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**Comments**

## Chronic Nuisance Ordinances: Turning Victims of Domestic Violence into “Nuisances” in the Eyes of Municipalities

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### ABSTRACT

Chronic nuisance ordinances are municipal ordinances that identify and terminate unwanted “nuisance” activities. Although chronic nuisance ordinances originally targeted households that harbored prolific drug use, many municipalities have broadened the scope of their ordinances to include a wide range of activities, including acts of domestic violence. As a result, domestic violence victims are now frequently deemed “nuisances” when they call the police for protection. Municipalities, to abate the “nuisances,” evict the domestic violence victims from their homes. Because chronic nuisance ordinances are gaining in popularity throughout the country, an increasing number of domestic violence victims are being victimized twice: once by their abusers and again by their municipalities.

This Comment explores the objectives, validity, and effects of chronic nuisance ordinances. This Comment also analyzes several arguments that have been used to challenge the constitutionality of these ordinances. Ultimately, this Comment recommends that municipalities avoid chronic nuisance ordinances entirely, but in the alternative,

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recommends several strategies for limiting the ordinances' harmful effects.

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#### I. INTRODUCTION

In the summer of 2012, Lakisha Briggs<sup>1</sup> and her three-year-old daughter faced homelessness at the hands of their municipality.<sup>2</sup> At the time, Lakisha and her daughter lived in a rental house in Norristown, Pennsylvania, with Lakisha's boyfriend, Wilbert Bennet.<sup>3</sup> Norristown, like many towns in the United States, had adopted a chronic nuisance ordinance<sup>4</sup> that monitored how many times the police responded to calls

1. Lakisha Briggs is the plaintiff in *Briggs v. Borough of Norristown*. See *Briggs v. Borough of Norristown*, No. 2:13-cv-02191-ER \*E.D. Pa. filed Apr. 29, 2013). In *Briggs*, Lakisha is suing for injunctive and declaratory relief on the grounds that Norristown's chronic nuisance ordinances, both the current and previous versions, are unconstitutional. *Id.* The law firm of Pepper Hamilton, LLP and the American Civil Liberties Union (ACLU) filed the complaint on behalf of Ms. Briggs. *Id.*

2. See Erik Eckholm, *Victims' Dilemma: 911 Calls Can Bring Eviction*, N.Y. TIMES, Aug. 16, 2013, <http://nyti.ms/1esZ7mW>.

3. *Id.*

4. See Emily Werth, *The Cost of Being "Crime Free": Legal and Practical Consequences of Crime Free Rental Housing and Nuisance Property Ordinances* 1, 4 (Aug. 2013), available at <http://povertylaw.org/sites/default/files/files/housing-justice/cost-of-being-crime-free.pdf>. Chronic nuisance ordinances are a type of third-party policing program. Matthew Desmond & Nicol Valdez, *Unpolicing the Urban*

regarding the same property within a set time period.<sup>5</sup> If the police responded to three calls involving the same property within a four-month period, then the police could unilaterally evict the tenant from the property, thus abating the nuisance.<sup>6</sup>

Sadly, as a victim of domestic violence, Lakisha frequently needed to call the police for protection from Wilbert.<sup>7</sup> From January 2012 to May 2012, Lakisha called the police to her home ten times.<sup>8</sup> On May 23 of the same year, Norristown officials issued a formal letter notifying Lakisha that if she called the police again, the police would enforce the chronic nuisance ordinance against her, and she would be evicted.<sup>9</sup>

Afraid of becoming homeless, Lakisha managed to end the abusive relationship, and Wilbert moved out of the residence.<sup>10</sup> Nevertheless, Wilbert would not stay away.<sup>11</sup> Instead, when Wilbert once again attacked Lakisha, Lakisha confronted a difficult decision: call the police for protection and face imminent eviction or face the abuse without police protection.<sup>12</sup> Lakisha chose to face the abuse.<sup>13</sup> As a result, her ex-boyfriend struck Lakisha across the face with an ashtray before stabbing her in the neck with one of the fractured pieces.<sup>14</sup> As she was

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*Poor: Consequences of Third-Party Policing for Inner-City Women*, 78 AM. SOC. REV. 117, 119–20 (2012) [hereinafter Desmond & Valdez, *Unpolicing the Urban Poor*]. Third-party policing programs attempt “to control or prevent crime and disorder by activating non-offending persons who are thought to influence environments where offenses have occurred or may occur.” *Id.* at 118. Police have reasoned that assigning police duties to civilians is appropriate because: (1) civilians can help prevent crimes from occurring and (2) some civilians are responsible for committing the crimes. *Id.* at 119. Thus, ordinances have started to impose “gatekeeper liability” “on parties who, although not the primary authors and beneficiaries of misconduct, might nonetheless be able to prevent it.” *Id.* (quoting Reinier Kraakman, *Gatekeepers: The Anatomy of a Third-Party Enforcement Strategy*, 2 J.L. ECON. & ORG. 53, 53 (1986)). Chronic nuisance ordinances should not be confused with other types of third-party policing programs, such as crime free programs, which, although similarly detrimental to victims of domestic violence, are not discussed in this Comment. *See id.* at 117–19. For an overview of crime free programs, see generally *Crime Free Programs*, INTERNATIONAL CRIME FREE ASSOCIATION, <http://www.crime-free-association.org>.

5. Anne Stolley Persky, *A Call for Help*, A.B.A. J., Sept. 2013, at 14–15.

6. *Id.* at 15.

7. Eckholm, *supra* note 2.

8. *Id.*

9. Verified First Amended Complaint at ¶¶ 84–86, *Briggs v. Borough of Norristown*, No. 2:13-cv-02191-ER (E.D. Pa. filed Apr. 29, 2013) [hereinafter Pl.’s First Am. Compl.].

10. Eckholm, *supra* note 2.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Renters Fear Eviction Over 911 Calls, Pennsylvania Lawsuit Says*, FOX NEWS (Sept. 1, 2013), <http://fxn.ws/15iJPxN> [hereinafter *Renters Fear Eviction*].

losing consciousness, Lakisha begged her neighbor to *not* call 9-1-1.<sup>15</sup> Luckily the neighbor did, and Lakisha survived after being flown by helicopter to a hospital for treatment.<sup>16</sup> Just as the Norristown officials warned, however, city officials initiated eviction proceedings against Lakisha a few days later.<sup>17</sup>

Unfortunately, Lakisha's story is not unique. Domestic violence is a nationwide problem that crosses racial, ethnic, economic, age, and gender lines<sup>18</sup> and affects approximately 1.4 million people every year.<sup>19</sup> Additionally, on any given day, over 3000 people face homelessness because they are unable to find shelter away from their abusers,<sup>20</sup> making domestic violence a leading cause of homelessness in the United States.<sup>21</sup>

Despite these known facts, municipalities have exacerbated the housing crisis plaguing domestic violence victims by enacting chronic nuisance ordinances, which aim to identify and abate any "nuisance" activity that repeatedly occurs on a property.<sup>22</sup> Although chronic nuisance ordinances originally targeted households that harbored prolific drug use, many municipalities have broadened the scope of their ordinances.<sup>23</sup> Now, many different types of activities may constitute nuisance activities, including acts of domestic violence.<sup>24</sup> As a result, domestic violence victims across the country are being forced to make the same choice that Lakisha was forced to make: report abuse and face homelessness or continue to suffer from abuse. In effect, chronic nuisance ordinances have "turn[ed] victims of crime who are pleading for emergency assistance into 'nuisances' in the eyes of [municipalities]."<sup>25</sup>

This Comment will argue that municipalities should stop adopting chronic nuisance ordinances or at least include exceptions for victims of domestic violence. Part II will explain what a chronic nuisance

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15. Eckholm, *supra* note 2.

