the job application process futile.¹²⁸ Service providers can educate the homeless about their rights and refer them to homeless advocates who might help them obtain relief when their rights are violated. Service providers also help assess homeless individuals' employability, ensuring that they have a place to store their belongings while they are seeking employment,¹²⁹ offering them transportation to interviews and work until they receive their first paycheck, providing job training and placement services, and offering post-placement follow-up and support services. Additionally, service providers and advocates should educate job-placement officials and employers on homeless individuals' rights.

As the movement develops, advocates should continue to monitor the progress and impact of the campaign.¹³⁰ Crucially, homeless individuals and the front-line staff who help them obtain jobs should be engaged throughout the campaign and give input on successes and shortcomings so that these ap-

.huffingtonpost.com/2014/09/02/jose-joe-job-discrimination_n_5753880.html [http://perma.cc/D428-AU99].

127. See Maryse Marpsat & Nicolas Razafindratsima, *Survey Methods for Hard-to-Reach Populations: Introduction to the Special Issue*, 5 *METHODOLOGICAL INNOVATIONS ONLINE* 3, 4 (2010).

128. See *supra* Section I.B.

129. Both homeless interviewees and homeless advocates emphasized the difficulty of attending job interviews with a backpack. Trisha Matthieu, the Springwire Program Manager of Feeding America, noted that storage options in cities are limited and expensive and suggested that advocates approach businesses to donate secure places to store backpacks on a temporary basis. See E-mail from Trisha Matthieu, Springwire Program Manager, Feeding Am. (Feb. 10, 2015, 5:00 PM) (on file with author).

130. *Organizational Change: Adopting a Housing First Approach*, *supra* note 13, at 16-17.

proaches can be continuously improved. Indeed, “[e]nsuring that there are regular and ongoing feedback loops with all key stakeholders permits timely assessment and recalibration of the change process, and affords mechanisms for communicating and celebrating incremental progress or successes.”¹³¹ Advocates should collect data on changes in rates of employment after Ban the Address policies are implemented, as well as feedback from employers. Collecting real-time data will help show that the objectives of the campaign are being met, highlight revisions or expansions to the Ban the Address campaign that circumstances require, and illustrate the importance of the policy change to key partners.

2. *Recruit Key Partners*

As homeless advocates have noted in other campaigns, one of the first steps of effecting change is to identify the core group of backers and organizers.¹³² Homeless advocates should partner with employment specialists in homeless shelters across the country; community-based and faith-based service providers; community organizers who have helped pass various HBORs; lawyers and leaders of local, state, and national organizations that provide assistance to the homeless. Organizations that have already expressed support for a Ban the Address campaign include the Columbus House in New Haven, the Institute of Global Homelessness, the National Law Center on Homelessness & Poverty, the National Alliance to End Homelessness, and the Washington Lawyers’ Committee for Civil Rights and Urban Affairs.

An essential component of a Ban the Address movement is ensuring that people with a history of homelessness have a central role in shaping the campaign. A number of currently and formerly homeless individuals have expressed a keen desire to assist with such a campaign. An important lesson learned from the Ban the Box movement is that advocates must provide the people that they are attempting to empower with the chance to speak for themselves.¹³³ These individuals and advocacy organizations could launch a Ban the Address movement in the same way that a diverse coalition of advocates for people with a conviction history united to promote Ban the Box policies.

Another avenue is to approach business leaders and employers directly and encourage them to stop requiring addresses on job applications. Organizations including the Chambers of Commerce, Business Improvement Districts, and

^{131.} *Id.* at 16.

^{132.} *Id.* at 4-5.

^{133.} Evans, *supra* note 20, at 11.

other groups representing employers have frequently voiced concerns regarding the economic impact of homelessness on their communities.¹³⁴ Local Workforce Development Boards assist workers in obtaining stable employment through employer engagement and workforce development services.¹³⁵ Advocates might partner with these groups in urging employers to refrain from asking for street addresses until employers extend provisional offers of employment.

Service providers and advocates are positioned to educate employers about the benefits of hiring homeless individuals, including government benefits. Employers who hire homeless job applicants might profit from subsidized employment benefits, such as the federal government's Work Opportunity Tax Credit and other federal and state tax credit programs.¹³⁶ The Work Opportunity Tax Credit is available to employers for hiring individuals from certain target groups with significant barriers to employment, including those receiving Temporary Assistance for Needy Families, Supplemental Nutrition Assistance Program, or Supplemental Security Income benefits.¹³⁷ Advocates should communicate to employers that a significant number of homeless individuals are eligible for such programs.¹³⁸

While some employers may contend that Ban the Address policies would unduly interfere with their freedom to select the strongest candidates and avoid liability for hiring decisions, advocates can address these concerns.¹³⁹ The campaign would not seek to restrain the capacity of employers to choose the best

134. *Overcoming Employment Barriers*, *supra* note 6, at 10 (noting that these groups “shared common worries about the drain on the local economy from paying public dollars for homeless services and housing and the loss of revenue stemming from the presence of homeless people who frighten away customers and make communities less appealing to residents and visitors alike.”).

135. See, e.g., *The Workforce Investment System and WIOA: An Investment in Our Workforce of the Future*, TEX. ASS'N WORKFORCE BOARDS, <http://tawb.org/wp-content/uploads/2015/03/The-Workforce-Investment-System-and-WIOA.pdf> [<http://perma.cc/4Y6D-Q2BL>].

136. Indivar Dutta-Gupta, et al., *Lessons Learned from 40 Years of Subsidized Employment Programs*, GEO. CTR. ON POVERTY & INEQ. 3 (2016), <http://www.law.georgetown.edu/academics/centers-institutes/poverty-inequality/current-projects/upload/GCPI-Subsidized-Employment-Paper-20160413.pdf> [<http://perma.cc/37UQ-AA5Q>]; e.g., *Utah Tax Credit for Employment of Persons Who Are Homeless (HTC)*, DEP'T WORKFORCE SERVS., <http://jobs.utah.gov/employer/business/htc.html> [<http://perma.cc/C4SX-TXB7>] (describing Utah's tax credit incentive program for employers who hire homeless applicants).

137. *Work Opportunity Tax Credit*, U.S. DEP'T LAB. (Mar. 13, 2015), <http://www.doleta.gov/business/incentives/opptax/eligible.cfm> [<http://perma.cc/U2VA-9QYN>].

138. Burt et al., *supra* note 113, at 3-4.

139. See Pettinato, *supra* note 15, at 843-44 (explaining the salience of the employer-discretion counterargument in criminal records cases).

employees, but rather to level the playing field for homeless applicants while preserving and emphasizing employers' capacity to evaluate individual applicants.¹⁴⁰ Employers who broadly discriminate against homeless applicants are in fact limiting their discretion to select the most qualified applicant by automatically disqualifying certain applicants. Not only do employers who hire homeless people often find that these workers are especially loyal and hard-working, but these employers also have the opportunity by adopting nondiscriminatory hiring policies to demonstrate that they endeavor to solve pressing social problems.¹⁴¹ Employers who have adopted Ban the Box policies have noted the benefits of expanding the pool of qualified applicants and studies show no decline in the job performance of their employees.¹⁴² As advocates have noted in the Ban the Box context, courts in negligent hiring lawsuits generally conclude that employers have exercised reasonable care when they "require a written application, check all work and personal references, and conduct an in-person interview."¹⁴³ In addition, as with some types of Ban the Box legislation, advocates might consider including limitations on employer liability in Ban the Address policies.¹⁴⁴ A Ban the Address campaign would not interfere with employers' ability to contact references, consider past work experience, or otherwise evaluate candidates based on their merits. Furthermore, the campaign would not restrict an employer's ability to terminate employment if work is not satisfactorily completed. Advocates should engage employers and address their concern in order to maximize success of the campaign.

An interview with Walmart's Director of Human Resources Workforce Strategy and Innovation suggested that Walmart, the largest private employer in the United States,¹⁴⁵ is willing to consider banning inquiries about a job applicant's residency during the application process.¹⁴⁶ When asked whether

140. Cf. Johnathan J. Smith, *Banning the Box but Keeping the Discrimination?: Disparate Impact and Employers' Overreliance on Criminal Background Checks*, 49 HARV. C.R.-C.L. L. REV. 197, 221-23 (2014) (discussing recently strengthened EEOC guidance in criminal records cases).

141. Robert G. Brody & Rebecca Goldberg, *Is Homelessness the Next Protected Class?*, EMP. L. STRATEGIST (Aug. 21, 2013), <http://brodyandassociates.com/is-homelessness-the-next-protected-class> [<http://perma.cc/V4YD-RYVT>].

142. Evans, *supra* note 20, at 65-66.

143. *Id.* at 61.

144. *Id.* at 50.

145. Alexander E.M. Hess, *The 10 Largest Employers in America*, USA TODAY (Aug. 22, 2013, 7:48 AM), <http://www.usatoday.com/story/money/business/2013/08/22/ten-largest-employers/2680249> [<http://perma.cc/8Q9F-57ZR>].

146. Telephone Interview with Dir. of Human Res. Workforce Strategy & Innovation, *supra* note 112.

Walmart would eliminate inquiries about residency arrangements from job applications, the Walmart Director responded:

I think we would be likely to consider removing the address question from job applications. We can always get the address after making an offer. I believe it is something we would be open to, especially in light of the fact that we [at Walmart] have taken significant steps in the Ban the Box movement to enhance opportunity in the hiring process. One thing I really respect about our company is that it is really open to anyone who wants to build a career with us and we take a lot of pride in trying to create opportunities for the future.¹⁴⁷

The Walmart Director continued by explaining that in order for Walmart to remove the address question: “[t]here would have to be some type of call to action, likely by an external group that would show us that this practice has the potential to discriminate against homeless job seekers and is a problem in the industry.”¹⁴⁸ She also suggested that Walmart might become a leader in this area. She explained, “The significance of refraining from asking for an address until after an offer has been made would be to acknowledge to the industry publicly that we don’t discriminate against homeless job applicants. And where Walmart leads, others come along.”¹⁴⁹ Even the largest employers of low-wage workers might refrain from requesting addresses during the initial application stage, and an effective policy campaign could make this approach more appealing to such employers. The Walmart Director suggested that large minimum-wage companies benefit from being leaders and innovators in adopting homeless-friendly policies.¹⁵⁰ As with Ban the Box, creating a broad-based, coordinated campaign that highlights the economic and reputational benefits of hiring homeless employees could lead other private businesses to follow suit.

This interview suggests that companies must have evidence that the practice of requesting an address on applications contributes to employment discrimination against the homeless and that such discrimination is widespread. Such insights emphasize the significance of presenting compelling evidence of the question’s negative impact and the importance of removing opportunities for employment discrimination in general. A public interest campaign that reveals employers who refuse to hire homeless applicants, in addition to high-

^{147.} *Id.*

^{148.} *Id.*

^{149.} *Id.*

^{150.} *Id.*

lighting the actions of supportive businesses, would help provide companies with motivation to eliminate the address question from applications.

Inviting business leaders to participate in the campaign during its initial stages is crucial for the campaign's success. Jesse Stout is the former policy director of Legal Services for Prisoners with Children, an organization that initiated the Ban the Box campaign through its All of Us or None program. Stout emphasized the importance of asking members of the business community to help develop campaigns and forming compromises with them to minimize resistance.¹⁵¹ By organizing meetings between business leaders, people who were formerly incarcerated, and legislative sponsors, private employers could express their concerns while at the same time being exposed to the impact that discriminatory policies have on those with a conviction history and their families.¹⁵² Similarly, by being invited to participate in a process to combat employment discrimination against the homeless, employers may develop empathy for the plight of the homeless and understand the economic benefits of hiring them. While employers have legitimate concerns about hiring employees who may be incapable of performing their assigned job functions, the fact that an applicant lacks a stable residence does not indicate an inability to perform well. Private employers who recognize that homeless job applicants are viable candidates might alter their policies to ensure that such applicants do not face automatic disqualification.

3. Develop Policy Proposals for Private Employers

Advocates should develop Ban the Address policies for private employers that encourage adoption of voluntary measures to increase employment opportunities for homeless applicants. While others have recommended that employers increase their receptiveness to homeless applicants in the interests of avoiding potential litigation, a Ban the Address campaign could also assert the benefits employers might enjoy by removing discriminatory practices from their hiring procedures.¹⁵³ Employers should review certain policies and procedures to avoid lawsuits and ensure that they do not discriminate against homeless applicants. Employers in states with HBORs or equivalent statutes that protect the homeless in seeking and maintaining employment should be espe-

^{151.} Telephone Interview with Jesse Stout, Policy Dir. of Legal Servs., Prisoners with Children (July 2, 2014).

