

**NO ROOM IN THE INN: ASSESSING THE VALIDITY OF  
THE UNITED STATES' RESERVATION TO ICESCR &  
IMPLICATIONS CONCERNING HOMELESSNESS**

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**Abstract**

*This Note demonstrates that the United States' practice of making reservations limiting its obligations to nothing beyond existing federal and constitutional law when entering human rights treaties consistently undermines the objects and purposes of those treaties, making the United States' reservations invalid. Relying on the United States' treatment of homelessness as a violation of the International Covenant on Economic, Social and Cultural Rights ("ICESCR"), this Note argues that the United States should pass legislation to enter existing human rights treaties into force, overriding any non-self-executing clauses previously attached to the treaties. The United States should also accept the additional obligations in human rights treaties as requiring more than what the Constitution establishes.*

*Based on an analysis of obligations under the ICESCR and other human rights treaties, the United States could pursue a constitutional amendment that expresses and endorses human rights. In tandem, other developed countries should stand against the United States' reservations made to human rights treaties by naming and shaming the United States for its behavior. Finally, this Note also describes models implemented by other States and analyzes their viability in the United States.*

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## I. INTRODUCTION

I spent the summer of 2024 working in downtown Salt Lake City, Utah. My daily commute into the city exposed me to the unhoused crisis in the city as I walked past person after person experiencing homelessness. Sometimes I would offer food or snacks. Sometimes I fearfully avoided eye contact. And all the time, I felt immense sadness at witnessing these human beings who did not have access to a home or even a roof over their heads. I wondered how different my life would be if I slept each night on a patch of grass where people walking to work strolled past me minute after minute—a life without any privacy or private space.

Liz, a woman who experienced homelessness starting in 2016 when her husband walked out on [her] three weeks before [her] mother died of cancer, describes the terror of taking a shower at a shelter:

You delayed taking showers—it was dangerous. You're a sitting duck. It got to where my friend and I would go in there together: One of us would take their clothes off, hand it to the other person. They'd stand there and kind of guard you while you took a shower. I would have never gone in there and took showers without somebody with me. That is a fact.<sup>1</sup>

Liz had access to a roof over her head, but she was missing the privacy and security that the human right of adequate housing includes. Another woman who has experience being unhoused,

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<sup>1</sup> Susan Shain & Aidan Gardiner, *What's Homelessness Really Like? 30 People Answer Questions and Share Their Experiences*, N.Y. TIMES (Feb. 10, 2023), <https://www.nytimes.com/interactive/2023/02/10/headway/homelessness-mental-health-us.html>.

Jessica, describes why her shower in her new house is her favorite spot:

For so long, I was taking communal showers. One of the first things I got when I was stabilizing was hygiene products: shower gel, shampoo of my own. Now I have, like, five different shampoos and really expensive body wash. And I have that privacy, and there's just nothing like that.<sup>2</sup>

Again, the concept of privacy and security is of utmost importance to a person experiencing homelessness. Just as it was for Jessica, privacy is often one of the best parts of having a stable housing situation. The stories of these two women serve as a small indicator of what being denied the human right to housing means; since both have now secured housing, they also illustrate the parts of having adequate housing that are of the utmost value and importance.

Tragically, close to two billion people worldwide lack adequate housing.<sup>3</sup> The Office of the High Commissioner of Human Rights (“OHCHR”) of the United Nations (“UN”) states that: “More than 1.8 billion people live in informal settlements or inadequate housing with limited access to essential services such as water and sanitation [or] electricity and are often under threat of forced eviction.”<sup>4</sup> The right to housing, while a human right recognized under international law, is being denied to many. OHCHR further identifies that “many economically advanced countries” are experiencing a rise in homelessness<sup>5</sup> Homelessness, according to OHCHR, “is one of the most severe violations of the right to adequate housing.”<sup>6</sup>

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<sup>2</sup> *Id.*

<sup>3</sup> U.N. OFF. OF THE HIGH COMM’R FOR HUM. RTS., *The Human Right to Adequate Housing: Special Rapporteur on the Right to Adequate Housing*, <https://www.ohchr.org/en/special-procedures/sr-housing/human-right-adequate-housing> [hereinafter *OHCHR Special Rapporteur on the Right to Adequate Housing*].

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> U.N. OFF. OF THE HIGH COMM’R FOR HUM. RTS., *The Right to Adequate Housing*, UN-Habitat Fact Sheet No. 21 (Rev. 1), [https://www.ohchr.org/sites/default/files/Documents/Publications/FS21\\_rev\\_1\\_Housing\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/FS21_rev_1_Housing_en.pdf).

Specifically, in the United States, an estimated 653,100 people experienced homelessness each day in 2023.<sup>7</sup> The Organisation for Economic Co-operation and Development (“OECD”) compiles data from multiple countries to create more comparative numbers of homelessness. “In about half of the countries, more than 100 in every 100,000 people are homeless.”<sup>8</sup> The United States reports 193 people per 100,000 that experience homelessness.<sup>9</sup> Although the United States does not have the largest proportion of people experiencing homelessness, the United States has a bigger homeless population relative to its population than such countries as Canada, Denmark, Finland, Japan, and Spain.<sup>10</sup>

The United States has consistently entered reservations—statements that modify the legal obligation of a multilateral treaty—to international human rights treaties, stating the United States has no additional obligations beyond those required by the Constitution and domestic law.<sup>11</sup> The United States has not ratified the International Covenant on Economic, Social and Cultural Rights (“ICESCR”),<sup>12</sup> but based on past practice, the United States will likely maintain a similar constitution/domestic law reservation to the ICESCR if it ever ratifies the treaty. A reservation claiming that the ICESCR imposes no additional obligations on the United States beyond those already required under the Constitution and domestic law undermines the object and purpose of the ICESCR. The United States should pass legislation to enter existing human rights treaties into force,

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<sup>7</sup> U.S. DEP’T HOUSING AND URBAN DEVEL., *The 2023 Annual Homelessness Assessment Report (AHAR) to Congress 2* (2023), <https://www.huduser.gov/portal/sites/default/files/pdf/2023-AHAR-Part-1.pdf> [hereinafter *2023 AHAR Report*] (“On a single night in 2023, roughly 653,100 people—or about 20 of every 10,000 people in the United States—were experiencing homelessness.”).

<sup>8</sup> Bastian Herre & Pablo Arriagada, *Homelessness*, OUR WORLD IN DATA (last visited Nov. 23, 2024), <https://ourworldindata.org/homelessness>.