16. *Id.*

17. *Id.* Lakisha stated that she "felt like [she] was being punished for being assaulted." *Renters Fear Eviction*, *supra* note 14.

18. See COLO. DEP'T OF HUMAN SERV., DOMESTIC VIOLENCE PROGRAM 2009 ANNUAL REPORT 1, 2 (2009).

19. *Domestic Violence and Homelessness*, NAT'L COAL. FOR THE HOMELESS, July 2009, available at <http://bit.ly/1m9McjT>.

20. *Id.*

21. *See id.*

22. *See* Werth, *supra* note 4, at 4 (defining "chronic nuisance ordinance"). Although the exact number is unknown, "hundreds" of chronic nuisance ordinances are believed to be in existence. Eckholm, *supra* note 2.

23. *See* Eckholm, *supra* note 2.

24. *See id.*

25. *Id.*

ordinance is, why a municipality would adopt one, and whether these ordinances accomplish their identified goals. Part III will examine the two chronic nuisance ordinances at issue in *Briggs v. Borough of Norristown*,<sup>26</sup> the lawsuit initiated by Lakisha Briggs. Part IV will analyze several arguments challenging the constitutionality of chronic nuisance ordinances. Finally, Part V will recommend that municipalities avoid chronic nuisance ordinances entirely, but in the alternative, will recommend several strategies for limiting the ordinances' harmful effects for municipalities that insist on adopting one.

## II. BACKGROUND

### A. *What is a Chronic Nuisance Ordinance?*

A chronic nuisance ordinance is a municipal ordinance that identifies activity the community deems a “nuisance.”<sup>27</sup> The ordinance also establishes a nuisance abatement procedure to terminate the nuisance.<sup>28</sup> Nuisance abatement procedures force the owners on whose properties these activities repeatedly occur to stop such activities or face penalties.<sup>29</sup>

Many variations of these ordinances exist. For example, the scope of a chronic nuisance ordinance differs in each jurisdiction.<sup>30</sup> Some municipalities apply their chronic nuisance ordinance to rental properties only, some to all residential properties, and yet others to commercial properties as well as residential properties.<sup>31</sup>

In addition to the scope of the ordinances, the prohibited activities also vary.<sup>32</sup> Activities that are deemed nuisances range from criminal activity to lesser, municipal offenses, such as creating loud noises, not cutting the grass, and having garbage on the property.<sup>33</sup> The list of prohibited activities, however, is typically very broad.<sup>34</sup> Some chronic nuisance ordinances even contain seemingly limitless catch-all provisions that can apply to almost any activity.<sup>35</sup> Victims of domestic violence, like Lakisha, often fall into the widely used nuisance activity of

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26. *Briggs v. Borough of Norristown*, No. 2:13-cv-02191-ER (E.D. Pa. filed Apr. 29, 2013).

27. *See* Werth, *supra* note 4, at 4 (defining “chronic nuisance ordinance”).

28. *Id.*

29. *Id.*

30. *See id.* at 1 n.2.

31. *Id.*

32. Werth, *supra* note 4, at 17.

33. *Id.*

34. *See id.*

35. *Id.*

“disorderly conduct,” although some ordinances reach domestic violence victims directly by prohibiting “sexual abuse” and “stalking.”<sup>36</sup>

Chronic nuisance ordinances also vary as to whether residents are responsible for their own conduct only or others’ conduct as well.<sup>37</sup> Typically, chronic nuisance ordinances keep track of nuisance activities that occur on the *property*, regardless of who the perpetrator is.<sup>38</sup> In other words, a nuisance activity may be committed by the tenant, a guest, or a passerby.<sup>39</sup> Some chronic nuisance ordinances even create “buffer zones,” meaning that nuisance activities may not occur on the premises or within a defined area surrounding the premises.<sup>40</sup> Consequently, tenants and residents may be penalized for nuisance activities that others commit on the outskirts of their own property lines.<sup>41</sup>

Another variation among chronic nuisance ordinances is the number of times a nuisance activity may occur before it is considered “chronic.”<sup>42</sup> Chronic nuisance ordinances tend to focus on *excessive* nuisance activities, not a one-time or isolated instance of nuisance activity.<sup>43</sup> The vast majority of these ordinances define a “chronic” nuisance as a property that generates a certain number of 9-1-1 calls within a set period of time, with each call to the police constituting a “strike.”<sup>44</sup> After too many strikes accrue, the nuisance activity is viewed as excessive.<sup>45</sup> Many chronic nuisance ordinances deem three strikes within 90 days as excessive<sup>46</sup> while other ordinances use a 6-month or

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36. JAMES FRANK ET AL., *CHRONIC NUISANCE EVALUATION* i, 12–13 (2010).

37. See Matthew Desmond & Nicol Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*, 78 AM. SOC. REV. 1, 4 [hereinafter Desmond & Valdez, *Online Supp.*] (Online Supp. 2013) (explaining that Phoenix’s chronic nuisance ordinance holds residents responsible for their own conduct only while Philadelphia’s chronic nuisance ordinance holds property owners responsible for the actions of anyone who comes onto the property).

38. Werth, *supra* note 4, at 12.

39. *Id.*

40. FRANK, *supra* note 36, at 18–19.

41. *Id.*

42. See Desmond & Valdez, *Online Supp.*, *supra* note 37, at 4, 6 (explaining that Chicago’s chronic nuisance ordinance requires three or more instances of nuisance activity within ninety days while Denver’s chronic nuisance ordinance requires two instances of nuisance activity within six months).

43. See FRANK, *supra* note 36, at 16.

44. See Werth, *supra* note 4, at 4. “After [9-1-1] became citizens’ primary source of communication with the police, the volume of calls departments received quickly outpaced their capacity to handle them. Inundated with calls, police departments began devising strategies to screen out [certain] requests. One such strategy was to rely on chronic nuisance ordinances.” Desmond and Valdez, *Unpolicing the Urban Poor*, *supra* note 4, at 119.