^{152.} *Id.*

^{153.} See Brody & Goldberg, *supra* note 141.

cially attentive to these issues. They should consider implementing the following measures.

a. Eliminate Discriminatory Application Questions

Employers should reconsider how they ask for contact information on job applications. Job applications and interviews with homeless applicants demonstrate that certain prevalent questions discourage or disqualify homeless job seekers. Requiring a job applicant to provide a home address before extending a provisional job offer is standard, but employers appear almost always to contact applicants through other means.¹⁵⁴ When I submitted minimum-wage job applications, employers communicated with me solely through email.¹⁵⁵ One tactic that employers might utilize is to offer job applicants the opportunity to decide how they wish to be contacted and leave room on the application for them to provide an email address, telephone number, or mailing address.

Employers can collect necessary information in order to adequately evaluate job candidates without initially asking for an address. Employers that I interviewed expressed concern about employees arriving at work on time.¹⁵⁶ An application might ask for an applicant's ZIP code rather than a specific address. Simply requesting the ZIP code of the job applicant instead of the street address would reveal to an employer whether the candidate lives in the general vicinity of the workplace and could arrive to work on short notice. The fact that an applicant is applying for a low-wage job at a particular location and would enter an at-will employment contract if hired suggests that the applicant lives in the general vicinity and is capable of arriving at work punctually. Following a provisional job offer or hire, employers have legitimate administrative reasons to request that the employee provide a mailing address.¹⁵⁷

As discussed, employers have a valid need to select stable employees and they understandably want to avoid liability for making negligent hiring decisions. Employers should request references and ask former employers whether the job applicant regularly arrived to work on time and satisfactorily performed duties and responsibilities. Almost all of the applications reviewed asked applicants to provide references. In addition to contacting references and carefully reviewing applicants' resumé and relevant background, employers can ask a

154. See *supra* text accompanying note 62 (noting that many of the employer applications reviewed indicated that employers would contact the applicant via email).

155. See *supra* text accompanying note 62.

156. Interviews with low-wage employers in L.A., Cal. (Jan. 4, 2015).

157. Administrative reasons include mailing tax forms and benefits enrollment.

number of other questions to assess the reliability and stability of applicants. A review of job applications demonstrates that these questions include: During the past seven years, have you ever been suspended, asked to resign, or discharged from any employment? Have you ever quit a job without giving advance notice? How many years did you work at your prior company? This type of information, rather than inquiries about an applicant's housing status, addresses the important need of employers to obtain relevant information about candidates that may bear on job performance.

Furthermore, if employers are concerned that homeless people are more prone to substance abuse, they can refrain from asking for addresses and employ less discriminatory approaches such as testing all applicants for alcohol and illegal drug use, as long as procedural and legal requirements are met. A number of employers—including Target, Sears, and Kohl's—already note in their applications that prospective employees may be compelled to submit to drug screening as a condition of employment.¹⁵⁸ Indeed, fifty-seven percent of private employers in 2011 reported administering drug tests to all potential employees.¹⁵⁹ Plaintiffs who have been denied jobs because they are homeless should have little difficulty in proving that employers might employ less discriminatory measures to ensure that their workplaces are drug-free and that employees are stable and reliable.

Employers may argue that applicants' address information is necessary for conducting background checks. But in reality, in order to save on costs, many companies run these checks only after granting provisional offers.¹⁶⁰ While employers might reasonably request applicants' addresses after granting provisional offers in order to conduct background checks, homeless job candidates should first have the opportunity to demonstrate their qualifications in the hiring process.

Furthermore, not all of the leading background screening companies that gather information on job applicants for employers have determined that the address of a job applicant is necessary in order to run a background check. For

158. See Employment Application, Job Application, Kohl's Corp. (on file with author); Employment Application, Job Seeker's Statement, Sears Holding Corp. (on file with author); Employment Application, Drug Test Consent, Target Corp. (on file with author).

159. *Drug Testing Efficacy SHRM Poll*, SOC'Y FOR HUM. RESOURCE MGMT. (Sept. 7, 2011), <http://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/pages/ldrugtestingefficacy.aspx> [<http://perma.cc/7KKZ-G3W3>].

160. *Best Practice Standards: The Proper Use of Criminal Records in Hiring*, LAW. COMMITTEE FOR C.R. UNDER L. 14-15 (2013), <http://lawyerscommittee.org/wp-content/uploads/2015/07/Best-Practices-Standards-The-Proper-Use-of-Criminal-Records-in-Hiring.pdf> [<http://perma.cc/HH22-AGQH>].

example, a representative for ClearStar, a company that specializes in pre-employment background checks, noted that the information needed on an applicant varies depending on the type of background search. Generally, he stated, the only information essential to performing the background check is the applicant's first and last name, date of birth, and—for some states—Social Security number. The ClearStar representative explained that the address of an applicant might be helpful when “the applicant has a more common name. You can reference the address to see if it is, in fact, the applicant. The address is not required, but it is helpful if we receive results back that match the applicant but we can't rule out it is someone else.”¹⁶¹ Another background screening company, on the other hand, revealed that it requires the address of a job applicant in order to run a background check. A GoodHire representative stated that, without the address of the job applicant, a report would be less accurate and a consumer reporting agency would not receive Fair Credit Reporting Act (FCRA) approval, which signifies that employers have gained reliable consumer report information to make informed hiring decisions.¹⁶² These responses illustrate the ambiguity of the current FCRA standard and suggest that greater clarification is needed on whether an address is necessary to conduct an accurate background check.

Employers that conduct background checks before granting provisional offers of employment should strive to assess applicants on an individual basis before asking for their addresses. Even if an employer does not request the addresses of job applicants to conduct a background check before extending an offer, a background report might reveal that the applicant lacks housing or lives in a homeless shelter. An employee at GoodHire explained that “[i]t may or may not come up on a report that a person is homeless. It would probably create an alert on the report. The employer could talk to that candidate and make a decision off of that information he received.”¹⁶³ If an employer learns from a background report that an applicant lacks stable housing and therefore rejects the candidate, the employer must notify the applicant in writing that the decision was based in part on the background check in order to be in compliance with FCRA.¹⁶⁴ Before taking an adverse action, the employer must provide the applicant with a copy of the consumer report relied upon as well as a summary

161. Telephone Interview with ClearStar employee (Jan. 5, 2015).

162. Telephone Interview with GoodHire employee (Jan. 5, 2015).

163. *Id.*

164. *Employment Background Check Guidelines*, BUS. MGMT. DAILY 2 (2012), <http://www.businessmanagementdaily.com/res/BMD/Free-Reports/BackgroundCheckGuidelines.pdf> [<http://perma.cc/W8BZ-YYQJ>].

of the applicant's rights under the Act.¹⁶⁵ The applicant will therefore have an opportunity to explain the circumstances surrounding his or her homelessness, dispute information provided in the report believed to be erroneous, or pursue legal recourse. Additionally, at this point, the job applicant has most likely already interviewed with the employer and the hiring authority has therefore learned about the candidate's experience, skills, and personality. Thus, the employer is more likely to take a holistic approach in deciding whether to extend a job offer to a homeless candidate rather than relying on prevalent stereotypes.

In addition to eliminating questions that screen homeless individuals, employers may revise applications to make explicit that their companies do not reject candidates because of their housing status. A number of applications already state that the employer does not discriminate based on characteristics such as race, sex, marital status, sexual orientation, military or veteran status, ancestry, disability, genetic information, pregnancy, childbirth or related medical conditions, or any other basis protected by applicable law. A statement that the employer will also not discriminate based on housing status or residency history would encourage homeless applicants to apply, as they would have reassurance that their experiences living without homes will not eliminate them from consideration.

b. Train Hiring Personnel

Interviews with low-wage employers and homeless individuals, as well as a review of job applications, suggest that a number of employers ask job applicants about their recent residency history.¹⁶⁶ This type of questioning can have an even more detrimental impact on applicants than simply asking about current living conditions. Employers should educate their managers and hiring personnel to refrain from asking questions about current and past housing status in interviews as well as in applications. Such inquiries can incur legal and public relations costs.¹⁶⁷

While employers have legitimate concerns about hiring individuals who are unreliable, lack proper hygiene, or have drug or alcohol addictions, hiring personnel should not automatically conclude that homeless job applicants have

¹⁶⁵. *Background Checks: What Employers Need To Know*, U.S. EQUAL EMP. OPPORTUNITY COMMISSION & FED. TRADE COMMISSION 5, http://www.eeoc.gov/eeoc/publications/upload/eeoc_ftc_background_checks_employers.pdf [<http://perma.cc/NZ4B-4CQK>].

¹⁶⁶. See *supra* Sections I.B, I.C; *infra* Appendix II.B.

¹⁶⁷. Brody & Goldberg, *supra* note 141 (emphasizing these concerns in states that have enacted an HBOR).

these characteristics. Instead of eliminating job applicants because they are homeless and thus assumed to be at risk for these complications, the interviewer should contact references and explain to all interviewees that the company obliges employees to abide by its policies.¹⁶⁸

Additionally, management should take measures to protect homeless employees. Homeless individuals who escape discrimination during the job application process too often face discrimination and ridicule once employed. One homeless participant of the Springwire Community Voicemail Program explained:

If they find out you are homeless . . . coworkers will tease you, make fun of you, call you names. When they find out, they try to get you fired. Not only the coworkers act this way, but also the managers. You can't report the misconduct. You have nobody to go report to because everyone is doing the same thing. Nobody feels sorry for you because you are in that situation. People in authority should react better than the employees. Nobody wants to hire you when they know you are homeless. And if you get hired and then [employers] find out you are homeless, they try to get you fired.¹⁶⁹

An employment specialist in New Haven noted that, in addition to facing ridicule, homeless employees are often offered lower wages when employers discover that they are homeless.¹⁷⁰ Homeless interviewees who secured employment described similar maltreatment, and a few even lost their jobs after employers discovered their homeless status. One female respondent to the Community Voicemail survey revealed:

I'm an attorney and am living in transitional housing. I just lost a job after a month and a half of working there. I lost my job because my employer found out where I was living. He had a strong opinion about that. So I have had personal experience with being discriminated against because of my address.¹⁷¹

While a number of advocates argue that employers should be more diligent in enforcing antiharassment policies, many employers lack policies explicitly protecting the homeless. A number of companies, including Walmart, do not

168. *Id.*

169. Telephone Interview with Springwire client (Feb. 13, 2015).

170. Telephone Interview with New Haven Emp't Specialist (June 24, 2014).

171. Telephone Interview with Springwire client (Feb. 14, 2015).

train managers or supervisors on how to treat homeless applicants or employees.¹⁷² Businesses should develop policies that provide managers with guidance on how to prevent the maltreatment of individuals without stable homes. Companies should make explicit that competent employees will not be terminated because of their homeless status. Additionally, information about employees' housing status should be shared only on a need-to-know basis. Effective training would lead to better work environments and prevent antidiscrimination lawsuits.

4. *Leverage the Media*

As part of their campaign, advocates should encourage impacted homeless job applicants to publicly share their stories of discrimination and provide a platform for employers who have had success with hiring homeless job applicants. In the same way that humanizing people with records among the public was one of the goals of the Ban the Box movement,¹⁷³ diminishing the stigma associated with being homeless among the public and employers should be one of the top priorities of the Ban the Address campaign. People with a conviction history who have courageously agreed to share their challenges as spokespeople for the Ban the Box campaign have had a significant impact on both policymakers and the general public.¹⁷⁴ In addition to providing platforms for homeless job seekers and employers who have had success with hiring homeless individuals, the Ban the Address campaign should also encourage diverse members of society, such as faith-based leaders, government officials, police officers, and members of economic development boards, to speak to the public on how removing barriers to employment for the homeless will lead to more compassionate, safer, and more economically viable communities. Just as Ban the Box found famous advocates and celebrities to encourage support for the movement through social media,¹⁷⁵ Ban the Address advocates should utilize social media and public outreach opportunities to achieve their objectives.

172. The Director of Human Resources Workforce Strategy and Innovation at Walmart noted that homelessness is not mentioned in the company's manager or supervisor training materials. See Telephone Interview with Dir. of Human Res. Workforce Strategy & Innovation, Wal-Mart Stores, Inc., *supra* note 112.

173. Rodriguez & Christman, *supra* note 14, at 12.

174. *Id.* at 14.

175. See, e.g., Dorsey Nunn, *John Legend Speaks out for Ban the Box Campaign*, LEGAL SERVS. FOR PRISONERS WITH CHILD. (Oct. 20, 2015), <http://www.prisonerswithchildren.org/2015/10/john-legend-speaks-out-for-ban-the-box-campaign> [<http://perma.cc/CJ8X-RCP5>].

Ban the Address advocates should adopt other strategies employed by Ban the Box, including holding town hall meetings and press conferences on the subject, circulating petitions for people to sign in order to demonstrate support for the Ban the Address initiative, seeking endorsements from local and national leaders, and planning lobby days with elected officials.¹⁷⁶ Advocates might highlight cases of noncompliance in the media and emphasize negative consequences of such actions on both job applicants and the community at large. Press releases that identify employers with a pattern of discrimination and discuss areas for improvement in the movement may prove effective.¹⁷⁷ The visibility of the homeless, particularly as compared to individuals with a conviction history, should help in raising awareness among the public. Momentum created by advocates adopting these strategies will lead to more lasting change through legislative enactments.