<sup>9</sup> *Id.*

<sup>10</sup> INST. GLOBAL HOMELESSNESS, *State of Homelessness in Countries with Developed Economies*, 9-10 (May 2019), [https://www.un.org/development/desa/dspd/wp-content/uploads/sites/22/2019/05/CASEY\\_Louise\\_Paper.pdf](https://www.un.org/development/desa/dspd/wp-content/uploads/sites/22/2019/05/CASEY_Louise_Paper.pdf).

<sup>11</sup> See generally Dinah Shelton, *State Practice on Reservations to Human Rights Treaties*, 1983 CAN. HUM. RTS. Y.B. 205 (1983).

<sup>12</sup> U.N. OFF. OF THE HIGH COMM’R FOR HUM. RTS., *Status of Ratification: Interactive Dashboard*, “Ratification of 18 International Human Rights Treaties,” <https://indicators.ohchr.org>.

overriding any non-self-executing clauses previously attached to the treaties. The United States should also accept the additional obligations in human rights treaties as requiring more than what the Constitution establishes. Thus, the Constitution could be considered a floor of rights. Particularly regarding homelessness, the United States should ratify the ICESCR and pursue a policy where shelters and other temporary housing amenities are modified into longer-term rental locations modeled by Finland. Such a policy would be most effective if the United States also decriminalized homelessness and increased the supply of housing available.

Part II explains why this paper focuses on the right to housing when determining the validity of the United States' reservations to human rights treaties. It describes the right to adequate housing and cites the major international declarations and conventions that provide it.

Part III of this paper defines reservation and describes the United States' practice of reservations regarding multilateral human rights treaties. Specifically, Part Three grapples with the apparent United States policy of using reservations to limit the obligations in human rights agreements by claiming that its ratification of the treaty does not impose any obligations beyond those required by existing domestic law or the Constitution.

Part IV illustrates the homelessness crisis in the United States. It provides statistics to paint the picture of how widespread the problem is, who is experiencing homelessness, and where homelessness is most prevalent. Additionally, this part briefly discusses the recent U.S. Supreme Court case, *City of Grant's Pass, Oregon v. Johnson*, that allows criminalization of some aspects of homelessness.<sup>13</sup> This part concludes that the current treatment of homelessness in the United States and its reservations typically made to human rights treaties demonstrate a failure of the United States to provide adequate housing, which violates the norms established by the ICESCR.

Part V proposes multiple solutions and actions the United States should take to better ensure and protect the right to adequate housing. First, I suggest the United States withdraw all unnecessary reservations to existing human rights treaties.

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<sup>13</sup> *City of Grant's Pass, OR v. Johnson*, 144 S. Ct. 2202 (2024).

Second, I recommend ratifying the ICESCR and then passing legislation that universally implements all human rights treaties the United States has signed. Third, the United States could pursue a constitutional amendment that expresses and endorses human rights. Fourth, I encourage other developed countries to stand against the United States' reservations made to human rights treaties and to name and shame the United States for its behavior. Finally, I provide multiple examples of State models of how to address homelessness and analyze their viability in the United States to reinforce how the United States can support those experiencing homelessness.

## II. THE RIGHT TO HOUSING

This Note focuses on the right to housing to analyze whether the United States' practice of reservations to human rights treaties undermines the purpose of the human rights treaties themselves. "The human right to adequate housing, which is thus derived from the right to an adequate standard of living, is of central importance for the enjoyment of all economic, social and cultural rights."<sup>14</sup> The right to an adequate standard of living helps to make the other rights possible because, as is demonstrated in Maslow's hierarchy of needs, until the basic material needs are met, the higher order needs that are accompanied by rights to political representation and participation, right to work/labor, and more are largely unattainable.<sup>15</sup> They require that individuals have their more basic needs taken care of, one of which is sufficient shelter, before they can pursue more intellectual, higher order rights. Nelson Mandela said, "Freedom is meaningless if people cannot put food in their stomachs, if they can have no shelter, if illiteracy and disease continue to dog them."<sup>16</sup> Mandela articulates a common-

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<sup>14</sup> COMM. ON ECON., SOC. & CULTURAL RTS., *Gen. Comment No. 4: The Right to Adequate Housing*, ¶ 1, U.N. Doc. E/1992/23 (Dec. 13, 1991) [hereinafter *Gen. Comment No. 4*].

<sup>15</sup> Abraham Harold Maslow, *A Theory of Human Motivation*, 50 *PSYCH. REV.* 370 (1943).

<sup>16</sup> OUR FATHER'S HOUSE SOUP KITCHEN, *40+ Quotes That Will Open Your Eyes About Homelessness* (Oct. 17, 2023), <https://ofhsoupkitchen.org/quotes-that-will-open-your-eyes-about-homeless> (last visited Dec. 2, 2024).

sense idea: people need their basic material needs met before the other rights guaranteed in human rights instruments are worth much.

The right to housing is guaranteed in multiple international treaties and is an area of focus for the United Nations. The Office of the High Commissioner on Human Rights has a page dedicated to “the human right to adequate housing.”<sup>17</sup> The first major recognition of a right to housing comes from Article 25(1) of the Universal Declaration of Human Rights (“UDHR”). UDHR Article 25(1) states:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.<sup>18</sup>

This right was further strengthened and specified in Article 11(1) of the International Covenant on Economic, Social and Cultural Rights:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.<sup>19</sup>

“The United Nations Committee on Economic, Social and Cultural Rights has underlined that the right to adequate housing should not be interpreted narrowly. Rather, it

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<sup>17</sup> *OHCHR Special Rapporteur on the Right to Adequate Housing, supra* note 3.

<sup>18</sup> Universal Declaration on Human Rights, G.A. Res. 217A(III), U.N. Doc. A/RES/217(III), art. 25(1) (Dec. 10, 1948).

<sup>19</sup> International Covenant on Economic, Social and Cultural Rights, art. 11(1), Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter *ICESCR*].

should be seen as the right to live somewhere in security, peace and dignity.”<sup>20</sup> General Comment 4 provides helpful descriptions of adequate housing:

As both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated: “Adequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities - all at a reasonable cost.”<sup>21</sup>

These conditions may seem self-explanatory, but the specificity of definition helps to develop what guaranteeing the right to housing requires of a country. A right to housing includes privacy, space, security, lighting, and ventilation.

Housing . . . connotes the essential elements of space, privacy and identity in the social existence of individual human beings. That is, a house, or even just shelter, is somewhere and that space, if adequate, should provide at least a base level of privacy, and through one’s association with it, also constitute a primary component in the construction of an individual’s social identity.<sup>22</sup>

Beyond simply guaranteeing a right to privacy and physical shelter, housing provides one element of “an individual’s social identity” because it is a way to form community and connection and access various resources. The right to adequate housing is one of the central human rights because without it, many other human rights will not be as meaningful. Failure to ensure the right to

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<sup>20</sup> *OHCHR Special Rapporteur on the Right to Adequate Housing*, *supra* note 3.