45. FRANK, *supra* note 36, at 16.

46. See Desmond & Valdez, *Online Supp.*, *supra* note 37, at 4–18.

12-month time period.<sup>47</sup> When determining whether a property has reached the nuisance activity limit, most municipalities consider only the number of incidents reported to the police without filtering the list in any way.<sup>48</sup> Other municipalities require that the police perform some type of enforcement action, such as issue a warning or citation to verify that a nuisance activity did in fact occur, before counting the incident as a strike.<sup>49</sup>

Finally, the nuisance abatement procedures established by chronic nuisance ordinances also differ. Once a property is deemed a “chronic nuisance,” the landlord or homeowner is required to complete a nuisance abatement procedure.<sup>50</sup> Some nuisance abatement procedures explicitly require the landlord to evict the nuisance-causing tenant.<sup>51</sup> Other procedures impose a series of escalating fines against the landlord for each day the tenant remains on the property, in effect compelling the landlord to evict the tenant.<sup>52</sup> In addition to removing the tenant, some property owners may be required to attend a training class or a public hearing to comply with a nuisance abatement procedure.<sup>53</sup> If the owner does not complete the nuisance abatement procedure, the municipality imposes penalties against the owner.<sup>54</sup> The penalties, depending on the jurisdiction, range from revoked rental licenses<sup>55</sup> to liens being placed on the property, property forfeitures, and incarceration.<sup>56</sup> Once the nuisance-causing tenant is removed and the nuisance abatement procedure is completed, the purpose of the chronic nuisance ordinance is considered fulfilled.<sup>57</sup>

#### *B. The Purpose and Validity of Chronic Nuisance Ordinances*

Municipalities may adopt a chronic nuisance ordinance for several reasons. Most municipalities believe a chronic nuisance ordinance will reduce the demand on law enforcement resources,<sup>58</sup> address repetitive

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47. *See id.* For example, Baltimore, Maryland’s chronic nuisance ordinance defines excessive as two or more strikes within a two-year time period. *Id.*

48. FRANK, *supra* note 36, at 21.

49. *Id.*

50. Werth, *supra* note 4, at 4.

51. *See* Desmond & Valdez, *Online Supp.*, *supra* note 37, at 2.

52. *See id.*

53. *See id.*

54. *See* Werth, *supra* note 4, at 4.

55. Desmond & Valdez, *Online Supp.*, *supra* note 37, at 2.

56. *See* Desmond & Valdez, *Unpolicing the Urban Poor*, *supra* note 4, at 120.

57. *See* Werth, *supra* note 4, at 4.

58. Heather K. Way et al., *Building Hope: Tools for Transforming Abandoned and Blighted Properties into Community Assets* 1, 3 (Dec. 2007), available at <https://www.utexas.edu/law/clinics/community/buildersofhope.pdf>.

problem behaviors,<sup>59</sup> and recoup the cost of the government's police response.<sup>60</sup> Municipalities also believe that evicting problem-causing residents will force the residents to leave the area, resulting in an increase in surrounding property values and tax revenues.<sup>61</sup> Chronic nuisance ordinances are particularly popular in today's economy because they delegate the responsibilities of the police force to property owners at little cost to municipalities.<sup>62</sup>

Chronic nuisance ordinances have existed for at least two decades, yet very little is known about how effective the ordinances are at achieving their goals.<sup>63</sup> Cincinnati is one of the few cities in the country with a chronic nuisance ordinance to report a decrease in overall nuisance activity.<sup>64</sup> The city "reported a ten percent drop in nuisance related calls . . . in just one year . . . and a 22 [percent] overall reduction from 2006 to 2010."<sup>65</sup> It is unknown, however, whether this reported reduction in nuisance related calls was caused by fewer occurrences of nuisance activity or other factors, such as citizens choosing not to report such activities for fear of receiving a strike or being evicted.<sup>66</sup>

The long-term effects of chronic nuisance ordinances are also unknown. Critics of chronic nuisance ordinances believe the ordinances may cause harm to communities.<sup>67</sup> If Cincinnati's reduction in nuisance related calls is attributable to citizens being discouraged from calling the police, then the city's ordinance served only to mask the crimes and nuisance activities that did occur.<sup>68</sup> Thus, the statistical decrease in nuisance activity would be directly attributable to a decrease in crime reporting, not a decrease in overall nuisance activity.<sup>69</sup> Furthermore, the chronic nuisance ordinance may have undermined public safety.<sup>70</sup> When citizens are discouraged from calling the police, perpetrators are free to

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59. See FRANK, *supra* note 36, at 15.

60. See *id.* at 28, 34.

61. Way et al., *supra* note 58, at 3. Chronic nuisance ordinances developed concurrently with the rise of environmental criminology. FRANK, *supra* note 36, at 2. Environmental criminology is based on the idea that certain characteristics of a place and "its place managers and guardians, may cause crime to cluster at that location . . . . [For example, when] one 'broken window' . . . attracts other forms of petty offending that will eventually build into greater criminal activity and a general decrease in community quality of life." *Id.*

62. See FRANK, *supra* note 36, at 2.

63. *Id.* at i.

64. *Id.* at 37.

65. *Id.*

66. *Id.*

67. See Werth, *supra* note 4, at 5–12.

68. See *id.* at 2, 8.

69. *Id.*

70. *Id.*



continue committing crimes and other nuisance activities without fear of punishment.<sup>71</sup> Perpetrators may even escalate or increase the frequency of their crimes due to the lack of police response, placing citizens at greater risk than if there was no chronic nuisance ordinance at all.<sup>72</sup>

Critics also argue that chronic nuisance ordinances may increase, not decrease, costs for municipalities.<sup>73</sup> By punishing landlords for the behavior of tenants, chronic nuisance ordinances discourage landlords from providing rental housing.<sup>74</sup> The supply of rental housing is further reduced if chronic nuisance ordinances penalize landlords by revoking their rental licenses.<sup>75</sup> Critics opine that the resulting lack of housing leads to an increase in homelessness, which in turn causes an increased burden on municipalities to pay for the medical treatment, shelter, and other needs of the homeless.<sup>76</sup> Therefore, while chronic nuisance ordinances may appear to save costs by decreasing calls for emergency services, the amount saved may in fact be negated or even exceeded by the costs incurred from the increased homelessness also caused by the ordinances.<sup>77</sup> Finally, some critics believe that chronic nuisance ordinances merely shuffle problems elsewhere instead of addressing the underlying issues, negating any costs saved in one region by increasing the costs of another region.<sup>78</sup>

Because so little is known about the long-term effects of chronic nuisance ordinances, more inquiries and studies are needed. Despite their vast use, “the proliferation of [chronic nuisance ordinances] . . . is matched only by the paucity of inquiries into [their] ramifications.”<sup>79</sup> At this time, the impact a chronic nuisance ordinance may have on a community, whether beneficial or detrimental, is unknown. Possibly, however, these ordinances cause more problems than they solve. Municipalities, therefore, should pause before adopting a chronic

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71. *Id.*

72. *See* Werth, *supra* note 4, at 2, 8.

73. *See* Eckholm, *supra* note 2.

74. *See* Werth, *supra* note 4, at 5.