5. *Develop Policy Proposals for Government*

The preceding steps will increase the campaign's momentum and highlight to government officials that Ban the Address policies have a positive impact on communities and are popular with the public. Ban the Address advocates should collaborate with government officials who recognize the benefits that expanding employment opportunities for the homeless could have on communities. As with the Ban the Box movement, Ban the Address advocates might begin by identifying progressive mayors who will issue executive orders implementing these policies, which can later develop into permanent legislation reaching private employers.¹⁷⁸ Ban the Box founders concentrated first on the San Francisco government, due to its reputation for enacting forward-looking reforms.¹⁷⁹ As with Ban the Box, Ban the Address would likely develop regionally.¹⁸⁰ In jurisdictions with city councils that are less receptive to reform, Ban the Address advocates might work with city administrators in achieving administrative policy change.¹⁸¹

176. See Rodriguez & Christman, *supra* note 14, at 14.

177. See *No Safe Place: Advocacy Manual*, *supra* note 12, at 13.

178. See *Ban the Box Laws Across the Country*, BUS. & LEGAL RESOURCES (2016), <http://hr.blr.com/state-comparison-charts/Ban-the-Box-laws-across-the-country> [<http://perma.cc/9TLD-UBQZ>].

179. Evans, *supra* note 20, at 11.

180. *Id.* at 12.

181. *Id.* at 51 ("After many months of advocacy work, it became clear that Ban the Box would not be passed by the Durham City Council. So the Alliance switched strategy. Instead of trying

Ban the Address supporters should strive to work with employers' human resources directors when formulating reforms. Similarly, Ban the Box advocates have highlighted the importance of fully understanding an employer's hiring process in order to most effectively advocate change.¹⁸² After conducting research into employers' hiring practices and determining how to best improve them, Ban the Address advocates should share their insights with allies by creating and distributing educational materials. In the same way that Ban the Box founders brought their policies to other jurisdictions around the country through its Ban the Box Toolkit,¹⁸³ Ban the Address advocates should develop a packet with best practices, sample resolutions, model Ban the Address ordinances, and other materials that might be useful in encouraging widespread adoption.

When drafting Ban the Address measures that policymakers can enact, advocates should also work closely with legal organizations that have supported homeless advocacy efforts in the past. When homeless advocates began drafting HBORs, they worked closely with legal experts who provided both conceptual and practical feedback.¹⁸⁴ Forming strategic partnerships with legal organizations may help ensure that the enacted measures effectively protect homeless applicants against discrimination, such as by affording victims of discrimination a direct cause of action.

Ban the Address ordinances should be robust and prohibit an employer from considering an applicant's residency information until after extending a provisional offer of employment. A strong Ban the Address policy should implement measures to ensure that, following employment, an employee's housing status is only shared on a need-to-know basis. Additionally, as with robust Ban the Box legislation,¹⁸⁵ advocates should consider establishing civil fines for employers who violate Ban the Address policies to encourage compliance.

In the same way that advocates should continue encouraging the Equal Employment Opportunity Commission (EEOC) to issue "enforcement guidance, policy statements, and other documents about criminal records policies" in the context of employment,¹⁸⁶ advocates should urge the EEOC to issue statements on how employers might use the information that an applicant has

to pass a bill through the city council, they worked with city administrators to make [an] administrative policy change.").

¹⁸². *Id.* at 34.

¹⁸³. *Id.* at 11.

¹⁸⁴. Telephone Interview with Nathan Fox, *supra* note 49.

¹⁸⁵. Evans, *supra* note 20, at 29.

¹⁸⁶. See Smith, *supra* note 140, at 227.

been homeless. As in the context of conviction history, “[n]ot only can these documents serve as powerful aids for Title VII litigants, but they can also be used to educate employers about how to revise their policies so that they are not unfairly excluding qualified applicants who would make positive contributions to the workforce.”¹⁸⁷ In the same way that the EEOC’s enforcement guidelines formed a groundwork for legal change in the Ban the Box movement,¹⁸⁸ EEOC guidance can form a foundation for Ban the Address legal reform.

The various executive, legislative, and administrative actions recommended in this Section would contribute to a multifaceted Ban the Address campaign, preventing discrimination against homeless individuals applying for jobs in both the public and private sectors and providing a foundation for change through existing state and federal law discussed in Part III. Ban the Address policies would empower homeless applicants by bolstering transparency in the employment process and providing additional opportunity for homeless individuals to recognize when their rights have been violated. Additionally, nonlegal sociopolitical changes would impair the ability of employers to discriminate by providing addresses to homeless applicants or removing discriminatory questions from applications. Such efforts would create strategic partnerships that reduce public and employer stigma against the homeless. The advocacy strategies highlighted in this Section would provide momentum, as well as evidence of discrimination, which could contribute to legal success.

III. LEGAL TACTICS

Policy advocacy and a campaign that raises awareness about homeless applicants’ challenges can facilitate legal success. While the nonlegal strategies described in Part II are critical for transforming public opinion, employer practices, and homeless individuals’ confidence, legal reform and successful litigation represent the most effective ways to formalize and consolidate the advances heralded by a Ban the Address campaign. The same model, with advancements in court following nonlegal advocacy efforts, was followed in the Ban the Box campaign. Furthermore, the social movement for marriage equality helped change attitudes among the general public, which led to law reform in courts and legislatures.¹⁸⁹ Likewise, legal success in the Ban the Address movement

¹⁸⁷. *Id.*

¹⁸⁸. Evans, *supra* note 20, at 13.

¹⁸⁹. Goldberg, Obergefell, *supra* note 16, at 2.

could provide additional public support and momentum to advocacy efforts.¹⁹⁰ Indeed, there are synergies between legal victories and social movements.¹⁹¹

This Part presents three possible legal arguments that advocates can utilize to combat employment discrimination against the homeless. First, employment discrimination against the homeless might violate newly developed HBORs that exist or are contemplated in states across the nation. Second, employment discrimination against the homeless might violate Title VII. Third, advocates may argue that employment discrimination against those who lack stable housing violates the ADA. A growing number of states are passing HBORs that establish fundamental protections and allow future homeless plaintiffs to bring lawsuits under these statutes. While a Title VII disparate-impact claim in the context of employment discrimination against the homeless might be successful, such a lawsuit would be novel in the context of homeless advocacy. An ADA claim, by contrast, has been used to defend homeless individuals' rights and thus appears more likely to provide relief than a disparate-impact claim under Title VII.

A. Remedies Under Homeless Bills of Rights

In the future, homeless job applicants who have experienced employment discrimination will likely have viable claims against employers under new state statutes that protect homeless individuals against discrimination in a broad range of areas. These statutes mark the first widespread attempt to directly protect the homeless as a class under employment antidiscrimination law.¹⁹² In 1998, Puerto Rico achieved a milestone in homeless advocacy by becoming “the first U.S. territory to pass a homeless bill of rights.”¹⁹³ Unfortunately, although purporting to convey broad, substantive rights, Puerto Rico's statute has not to date been rigorously enforced or effectively implemented.¹⁹⁴ Rhode Island became the first state to pass a law providing comprehensive legal protections for

190. See Eskridge, *supra* note 86, at 1 (“The norms challenged by this kind of collective action are likely to be codified in legal codes, and the movement’s struggle will inevitably involve law. If the social movement generates institutional forms, they will be affected by and will seek to affect the law. Intuitively, the law professor would suggest that the law has strong effects on social movements; law does not drive them, but it is a pervasive positive and normative context in which the social movement operates.”).

191. Goldberg, Obergefell, *supra* note 16, at 1.

192. Michael F. Drywa, Jr., *Rhode Island’s Homeless Bill of Rights: How Can the New Law Provide Shelter from Employment Discrimination?*, 19 ROGER WILLIAMS U. L. REV. 716, 717 (2014).

193. Rankin, *supra* note 12, at 399.

194. *Id.* at 403.

homeless people when it enacted the Homeless Bill of Rights on June 20, 2012.¹⁹⁵

Other states have followed suit. On August 22, 2013, Illinois passed the Bill of Rights for the Homeless Act, which became effective immediately.¹⁹⁶ Connecticut's Homeless Person's Bill of Rights became effective on October 1, 2013.¹⁹⁷ Jurisdictions considering homeless rights legislation have included California, Colorado, Hawaii, and Oregon,¹⁹⁸ as well as Washington, D.C.; Indianapolis, Indiana; Madison, Wisconsin; and Duluth, Minnesota.¹⁹⁹

HBORs set forth a wide range of remedies designed to improve the lives of the homeless. The Rhode Island and Illinois statutes use comparable language and stipulate that a person who is homeless has the same rights and privileges as a state resident with stable housing. These rights include (1) the ability to use and move freely in public spaces, including public sidewalks, parks, transportation, and buildings, among other spaces; (2) equal treatment by state and municipal government agencies; (3) freedom from discrimination while maintaining employment; (4) emergency medical care; (5) ability to vote, register to vote, and receive documentation necessary for voting; (6) protection from disclosure of his or her personal records and confidential information; and (7) a reasonable expectation of privacy over personal property to the same extent as one would have in a permanent residence.²⁰⁰ These statutes recognize that ending discrimination against homeless individuals must include measures designed to reduce barriers to employment.

Nevertheless, the different textual scopes of the substantive employment provisions in the Illinois, Rhode Island, and Connecticut HBORs illuminate the limited range of protections available to homeless job applicants in Illinois. The language of the Illinois law specifies that a homeless person has "the right not to face discrimination while maintaining employment due to his or her lack of permanent mailing address, or his or her mailing address being that of a shelter or social service provider."²⁰¹ The Rhode Island HBOR offers broader

195. 2012 R.I. Pub. Laws 316.

196. 775 ILL. COMP. STAT. ANN. 45/1, 45/99 (West 2016).

197. 2013 Conn. Acts 251 (Reg. Sess.).

198. See Renee Lewis, *California Eyes Right To Rest Act To Stem Criminalization of Homeless*, AL JAZEERA AM. (Mar. 2, 2015, 1:00 PM), <http://america.aljazeera.com/articles/2015/3/2/homeless-bill-rights.html> [<http://perma.cc/X8QY-JSBR>].

199. See Renee Lewis, *Indianapolis Passes Law To Protect Homeless as Movement Gains Steam*, AL JAZEERA AM. (Mar. 6, 2015, 1:47 PM), <http://america.aljazeera.com/articles/2015/3/6/us-cities-consider-homeless-rights-legislation.html> [<http://perma.cc/56PQ-9XEA>].

200. See 775 ILL. COMP. STAT. ANN. 45/10 (West 2016); 34 R.I. GEN. LAWS § 34-37.1-3 (2016).

201. 775 ILL. COMP. STAT. ANN. 45/10.

protection to homeless individuals in stipulating the right of the homeless to be free from discrimination in both seeking and maintaining employment.²⁰² For the most part, the Connecticut law specifies protections equivalent or comparable to the Rhode Island statute.²⁰³ Connecticut’s law includes a clause stating that an individual who is homeless has the right to “[h]ave equal opportunities for employment,”²⁰⁴ which appears to offer a broad set of rights in various employment contexts. The difference in wording seems to signify that a homeless person who experiences employment discrimination while applying for a job in Illinois has no legal recourse under the Illinois HBOR.²⁰⁵ This Note asserts that protections in both seeking and maintaining employment are essential to creating equal opportunity for homeless individuals to obtain a stable position.

The HBORs in these three states also differ significantly in their definition of homelessness. Connecticut defines “homeless person” much more generally than Rhode Island and Illinois.²⁰⁶ The Rhode Island law bans discrimination due to “housing status,” which it defines as “having or not having a fixed or regular residence, including . . . living on the streets or in a homeless shelter or similar temporary residence.”²⁰⁷ The language of the Illinois law is quite similar.²⁰⁸ In contrast, the Connecticut law uses the federal definition for a “homeless individual,” which includes “an individual or family who lacks a fixed, regular, and adequate nighttime residence or resides in temporary living arrangements—such as cars, parks, abandoned buildings, public-transit, camp grounds, and shelters—and also people at imminent risk of homelessness or who are living in unstable conditions.”²⁰⁹ By not extending protection to individuals at imminent risk of homelessness, the Rhode Island and Illinois statutes protect a more limited number of people than their Connecticut counterpart. In the employment context, the Connecticut version might offer greater

202. 34 R.I. GEN. LAWS § 34-37.1-3 (“A person experiencing homelessness . . . [h]as the right not to face discrimination while seeking or maintaining employment due to his or her lack of permanent mailing address, or his or her mailing address being that of a shelter or social service provider.”).