<sup>21</sup> *Gen. Comment No. 4*, *supra* note 14 at para. 7.

<sup>22</sup> Ben Saul et al., *Article 11: The Right to an Adequate Standard of Living*, THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS: COMMENTARY, CASES, AND MATERIALS, 1 (2014; online ed., Oxford Academic), <https://doi.org/10.1093/law/9780199640300.003.0013> (last visited 2 Oct. 2024).

adequate housing could even make additional human rights utterly unattainable.

The right to adequate housing is a right that requires states to do more than eliminate homelessness; however, homelessness is “one of the most severe violations of the right to adequate housing.”<sup>23</sup> Because homelessness is such a severe violation, this paper analyzes the United States’ treatment of the homelessness crisis to illustrate that the United States’ reservations to human rights treaties undermine the purpose of the treaty and are therefore legally invalid.

### III. RESERVATION DEFINITION AND THE UNITED STATES’ PRACTICE

The Vienna Convention on the Law of treaties defines reservation as “a unilateral statement, however phrased or named, made by a state, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.”<sup>24</sup> However, the Vienna Convention specifies that reservations are inadmissible if “the reservation is incompatible with the object and purpose of the treaty.”<sup>25</sup> Given the universality of human rights and the desire to create uniform understandings of what constitutes human rights, “[s]ome human rights treaties expressly prohibit reservations, either in whole or in part.”<sup>26</sup>

Although historically, reservations had to be unanimously accepted by all state parties to an agreement to be valid, reservations now are valid between whatever individual parties accept the particular reservations on a state-by-state basis.<sup>27</sup> The 1951 International Court of Justice advisory opinion on

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<sup>23</sup> *OHCHR Special Rapporteur on the Right to Adequate Housing*, *supra* note 14.

<sup>24</sup> Shelton, *supra* note 11, at 207 (quoting Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331 [hereinafter *Vienna Convention*]).

<sup>25</sup> *Id.* at 209 (quoting the *Vienna Convention*); see also Ann Elizabeth Mayer, *Reflections on the Proposed United States Reservations to CEDAW: Should the Constitution Be an Obstacle to Human Rights?*, 23 HASTINGS CONST. L.Q. 727, 731 (1996).

<sup>26</sup> *Id.*

<sup>27</sup> Massimo Coccia, *Reservations to Multilateral Treaties on Human Rights*, 15 CAL. W. INT’L L.J. 1, 4 (1985).

Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide formalized the understanding of reservations as agreements between individual states.<sup>28</sup> This change, referred to as the “rule of reciprocity of reservations,”<sup>29</sup> followed a general perspective shift among states. “With respect to multilateral treaties, the priority had shifted from the principle of the absolute integrity of the treaty to the principle of universal participation.”<sup>30</sup> The Court explained how reservations would now operate as follows:

[E]ach State . . . will or will not . . . consider the reserving State to be a party to the Convention [and] such a decision will only affect the relationship between the State making the reservation and the objecting State. . . . Finally, it may be that a State . . . will . . . object to [a reservation] but that an understanding between that State and the reserving State will have the effect that the Convention will enter into force between them, except for the clauses effected by the reservation.<sup>31</sup>

The Vienna Convention adopted these more flexible reservation rules to “foster a larger participation in multilateral treaties.”<sup>32</sup>

The Vienna Convention essentially sees States as “free to make whichever reservations they deem appropriate unless the treaty forbids some or all of them. Only reservations which are compatible with the object and purpose of the treaty are admissible.”<sup>33</sup> This framework of reservations results in “modern multilateral treat[ies that] involve[] a patchwork of different rights and obligations among the various contracting States, depending upon reservations, objections and acceptances.”<sup>34</sup> To summarize, reservations are statements made by States to

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<sup>28</sup> *Id.* at 6.

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

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* (quoting Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, 1951 I.C.J. 15) (bracketed material in original).

<sup>32</sup> *Id.* at 8.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 9.

treaties that “exclude or modify the legal effect of some provisions;”<sup>35</sup> reservations are only valid if they do not undermine the object and purpose of the treaty; State parties must object to individual reservations if they want to eliminate the obligations between themselves and the State party that made the reservation; and the obligation between States as to the treaty provisions unencumbered by a reservation remain in force.

Although some think that no reservations should be allowed to human rights treaties because human rights are supposedly universal rights held by any person simply due to his or her identity as a human<sup>36</sup>, “[s]tate practice does not seem to differentiate, from the legal point of view, human rights treaties from other multilateral treaties.”<sup>37</sup> Further, “where no jus cogens is involved, under the Vienna Convention rules, States are free to accept any reservation by another State regardless of its content. This is true even where the reservation is incompatible with the object and purpose of the treaty.”<sup>38</sup> An objection to a reservation allows a state to leave open the possibility of challenging the validity of the reservation, but objections could also be made for reasons separate from concerns that the reservation defeats the object and purpose of the treaty.<sup>39</sup>

States make reservations to human rights treaties for a variety of reasons. “One common factor is the presence, in the domestic law of the State concerned, of a constitutional or statutory provision which is somewhat inconsistent with the treaty at stake.”<sup>40</sup> Another common concern, especially among States with a federal system of government, is “maintaining the

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<sup>35</sup> *Id.* at 10.

<sup>36</sup> “Allowing states to enter reservations that signal that they do not intend to comply with human rights conventions therefore defeats the purpose of setting universal norms in the area of human rights. Upholding domestic standards in lieu of international rights standards destroys the aims of human rights treaties. Concerned with compliance with the ICCPR, the Human Rights Committee in 1994 expressed the view that ‘reservations should not systematically reduce the obligations undertaken only to those presently existing in less demanding standards of domestic law,’ because to do otherwise would mean that reservations could lead to “a perpetual non-attainment of international human rights standards.” Mayer, *supra* note 25, at 734.

<sup>37</sup> Coccia, *supra* note 27, at 16.

<sup>38</sup> *Id.* at 32.

<sup>39</sup> *Id.* at 33.

<sup>40</sup> *Id.* at 19.

constitutional balance between the jurisdictions of central and local authorities.”<sup>41</sup> Therefore, reservations do not always indicate “a will not to comply with human rights principles.”<sup>42</sup>

#### IV. THE UNITED STATES’ PRACTICE OF RESERVATIONS TO HUMAN RIGHTS TREATIES

The United States has been a vocal proponent of human rights from post-WWII efforts to draft and pass a Universal Declaration of Human Rights. Even before that involvement, the United States’ Declaration of Independence “rested on this assertion that human rights are universal and binding on all human beings, nations, and states and that it is only to secure these rights that governments legitimately exist.”<sup>43</sup> Despite the founding principle of universal human rights found in the declaration, the United States has not risen to full participation in the international human rights treaties in existence today.