75. *Id.*

76. *See Cost of Homelessness*, NATIONAL ALLIANCE TO END HOMELESSNESS, [http://www.endhomelessness.org/pages/cost\\_of\\_homelessness](http://www.endhomelessness.org/pages/cost_of_homelessness) (last visited Feb. 13, 2014).

77. Eckholm, *supra* note 2. Additionally, chronic nuisance ordinances may hurt municipalities’ budgets by causing an increase in property abandonment. Way et al., *supra* note 58, at 26–27. Property abandonment decreases property values and paves the way for more nuisance activities, such as vandalism, to occur. *Id.*

78. *See* Eckholm, *supra* note 2.

79. Desmond & Valdez, *Unpolicing the Urban Poor*, *supra* note 4, at 120.

nuisance ordinance and not rush to the conclusion that such an ordinance will “serve as a panacea for [all of] their . . . ailments.”<sup>80</sup>

*C. The Effects of Chronic Nuisance Ordinances on Victims of Domestic Violence*

Despite chronic nuisance ordinances’ *unknown* effects, it is *known* that these ordinances have a detrimental impact on victims of domestic violence.<sup>81</sup> Many domestic violence victims, like Lakisha Briggs, must call for police protection on multiple occasions over a fairly short period of time.<sup>82</sup> Accordingly, chronic nuisance ordinances disproportionately put domestic violence victims at risk for eviction, particularly when the ordinances define as excessive two or three calls to the police within a six-month period of time or longer.<sup>83</sup>

Several studies have provided empirical support for the detrimental impact chronic nuisance ordinances have on victims of domestic violence.<sup>84</sup> One study, for example, analyzed every nuisance property citation the Milwaukee Police Department issued over a two-year period.<sup>85</sup> The study showed that nearly one-third of all tenants evicted by the city’s chronic nuisance ordinance were victims of domestic violence.<sup>86</sup> The Milwaukee ordinance terminated nuisances by fining landlords each day the tenant remained on the property.<sup>87</sup> As a result, most of the landlords in the study believed they had no choice but to evict their tenants.<sup>88</sup> Many landlords even took affirmative steps to discourage their tenants from calling the police.<sup>89</sup> One landlord told the Milwaukee Police Department that “[w]e suggested she obtain a gun and kill him in self-defense, but evidently she hasn’t . . . [so] we are evicting her.”<sup>90</sup> The evicted tenant thus felt that she was being punished for not committing murder.<sup>91</sup>

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80. FRANK, *supra* note 36, at i.

81. *See* Werth, *supra* note 4, at 8–12.

82. *See* Letter from ACLU to U.S. Dep’t of Hous. and Urban Dev. (Sept. 17, 2013), <http://bit.ly/NKYIr6>.

83. *See id.*

84. *See* Desmond & Valdez, *Unpolicing the Urban Poor*, *supra* note 4, at 118, 122.

85. *Id.*

86. *Id.*

87. *See id.* at 122.

88. *Id.* at 131.

89. *See* Desmond & Valdez, *Unpolicing the Urban Poor*, *supra* note 4, at 122.

90. *See id.* at 135.

91. *See id.*

The detrimental impact of chronic nuisance ordinances on domestic violence victims is not limited to Milwaukee.<sup>92</sup> The Director of the Illinois Domestic Violence Helpline stated that every month the helpline receives multiple calls from women who, like Lakisha Briggs, must choose between safety and housing.<sup>93</sup> Therefore, the problems that chronic nuisance ordinances cause victims of domestic violence are not theoretical or rare but routinely occur when such ordinances are enacted.<sup>94</sup>

Chronic nuisance ordinances also *encourage* abusers to continue abusing their victims and to escalate their violence.<sup>95</sup> Because abusers know that their victims are unwilling to call the police out of fear of being evicted, abusers have little motivation to control their conduct.<sup>96</sup> Consequently, abusers are able to continue their abuse without fear of repercussions from the police.<sup>97</sup>

Finally, chronic nuisance ordinances place the burden of stopping the abuse on the domestic violence victims themselves.<sup>98</sup> In other words, the responsibility is on the victims at all times to prevent any instance of abuse from occurring, a seemingly insurmountable burden.<sup>99</sup> Furthermore, because domestic violence victims often do not live with their abusers, it is the *victims* who are punished when chronic nuisance ordinances are enforced, *not* the abusers.<sup>100</sup> Chronic nuisance ordinances, therefore, turn acts of domestic violence into “nuisances” and blame the victims for criminal activity committed against them.<sup>101</sup>

### III. THE CHRONIC NUISANCE ORDINANCES AT ISSUE IN *BRIGGS V. BOROUGH OF NORRISTOWN*

Two different chronic nuisance ordinances are at issue in *Briggs v. Borough of Norristown*: the Old Ordinance<sup>102</sup> and the New Ordinance.<sup>103</sup> Norristown enforced the Old Ordinance, the municipality’s original chronic nuisance ordinance, against Lakisha Briggs after she was

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92. See Eckholm, *supra* note 2.

93. *Id.*

94. *See id.*

95. Desmond & Valdez, *Unpolicing the Urban Poor*, *supra* note 4, at 138.

96. *See id.*

97. *See id.*

98. *See id.* at 134.

99. *See* Persky, *supra* note 5, at 18.

100. Desmond & Valdez, *Unpolicing the Urban Poor*, *supra* note 4, at 134.

101. Eckholm, *supra* note 2.

102. NORRISTOWN, PA., MUNICIPAL CODE § 245-3 (repealed 2012).

103. Norristown, Pa., Ordinance No. 12-15 (Dec. 4, 2012).

attacked by Wilbert Bennet and airlifted to the hospital.<sup>104</sup> Norristown repealed the Old Ordinance, however, after the American Civil Liberties Union (ACLU)<sup>105</sup> accepted Lakisha's case for representation and wrote a letter to the municipality, explaining how the ordinance violated Lakisha's constitutional rights.<sup>106</sup> Less than two weeks later, Norristown enacted the New Ordinance, which is still in effect today.<sup>107</sup>

*A. Norristown's Old Ordinance*

The Old Ordinance is an older, more traditional example of a chronic nuisance ordinance.<sup>108</sup> The Old Ordinance defined a "chronic nuisance" as any property that hosted a designated nuisance activity necessitating a police response three or more times within a four-month period.<sup>109</sup> The ordinance designated "disorderly behavior" as a nuisance activity<sup>110</sup> and defined it as "activity that can be characterized as disorderly in nature."<sup>111</sup> The ordinance also expressly included an instance of domestic violence as an example of a disorderly behavior incident.<sup>112</sup>

Under the Old Ordinance, the police could forcibly evict all tenants from the property once a property was deemed a chronic nuisance.<sup>113</sup> Additionally, the Old Ordinance granted sole discretion of whether to enforce the ordinance in an individual case to the Chief of Police.<sup>114</sup> Likewise, most early versions of chronic nuisance ordinances authorized the police to perform evictions and granted broad discretionary powers to the police force.<sup>115</sup>

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104. Pl.'s First Am. Compl. ¶¶ 8, 13–14.