203. Sheffield, *supra* note 71, at 11.

204. CONN. GEN. STAT. § 1-500(b)(2) (2015).

205. Drywa, *supra* note 192, at 738.

206. CONN. GEN. STAT. § 1-500(a) (incorporating the definition of homeless person at 42 U.S.C. § 11302 “as amended from time to time”).

207. 34 R.I. GEN. LAWS § 34-37-3(17).

208. 775 ILL. COMP. STAT. ANN. 45/10(b) (West 2016).

209. Sheffield, *supra* note 71, at 11 (summarizing the complex definition of homelessness under federal law at 42 U.S.C. § 11302 (2012)).

protection to a job applicant who faces discrimination due to a recent history of residential instability.

Nevertheless, not all aspects of the Connecticut law are superior in providing protections to the homeless; for example, it does not specify recoverable money damages. The Rhode Island and Illinois laws stipulate such damages, maintaining in pertinent part that a “court may award appropriate injunctive and declaratory relief, actual damages, and reasonable attorneys’ fees and costs to a prevailing plaintiff.”²¹⁰ This is significant because the possibility of recovering damages and attorneys’ fees encourages individuals who have experienced discrimination to bring suit, and the threat of recoverable damages discourages future discriminatory actions.²¹¹ While the Connecticut law originally contained the same robust enforcement provision as the Rhode Island and Illinois statutes, lawmakers removed the enforcement provision from the bill during final negotiations due to concerns that the possibility of damages would encourage frivolous suits against employers.²¹²

Even though the Rhode Island and Illinois statutes have stronger enforcement provisions, homeless individuals may not be cognizant of their rights and, even when they are, may lack the necessary financial resources or backing for legal representation.²¹³ Additionally, limited government resources and public support might constrain enforcement:

To the extent homeless advocates succeed in securing the inclusion of new social welfare remedies in homeless bills of rights, as an economic and political matter, the judiciary may review even statutory violations with a degree of caution and deference, ultimately allowing legislatures to determine the destiny of such laws.²¹⁴

While these bills can focus public attention and support on homeless advocacy issues, some believe that even judicially enforceable enactments represent

210. 775 ILL. COMP. STAT. ANN. 45/15; 34 R.I. GEN. LAWS § 34-37.1-4.

211. Sheffield, *supra* note 71, at 12.

212. *Id.* Notwithstanding the Connecticut legislature’s fears, the apparent lack of employment discrimination claims brought under the other HBORs seems to indicate that these fee-shifting provisions do not go far enough in providing legal relief for victims of discrimination. See *infra* text accompanying note 217.

213. *From Wrongs to Rights: The Case for Homeless Bill of Rights Legislation*, NAT’L L. CTR. ON HOMELESSNESS & POVERTY 16 (2014), http://www.nlchp.org/documents/Wrongs_to_Rights_HBOR [<http://perma.cc/DG9M-6584>].

214. Rankin, *supra* note 12, at 422.

merely symbolic gestures.²¹⁵ In order to make homeless plaintiffs' employment discrimination claims more attractive to the plaintiffs' bar, advocates might consider including fee-shifting provisions to strengthen future HBORs. But even this approach has its limitations.²¹⁶

As the first state to enact an HBOR only did so in 2012, there are “no published legal decisions that address the question of [employment] discrimination . . . on the basis of homelessness, including the methods for asserting a claim, the mechanism of proof, and the statute of limitations.”²¹⁷ The absence of cases on the subject might also speak to homeless people's deficiency in access to legal representation. Due to the relative novelty of Rhode Island's HBOR, the question remains of how a court would treat an employment discrimination claim based on a job applicant's status as homeless.

One might expect courts to utilize the legal test employed by state and federal courts following *McDonnell Douglas Corp. v. Green*²¹⁸ to decide whether employment discrimination due to an applicant's status as homeless had occurred: “Fundamentally, the plaintiff must prove that he or she is a member of a class entitled to the protection of [the antidiscrimination law] and that he or she has been treated differently from other similarly situated employees who are not members of the class.”²¹⁹ Evidence of discrimination is illustrated through circumstantial evidence utilizing the burden-shifting model described in *McDonnell Douglas*.²²⁰ Applying that methodology to the HBOR,

[A] plaintiff would be required to show (1) she was homeless; (2) she was qualified for the applied-for job or was performing her job at an acceptable level; (3) she was refused the job or suffered some form of adverse employment action; and (4) the position applied for was given to an equally- or lesser-qualified non-homeless person or non-homeless employees were otherwise treated more favorably.²²¹

A homeless job applicant should not have difficulty establishing a prima facie case. The first component of establishing a prima facie case, demonstrating

215. *Id.* at 423.

216. See Benjamin S. Waxman, *Fighting the Criminalization of Homelessness: Anatomy of an Institutional Anti-Homeless Lawsuit*, 23 STETSON L. REV. 467, 478 (1994).

217. Drywa, *supra* note 192, at 717.

218. 411 U.S. 792 (1973), *modified by* Hazen Paper Co. v. Biggins, 507 U.S. 604, 612 (1993).

219. Drywa, *supra* note 192, at 731 (quoting *Newport Shipyard, Inc. v. Rhode Island Comm'n for Human Rights*, 484 A.2d 893, 898 (R.I. 1984) (alteration in original)).

220. See *McDonnell Douglas*, 411 U.S. at 802-03.

221. Drywa, *supra* note 192, at 731.

that the complainant is homeless, should be straightforward and contingent on the wording of the state legislation.²²² The complainant's burden of establishing the other elements of a prima facie case, identified above, is not particularly onerous.²²³

Once a job applicant establishes a prima facie case of discrimination, a presumption that the employer unlawfully discriminated against the employee because of the applicant's homeless status would arise.²²⁴ The burden of production would then shift to the employer, who would need "to articulate some legitimate, nondiscriminatory reason for the employee's rejection."²²⁵ The employer can "satisfy its burden of production by articulating—not necessarily proving—some legitimate, nondiscriminatory reason that justifies the firing."²²⁶ As the employer only has the burden of production rather than persuasion at this stage, satisfying this requirement would likely not be difficult.

Finally, if the employer provides such a justification, the presumption created by the employee's prima facie case would be eliminated and "the focus shift[ed] back to the employee to demonstrate that the proffered reasons are a mere pretext for discrimination."²²⁷ Case law has established that while the complainant retains the burden of persuasion in the *McDonnell Douglas* burden-shifting framework, the proffered evidence does not have to be bullet-proof. When an employer rebuts the prima facie case of discrimination, a complainant does not have "to come forward with evidence of the 'smoking gun' variety."²²⁸ Instead, a complainant may succeed "either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence."²²⁹ As discussed below,²³⁰ homeless job applicants should be able to demonstrate that the possession of a stable residence is not a legitimate business necessity for the vast majority of jobs. In a number of contexts, homeless complainants can explain why proffered explanations for not hiring them are pretexts for discrimination and unrelated to job performance.

222. See *supra* text accompanying notes 206-209.

223. See *Ctr. for Behavioral Health, R.I. Inc. v. Barros*, 710 A.2d 680, 685 (R.I. 1998).

224. *Id.*

225. *McDonnell Douglas*, 411 U.S. at 802; *Ctr. for Behavioral Health*, 710 A.2d at 685.

226. *Cumpiano v. Banco Santander P.R.*, 902 F.2d 148, 153 (1st Cir. 1990).

227. *Ctr. for Behavioral Health*, 710 A.2d at 685.

228. *Id.* (quoting *Resare v. Raytheon Co.*, 981 F.2d 32, 42 (1st Cir. 1992)); accord *Neri v. Ross-Simons, Inc.*, 897 A.2d 42, 50 (R.I. 2006).

229. *Tex. Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248, 256 (1981).

230. See *infra* text accompanying notes 269-276.

The biggest obstacle a homeless job applicant faces in proving discrimination will likely be demonstrating that the employer was aware of the applicant's homeless status and discriminated on the basis of that status.²³¹ Carl Reynolds, an employment specialist in New Haven, has described the difficulty of proving that employers do not hire job applicants because they are homeless:

The address[es] of the homeless shelters and halfway houses in New Haven are no secret. Once an employer sees that address on a job application, they might be less inclined to call the job applicant back for an interview. There is no doubt in my mind that there is discrimination, but it is difficult to prove.²³²

This Note's Ban the Address proposal would address this challenge of employer's pretextual refusals to hire homeless applicants. Part II suggests that employers should not require an applicant to provide an address until after granting a provisional offer of employment. In jurisdictions where an employer is not permitted to inquire about an applicant's criminal history until extending a conditional offer of employment, an applicant will know whether a post-offer revelation affects the hiring outcome. Similarly, if employers only discover after extending a conditional offer of employment that an applicant is homeless, any reversal of hiring decisions would seem to be directly related to homelessness and negative stereotypes that likely include disability considerations. Homeless applicants without a conviction history would know whether they experienced discrimination and would be better positioned to pursue legal action.

In jurisdictions with both Ban the Box and Ban the Address policies, where a provisional offer of employment is extended before review of an applicant's conviction history and residency information, a homeless candidate with a criminal record may not know the reason for her subsequent rejection. Applicants rejected following a provisional offer and background check might need additional information in order to fully develop potential legal claims. However, this concern does not significantly weaken the impetus for both policies. To address this challenge, advocates might argue that FCRA should require employers to specify the facts that resulted in the withdrawal of a provisional offer of employment. The scenario described is novel and the mechanics of potential litigation will depend on a number of factors, including the details of the anti-discrimination legislation involved and the employer's idiosyncratic hiring practices. In a private action, a plaintiff in this category may allege multiple

²³¹. Drywa, *supra* note 192, at 732.

²³². Telephone Interview with Carl Reynolds, Coordinator of Emp't Servs., Columbus House, Inc. (June 24, 2014).

causes of action, and the reasoning behind the employer's decision would likely be revealed in informal or formal discovery. The combination of Ban the Box and Ban the Address would present, at most, a discovery issue to be resolved during litigation rather than a reason not to provide both protections.

Moreover, this scheme would help homeless applicants with a conviction history. Even with Ban the Box policies in place, such applicants can be automatically rejected due to their homeless status. Applicants who are rejected in the initial application stage have no way of proving that employers refused to hire them because they lack a home. In jurisdictions with both Ban the Address and Ban the Box policies in place, applicants who see their provisional offers of employment withdrawn will know that the adverse employment action was likely taken for one of two reasons (or both) and be better equipped to pursue legal recourse.

HBORs, through application of the *McDonnell Douglas* framework, offer new promise for homeless job applicants. A growing number of jurisdictions, after years of advocacy exposing the criminalization of homelessness and abuse experienced by this population, are considering HBORs.²³³ Other drivers for such legislation have been rising rates of unemployment and homelessness and the shortage of affordable housing.²³⁴ Additional states and localities may soon enact statutes that aim to protect homeless citizens from discrimination in a number of circumstances, including in seeking and maintaining employment.²³⁵

Furthermore, a number of jurisdictions offer protections that do not specifically reference the homeless but still provide safeguards to this group of people. For example, the District of Columbia's Human Rights Act of 1977 makes it an unlawful practice to discriminate on the basis of place of residence or personal appearance of a person.²³⁶ These laws set forth essential protec-

233. Eleanor Goldberg, 'Homeless Bill of Rights' Wants People on Streets To Be Able To Freely Stand, Sit in Public, HUFFINGTON POST (Oct. 7, 2014, 8:51 AM), http://www.huffingtonpost.com/2014/10/07/homeless-bill-of-rights-california_n_5941546.html [<http://perma.cc/582U-EAD7>]; see also *Homeless Bill of Rights*, NAT'L COALITION FOR HOMELESS, <http://nationalhomeless.org/campaigns/bill-of-right/> [<http://perma.cc/QCB9-95HG>] (discussing advocacy efforts around HBORs).

234. See Rankin, *supra* note 12, at 389.

235. See *supra* text accompanying notes 192-199.

236. D.C. CODE §§ 2-1401.01, 2-1402.11 (2016); *Boykin v. Gray*, 895 F. Supp. 2d 199, 217-18 (D.D.C. 2012) (discussing place of residence in the context of the D.C. Human Rights Act); *Armstrong v. D.C. Pub. Library*, 154 F. Supp. 2d 67, 72 (D.D.C. 2001) (discussing personal appearance); see also P.R. CONST. art. II, §§ 1, 20 (prohibiting discrimination on the basis of "social condition" and mandating equal access to housing and social services). Although place of residence is not a prohibited ground of discrimination under the employment pro-

tions, and, in combination with nonlegal tactics and the necessary financial and legal support, homeless plaintiffs in the future may be able to bring successful lawsuits under these statutes. As discussed in Section II.B.2, whether homeless plaintiffs can secure adequate legal representation in order to effectuate their rights under the law remains to be determined. Although state antidiscrimination causes of action offer promise of protection to homeless job applicants, uncertainty remains regarding how these statutes would be enforced. Advocates should also explore how federal law can be applied to protect this population.