The United States is a party to only five international human rights treaties: the International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”), the International Covenant on Civil and Political Rights (“ICCPR”), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”), the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. The United States has signed but not ratified four human rights treaties: ICESCR, Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”), Convention on the Rights of the Child (“CRC”), and Convention on the Rights of Persons with Disabilities. The United States has not acted on the remaining nine international human rights treaties.<sup>44</sup>

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<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 22.

<sup>43</sup> M. N. S. Sellers, *Universal Human Rights in the Law of the United States*, 58 AM. J. COMP. L. 533, 533 (2010).

<sup>44</sup> U.N. OFF. OF THE HIGH COMM’R FOR HUM. RTS., *Status of Ratification: Interactive Dashboard*, “Ratification of 18 International Human Rights Treaties,” <https://indicators.ohchr.org>.

As grouped by Louis Henkin, the United States' reservations to human rights treaties fall into five categories:

- (1) The United States will not undertake any treaty obligation that it will not be able to carry out because it is inconsistent with the United States Constitution.
- (2) United States adherence to an international human rights treaty should not effect or promise change in existing U.S. law or practice.
- (3) The United States will not submit to the jurisdiction of the International Court of Justice to decide disputes as to the interpretation or application of human rights conventions.
- (4) Every human rights treaty to which the United States adheres should be subject to a "federalism clause" so that the United States could leave implementation of the convention largely to the states.
- (5) Every international human rights agreement should be "non-self-executing."<sup>45</sup>

The United States has a long history of viewing its own constitution as superior to any international human rights treaty.<sup>46</sup> In part because of this sense of constitutional superiority, the United States has failed to ratify many major human rights instruments, including the ICESCR. "Any U.S. president advocating ratification of human rights conventions must contend with a climate of negativity that has been created by forces determined to convince the U.S. public that it has everything to lose and nothing to gain by such ratification."<sup>47</sup>

In 1951, an ABA committee and United States Senator, John Bricker, worked to advance a constitutional amendment "that would have prevented ratification of human rights treaties or at least would have limited their domestic impact."<sup>48</sup> Even for

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<sup>45</sup> Penny M. Venetis, *Making Human Rights Treaty Law Actionable in the United States: The Case for Universal Implementing Legislation*, 63 ALA. L. REV. 97, 105 (2011) [hereinafter *Venetis (2011)*] (citing Louis Henkin, Editorial Comment, *U.S. Ratification of Human Rights Conventions: The Ghost of Senator Bricker*, 89 AM. J. INT'L L. 341, 342 (1995)).

<sup>46</sup> Mayer, *supra* note 25, at 741, 747.

<sup>47</sup> *Id.* at 748.

<sup>48</sup> *Id.* at 749.

human rights treaties on something as universally opposed as genocide, there has been domestic resistance. For example, “the reservations [to the Genocide Convention] included one assertion that nothing in the Genocide Convention required or authorized legislation or action prohibited by the U.S. Constitution as interpreted by our courts.”<sup>49</sup> In general, “regardless of shifts in support of ratifying human rights instruments, the U.S. practice of appending constitutional and other reservations seems to be a constant.”<sup>50</sup> These constitutional and other reservations are “designed to ensure that these treaties would have virtually no domestic legal effect in enhancing human rights.”<sup>51</sup>

Experts find that “[t]he general policy of the United States with respect to all new multilateral human rights treaties has been to view the great majority of their substantive provisions as consistent with the existing constitutions and laws of the United States.”<sup>52</sup> In this framework, consistent is interpreted as not requiring anything more of the United States from entering into these multilateral human rights treaties than what current domestic law (both statutory and Constitutional) requires.

Another way to phrase these reservations is that the United States consistently states that human rights treaties impose nothing more than what the domestic constitution and federal statutes require. “[T]he United States when ratifying treaties, limits the norms it accepts through the attachment of reservations, understandings, and declarations (“RUDs”) which, in effect, render the rights protected no more expansive than their corollaries in the [U.S.] Constitution and laws.”<sup>53</sup> The United States’ reservations limit human rights instruments by narrowing their applicability and obligation to only what is already covered by the United States Constitution or other domestic law.<sup>54</sup> Proponents of such an approach view these

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<sup>49</sup> *Id.* at 751.

<sup>50</sup> *Id.* at 754.

<sup>51</sup> *Id.* at 755 (quoting Paul L. Hoffman & Nadine Strossen, *Enforcing International Human Rights Law in the United States*, in HUMAN RIGHTS: AN AGENDA FOR THE NEXT CENTURY 478 (Louis Henkin & John Lawrence Hargrove eds., 1994)).

<sup>52</sup> Sellers, *supra* note 43, at 550.

<sup>53</sup> James L. Cavallaro, *U.S. Exceptionalism, Human Rights and Civil Society*, 16 AUSTRIAN REV. INT’L & EUR. L. 41, 41 (2011).

<sup>54</sup> Mayer, *supra* note 25, at 756-59.

limitations as honoring the Constitution as a premier document in guaranteeing important rights. However, critics have purported an alternative explanation:

One must question whether the U.S. “constitutional” rationales for reservations to human rights treaties are not merely pretextual and ultimately contrived to give respectability to a preference for adhering to the norms of domestic law regardless of whether or not they are constitutionally mandated. That is, the “constitutional” reservations might have been offered for much the same reason as the “Islamic” reservations made by Muslim countries to human rights treaties—to give respectability to policies of upholding domestic laws that are discriminatory or otherwise deficient by international human rights standards by associating these policies with sacred laws.<sup>55</sup>

Mayer explains that the purported “constitutional” reasons for the United States’ reservations may actually demonstrate its unwillingness to change its domestic law to comply with human rights obligations. Some non-governmental organizations focused on human rights find the United States’ tendency to cling to existing domestic law troubling.<sup>56</sup> Further, “to the extent civil society invokes the Constitution and fails to invoke international human rights language and bodies regularly, these instruments lose their impact and legitimacy.”<sup>57</sup>

Article VI, Clause 2 of the U.S. Constitution,<sup>58</sup> also known as the Supremacy Clause, places treaty law and federal law on the same level of legitimacy, with state law being superseded by both treaty and federal law. Because both treaty and federal law are “supreme,” the controlling law is determined by a last-in-time analysis. Whichever law

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<sup>55</sup> *Id.* at 757-58.