105. The ACLU is a non-profit organization whose mission is to "defend and preserve the individual rights and liberties that the [U.S.] Constitution . . . guarantee[s] everyone in [the United States]." *About the ACLU*, AMERICAN CIVIL LIBERTIES UNION, <https://www.aclu.org/about-aclu-0> (last visited July 27, 2014).

106. Pl.'s First Am. Compl. ¶¶ 8, 12–14.

107. *Id.* ¶¶ 13–14.

108. See Desmond & Valdez, *Online Supp.*, *supra* note 37, at 4–18.

109. See Pl.'s First Am. Compl. ¶ 4.

110. See *id.* ¶ 5.

111. *Id.* ¶ 5.

112. *Id.*

113. See *id.* ¶ 4.

114. See Pl.'s First Am. Compl. ¶ 6.

115. See Desmond & Valdez, *Online Supp.*, *supra* note 37, at 4–18.

*B. Norristown's New Ordinance*

The New Ordinance is a modern and more typical example of a chronic nuisance ordinance.<sup>116</sup> Although the New Ordinance shares many similarities with the Old Ordinance, one main difference exists.<sup>117</sup> In the New Ordinance, instead of the *police* suspending and revoking rental licenses and forcibly evicting tenants, the municipality imposes a series of escalating criminal fines against the landlords of properties deemed chronic nuisances.<sup>118</sup> Consequently, the municipality is compelling *landlords* to evict tenants and no longer carries out actual evictions through its own agents.

Municipal legislators believe that this transfer of eviction authority from governmental agencies to private entities protects chronic nuisance ordinances from constitutional challenges.<sup>119</sup> Accordingly, Norristown repealed its Old Ordinance and enacted the New Ordinance to withstand constitutional scrutiny after the ACLU commenced representation of Lakisha.<sup>120</sup> Despite this change, the ACLU continues to assert that the New Ordinance violates citizens' constitutional rights and should be struck down by courts.<sup>121</sup> Whether such constitutional challenges will succeed, however, remains uncertain.

#### IV. ARE CHRONIC NUISANCE ORDINANCES CONSTITUTIONAL?

Although many lawsuits have challenged chronic nuisance ordinances, most cases have settled before a final judgment could be rendered,<sup>122</sup> and no case has appeared before a court of final appeal.<sup>123</sup>

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116. *See id.* The New Ordinance reads:

It shall be the licensee's responsibility to assure that the tenants, the tenants' family members, and guests of any tenant or tenant's family member not engage in disorderly behavior in the rental dwelling unit . . . . For purposes of this [section] only, "disorderly behavior" may include, but is not limited to[:] . . . [a]ny call to a rental dwelling unit or units to which the Norristown Police Department responds and which, in the sole discretion of the Chief of Police, involves criminal activity that can be characterized as disorderly in nature, including, but not limited to, the following types of activity: (1) disorderly conduct; . . . [and] (5) domestic disturbances that do not require that a mandatory arrest be made . . . .

Norristown, Pa., Ordinance No. 12-15 (Dec. 4, 2012).

117. *See* Pl.'s First Am. Compl. ¶¶ 14, 16.

118. *See id.*

119. *See id.* ¶¶ 12–13.

120. *See id.*

121. *See id.* ¶ 17.

122. *See* Grape v. Town/Village of East Rochester, No. 07-CV-6075-CJS-(F) (W.D.N.Y. July 6, 2007).

Using *Briggs v. Borough of Norristown* as an example,<sup>124</sup> this Comment will analyze several arguments<sup>125</sup> attacking the constitutionality of chronic nuisance ordinances.<sup>126</sup> The arguments will then be applied to chronic nuisance ordinances generally.

A. *Do Chronic Nuisance Ordinances Violate the Void for Vagueness Doctrine?*

In *Briggs*, the ACLU argues that the New Ordinance<sup>127</sup> should be declared unconstitutional due to the void for vagueness doctrine.<sup>128</sup> The void for vagueness doctrine is derived from the Fourteenth Amendment's Due Process Clause.<sup>129</sup> The doctrine is defined as "establishing a

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123. Cari Fais, *Denying Access to Justice: The Cost of Applying Chronic Nuisance Laws to Domestic Violence*, 108 COLUM. L. REV. 1181, 1205 (2008).

124. The ACLU, on behalf of Lakisha Briggs, raised the arguments that are the focus of this Comment in *Briggs v. Borough of Norristown*. See *Briggs v. Borough of Norristown*, No. 2:13-cv-02191-ER (E.D. Pa. filed Apr. 29, 2013).

125. Although not discussed in this Comment, other constitutional arguments include that chronic nuisance ordinances violate the First Amendment right to petition the government as well as the Fourteenth Amendment rights to substantive due process, procedural due process, and equal protection. Fais, *supra* note 123, at 1218–22.

126. Although not discussed in this Comment, the main statutory challenges raised against chronic nuisance ordinances are that such ordinances violate: (1) the Fair Housing Act and (2) the Violence Against Women Act. *Id.* at 1206–17. For a discussion of these statutory challenges, see Fais, *supra* note 123, at 1206–17. Many states have also adopted public policies that aim to protect victims of domestic violence by increasing the available legal protections for these particular victims. See Ana S. Salper, *Legal Protections for Victims of Domestic Violence on the Rise*, Aug. 14, 2013, available at <http://bit.ly/1eVevxe>. Therefore, enforcing chronic nuisance ordinances against domestic violence victims is in direct opposition to these public policies. *Id.*

127. See *supra* Part III.B (discussing the enactment and scope of the New Ordinance and how it differs from its predecessor). The ACLU is also asserting that the Old Ordinance violated Lakisha's constitutional rights, but this assertion is not the subject of this Comment. See Pl.'s First Am. Compl. ¶ 18. Regarding the New Ordinance challenges, the ACLU asserts standing on the grounds that the New Ordinance continues to prevent Lakisha from calling the police for protection. See Pl.'s First Am. Compl. ¶¶ 14, 16. Further discussion regarding the issue of standing is outside the scope of this Comment.

128. Pl.'s First Am. Compl. ¶ 216. Whether nuisance laws are unduly vague is an age-old debate. See John Gray, *Public Nuisance: A Historical Perspective*, NUISANCE LAW, <http://www.nuisancelaw.com/learn/historical> (last visited Feb. 13, 2014). Nuisance laws have been used by governments for centuries to prohibit conduct that, although not strictly illegal, "was deemed unreasonable in view of its likelihood to injure someone in the general public." *Id.* Some lawyers are now seeking to transform nuisance law jurisprudence by redefining its scope and boundaries. *Id.* Whether these lawyers will be successful remains to be seen.