B. Remedies Under Federal Antidiscrimination Laws

In addition to new state statutes, advocates might turn to federal law in order to protect the homeless against employment discrimination. A job applicant discriminated against due to his or her homeless status could plausibly pursue a Title VII disparate-impact or ADA claim. Ban the Address policies, requiring employers to refrain from asking for an address until granting a provisional offer of employment, would contribute to success under these causes of action. Nevertheless, the Title VII disparate-impact claim in the homeless advocacy context is novel, and a law like an HBOR that is more directly targeted to ending discrimination against homeless individuals may have more success.

1. Title VII Claims

Homeless individuals who have been discriminated against because they lack stable residences might bring successful Title VII disparate-impact claims by demonstrating that such discrimination is unnecessary and has a disproportionately adverse impact on a protected group. The three-phase burden-shifting model for establishing a disparate-impact claim, codified by Congress in the Civil Rights Act of 1991, is well established.²³⁷ In the first phase, a plaintiff must establish a prima facie case that the employer uses a facially neutral employment policy or practice with a substantial adverse impact on a protected group.²³⁸ If the plaintiff successfully proceeds through this first phase, the burden shifts to the employer “to demonstrate that the challenged practice is relat-

vision (§ 2-1402.11(a)) of the D.C. Code, the general antidiscrimination provision in D.C. Code § 2-1401.01 prohibits discrimination based on residency information.

²³⁷. Smith, *supra* note 140, at 201 (discussing Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071).

²³⁸. 42 U.S.C. § 2000e-2(k)(1)(A)(i) (2012).

ed to the position in question and consistent with business necessity.”²³⁹ Even if the employer establishes a “business necessity” defense, the plaintiff may still succeed by proving that the employer can utilize a less discriminatory alternative.²⁴⁰ This Section discusses in turn how each phase of the three-phase model would operate in a disparate-impact claim brought by a homeless plaintiff.

a. Phase I: The Prima Facie Case

In order for a plaintiff to succeed in challenging an employer’s use of applicants’ addresses under Title VII’s disparate-impact provision, the applicant would not need to establish that the employer intentionally discriminated. Instead, a plaintiff who is a member of a protected class²⁴¹ would need to demonstrate that the employer’s use of address history information has a disproportionately adverse impact on a group protected by Title VII. For example, if the employer’s use of address information prevented a large number of African-American applicants from getting hired but did not have a similar impact on white applicants, a plaintiff’s prima facie case may be bolstered by the disparate impact.

Statistics on the demographics of the homeless population suggest that Title VII disparate impact claims are viable. The homeless population is disproportionately comprised of members of protected classes. While the 2010 Census showed that 16.3% of the U.S. population identified as Hispanic or Latino,²⁴² the U.S. Department of Housing and Urban Development approximated in 2015 that Hispanics or Latinos comprise twenty percent of the homeless population, regardless of sheltered status.²⁴³ More striking are statistics regarding the disproportionate representation of African Americans among the homeless. While the 2010 Census showed that 13.6% of the U.S. population

²³⁹ *Id.*

²⁴⁰ *Id.* § 2000e-2(k)(1)(A)(ii).

²⁴¹ See Richard A. Primus, *Equal Protection and Disparate Impact: Round Three*, 117 HARV. L. REV. 493, 527-28 (2003) (discussing the open question of whether Title VII should protect historically dominant groups).

²⁴² Sharon R. Ennis et al., *The Hispanic Population: 2010*, U.S. CENSUS BUREAU 3 tbl.1 (2011), <http://www.census.gov/prod/cen2010/briefs/c2010br-04.pdf> [<http://perma.cc/R5HB-PYQX>].

²⁴³ Meghan Henry et al., *The 2015 Annual Homelessness Assessment Report (AHAR) to Congress*, U.S. DEP’T HOUSING & URB. DEV. 9 (Nov. 2015), <http://www.hudexchange.info/resources/documents/2015-AHAR-Part-1.pdf> [<http://perma.cc/J2CT-NFXG>].

identified as Black alone,²⁴⁴ African Americans comprised approximately forty percent of the homeless population in the report.²⁴⁵ The 2010 Census approximated that 25.2% of the U.S. population is nonwhite,²⁴⁶ but the report noted that nonwhite people represented about 55.2% of homeless shelter residents.²⁴⁷ In 2015, 51.5% of all homeless people (regardless of shelter status) were nonwhite.²⁴⁸ These population data indicate that members of protected racial and ethnic classes are more likely to be homeless, suggesting that these groups are disproportionately disadvantaged by address-based discrimination.

Nevertheless, courts' treatment of disparate-impact claims in the Ban the Box context suggests that, despite these statistics, mounting a successful disparate-impact case in the homeless advocacy context would be challenging. Though the homeless population disproportionately comprises members of protected classes, felony defendants are also disproportionately African American and Latino²⁴⁹ and plaintiffs' disparate-impact claims regarding criminal records screening policies have generally not succeeded.²⁵⁰ The limited success rate of challenges to employers' criminal records policies is partly "reflective of the broader trend that plaintiffs in employment discrimination cases generally do not fare well within the federal judiciary. Moreover, the federal courts have become increasingly skeptical of disparate-impact claims."²⁵¹ As there exist marginal differences in the proportions of African Americans and Hispanics or Latinos in the homeless and criminal offender population, homeless plaintiffs would likely face a similar uphill battle in convincing a federal court that a disparate-impact claim exists. Still, as discussed below, there is reason to believe that the trend in these cases is changing following recent EEOC attention to Title VII violations in the criminal records policy context. In the future, home-

244. Sonya Rastogi et al., *The Black Population: 2010*, U.S. CENSUS BUREAU 3 tbl.1 (2011), <http://www.census.gov/prod/cen2010/briefs/c2010br-06.pdf> [<http://perma.cc/3DQT-DHAT>].

245. Henry et al., *supra* note 243, at 9.

246. Lindsay Hixon et al., *The White Population: 2010*, U.S. CENSUS BUREAU 3 tbl.1 (2011), <http://www.census.gov/prod/cen2010/briefs/c2010br-05.pdf> [<http://perma.cc/QNR4-6THU>].

247. Henry et al., *supra* note 243, at 9.

248. *Id.*; Hixon et al., *supra* note 246, at 3.

249. See Brian A. Reaves, Bureau of Justice Statistics, *Felony Defendants in Large Urban Counties, 2009—Statistical Tables*, U.S. DEP'T JUST. 7 tbl.5 (Dec. 2013), <http://www.bjs.gov/content/pub/pdf/fdluco9.pdf> [<http://perma.cc/25JQ-NRWW>] (showing that forty-five percent of felony defendants are Black and twenty-four percent are Latino); see also *supra* text accompanying notes 242, 244 (documenting the proportion of Black (12.9%) and Latino (16.3%) individuals in the general U.S. population).

250. See *infra* text accompanying note 282.

251. Smith, *supra* note 140, at 210 (footnote omitted).

less job applicants might experience success in combating employment discrimination through application of this federal law.

Material obtained through discovery that includes the addresses, racial composition where available, and hiring outcomes of all job applicants to a particular business should be used to determine whether the practice has a significant adverse impact on a protected group. Based on evidence obtained during discovery that reveals the characteristics of the applicant pool and those who were hired, advocates can unmask discrimination, even if employers do not reveal their hiring practices and biases. Recent developments in the hiring process may facilitate the collection of such information. Many businesses—including, by some estimates, more than ninety percent of large companies—use hiring software that screens job applications based on selected characteristics.²⁵² In order to avoid automatic elimination by hiring software, some experts have urged applicants to include a postal address: “Your address is often how your résumé is filed. If you don’t include it, you might not get considered at all.”²⁵³ Massive amounts of data on job candidates, including their housing status, should be available to help mount a Title VII claim.

The outcome of such litigation may depend on the test that a court employs in determining whether a plaintiff has established a prima facie case of disparate-impact discrimination. Courts either select the statistical-significance test or the four-fifths rule. Under statistical-significance tests, “a disparity is actionable when we can be confident at a specified level—generally 95%—that the observed disparity is not due to random chance.”²⁵⁴ The four-fifths rule sets forth that “[a] selection rate for any race, sex, or ethnic group which is less than four-fifths . . . of the rate for the group with the highest rate” be “generally . . . regarded . . . as evidence of adverse impact.”²⁵⁵ With low-wage employers that receive millions of applications a year,²⁵⁶ the possibility of proving discrimination under the statistical-significance test becomes more viable.²⁵⁷ Yet, a court might adopt the four-fifths test, a choice that often leads to a different

252. Weber, *supra* note 64.

253. Peter Cappelli, *How To Get a Job? Beat the Machines*, TIME (June 11, 2012), <http://business.time.com/2012/06/11/how-to-get-a-job-beat-the-machines> [http://perma.cc/D9J2-RA3M].

254. Jennifer L. Peresie, *Toward a Coherent Test for Disparate Impact Discrimination*, 84 IND. L.J. 773, 774 (2009).

255. 29 C.F.R. § 1607.4(D) (2016).

256. Weber, *supra* note 64.

257. Peresie, *supra* note 254, at 787 (“Simply put, the larger the number of applicants, the smaller the magnitude of difference that will be statistically significant . . .”).

outcome.²⁵⁸ While none of the circuits have adopted a single standard for determining which test to adopt, the EEOC selected the four-fifths rule following *Griggs v. Duke Power Co.*²⁵⁹ This test “sets a high bar for plaintiffs to meet to establish a prima facie case.”²⁶⁰ If a court selects the four-fifths standard, a plaintiff might have more difficulty establishing a case.

Certain “disparate impact theories would be cognizable only under state [antidiscrimination] law and only if the state law recognized a disparate impact theory of employment discrimination.”²⁶¹ While most state antidiscrimination statutes cover characteristics that are also covered by federal law, such as race, sex, age, religion, national origin, and disability, a number of states have increased the number of protected categories of people.²⁶² Some state antidiscrimination statutes expand the list of protected classes, covering factors such as sexual orientation, veteran status, or experience as a victim of domestic violence.²⁶³ As these protected groups are disproportionately homeless, individuals with these characteristics might also bring successful disparate-impact claims.²⁶⁴

b. Phase II: The Business Necessity Defense

Even if the plaintiff demonstrates the differential impact of address use in the hiring context, the employer can escape liability by presenting a legitimate business necessity defense. Employer-defendants bear the burden of proof in establishing a business necessity defense. In order to be successful, an employer would offer evidence suggesting that consideration of address history information is necessary to identify applicants who will successfully perform the job’s functions. Courts have rejected defenses that do not consider whether a practice that operates to discriminate against protected groups bears a “demon-

²⁵⁸. *Id.* at 788.

²⁵⁹. *Id.* at 781.

²⁶⁰. *Id.* at 782.

²⁶¹. Brody & Goldberg, *supra* note 141.

²⁶². Jarod S. Gonzalez, *State Antidiscrimination Statutes and Implied Preemption of Common Law Torts: Valuing the Common Law*, 59 S.C. L. REV. 115, 116 (2007).

²⁶³. See *State Laws on Employment-Related Discrimination*, NAT’L CONF. ST. LEGISLATORS, <http://www.ncsl.org/research/labor-and-employment/discrimination-employment.aspx> [<http://perma.cc/3JA3-SHLM>] (providing a fifty-state survey of state-level protections against employment discrimination).

²⁶⁴. *Id.*

strable relationship” to successful performance of the job.²⁶⁵ Unsupported or “common-sense”-based assertions of business necessity are unacceptable; rather, there must be empirical proof that disputed hiring criteria accurately forecasts job performance.²⁶⁶

Employers are unlikely to be able to establish that discriminating against people without homes constitutes a business necessity. In the decades following the *Green v. Missouri Pacific Railroad Co.* decision, “many courts have embraced a more employer-deferential interpretation of the business necessity defense.”²⁶⁷ Nevertheless, recent action by the EEOC, discussed below, reveals that the agency can use its authority to counter employers’ business necessity defenses.²⁶⁸ There is often not a clear nexus between the lack of an address and a homeless applicant’s ability to meet the requirements of a particular position, and EEOC guidance may prompt more demanding judicial treatment of employers’ business necessity defenses.

Courts have rejected a number of business necessity defenses relying on arguments that do not specifically consider the characteristics of the employee and essential functions of the job at hand. For example, courts have held that Title VII prohibits an employer from discharging African-American employees solely because their wages were garnished to satisfy judgments, noting that the argument that an employee facing financial difficulties will work less hard is “at its best only speculative.”²⁶⁹ The Eighth Circuit held that a restaurant failed to establish a business justification for its blanket policy requiring all employees to be clean-shaven, a policy that had a disparate impact on African Americans and did not affect job performance.²⁷⁰ The court found that “[c]ustomer preference . . . is clearly not a colorable business justification defense in this case.”²⁷¹ Additionally, courts and administrative adjudicators have noted that business necessity does not result from the preferences of customers, fellow employees or their spouses,²⁷² or from the mere dollar cost of changing to a new business practice.²⁷³

265. *El v. Se. Pa. Transp. Auth. (SEPTA)*, 479 F.3d 232, 239 (3d Cir. 2007) (quoting *Griggs v. Duke Power*, 401 U.S. 424, 431 (1971)).