<sup>56</sup> *Id.* at 758.

<sup>57</sup> Cavallaro, *supra* note 53, at 46-47.

<sup>58</sup> U.S. Const. art. VI, § 2.

was passed most recently will be held supreme compared to earlier laws.<sup>59</sup>

Unfortunately, the United States' ratification of many international human rights treaties has been seen as motivated by creating obligations for other nations. The constitutional exceptionalism tends to create the perspective that the United States does not need to make any advancements in human rights.<sup>60</sup> "Whenever the United States has taken the unusual step of ratifying an international treaty governing or defining universal human rights, the motive has been to encourage greater respect for fundamental rights in other nations, rather than to change existing American constitutional guarantees."<sup>61</sup> As further evidence of this intention not to increase any obligations on the United States even when it becomes a party to a human rights treaty, reservations "protect existing understandings of the U.S. Bill of Rights, while also usually . . . requiring that implementing legislation must pass through the U.S. Congress before U.S. courts will apply the provisions of international human rights conventions directly to U.S. cases and controversies."<sup>62</sup>

## V. HOMELESSNESS IN THE UNITED STATES

"On a single night in 2023, roughly 653,100 people—or about 20 of every 10,000 people in the United States—were experiencing homelessness."<sup>63</sup> The 2023 estimates document the "highest number of people reported as experiencing homelessness on a single night since reporting began in 2007."<sup>64</sup> Despite being a global superpower with a reputation for heralding human rights, "the United States still has one of the biggest problems with

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<sup>59</sup> Shea Esterling, *The Illusion of Human Rights: The US Constitution, NSE Declarations and International Human Rights Treaty Law*, 1 MALAWI L.J. 179, 184-85 (2007).

<sup>60</sup> Cavallaro, *supra* note 53, at 50.

<sup>61</sup> Sellers, *supra* note 43, at 549.

<sup>62</sup> *Id.* at 550.

<sup>63</sup> 2023 AHAR Report, *supra* note 7.

<sup>64</sup> *Id.* at 2.

homelessness, even when compared to more impoverished countries.”<sup>65</sup>

HUD’s Annual Report defines a person experiencing homelessness as “a person who lacks a fixed, regular, and adequate nighttime residence.”<sup>66</sup> Experiencing homelessness includes both

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

An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, State, or local government programs for low-income individuals).<sup>67</sup>

HUD’s definition of experiencing homelessness falls within what the ICESCR would consider a failure to provide adequate housing. Over thirty-nine percent of those experiencing homelessness are unsheltered, with individuals making up over thirty-six percent of unsheltered, while unsheltered people in families made up under three percent of the total percentage.

“Households with only adults staying in unsheltered locations comprised the largest single segment of the total population experiencing homelessness.”<sup>68</sup> The next largest group was adults staying in sheltered locations. “Seventy-six percent of all people experiencing homelessness were adults aged 25 or older (494,048 people), 17 percent were children under the age of 18 (111,620 children). Seven percent were young adults aged 18 to 24

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<sup>65</sup> WORLD POPULATION REVIEW, *Homelessness by Country 2024*, <https://worldpopulationreview.com/country-rankings/homelessness-by-country> (last visited Oct. 28, 2024).

<sup>66</sup> 2023 AHAR Report, *supra* note 7, at 4.

<sup>67</sup> *Id.* at 6.

<sup>68</sup> *Id.* at 12.

(47,436 young adults)”<sup>69</sup> “Roughly one in every three individuals experiencing homelessness had experienced a chronic pattern of homelessness (31%), meaning that they have experienced homelessness for extended periods of time and have a disability (as defined by HUD).”<sup>70</sup>

“States with very high rates of overall experiences of homelessness included New York, Vermont, Oregon, and California, with 52, 51, 48, and 46 people experiencing homelessness for every 10,000 people in the state. In the District of Columbia, a single city, 73 of every 10,000 people were experiencing homelessness.”<sup>71</sup> Major cities experienced the most significant increase in people experiencing homelessness compared to suburban or rural cities.<sup>72</sup> Multiple factors can cause homelessness, but it is always at least in part caused by a lack of access to necessary supports and housing. “This [lack of access] can be the result of economic and socio-structural factors, like shortage of affordable housing, extreme poverty, and discrimination; it can occur when systems of care and support fail; and it can occur in response to individual or relational factors, such as relationship violence or personal trauma.”<sup>73</sup> Regardless of the factors that lead to homelessness, the United States has a large population of individuals experiencing homelessness.

Beyond the statistics, the U.S. Supreme Court recently held that cities can criminalize aspects of being unhoused.<sup>74</sup> In

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<sup>69</sup> *Id.* at 14.

<sup>70</sup> *Id.* at 26.

<sup>71</sup> *Id.* at 16.

<sup>72</sup> *Id.* at 19-20.

<sup>73</sup> INSTITUTE OF GLOBAL HOMELESSNESS, *State of Homelessness in Countries with Developed Economies* 3 (2019), [https://www.un.org/development/desa/dspd/wp-content/uploads/sites/22/2019/05/CASEY\\_Louise\\_Paper.pdf](https://www.un.org/development/desa/dspd/wp-content/uploads/sites/22/2019/05/CASEY_Louise_Paper.pdf).

<sup>74</sup> “*Robinson* had authorized ‘a very small’ intrusion by courts ‘into the substantive criminal law’ ‘under the aegis of the Cruel and Unusual Punishment[s] Clause.’ That small intrusion, Justice Marshall said, prevents States only from enforcing laws that criminalize ‘a mere status.’ *Powell v. Texas*, 392 U. S. 533, (1968). It does nothing to curtail a state’s authority to secure a conviction when ‘the accused has committed some act . . . society has an interest in preventing.’ *Id.* That remains true, Justice Marshall continued, regardless of whether the defendant’s act “in some sense” might be described as ‘*involuntary or occasioned by*’ a particular status. *Id.* This case is no different from *Powell*. Just as there, the plaintiffs here seek to expand *Robinson*’s “small” intrusion “into the substantive

this case, Gloria Johnson, a person experiencing homelessness and representing all others similarly situated, attempted to argue that criminalizing aspects of being unhoused violated the 8th amendment prohibition on “cruel and unusual punishment.”<sup>75</sup> However, the U.S. Supreme Court reversed the Ninth Circuit’s decisions, agreeing with Johnson’s argument, and held that criminalizing aspects of homelessness, such as prohibiting encampments in certain areas of a city, was not a cruel and unusual punishment.