129. U.S. CONST. amend. XIV, § 1 (stating that no state shall "deprive any person of life, liberty, or property without due process of law"). Under the Due Process Clause, U.S. citizens are entitled to notice in statutes of what conduct is punishable and what conduct is not so that they may govern their behavior accordingly. *Vagueness Doctrine*,

requirement or punishment without specifying what is required or what conduct is punishable, and therefore void because violative of due process.”<sup>130</sup> The U.S. Supreme Court has developed a two-pronged test for determining if a statute is unduly vague.<sup>131</sup> The first prong of the test examines whether the statute “provide[s] a person of ordinary intelligence fair notice of what [conduct] is prohibited.”<sup>132</sup> The second prong of the test analyzes whether the statute provides a standard so that law enforcement personnel cannot arbitrarily and discriminatorily enforce the statute.<sup>133</sup>

Several hurdles stand in the way of proving that chronic nuisance ordinances are unconstitutionally vague. For example, no direct precedent exists for applying the void for vagueness doctrine to municipal chronic nuisance ordinances.<sup>134</sup> To further complicate matters, courts have primarily applied the void for vagueness doctrine in criminal cases.<sup>135</sup>

Some evidence shows, however, that these hurdles can be overcome. Although the void for vagueness doctrine is primarily used in criminal cases, some courts have applied the doctrine in civil matters.<sup>136</sup> Furthermore, while the void for vagueness doctrine is mainly used in civil cases involving the First Amendment to the U.S. Constitution,<sup>137</sup> the U.S. Supreme Court recently held that “[e]ven when speech is not at issue, the void for vagueness doctrine [remains applicable].”<sup>138</sup> Although chronic nuisance ordinances may be classified as civil ordinances or civil and criminal ordinances,<sup>139</sup> depending on the jurisdiction, it now seems possible to apply the void for vagueness doctrine to any municipal chronic nuisance ordinance.

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LEGAL INFORMATION INSTITUTE, [http://www.law.cornell.edu/wex/vagueness\\_doctrine](http://www.law.cornell.edu/wex/vagueness_doctrine) (last visited July 27, 2014).

130. BLACK’S LAW DICTIONARY 1814 (9th ed. 2009).

131. *See* United States v. Williams, 553 U.S. 285, 286 (2008). In a void for vagueness challenge, a court will presume that the statute at issue is constitutional. *See id.* The party challenging the statute has the burden of overturning this presumption. *Id.*

132. *Id.*

133. *Id.*

134. *See* Eugene Volokh, *The Void-for-Vagueness/Fair Notice Doctrine and Civil Cases*, THE VOLOKH CONSPIRACY (June 21, 2012, 12:19 PM), <http://bit.ly/1g8J9Ua> [hereinafter Volokh, *Fair Notice Doctrine*].

135. *See* City of Chicago v. Morales, 527 U.S. 41, 55 (1999). The void for vagueness doctrine has primarily been applied in criminal cases because the U.S. Supreme Court has declared that vagueness is especially troublesome within criminal laws. *See* Reno v. Am. Civil Liberties Union, 521 U.S. 844, 862, 872 (1997).

136. Volokh, *Fair Notice Doctrine*, *supra* note 134.

137. U.S. CONST. amend. I.

138. F.C.C. v. Fox Television Stations, Inc., 132 S. Ct. 2307, 2317 (2012).

139. *See* Desmond & Valdez, *Online Supp.*, *supra* note 37, at 4–18.

Assuming courts will apply the void for vagueness doctrine to municipal chronic nuisance ordinances, many chronic nuisance ordinances will likely fail the first prong of the void for vagueness test. The first prong examines whether a statute provides citizens with fair notice of what conduct is prohibited.<sup>140</sup> As previously stated, Norristown's New Ordinance considers one instance of "disorderly behavior" to constitute a strike, circuitously defining "disorderly behavior" as conduct that "involves activity that can be characterized as disorderly in nature."<sup>141</sup> Likewise, almost all chronic nuisance ordinances prohibit "disorderly conduct" or contain a similar, seemingly limitless catch-all provision that can be applied to almost any activity.<sup>142</sup> These limitless catch-all provisions can be construed to encompass "virtually any call to which the police [respond], including incidents where the tenant [is] blameless, reasonable in seeking police assistance, or facing a true emergency, [or] even where the police [respond] to a baseless call from a vindictive neighbor."<sup>143</sup> Because citizens can only guess as to what conduct is prohibited, such chronic nuisance ordinances fail to provide citizens with fair notice of what is prohibited.<sup>144</sup> Therefore, the majority of chronic nuisance ordinances likely fail the first prong of the void for vagueness test.

Chronic nuisance ordinances also likely violate the second prong of the void for vagueness test. The second prong analyzes whether a statute provides a standard to prevent arbitrary or discriminatory enforcement by law enforcement personnel.<sup>145</sup> In Norristown's New Ordinance, the definition of "disorderly behavior" includes as an example "[d]omestic disturbances that do not require that a mandatory arrest be made."<sup>146</sup> Because this language can be used to describe almost any incident, the police have nearly unfettered discretion in enforcing the ordinance.<sup>147</sup> The New Ordinance even expressly states that the police have "*sole discretion*" in determining what conduct is covered by the ordinance.<sup>148</sup> Therefore, any conduct, no matter how insignificant or innocent, can be deemed "disorderly" based on the whims of the responding police officer.<sup>149</sup> Other chronic nuisance ordinances further empower law

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140. United States v. Williams, 553 U.S. 285, 286 (2008).

141. Pl.'s First Am. Compl. ¶ 132(b).

142. Werth, *supra* note 4, at 17.

143. Pl.'s First Am. Compl. ¶¶ 7, 14, 132(b).

144. *See id.* ¶¶ 209, 213.

145. *Williams*, 553 U.S. at 286.

146. Pl.'s First Am. Compl. ¶¶ 129, 132(b).

147. *See id.* ¶ 132(a).

148. *Id.* ¶ 129 (emphasis added).

149. *Id.* ¶ 132(b).



enforcement personnel by creating “buffer zones” that reach conduct that occurs outside of the tenants’ or residents’ premises.<sup>150</sup> Therefore, the lack of a specific, unambiguous standard causes chronic nuisance ordinances to fail the second prong of the void for vagueness test.<sup>151</sup> Because chronic nuisance ordinances appear to fail both prongs of the void for vagueness test, chronic nuisance ordinances in general are likely unconstitutionally vague.

*B. Do Chronic Nuisance Ordinances Violate the Fourth Amendment Right Against Unreasonable Seizures?*

In *Briggs*, the ACLU also raises a novel<sup>152</sup> argument that the New Ordinance should be declared unconstitutional because the ordinance violates Lakisha’s right against unreasonable seizures.<sup>153</sup> The right against unreasonable seizures is derived from the Fourth Amendment,<sup>154</sup> which declares that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable . . . seizures, shall not be violated.”<sup>155</sup> Three requirements must be met for evictions to be considered Fourth Amendment violations.<sup>156</sup> The evictions must: (1) fall under the definition of “seizures,” (2) be unreasonable, and (3) involve government action.<sup>157</sup>

Evictions under chronic nuisance ordinances likely fall under the definition of seizures. A “seizure” is defined as “some meaningful

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150. See FRANK, *supra* note 36, at 18–19; see also Part II.A (explaining how some chronic nuisance ordinances contain “buffer zones”).