266. *Id.* at 240.

267. *Smith*, *supra* note 140, at 208.

268. *Id.* at 226.

269. *Johnson v. Pike Corp. of Am.*, 332 F. Supp. 490, 495 (C.D. Cal. 1971).

270. *Bradley v. Pizzaco of Neb., Inc.*, 7 F.3d 795, 799 (8th Cir. 1993).

271. *Id.*

272. EEOC Decision No. 80-18, 26 Fair Empl. Prac. Cas. (BNA) 1802 (1980).

273. *United States v. N. L. Indus., Inc.*, 479 F.2d 354, 366 (8th Cir. 1973).

Findings from interviews suggest that, for the vast majority of jobs, the possession of a stable residence is not a legitimate business necessity. Employers who refused to hire homeless job applicants did not explain how lacking a stable home impacts job performance or provide data showing that homeless employees cannot successfully perform minimum-wage job duties.²⁷⁴ Instead, they pointed to unsubstantiated preferences of customers as well as stereotypes surrounding this population.²⁷⁵ Research suggests that people who have lost their homes are often conscientious and reliable employees, and even the chronically homeless can succeed at work with appropriate support and training.²⁷⁶ As noted in my interviews, many homeless individuals utilize public transportation services to access employment, social services, shelters, and affordable housing. Employers have not provided evidence that homeless employees are more likely to arrive late to work as a result. Based on the legal standard, courts are likely to reject as speculative uncorroborated employer arguments that homeless employees would perform their jobs less well than other workers would.

c. Phase III: The Less Discriminatory Alternative Practice

Even if employers argue that having a stable address is consistent with business necessity, homeless job applicants could demonstrate in the third prong of the burden-shifting framework that there is a less discriminatory alternative. Courts have held that in order to mount a successful business-necessity defense, “there must be available no acceptable alternative policies or practices which would better accomplish the business purpose advanced, or accomplish it equally well with a lesser differential racial impact.”²⁷⁷ This standard set forth in case law suggests that employers should be required to adopt less discriminatory alternatives than automatically rejecting applicants who lack stable residences. These alternatives include requiring all employees to maintain good hygiene and refrain from drug use. Instead of discriminating against homeless job applicants because of an unsubstantiated belief that they will arrive late to work, employers could ask applicants whether they live in the general vicinity, such as by requesting each applicant’s ZIP code. Employers could also emphasize to applicants that employees’ at-will employment contracts will

274. Interview with homeless individual in L.A., Cal. (Jan. 5, 2015); Interview with homeless individual in L.A., Cal. (Jan. 4, 2015).

275. See *supra* text accompanying notes 49-56.

276. Long et al., *supra* note 39, at 11-14.

277. *Robinson v. Lorillard Corp.*, 444 F.2d 791, 798 (4th Cir. 1971).

be automatically terminated if employees do not arrive on time for their shifts. If the plaintiff then sets forth a “less discriminatory alternative” than eliminating applicants based on address history, the employer’s argument should be rejected.

Title VII’s disparate-impact provision would not entirely prevent employers from asking for the address of a job applicant. Employers have legitimate reasons to ask for an address after granting a provisional offer of employment. Title VII only requires that the information on an applicant’s residence history not be employed in a way that has an adverse impact on protected classes and is not essential for the position at hand.²⁷⁸

Though viable, there remain drawbacks to pursuing a disparate-impact claim. By making a disparate-impact claim rather than attacking the practice of employment discrimination against the homeless directly, the focus of litigation would not be on the plight of homeless job seekers. Headlines surrounding litigation might not be as forceful in describing the intentional discrimination and prevalent stereotypes faced by this population. Furthermore, while some states offer a jury for disparate-impact cases,²⁷⁹ advocates would not obtain a jury in federal courts.²⁸⁰ Additionally, other approaches might provide more immediate relief.

Under a similar line of reasoning, advocates have argued that employers’ use of criminal background checks to screen job candidates raises concerns that they are violating Title VII’s disparate-impact provision. For example, one commentator has argued that “[t]o the extent employers have developed criminal records screening policies that result in a disproportionate exclusion of racial minorities and are unable to satisfy Title VII’s ‘business necessity’ defense, they are running afoul of Title VII.”²⁸¹ For the most part, federal courts have not been amenable to plaintiffs’ claims regarding conviction history screening policies, typically finding that the plaintiff offered inadequate statistical evidence “to establish a prima facie case of disparate impact or [that] the employer

278. See Smith, *supra* note 140, at 201.

279. See JUDICIAL COUNCIL OF CAL., CIVIL JURY INSTRUCTIONS 1452-54, 1580-82 (2016) (setting forth the factual elements for prima facie liability for disparate-impact discrimination under the California Fair Employment and Housing Act, CAL. GOV’T CODE § 12940(a) (West 2016)).

280. See *Allison v. Citgo Petroleum Corp.*, 151 F.3d 402, 423 (5th Cir. 1998) (stating that the statutory right to a jury trial created by the Civil Rights Act of 1991 does not extend to disparate-impact claims); *Taylor v. D.C. Water & Sewer Auth.*, 205 F.R.D. 43, 47 (D.D.C. 2002) (explaining that because “injunctive relief remains the only remedy available for those asserting disparate impact claims,” no jury right attaches to such claims).

281. Smith, *supra* note 140, at 200.

met the business necessity defense.”²⁸² In the near future, federal courts are unlikely to offer plaintiffs a significant prospect of defeating employers’ criminal records policies. At the same time, recent developments suggest that advocates should still consider how Title VII might be applied to assist a vulnerable population in the homeless advocacy context.

d. Recent Trends

Recent action by the EEOC in protecting the rights of people with a conviction history suggests that the threat of a disparate-impact claim brought by homeless plaintiffs might achieve change in hiring practices. Soon after Ban the Box advocates submitted testimony and research to the EEOC, the agency took crucial steps toward providing legal remedies to combat employment discrimination against individuals with a conviction history.²⁸³ In January 2012, Pepsi Beverages (Pepsi) “agreed to pay \$3.13 million and provide job offers and training” after an EEOC investigation “found reasonable cause to believe” that the company’s policy of rejecting job applicants who had been arrested, even if they had never been convicted, violated Title VII.²⁸⁴ In April 2012, the agency issued enforcement guidance²⁸⁵ regarding employers’ use of criminal background information, which emphasized that in order to meet the business necessity defense, employers should generally conduct an “individualized assessment” before eliminating an individual for employment based on past criminal conduct.²⁸⁶ In effect, by setting forth new requirements and encouraging a focus on data to validate a criminal record exclusion policy, the new guidance

²⁸². *Id.* at 205.

²⁸³. Anita Campbell, *What Employers Need To Know About the “Ban the Box” Movement*, COUNCIL ST. GOV’TS JUST. CTR. (May 18, 2015), <http://csgjusticecenter.org/reentry/media-clips/what-employers-need-to-know-about-the-ban-the-box-movement> [http://perma.cc/UPD8-8427].

²⁸⁴. Press Release, U.S. Equal Emp’t Opportunity Comm’n, *Pepsi To Pay \$3.13 Million and Made Major Policy Changes To Resolve EEOC Finding of Nationwide Hiring Discrimination Against African Americans* (Jan. 11, 2012), <http://www.eeoc.gov/eeoc/newsroom/release/1-11-12a.cfm> [http://perma.cc/37J2-DKTU].

²⁸⁵. This guidance currently remains the subject of an administrative-law challenge. *See Texas v. EEOC*, 827 F.3d 372, 388 (5th Cir. 2016) (finding that the State of Texas has standing and that the EEOC’s guidance was ripe for review and remanding to the district court for further proceedings).

²⁸⁶. Office of Legal Counsel, *Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964*, U.S. EQUAL EMP. OPPORTUNITY COMMISSION 14, 18 (Apr. 25, 2012), http://www.eeoc.gov/laws/guidance/upload/arrest_conviction.pdf [http://perma.cc/VZ7Y-HFGD].

narrows what policies will be construed as consistent with business necessity. Included among specific factors for the employer to consider in conducting this assessment are “[e]mployment or character references and any other information regarding fitness for the particular position.”²⁸⁷ In outlining best practices for employers, the EEOC noted that employers should “[i]dentify essential job requirements and the actual circumstances under which the jobs are performed”²⁸⁸ and “[d]etermine the specific offenses that may demonstrate unfitness for performing such jobs.”²⁸⁹

While courts are not bound to follow the EEOC’s suggested best practices, the EEOC has cited its guidance in administrative enforcement actions, suggesting that the agency can significantly reform hiring practices that violate Title VII. For instance, in a 2013 disparate-impact criminal background check case, J.B. Hunt Transport agreed to review, provide additional training on, and revise its hiring and selection policies and practices to adhere to the EEOC’s guidance.²⁹⁰ The EEOC also filed lawsuits against two employers, BMW Manufacturing and Dollar General, with criminal records policies that allegedly had a disparate impact on African Americans.²⁹¹ In its complaint, the EEOC claimed that BMW’s policy violated Title VII because it resulted in the termination and exclusion of applicants or employees without any individualized assessment.²⁹² The U.S. District Court for the District of South Carolina ordered BMW “to pay \$1.6 million and provide job opportunities to alleged victims of race discrimination” as well as to “provide training on using criminal history

287. *Id.* at 18.

288. *Id.* at 25.

289. *Id.*

290. See Press Release, U.S. Equal Emp’t Opportunity Comm’n, J.B. Hunt Agrees To Settle EEOC Race Discrimination Case Regarding Criminal Conviction Records (June 28, 2013), <http://www.eeoc.gov/eeoc/newsroom/release/6-28-13c.cfm> [<http://perma.cc/6NBB-4L7N>]; see also Stephanie Joston, *EEOC Challenges Three Companies for Inappropriate Use of Criminal Records in Employment Decisions*, COUNCIL ST. GOV’TS JUST. CTR. (July 26, 2013), <http://csgjusticecenter.org/nrrc/federal-interagency-reentry-council/posts/eeoc-challenges-three-companies-for-inappropriate-use-of-criminal-records-in-employment-decisions> [<http://perma.cc/CQD6-VDKT>] (noting that the EEOC’s cases against J.B. Hunt, BMW, and Dollar General all involved disparate impact).

291. Press Release, U.S. Equal Emp’t Opportunity Comm’n, EEOC Files Suit Against Two Employers for Use of Criminal Background Checks (June 11, 2013), <http://www.eeoc.gov/eeoc/newsroom/release/6-11-13.cfm> [<http://perma.cc/4BJA-5RAY>].

292. Press Release, U.S. Equal Emp’t Opportunity Comm’n, BMW To Pay \$1.6 Million and Offer Jobs To Settle Federal Race Discrimination Lawsuit (Sept. 8, 2015), <http://www.eeoc.gov/eeoc/newsroom/release/9-8-15.cfm> [<http://perma.cc/63F4-DY2H>].

screening in a manner consistent with Title VII.”²⁹³ These developments illustrate how Title VII’s disparate-impact provision can be employed in order to meaningfully alter hiring practices that systematically exclude certain applicants.

Some courts have referred to the EEOC’s Title VII guidance, suggesting that the judiciary will consider how hiring practices violate this law. Referencing the EEOC’s guidance in dicta, in December 2015, a Pennsylvania state court held a state law to be unconstitutional because it was too broad in delineating the types of past crimes that disqualified people with a conviction history from jobs that involved caring for the elderly.²⁹⁴ These developments suggest that, despite the narrow fashion in which the judiciary initially construed disparate impact, courts continue to meaningfully consider these claims in light of shifting public norms and employer practices. Even without litigation, the promulgation of guidance and threat of enforcement action by the EEOC can inspire businesses to reform their hiring policies.

The recent case of *Waldon v. Cincinnati Public Schools* in Ohio is a victory for the application of disparate-impact theory in the criminal records context. *Waldon* also suggests that this litigation strategy might be applied to homeless advocacy.²⁹⁵ Ohio enacted legislation that required criminal background checks of current school employees, regardless of whether their job functions included “the care, custody, or control of children.”²⁹⁶ The court found that the African-American plaintiffs, who were fired “pursuant to the new law,”²⁹⁷ adequately pleaded a case of disparate impact employment discrimination and that the school had failed to demonstrate that the practice was “job related and consistent with business necessity.”²⁹⁸ The court noted that the outcome was “a close call” and that the result would be different when the policy was applied to “serious recent crimes” due to the “employees’ proximity to children.”²⁹⁹ Nevertheless, quoting the Eighth Circuit, the court concluded, “To deny job opportunities to these individuals because of some conduct which may be remote in time or does not significantly bear upon the particular job requirements is an

293. *Id.* The Dollar General litigation is still pending. See Complaint at 4-5, EEOC v. DolGen-Corp. LLC, No. 1:13-cv-04307 (N.D. Ill. June 11, 2013).