This decision further proves the United States’ failure to protect the right to adequate housing. While the text of ICESCR and the relevant general comments do not explicitly prohibit the criminalization of homelessness, implicit within the right to adequate housing is an understanding that the right will be protected. In stark contrast to protecting the right to adequate housing, the United States has allowed cities to punish individuals who do not have access to one of their foundational human rights. Such an approach seems starkly wrong in light of international norms regarding protection of international human rights. Since housing is key to “the enjoyment of all economic, social and cultural rights,”<sup>76</sup> denying adequate housing or even failing to provide sufficient supports to allow access to adequate housing, in addition to allowing criminalization of aspects of homelessness defeats a central tenant of the ICESCR and the UDHR.

While homelessness is only one aspect of the broader human rights scheme, the United States inability to ensure adequate housing is only one example of its larger failure to meaningfully fulfill its obligations under human rights treaties.

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criminal law. . . The only question we face is whether one specific provision of the Constitution—the Cruel and Unusual Punishments Clause of the Eighth Amendment—prohibits the enforcement of public-camping laws. . . The Constitution’s Eighth Amendment serves many important functions, but it does not authorize federal judges to wrest those rights and responsibilities from the American people and in their place dictate this Nation’s homelessness policy.” *City of Grant’s Pass, OR v. Johnson*, 144 S.Ct. 2202, 2219-20, 24, 26 (2024).

<sup>75</sup> Jason Pohl, *Supreme Court Has ‘Greenlighted the Criminalization of Homelessness,’ Berkeley Experts Say*, UC BERKELEY NEWS (June 28, 2024), <https://news.berkeley.edu/2024/06/28/supreme-court-has-greenlighted-the-criminalization-of-homelessness-berkeley-experts-say>.

<sup>76</sup> *Gen. Comment No. 4*, *supra* note 11, at para. 1.

In its discussion of state's ability to criminalize aspects of homelessness, the Supreme Court does not engage in any discussion around the United States' obligations under the ICESCR or the UDHR. The Supreme Court is following the United States' reservations that nothing in the human rights treaties adds any obligation beyond what the Constitution already guarantees; therefore, the U.S. Supreme Court needs only look to the Constitution when determining legality and duty.

However, just as the reservation to limit housing rights to what is in the Constitution fails to provide meaningful human rights, the other reservations made to such treaties as the ICCPR and the CEDAW demonstrate an overall framework that prevents the United States from guaranteeing the tenants of its agreements. The reservations made regarding the rights to adequate housing are similar to reservations the United States makes in other human rights agreements, and by interpreting its obligation as nothing more than what the Constitution provides, the United States fails to provide the benefits it signs onto in these international agreements. Given the inability of the current framework to provide the rights included in the human rights instruments it has ratified and given the failure of the United States to even become a full party to many foundational human rights instruments, the United States should take multiple measures to change its current practice and take steps to increase its compliance with the agreements already ratified.

#### VI. PROPOSED SOLUTIONS FOR IMPROVING ACCESS TO ADEQUATE HOUSING IN THE UNITED STATES

The United States should rely on constitutionally based reservations to human rights treaties only when such a reservation is necessary. Despite the commonality of United States reservations regarding constitutionality on human rights treaties, there is a difference between a treaty obligation that requires something that conflicts with the Constitution and a treaty provision that simply illustrates "a difference between the lower rights protection afforded under United States domestic law, and the more exigent international human rights

principles.”<sup>77</sup> The former is the time the United States should make a reservation. However, the latter is the much more common situation.<sup>78</sup>

A difference in obligation where international norms demand more of the United States than its own Constitution is not inherently a problem because “the Constitution does not impose ceilings on rights, but only floors—minimum acceptable levels of rights protections.”<sup>79</sup> The United States is free to enter into treaties that increase its domestic obligations, and the United States should do so regarding the fundamental human rights treaties, such as the ICESCR, the ICCPR, and the CEDAW. Further, the United States should “reexamine the reservations it has previously attached to human rights treaties, with a view to withdrawing those that are not constitutionally required.”<sup>80</sup>

In addition to limiting its use of reservations to the instances where the treaty obligation would require something the Constitution prohibits, the United States should consider giving legal force to all human rights treaties by passing legislation in Congress.<sup>81</sup> Penny M. Venetis argues that “Human rights treaties will only become the ‘supreme Law of the Land,’ as explicitly mandated in the Constitution's Supremacy Clause, if and only if human rights violations can be adjudicated and courts can order remedies for human rights violations.”<sup>82</sup> She posits that justiciability is possible within the existing United States court system, assuming that Congress passes legislation universally implementing all existing human rights treaties.<sup>83</sup>

Regarding the first step as passing this legislation, Venetis proposes legislation that “obviates the need for specialized implementing legislation for each individual treaty, and thus eliminates the possibility that Congress will use implementing

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<sup>77</sup> Mayer, *supra* note 25, at 758.

<sup>78</sup> *Id.*

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

<sup>80</sup> Louis Henkin, *U.S. Ratification of Human Rights Conventions: The Ghost of Senator Bricker*, 89 AM. J. INT'L L. 341, 350 (1995).

<sup>81</sup> Venetis (2011), *supra* note 45 at 99.

<sup>82</sup> *Id.*

<sup>83</sup> Penny M. Venetis, *Enforcing Human Rights in the United States: Which Tribunals Are Best Suited to Adjudicate Treaty-Based Human Rights Claims*, 23 S. CAL. REV. L. & SOC. JUST. 121, 121-22 (2014).

legislation to compromise the stated goals and scope of human rights treaties,” and thus preserves the object and purpose of each treaty.<sup>84</sup> Step two of Venetis’ suggestion discusses how individuals would seek redress of their violated human rights. She claims that “[o]nce Congress strips human rights treaties of non-self-executing RUDs, individuals whose treaty rights have been violated can seek redress through the federal courts, ostensibly through 42 U.S.C. § 1983.”<sup>85</sup> She argues that because treaties are considered “the Supreme Law of the Land” alongside the Constitution that ratified treaties are included within federal law.

Venetis continues, “Because ratified treaties are federal law, it would seem to follow that, given the plain language of § 1983, the violation of any rights secured under a particular treaty would automatically be an actionable claim under § 1983.”<sup>86</sup> Unfortunately, Venetis admits to a potential interpretative-based complication to her proposed solution: “One cannot assume that every time ‘law’ is mentioned by Congress it means both statutes and treaties. In fact, the federal courts have had great difficulty determining what constitutes ‘and laws’ for purposes of § 1983 adjudication.”<sup>87</sup>

Venetis further demonstrates the specific limitation of § 1983: “Because an individual right must be unambiguously conferred in a treaty’s text to make it enforceable under § 1983, that statute may only work to implement some, but not all, human rights treaties.”<sup>88</sup> Since the existing court remedy in § 1983 is only available for those human rights treaties that sufficiently state an individual claim to the rights, additional legislation is necessary for effective enforcement of the major human rights treaties.<sup>89</sup> Therefore, the universal-implementation legislation should also include explicit language that “makes very

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<sup>84</sup> *Venetis (2011)*, *supra* note 45, at 119.