151. Admittedly, a few jurisdictions have attempted to prevent their police force from having too much discretion by strictly enforcing their chronic nuisance ordinances. See FRANK, *supra* note 36, at 27. When chronic nuisance ordinances are strictly enforced, law enforcement personnel have no discretion on whether an incident of nuisance activity should constitute a strike but instead must count *every* incident as a strike. See *id.* Strict enforcement, however, has proved to be unworkable. See *id.* For example, Cincinnati attempted to strictly enforce its ordinance until numerous lawsuits forced the city to abandon its effort and return to discretionary enforcement instead. *Id.* at 35. Now, most or perhaps all jurisdictions with chronic nuisance ordinances employ discretionary or selective enforcement. See *id.* at 27. Nevertheless, selective enforcement is also flawed and leads to law enforcement personnel arbitrarily and discriminatorily applying the ordinances. Werth, *supra* note 4, at 17.

152. See Fais, *supra* note 123, at 1218–19 (failing to list Fourth Amendment violations in the list of arguments that plaintiffs have previously raised against chronic nuisance ordinances).

153. Pl.’s First Am. Compl. ¶ 173.

154. U.S. CONST. amend. IV.

155. *Id.*

156. *United States v. Jacobsen*, 466 U.S. 109, 113, 130 (1984).

157. *Id.*

interference with an individual's possessory interests in . . . property."<sup>158</sup> Property interests include leaseholds, which tenants have a right to possess.<sup>159</sup> Because evictions under chronic nuisance ordinances interfere with tenants' possessory rights in their leaseholds, these evictions likely fall under the definition of seizures.<sup>160</sup>

Whether evictions under chronic nuisance ordinances involve government action may be more difficult to prove. Many chronic nuisance ordinances, like Norristown's New Ordinance, compel *landlords* to evict nuisance-causing tenants by imposing a series of escalating fines each day the tenant remains on the property.<sup>161</sup> While some chronic nuisance ordinances, like Norristown's Old Ordinance, initially order the *police* to evict tenants, these jurisdictions usually amend their ordinances to have landlords carry out the evictions after the municipality is faced with constitutional challenges.<sup>162</sup> The issue, then, is whether government action is involved when the police do not directly evict tenants themselves.

Although difficult to prove at first glance, some evidence exists that the "government action" requirement is satisfied by less than direct participation by a government agent. For example, in *Soldal v. Cook County, Illinois*,<sup>163</sup> the U.S. Supreme Court held that a seizure involved government action when police officers simply stood by as employees of a mobile home park towed a tenant's mobile home onto the street.<sup>164</sup> The Court held that police ratification of the eviction, even absent direct participation, remained sufficient to satisfy the government action requirement.<sup>165</sup> Consequently, it is arguable that no matter who performs the eviction during the enforcement of a chronic nuisance ordinance, government action is always involved.

Finally, the unreasonableness requirement is the most difficult to prove. The Court in *Soldal* held that "reasonableness is . . . the ultimate standard under the Fourth Amendment . . . [and requires] a careful balancing of governmental and private interests."<sup>166</sup> Circuits are split as

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158. *See id.* at 109, 113.

159. *See* Pl.'s First Am. Compl. ¶ 169.

160. Werth, *supra* note 4, at 4.

161. *See* Pl.'s First Am. Compl. ¶¶ 172, 178; Desmond & Valdez, *Online Supp.*, *supra* note 37, at 4–18.

162. *See, e.g.*, Pl.'s First Am. Compl. ¶¶ 12–13.

163. *Soldal v. Cook Cnty., Ill.*, 506 U.S. 56 (1992).

164. *Id.* at 59.

165. *See id.* at 62–63.

166. *Id.* at 71 (internal quotation marks omitted).

to what this “careful balancing” entails.<sup>167</sup> Some circuits hold that if government officials abide by procedural due process requirements then the government action will always be reasonable.<sup>168</sup> Therefore, in these jurisdictions, so long as the municipality provides some due process to the evicted tenant, the eviction will be reasonable and not in violation of the Fourth Amendment.

Other circuits, however, hold that an independent review for reasonableness is required in addition to a procedural due process analysis.<sup>169</sup> In these jurisdictions, evicted tenants may challenge the lack of due process given to them as well as the lack of independent review.<sup>170</sup> Courts in these circuits will only find a Fourth Amendment violation, however, when the private interests at issue outweigh the government’s interests.<sup>171</sup> Accordingly, evicted tenants may argue that their interest in retaining shelter, which the U.S. Supreme Court has held is “the very core” of the Fourth Amendment,<sup>172</sup> outweighs the government’s interest in abating nuisances. Nevertheless, proponents of this argument face an uphill battle, as a substantial number of courts have upheld the government’s interest in abating nuisances in similar cases.<sup>173</sup>

Although evictions under chronic nuisance ordinances appear to fall under the definition of seizures and fulfill the government action requirement, the evictions will likely be deemed reasonable. Evictions under chronic nuisance ordinances, therefore, will likely not be found in violation of the Fourth Amendment. Rather, the void for vagueness doctrine is the strongest argument for tenants seeking to raise constitutional challenges against chronic nuisance ordinances.

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167. Compare *Flatford v. City of Monroe*, 17 F.3d 162, 170 (6th Cir. 1994) (holding that, if procedural due process requirements are followed, then the governmental action is reasonable as a matter of law), with *Samuels v. Meriwether*, 94 F.3d 1163, 1168 (8th Cir. 1996) (holding that an independent review for reasonableness is always required, whether or not the government fulfilled all due process requirements).

168. See, e.g., *Flatford*, 17 F.3d at 170.

169. See, e.g., *Samuels*, 94 F.3d at 1168.

170. See *id.*

171. See *id.*

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

173. See *Samuels*, 94 F.3d at 1168 (holding that the city’s destruction of an apartment building for failing to abate nuisances was reasonable); *Freeman v. City of Dallas*, 242 F.3d 642, 654 (5th Cir. 2001) (holding that the city’s destruction of vacant apartment buildings due to label of “urban nuisances” was reasonable); *Hedrick v. Pfeiffer*, 10 F. Supp. 2d 1106, 1112 (D. Neb. 1998) (holding that city’s placement of locks and hasps on rental property due to owner’s failure to abate nuisance was reasonable), *aff’d*, 175 F.3d 1024 (8th Cir. 1999).