294. *Peake v. Commonwealth*, 132 A.3d 506, 515 (Pa. Commw. Ct. 2015).

295. See 941 F. Supp. 2d 884 (S.D. Ohio 2013); see also Pettinato, *supra* note 15, at 849.

296. *Waldon*, 941 F. Supp. 2d at 886.

297. *Id.*

298. *Id.* at 884, 890.

299. *Id.* at 889.

unnecessarily harsh and unjust burden.”³⁰⁰ This case highlights that a successful business necessity defense must possess more than merely a “tenuous or insubstantial” relationship to the type of employment.³⁰¹

While disparate-impact claims are difficult to bring, these recent developments suggest that advocates might turn to the EEOC to obtain legal remedies for homeless job seekers and achieve systematic reform of the ways in which employers consider the homeless status of applicants. In criminal records cases, the EEOC has cautioned employers to conduct individualized assessments that account for the characteristics of the applicant and the essential job requirements in order to mount a successful business necessity defense. The agency would likely adopt a similar approach with regard to homeless job applicants. The cases described suggest that the EEOC is focused on reducing hiring obstacles for groups that have experienced discrimination. The EEOC’s past willingness to bring enforcement actions that further Ban the Box provides good reason to believe the agency may bring enforcement actions that could support Ban the Address as well. Homeless advocates ought to consider presenting data and narratives about the plight of the homeless to the EEOC. They should encourage the agency to issue guidance on the subject and pursue test cases against employers that violate Title VII in discriminating against homeless applicants.

Despite the merits of a Title VII disparate-impact claim, there are shortcomings to this approach. The limitation on damages in Title VII disparate-impact claims for back pay and injunctive relief makes this route relatively unattractive to plaintiffs and their lawyers.³⁰² Pursuing litigation under a state statute that directly protects the rights of the homeless or developing a campaign similar to Ban the Box might have a greater chance of success and do more to highlight the challenges that this population faces. The achievement of the Ban the Box campaign, despite the initially frosty reception in federal courts to challenges of employers’ criminal records policies, suggests that non-legal methods for addressing employment discrimination against the homeless might prove more effective and pave the way for later judicial success. While a variety of approaches should be adopted, advocates might have more success by focusing on launching a Ban the Address campaign, strengthening HBORs, and pursuing ADA claims where appropriate.

300. *Id.* (quoting *Green v. Montana Pac. R.R. Co.*, 523 F.2d 1290, 1296 (8th Cir. 1975)).

301. *Id.* (quoting *Green*, 523 F.2d at 1296).

302. See 42 U.S.C. § 1981a(b)(2) (2012).

2. *Americans with Disabilities Act Claims*

Due to the shortcomings and uncertainties associated with disparate-impact claims under Title VII, advocates might have greater success with legal theories that have already been used in homeless advocacy—such as disparate treatment and disparate-impact claims under the ADA. Under the ADA, an employer can be held liable for discriminating against either a job applicant or employee in a way that adversely affects the opportunities or status of that person. “[T]he term ‘discriminate against a qualified individual on the basis of disability’ includes—limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee.”³⁰³ Additionally, discriminating against a qualified individual on the basis of a disability includes

using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity.³⁰⁴

While a covered entity is permitted to make pre-employment inquiries regarding the ability of an applicant to accomplish job-related responsibilities, the ADA states that “a covered entity shall not conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability.”³⁰⁵ Certain forms of addiction to alcohol, illegal drugs, and legal or prescription drugs qualify as a disability.³⁰⁶ The ADA not only applies to people with disabilities but also covers individuals whom others consider to have a disability.³⁰⁷

In this way, homeless people without histories of alcohol or drug addictions should be protected from employment discrimination under the ADA. Em-

³⁰³ *Id.* § 12112(b).

³⁰⁴ *Id.*

³⁰⁵ *Id.* § 12112(d)(2)(A).

³⁰⁶ Barry C. Taylor et al., *Employment Legal Briefings: Drugs, Alcohol, and Conduct Rules Under the ADA*, DBTAC GREAT LAKES ADA CTR. 1 (July 2011), http://adagreatlakes.com/Publications/Legal_Briefs/BriefN0017_drugs_alcohol_and_conduct_rules_under_the_ADA.pdf [<http://perma.cc/Q3QT-AN55>].

³⁰⁷ 42 U.S.C. § 12102(1),(3).

ployers violate the ADA when they intentionally discriminate due to actual or perceived handicaps of homeless job applicants.³⁰⁸ Homeless individuals revealed that, during job interviews, employers who noticed that they lived in homeless shelters frequently asked them accusatory questions about drug and alcohol use.³⁰⁹ According to these interviewees, there was no evidence that they were using drugs, and employers relied on the lack of applicants' permanent housing to make these assumptions. Such questioning suggests that employers routinely disadvantage or eliminate job candidates due to *perceived* disabilities. Discriminating against job applicants because they are homeless and assumed to be drug addicts or alcoholics therefore violates the ADA.

Similarly, the ADA protects individuals who are discriminated against because of presumed mental impairments. Despite pervasive stereotypes that homeless people have untreated serious mental illnesses, about two-thirds of homeless individuals do not.³¹⁰ But a number of homeless individuals without mental illnesses noted that employers refuse to hire them due to such preconceived notions. As one focus group participant remarked,

We try to regain our dignity by finding a job. But when we try to recover and regain our dignity, we get undignified again when we are told, "Sorry, you live in a shelter, we can't hire you." Immediately that label of mental health comes up that is associated with homeless people. And nobody wants to hire you if they think you have a bad mental health situation.³¹¹

Homeless job applicants who have been discriminated against on the basis of nonexistent disabilities should be able to seek relief under the ADA.

Advocates might also employ the law to protect applicants who no longer use illegal substances. A number of people who have experienced homelessness have a history of illegal drug use and alcoholism.³¹² While illegal drug use is

308. *Id.* § 12102(3)(A).

309. Focus Group Discussion at Columbus House, *supra* note 37; Interview with homeless individual in New Haven, Conn. (May 24, 2014).

310. *Backgrounder: How Many Individuals with a Serious Mental Illness Are Homeless?*, TREATMENT ADVOC. CTR. 1 (June 2016), <http://www.treatmentadvocacycenter.org/storage/documents/backgrounders/4-how%20many%20individuals%20with%20a%20serious%20mental%20illness%20are%20homeless.pdf> [<http://perma.cc/WE79-S7W9>].

311. Focus Group Discussion at Columbus House, *supra* note 37.

312. *See Kentucky Draft 2006 QAP Sets Aside \$2.5 Million for Transitional Housing for Substance Abusers*, 33 [Current Developments] Hous. & Dev. Rep. (RIA) No. CD-26, at 18 (Dec. 19, 2005).

not a covered disability,³¹³ recovering addicts are covered under the ADA.³¹⁴ A recovered drug addict can demonstrate that he or she is “qualified” if he or she would be able to satisfy the job requirements with or without reasonable accommodation.³¹⁵ Instead of automatically eliminating certain applicants, employers can test employees and applicants for illegal use of drugs and on-duty impairment or take other steps to determine whether they are capable of performing the job at hand.³¹⁶

Similarly, while the ADA permits covered entities to hold people who abuse alcohol to the same qualification standards for employment and performance as other employees, “individuals disabled by alcoholism are otherwise entitled to the same protections as other individuals with disabilities.”³¹⁷ Employers are not permitted to automatically disqualify job applicants in this category without first considering whether they can perform the necessary job functions. Since many people in recovery are successful at work, the practice of immediately eliminating homeless job applicants based on alcohol-related disabilities is inconsistent with business necessity.

Recent cases brought under the ADA on behalf of homeless plaintiffs to challenge policies that negatively affect them suggest that homeless advocates might successfully avail themselves of the law in the employment context. In *A Society Without a Name v. Virginia*,³¹⁸ a three-judge panel discussed the substance of homeless plaintiffs’ ADA Title II claim stemming from the relocation of homelessness services to a new facility, eventually concluding that the claim

313. See 42 U.S.C. § 12114(a) (2012).

314. See *id.* § 12114(b). According to the EEOC’s technical assistance manual, “[p]ersons addicted to drugs, but who are no longer using drugs illegally and are receiving treatment for drug addiction or who have been rehabilitated successfully, are protected by the ADA from discrimination on the basis of past drug addiction.” U.S. EQUAL EMP’T OPPORTUNITY COMM’N, EEOC-M-1A, A TECHNICAL ASSISTANCE MANUAL ON THE EMPLOYMENT PROVISIONS (TITLE I) OF THE AMERICANS WITH DISABILITIES ACT § 8.5 (1992).

315. *The Americans with Disabilities Act: Applying Performance and Conduct Standards to Employees with Disabilities*, U.S. EQUAL EMP. OPPORTUNITY COMMISSION (Jan. 20, 2011), <http://www.eeoc.gov/facts/performance-conduct.html> [<http://perma.cc/9WEF-KH9J>].

316. Indeed, the ADA states: “Nothing in this subchapter shall be construed to encourage, prohibit, or authorize the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on such test results.” 42 U.S.C. § 12114(d)(2).

317. 1 EMPLOYMENT DISCRIMINATION COORDINATOR—ANALYSIS OF FEDERAL LAW § 6:40, (Westlaw 2016).

318. 655 F.3d 342 (4th Cir. 2011).

was not brought within the statute of limitations.³¹⁹ The plaintiff contended that “there is a strong link between homelessness and disability, asserting that the public generally perceives and regards homeless people as being disabled due to mental illness, alcoholism, and substance abuse.”³²⁰ While the claim failed on procedural grounds, both concurrences appeared to affirm the reasonableness of concluding that the segregation of the homeless population was based on disability.³²¹

In *Mary’s House, Inc. v. North Carolina*, the district court considered an ADA claim brought by homeless plaintiffs residing in a shelter that assisted women recovering from substance abuse or addiction. The court reasoned that these women had been homeless before being admitted to the shelter and could therefore allege that they had a qualifying disability to state a claim under the ADA.³²² *Mary’s House* and *Society Without a Name* suggest that courts might be receptive to ADA claims brought by homeless job applicants in the future.

Homeless advocates can also bring disparate-impact claims under the ADA as a means of combating employment discrimination against the large number of homeless individuals who are disabled.³²³ Indeed, thirty-eight percent of the sheltered homeless population is disabled – more than double the proportion of the U.S. population that is disabled (fifteen percent).³²⁴ Courts have recognized that the ADA bars practices that have a discriminatory impact on homeless populations who are also disabled.³²⁵ For instance, one court held that an ADA-based disparate-impact claim against the City of New Orleans was viable given the number of disabled individuals who were impacted among the local home-

319. *Id.* at 347-49; *see also id.* at 356-57 (Wynn, J., concurring in part and dissenting in part) (finding that the plaintiffs raised plausible discrimination claims under the ADA).

320. *Id.* at 345.

321. *See id.* at 353-54 (Motz, J., concurring in part and dissenting in part); *id.* at 357 (Wynn, J., concurring in part and dissenting in part).

322. *Mary’s House, Inc. v. North Carolina*, 976 F. Supp. 2d 691, 702 (M.D.N.C. 2013).

323. *See* 42 U.S.C. § 12112(b)(3) (2012); *Raytheon Co. v. Hernandez*, 540 U.S. 44, 50 (2003) (acknowledging the existence of a disparate-impact claim under the ADA).

324. OFFICE OF CMTY. PLANNING & DEV., U.S. DEP’T OF HOUS. & URB. DEV., THE 2011 ANNUAL HOMELESS ASSESSMENT REPORT TO CONGRESS 20 (2012).

325. *See, e.g., United States v. City of New Orleans*, No. 12-2011, 2013 WL 1767787, at *7 (E.D. La. Apr. 24, 2013) (allowing a disparate-impact ADA claim); *Boykin v. Gray*, 895 F. Supp. 2d 199, 214-17 (D.D.C. 2012) (recognizing disparate treatment and disparate impact claims as cognizable under the ADA, but rejecting plaintiffs’ particular claim for not providing detailed allegations about the plaintiffs’ disabilities, the percentage of the shelter’s population that was disabled, or the percentage of disabled individuals in the city’s homeless population).

less population.³²⁶ In analogous fashion, homeless advocates might challenge discriminatory employment practices that have a disparate impact on homeless individuals with disabilities who are capable of performing the required job functions.

A prospective employee who is rejected from a position because an employer believes that homelessness is indicative of a disability might have the greatest chance of relief under an ADA claim. An ADA disparate-impact or disparate-treatment claim, like a Title VII disparate-impact claim, would not necessarily focus on the plight of a homeless job seeker or have the rhetorical power of bringing a claim on behalf of the homeless. Nevertheless, there are a number of advantages. In a disparate-treatment case, unlike a disparate-impact case, obstacles associated with obtaining numbers and statistics to prove discrimination do not exist. An ADA claim would likely provide a more certain avenue of relief because only one person has to show intentional discrimination, perhaps through an email or interview question.