<sup>85</sup> *Id.* at 130.

<sup>86</sup> *Id.* at 131.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* at 142.

<sup>89</sup> *Id.*

clear Congress's intent to allow human rights treaties to be enforced by the courts.”<sup>90</sup>

Alternatively, or in addition, the United States could follow the example of other democratic nations that “do not treat international human rights as a force threatening the integrity of their constitutions and domestic systems of rights. Instead, their constitutions may treat international human rights as friendly entities and endorse them by express constitutional provisions.” Although it is highly unlikely that an amendment would be added to the Constitution, the United States could pursue a constitutional amendment that endorses international human rights and norms. Such an endeavor would largely help change the perspective of the United States as a non-cooperative party to human rights treaties. If the United States did pass an amendment expressing some foundational human rights beyond those already covered in the U.S. Bill of Rights—such as the right to adequate housing, aspects of the genocide convention and/or the CAT—the United States would regain its place and credibility as a primary proponent of international human rights.

Other states could encourage the United States to improve its treatment of human rights using the soft enforcement measures of naming and shaming. If the United States’ more developed state peers were to call out the United States for failing to enter into human rights treaties in good faith, then the United States may feel more pressure to rely on fewer reservations. However, this approach is unlikely to have a large effect because the United States has already faced international criticism for its approach to human rights treaties, but the United States continues to rely on reservations that narrow its obligations to requiring nothing beyond existing law.

Beyond naming and shaming, other States can provide ideas and models for addressing homelessness to ensure the right to adequate housing. For example, Denmark, Finland, the United Kingdom, and Greece present approaches to progressing toward a human right to adequate housing. Denmark’s approach “provid[es] a range of temporary accommodations, and, at the same time, [enforces] laws against the presence of homeless

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<sup>90</sup> *Id.* at 131.

encampments.”<sup>91</sup> Given recent Supreme Court decisions allowing criminalization of some aspects of homelessness, the United States would benefit from pairing criminalization with providing increased access to temporary accommodations. Currently, there are insufficient shelters and beds for the estimated number of people experiencing homelessness.

Great Britain similarly provides greater access to temporary housing for a larger number of people as a percentage of the population than the United States’ system provides.<sup>92</sup> Based on a count on a single night in 2023, the United States has 76 people per 100,000 living on the streets or in public spaces, with 117 per 100,000 living in temporary accommodations.<sup>93</sup> In comparison, the United Kingdom has only 16 per 100,000 people living on the streets or in public spaces, but has 410 per 100,000 staying in temporary accommodation or shelter.<sup>94</sup> While the United Kingdom has more than triple the number of people experiencing homelessness who are staying in shelters or temporary accommodations compared to the United States, the higher numbers also demonstrate an increased capacity to provide at least temporary shelter compared to the United States. To begin improving the right to adequate housing, the United States should increase the amount of temporary housing available to ensure there is room for the more than half a million people experiencing homelessness on any given night.

Denmark, Great Britain, and Finland, along with other countries, have developed programs to address homelessness based on the Housing First Model, which “advocated[s] providing housing and on-site support for people with a history of mental illness and substance abuse, as a way to end homelessness.”<sup>95</sup> Further, the Housing First Model prioritizes transitioning

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<sup>91</sup> Sasha Abramsky, *Other Countries Know Housing Is a Human Right. Why Doesn't America?*, THE NATION (July 28, 2024), <https://www.thenation.com/article/politics/housing-homelessness-europe-america>.

<sup>92</sup> *Id.*

<sup>93</sup> Herre & Arriagada, *supra* note 8.

<sup>94</sup> *Id.*

<sup>95</sup> WORLD ECONOMIC FORUM, *Homelessness: What Drives It and What's Needed to End It* (August 20, 2024), <https://www.weforum.org/stories/2024/08/homelessness-urban-housing-affordability> (last visited Nov. 23, 2024).

temporary shelters into long-term, affordable rental units.<sup>96</sup> This type of program has been demonstrably successful at reducing homelessness. In Finland, “[b]etween 2008 and 2022 the total number of people experiencing long-term homelessness decreased by 68 percent. Research has shown that on average 80 percent of homeless people have accessed housing through the programme.”<sup>97</sup> The Finnish program involves “partnerships between the state, cities, municipalities, the Y-Foundation and local NGOs.”<sup>98</sup> The state governmental entities direct funding to the cities, municipalities and other organizations to build and develop these rental units.<sup>99</sup>

There are three key aspects of the program: 1) the people living in these units are tenants under contract, which establishes a sense of ownership over their housing situation; 2) the housing units are available without condition, so people do not have to solve all of their potential problems with substance abuse or mental health challenges before acquiring adequate housing; and 3) the housing units include support services that address medical, social, and mental health needs.<sup>100</sup> Other countries have followed Finland’s lead with similar programs; however, some of these “pilot” programs have had less success because they do not provide sufficient housing to meaningfully decrease homelessness.<sup>101</sup> Juha Kaakinen, CEO of the Y-Foundation, which provides low-cost flats to homeless people across Finland, said, “We know what works. You can have all sorts of projects, but if you don’t have the actual homes . . . A sufficient supply of social housing is just crucial.”<sup>102</sup> While the United Kingdom has more shelters available than the United

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<sup>96</sup> Laura Maria Rojas Morales, *Finland's “Housing First” Policy Successfully Tackles Long-Term Homelessness (2008–Ongoing)*, N.Y.U. CTR. ON INT’L COOPERATION (Apr. 16, 2024), <https://www.sdg16.plus/policies/housing-first-policy-finland/#:~:text=Housing%20First%20solves%20long%2Dterm,into%20affordable%20rented%20accommodation%20units> (last visited Nov. 23, 2024).

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

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> Jon Henley, *‘It’s A Miracle’: Helsinki’s Radical Solution to Homelessness*, THE GUARDIAN (June 3, 2019, 3:00 AM), <https://www.theguardian.com/cities/2019/jun/03/its-a-miracle-helsinkis-radical-solution-to-homelessness>.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

States, the United Kingdom, like the United States, lacks sufficient housing, which partially explains why the United Kingdom has documented consistently increasing numbers of people experiencing homelessness in recent years.<sup>103</sup> While the United States should follow the United Kingdom's example of increasing available shelters, it should more closely model its programs after Finland's by ensuring sufficient housing units are available to people previously experiencing homelessness.