## V. RECOMMENDATION TO MUNICIPALITIES

Municipalities be forewarned: chronic nuisance ordinances should be avoided.<sup>174</sup> Such ordinances will likely be found unconstitutional in the future, and the ordinances have proven to be unpopular with both tenants and landlords, resulting in a plague of lawsuits against the municipalities that adopt such ordinances.<sup>175</sup> Because of the inevitable onslaught of litigation, some municipalities have refrained from adopting chronic nuisance ordinances,<sup>176</sup> choosing instead to implement other methods of controlling nuisance activity.<sup>177</sup> For the municipalities that choose to adopt chronic nuisance ordinances, expensive, drawn-out litigation awaits them.<sup>178</sup>

Other reasons also exist for avoiding chronic nuisance ordinances. At this time, the long-term effects a chronic nuisance ordinance may have on a community are unknown.<sup>179</sup> Whether chronic nuisance ordinances are effective at ending nuisance activities<sup>180</sup> or simply move the activities from one region to another is also unknown.<sup>181</sup> Finally, chronic nuisance ordinances should be avoided because of the detrimental impact they have on victims of domestic violence.<sup>182</sup>

If a municipality insists on adopting a chronic nuisance ordinance, the municipality should take steps to ensure that it protects domestic violence victims as much as possible.<sup>183</sup> The protection of domestic

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174. See Johnny Edwards, *Officials Chided on Nuisance Issue*, THE AUGUSTA CHRONICLE, May 20, 2010, available at <http://m.chronicle.augusta.com/latest-news/2010-05-20/officials-chided-nuisance-issue#gsc.tab=0>.

175. See *id.* For example, Cincinnati, Ohio, has faced numerous lawsuits since enacting its chronic nuisance ordinance in 2006, resulting in multiple changes to the ordinance and a giant headache for the municipality. See Kevin LeMaster, *Chronic Nuisance Ordinance to be Reviewed . . . Again*, BUILDING CINCINNATI (Apr. 13, 2010), <http://www.building-cincinnati.com/2010/04/chronic-nuisance-ordinance-to-be.html>.

176. See Edwards, *supra* note 174. Susan Moore, the General Counsel of Augusta, Georgia, actively discouraged her municipality from adopting a chronic nuisance ordinance, stating “I believe that adoption and enforcement of [a chronic nuisance] ordinance would result in expensive, drawn-out litigation much like Cincinnati has experienced.” *Id.*

177. See *id.* For example, municipalities have created multidisciplinary task forces whose objective is to reduce nuisance activities as another method of controlling nuisance activity. See *id.*

178. See Fais, *supra* note 123, at 1205.

179. See *supra* Part II.B.

180. See *supra* Part II.B (explaining how chronic nuisance ordinances may in fact cause harm to communities).

181. See *supra* Part II.B.

182. See *supra* Part II.C.

183. Protecting domestic violence victims will also protect the municipality from excessive lawsuits, as domestic violence victims are a significant source of the lawsuits plaguing municipalities. See *Grape v. Town/Village of East Rochester*, No. 07-CV-6075-

violence victims may be accomplished through several measures. Foremost, any vague, limitless catch-all provision that may be used to encompass acts of domestic violence must be removed. Additionally, language must be inserted into the ordinance that creates an exception for victims of domestic violence.<sup>184</sup> Some municipalities, for example, are considering adding language to their chronic nuisance ordinance that states that only the *perpetrators* of crimes and nuisance activities, and not the *victims* of those crimes and activities, may have the ordinance enforced against them.<sup>185</sup> These same municipalities are also considering adopting a policy of imposing a strike upon citizens only if either: “1) [they have] been convicted of an offense[] [and] 2) there is evidence beyond the mere fact of arrest or citation that corroborates that nuisance activity actually occurred.”<sup>186</sup> These measures in turn will more clearly provide citizens with fair notice of what conduct is prohibited and prevent arbitrary and discriminatory enforcement of the ordinance, protecting the municipality from void for vagueness challenges.<sup>187</sup>

While adding an exception for domestic violence victims is a start, more is needed to protect them. In many instances, an act of domestic violence can be categorized as another type of nuisance activity, such as an assault or instance of fighting, harassment, public noise disturbance, and so on.<sup>188</sup> Consequently, police education and training is needed to identify domestic violence situations.<sup>189</sup> Once a domestic violence situation is identified, police should refrain from charging a domestic violence victim with a strike for *any* type of nuisance activity, no matter how the activity is characterized.<sup>190</sup> Furthermore, if a strike is mistakenly imposed for a domestic violence incident, no penalty should be imposed upon the property owner for not evicting a domestic violence victim.<sup>191</sup>

Finally, if a municipality insists on enacting a chronic nuisance ordinance, the municipality should ensure that landlords, not the police, perform evictions under the ordinance. Although indirect government

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CJS-(F) (W.D.N.Y. July 6, 2007); *Briggs v. Borough of Norristown*, No. 2:13-cv-02191-ER (E.D. Pa. filed Apr. 29, 2013).

184. See Letter from Shriver Center to Rockford, Ill. City Council (Jan. 15, 2013), <http://bit.ly/1j6p4gZ> [hereinafter Shriver Letter].

185. See *id.*

186. *Id.*

187. See *supra* Part IV.A (arguing that chronic nuisance ordinances violate the void for vagueness doctrine).

188. See Shriver Letter, *supra* note 184.

189. See *id.*

190. See *id.*

191. See *id.*

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action is sufficient for a Fourth Amendment seizure to occur,<sup>192</sup> the government action involved is less obvious. Even though courts will likely hold that evictions under chronic nuisance ordinances do not violate the Fourth Amendment no matter who performs the evictions,<sup>193</sup> Fourth Amendment challenges are less likely to be raised when landlords perform the evictions. When fewer Fourth Amendment challenges are raised, municipalities save significant expenses that otherwise would be spent on protracted litigation.<sup>194</sup>

These measures will *limit* the harmful effects that chronic nuisance ordinances cause domestic violence victims and municipalities. Complications and unforeseen ramifications, however, will doubtless develop no matter how a municipality drafts its ordinance. Therefore, municipalities should seriously consider implementing alternative measures to control nuisance activities. A chronic nuisance ordinance is a hasty remedy, not a “panacea for [all] . . . ailments” conflicting a municipality.<sup>195</sup>

## VI. CONCLUSION

Chronic nuisance ordinances treat acts of domestic violence as “nuisances” instead of crimes. As chronic nuisance ordinances continue to grow in popularity, the same frightening decision Lakisha Briggs faced is being forced on more and more victims of domestic violence: call the police and face forced homelessness or continue to be abused. Consequently, the constitutionality of these ordinances will continue to be questioned in upcoming years, and whether the ordinances will survive these attacks remains to be seen.

In the meantime, municipalities should at the very least implement measures to limit the ordinances’ harmful effects. Ideally, however, municipalities should avoid chronic nuisance ordinances entirely. Domestic violence victims should not be blamed for failing to control their abusers. It is time to stop treating domestic violence like a nuisance and to start treating it like the crime that it is.

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192. *See supra* Part IV.B.

193. *See supra* Part IV.B.

194. *See supra* note 183 (stating that lawsuits plague municipalities that have enacted chronic nuisance ordinances, which results in significant costs for municipalities).

195. FRANK, *supra* note 36, at i.