Moreover, for an ADA claim, the “plaintiff’s burden [of proving a prima facie case of disability discrimination] is minimal.”³²⁷ For example, a prima facie violation would be established if an employer were to ask an applicant about drug use, unless that employer restricted the question to: “Are you unlawfully, presently using drugs?” Additionally, state agencies might not handle disparate-impact cases effectively due to a lack of resources and of technical competency to perform the requisite statistical analyses. Ban the Address would help reveal instances of ADA violations. Without the policy, employers can reject job applicants based on the initial application without providing any reason for doing so. Under the proposed framework, homeless job applicants would have more information to determine whether the employer violated federal law.

Homeless job applicants who encounter employment discrimination might obtain relief through the courts. Yet, due to the shortcomings of the strategies discussed in this Section and the uncertainties of enforcing HBORs and Title VII disparate-impact claims in this context, advocacy strategies should also be employed in order to lay a foundation for legal success and most effectively combat this practice.

326. *City of New Orleans*, 2013 WL 1767787, at *6-7.

327. *Primmer v. CBS Studios, Inc.*, 667 F. Supp. 2d 248, 256 (S.D.N.Y. 2009); *see also Willnerd v. First Nat’l Neb., Inc.*, 558 F.3d 770, 778 (8th Cir. 2009) (“The evidentiary showing required at the prima facie stage is ‘minimal . . .’” (quoting *Pope v. ESA Servs., Inc.*, 406 F.3d 1001, 1007 (8th Cir. 2005))).

CONCLUSION

One of the first questions on job applications is about the applicant's address. The consequences of this question on job seekers who have been homeless or who are currently homeless have not been explored in the literature. Advocacy campaigns suggest that publicizing the benefits of reform can help change even a well-established practice that has posed barriers to employment. Indeed, the Ban the Box campaign has ensured that half of the United States population, or 185 million Americans, now live in jurisdictions with fair chance hiring policies.³²⁸ Two of the largest employers of low-wage workers, Target and Walmart, voluntarily eliminated inquiries about conviction history from initial job applications, and other businesses have followed suit. By highlighting the numerous advantages of Ban the Address policies, homeless advocates should likewise obtain similar support in attaining reform.

Ending discrimination in the job application process is not sufficient to assure stable and consistent employment. Homeless individuals are confronted with many barriers in obtaining jobs that resemble those faced by low-income job applicants, including a lack of transportation and childcare, mental health impairments and substance abuse histories, criminal records, and educational limitations.³²⁹ The difficult experience of homelessness itself can also serve as an impediment to employment.³³⁰ Additionally, issues related to housing costs, wages, and benefits must also be addressed; indeed, there is no place in our country where a person earns enough income from a minimum-wage job to afford a one-bedroom unit.³³¹ Eliminating employment barriers necessitates partnerships among employers, social service providers, government agencies, and homeless individuals in order to create comprehensive, sustainable support for applicants. Moreover, a number of homeless people "have both separate and overlapping barriers to employment, so strategies should be tailored to individual needs rather than attempting to apply one-size-fits-all solutions."³³²

328. Evans, *supra* note 20, at 13.

329. David Long, et al., *Employment and Income Supports for Homeless People*, U.S. DEP'T HOUSING & URB. DEV. 11-3 (2007), <http://www.huduser.gov/publications/pdf/p11.pdf> [<http://perma.cc/G9QR-BZYY>].

330. *Overcoming Employment Barriers*, *supra* note 6, at 1.

331. *A Plan: Not a Dream-How To End Homelessness in Ten Years*, *supra* note 123, at 21.

332. *Overcoming Employment Barriers*, *supra* note 6, at 2.

Nevertheless, while eliminating discrimination in the employment process is just one piece of this broader enterprise, it is a critical one.³³³

The benefits of Ban the Address would be twofold. First, when employers refrain from requesting the addresses or residency history of job applicants during the initial job application stages, they will no longer make stereotypical judgments about the employability of homeless individuals. As a result, these employers are more likely to evaluate these individuals' relevant skills and qualifications in determining whether to extend them a provisional offer of employment. Second, the strategy would counteract the deterrent consequence that queries about residency history often have on individuals who have experienced homelessness. In the same way that people with a conviction history are expected to be more likely to apply for jobs when initial applications do not inquire about criminal records, homeless individuals are more likely to apply for jobs when employment applications do not ask for addresses or residency history. Furthermore, the societal value argument that helped fueled Ban the Box applies with equal force to a Ban the Address campaign. Just as enabling people with records to obtain jobs reduces childhood poverty and contributes to stronger families and safer communities,³³⁴ these benefits accrue when homeless people are able to secure stable employment.

A Ban the Address approach, where employers only ask for a job applicant's address after granting a provisional offer of employment, would also inform potential plaintiffs of the reason why they were refused the positions for which they applied, making litigation successes more likely. Other successful movements have illustrated that advocacy efforts can lay a foundation for judicial victories. In jurisdictions with robust Ban the Box policies, where an employer is not permitted to inquire about an applicant's criminal history until the employer has extended a conditional offer of employment, an applicant will know how the employer used her criminal history when evaluating her and be better positioned to mount a Title VII challenge.³³⁵ Similarly, if employers are only permitted to ask for an applicant's address after extending a conditional offer of employment, numerous homeless applicants will have a better understanding of whether they experienced illegal discrimination and be better informed in deciding whether to pursue legal action.

333. See *supra* Section I.B.

334. Rodriguez & Christman, *supra* note 14, at 5.

335. See *id.* at 217 (explaining the requirement for covered employers in Hartford, Connecticut to extend conditional offers of employment prior to inquiring about applicants' criminal records).

Until employers refrain from discriminating against homeless job applicants, homeless advocates and businesses can help break the cycle of poverty by providing addresses or P.O. boxes to homeless job applicants. While this strategy will not protect against discrimination entirely, it can provide much-needed encouragement to homeless applicants who believe that the job search process is futile due to their lack of stable residency. A combination of both legal and nonlegal tactics has the best chance of enabling homeless job applicants to obtain employment on their merits, regaining self-sufficiency and dignity. This is an outcome that is not only good for business but will result in safer and more prosperous communities everywhere.

APPENDIX

Part I: Questions and Response Information from the Interviews, Focus Group, and Survey

A. Interview Questions

1. What are the biggest problems facing homeless people?
2. What should be done about them?
3. Can you please tell me your thoughts on the following issues: space, mental health, employment, police abuse, gang violence, private places open to the public, veteran health?

B. Focus Group Questions

1. What is the biggest problem facing the homeless community in New Haven?
2. What are the biggest struggles that you face being homeless?
3. What is your general experience with the police?
4. Have you personally had much interaction with the New Haven police? In public places? In private places?
5. Have you ever been asked to leave a public place like the Green? How did this affect you?
6. Has anyone ever asked you to leave a private place, like a coffee shop? Why? What happened? How did this affect you?
7. Are there any policy changes you would like to see in the way that homeless people are treated in private places open to the public, like Starbucks?
8. Are there certain members of the homeless community whom you believe are targeted or more likely to be approached by the police?
9. Are there any businesses in particular where you have had this experience?
10. What three things could New Haven do to address homelessness?
11. Are there any changes you would like to see with the New Haven police?

C. Springwire Survey Prompt

Hi there. This is Trisha with Springwire and I'd like to ask you a question about what you think might help best fight employment discrimination for folks who are homeless, when they don't have a home address to put on a ré-

sumé. As you may know, sometimes shelters or other organizations will let folks who don't have a permanent address use their address to put on résumés. These social service addresses, however, can be recognized by potential employers. I'm working with a student who would like to help combat this issue and there are two ideas she has of things to focus on, but we don't know how helpful either would actually be.

1. Trying to get people or businesses to donate a shared P.O. box address for folks to use. So while it probably wouldn't be a personal P.O. box, maybe having several different P.O. box addresses for a city might make it more difficult to be recognized.
2. Trying to get discounts on personal P.O. boxes—only you would have access to the box but you would have to pay a small fee each month.

What do you think? Do you think that employers discriminate against homeless people who put down the address of a shelter? Do you think that either a shared P.O. box or personal P.O. box would be helpful, or have other ideas? If you have any thoughts, please press 4 and leave a comment now. I'll let you know in the coming weeks if we get any good ideas and what the student decides to focus on. And thanks so much for your time and help.

D. Participant Characteristics for Interviews, Focus Group, and Survey

	Number of Participants	Gender	
		Male	Female
Interviews	35	30	5
Focus Group	8	5	3
Springwire Survey ³³⁶	127	65	62

Part II: Questions Implicating Housing Status in Applications for Staffing Firms and Low-Wage Employers

A. Application Requirements of Staffing Firms

³³⁶ Approximately 1,426 individuals were contacted for the Springwire survey, and 127 responses were received. This translates to a response rate of about nine percent.

BAN THE ADDRESS

Staffing Firm	Home Address
Adecco	No
Allegis Group	No
Express Employment Professionals	Yes
Kelly Services	Yes
Manpower Group	Yes
Randstad Holding	No
Robert Half International	Yes
TrueBlue	Yes
Total	5

B. Application Requirements of Forty Low-Wage Employers (as of 2012)³³⁷

Company	Residency History	Transportation	Home Phone	Home Address
Abercrombie & Fitch, Co.	No	No	No	Yes
Aramark Corp.	No	No	No	Yes
Bloomin' Brands, Inc. (Outback Steakhouse)	No	Yes	No	Yes
Bob Evans Farms, Inc.	No	Yes	No	Yes
Brinker International, Inc. (Chili's)	No	Yes	No	Yes
Buffalo Wild Wings, Inc.	No	Yes	No	Yes
Burger King Holdings, Inc.	No	No	No	Yes
CKE Restaurants, Inc. (Carl's Jr.)	No	No	No	Yes
CKE Restaurants, Inc. (Hardee's)	No	No	No	Yes
Compass Group PLC	No	No	No	Yes
Couche-Tard, Inc. (Circle K)	No	No	No	Yes
Cracker Barrel Old Country Store	No	No	Yes	Yes
Darden Restaurants, Inc. (Capital Grille)	No	No	No	Yes

³³⁷. See *Big Business, Corporate Profits, and the Minimum Wage*, *supra* note 33. To gain a better sense of how homeless individuals actually confront these address requirements, I also examined applications for well-known subsidiary corporations owned by these forty low-wage employers. Because some employers own multiple subsidiaries, this approach led me in some cases to look at multiple applications affiliated with the same parent corporation. As a result, this table includes results from forty-six low-wage job applications rather than just forty.

Darden Restaurants, Inc. (Olive Garden)	No	No	No	Yes
Denny's Corp.	No	Yes	No	Yes
DineEquity, Inc. (Applebee's)	No	Yes	No	Yes
DineEquity, Inc. (IHOP)	No	No	No	Yes
Doctor's Associates Inc. (Subway)	No	No	No	Yes
Dollar General Corp.	No	Yes	Yes	Yes
Dollar Tree, Inc.	No	No	Yes	Yes
Domino's Pizza, Inc.	No	No	No	Yes
Dunkin' Brands Group, Inc.	No	No	Yes	Yes
Family Dollar Stores, Inc.	No	No	Yes	Yes
Gap, Inc.	No	No	Yes	Yes*
J.C. Penney Company, Inc.	No	No	No	Yes
Jack in the Box, Inc.	No	Yes	No	Yes
Kohl's Corp.	No	No	Yes	Yes
Macy's Inc.	No	No	Yes	Yes
McDonald's Corp.	Yes	No	No	Yes
Panera Bread Co.	No	No	No	Yes
Papa John's International, Inc.	No	No	No	Yes
Ross Stores, Inc.	No	No	No	Yes
Ruby Tuesday, Inc.	No	No	Yes	Yes
Sears Holding Corp.	No	No	No	Yes
Seven & I Holdings (7-11)	No	No	No	Yes
Sodexo S.A.	No	No	No	Yes
Sonic Corp.	No	No	No	Yes
Starbucks Corp.	No	No	No	Yes
Target Corp.	No	No	No	Yes*
TJX Cos., Inc. (T.J. Maxx)	Yes	No	No	Yes
TJX Cos., Inc. (Marshall's)	Yes	No	No	Yes
Wendy's Co.	No	Yes	No	Yes
Wal-Mart Stores, Inc.	No	No	No	Yes
Yum! Brands, Inc. (KFC)	No	No	No	Yes
Yum! Brands, Inc. (Pizza Hut)	No	Yes	Yes	Yes*
Yum! Brands, Inc. (Taco Bell)	No	No	No	Yes
Total	3	10	10	46
* Specifically requires a permanent address				