Finally, some countries and cities have included legislative provisions against homelessness. Athens, Greece, passed a homeless bill of rights.<sup>104</sup> The mayor of Athens said that the homeless bill of rights "means the recognition of the fundamental rights of all people to housing, employment, education, and health. By adopting this charter, Athens agrees to ensure that the homeless have a right to equal treatment, housing, basic sanitary facilities, emergency services, privacy, etc."<sup>105</sup> Athens' homeless bill of rights accompanied the creation of an additional shelter that could "house up to 400 people."<sup>106</sup> Finland "included the right to housing and provision of support and care for those unable to obtain the means necessary to live in dignified conditions" in its constitution.<sup>107</sup> Finland and Athens did not stop with their more symbolic statements guaranteeing the rights of people experiencing homelessness. They both took additional concrete measures to increase support and services provided to people experiencing homelessness.

The United States has some public support for increased numbers of shelters, but individuals generally do not want shelters built in or near their own communities.<sup>108</sup> Public information campaigns on the success of the Finnish model and other successful efforts could help bolster domestic support for the

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<sup>103</sup> Ann Cooban, *This Measure of Homelessness in England Has Reached a 25-Year High*, CNN (July 26, 2023, 10:36 AM), <https://www.cnn.com/2023/07/26/economy/england-homelessness-increase/index.html>.

<sup>104</sup> Abramsky, *supra* note 91.

<sup>105</sup> Svilena Iotkovska, *Athens Takes Another Step Towards Eliminating Homelessness*, THE MAYOR (Mar. 12, 2021), <https://www.themayor.eu/en/a/view/athens-takes-another-step-towards-eliminating-homelessness-7408>.

<sup>106</sup> *Id.*

<sup>107</sup> Rojas Morales, *supra* note 96.

<sup>108</sup> Abramsky, *supra* note 91.

development of shelters and longer-term units among United States citizens. In addition, citizens may be more supportive of these additional measures if they were aware that the Housing First Model is more economically efficient than alternatives.<sup>109</sup> Finland reports that “[t]he state now spends 15,000 Euros less per homeless person each year, as a result of less emergency situations that follow assaults, injuries, and breakdowns.”<sup>110</sup> Finland initially spent approximately 408 million dollars (accounting for inflation and currency conversion from euros to U.S. dollars) to implement this program.<sup>111</sup> While estimating an exact initial cost to the United States in implementing this program is difficult,<sup>112</sup> researchers have determined that the United States could feasibly pursue a Housing First Model.<sup>113</sup>

The United States could implement a Housing First model similar to Finland, despite being a less homogenous country, because 1) “[t]he choice of spending on social welfare is essentially a political choice, not one dictated by homogeneity” and 2) the United States is a wealthier nation than Finland overall.<sup>114</sup> Increasing information and awareness of the viability of Housing

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<sup>109</sup> Rojas Morales, *supra* note 96.

<sup>110</sup> THE ATLAS, *Housing First policy in Finland Provides Long-Term Housing & Stability to Homeless Populations*, <https://the-atlas.com/projects/finland-housing-first-homelessness> (last updated Aug. 4, 2022) (citing Kontrast.at, *Finland Ends Homelessness and Provides Shelter for All in Need*, THEBETTER.NEWS (Nov. 10, 2020), <https://thebetter.news/housing-first-finland-homelessness/>).

<sup>111</sup> In 1987 when Finland first began addressing homelessness, there were approximately 18,000 people experiencing homelessness. Patrice Bergeron, *Finland’s Successful Approach to Ending Homelessness Catches Eye of Quebec City*, GLOBAL NEWS (May 5, 2024, 5:57 PM), <https://globalnews.ca/news/10198145/quebec-finland-successful-approach-homelessness-model>. Between 2004 and 2008 when the Housing First Model was largely introduced, there were between 7,400 and 7,960 people experiencing homelessness. Marybeth Shinn & Jill Khadduri, *How Finland Ended Homelessness*, U.S. DEP’T HOUSING & URBAN DEV., 22 CITYSCAPE: J. OF POLICY DEV. & RES. 75, 75 (2020).

<sup>112</sup> Finland spent approximately \$270 million euros in the first 10 years of its Housing First program. Bergeron *supra* note 111. Assuming similar per person funding as Finland, the United States would spend \$350 billion initially based on an estimated 653,100 people that experienced homelessness in 2023. (This is a very rough estimate, and a more exact number should be determined by assessing the available housing units for the program, support services and funding already allocated that could be re-routed to the new model, cost of rental unit developments, and other more specific comparative factors to Finland’s implementation.) 2023 AHAR Report, *supra* note 7, at 2.

<sup>113</sup> Shinn & Khadduri, *supra* note 111, at 78-79.

<sup>114</sup> *Id.*

First programs could help bolster the ability of the United States to implement similar policies by improving public support and political will. The current decision of the United States to fund fewer social welfare programs overall is simply a political choice, so changing public opinion could mean the United States makes a different decision in the future. The United States needs to explore solutions to the homelessness crisis to ensure that people in the United States truly have the right to adequate housing. The current status quo of homelessness in the United States fails to provide adequate housing. It is time to do something different, such as implementing the Housing First model.

## VII. CONCLUSION

The United States was an integral committee member that drafted the UDHR, with Eleanor Roosevelt as the committee chair, working to create the first international declaration of widely accepted human rights. Unfortunately, the United States' practice of making reservations when entering any multilateral human rights treaty has decreased its credibility as an advocate, protector, and guarantor of human rights. United States reservations to human rights treaties tend to limit the obligations to nothing more than what is already required by the U.S. Constitution and domestic law.

The right to adequate housing is one of the fundamental human rights, and the OHCHR has made repeated statements that securing the right to adequate housing is often a necessary precursor to the enjoyment of many other human rights. The United States has not ratified the ICESCR, which explicitly includes a right to adequate housing; however, the United States did vote to approve the UDHR, which also discusses the right to housing. Further, the United States has signed the ICESCR despite never ratifying the covenant. Recent estimates state that approximately 653,100 individuals experienced homelessness on a given night in the United States. These individuals do not have the security, privacy, and shelter that they have a right to under the right to adequate housing.

The United States should ratify the ICESCR without reservations that would narrow obligations to nothing more than is already required by the Constitution and domestic law,

withdraw any unnecessary reservations from other human rights instruments based on a narrow constitutional analysis, and pass legislation that universally implements all ratified human rights treaties. If the United States takes these actions, it can once again serve as a leader among states regarding guaranteeing and enforcing human rights.

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