

NOTES

**Sleeping Together: Rhetorics of Displacement from  
Underpass to *Grants Pass***

Jay Arora\*

*“When we all fall asleep, where do we go?”<sup>1</sup>*  
— Billie Eilish

ABSTRACT

*This Note explores the interplay between public art, homelessness, and urban policy through an analysis of Rain and Lightweave, two installations in Washington, D.C.’s NoMa district. These works, commissioned as part of a broader neighborhood revitalization effort, were installed only after the removal of homeless encampments from the underpasses they now occupy. Through the frameworks of James Boyd White’s constitutive rhetoric and Sonja K. Foss’s visual rhetorical analysis, this Note examines how law and public art function in tandem to regulate space and shape public perception. It situates these installations within the evolving legal landscape of anti-homeless ordinances, particularly following the 2024 Supreme Court decision *City of Grants Pass v. Johnson*, which upheld municipal bans on sleeping in public. By tracing the ways in which judicial reasoning and aesthetic interventions converge to redefine urban space, this analysis demonstrates how public art, like law, operates not merely as a reflection of societal values but as an active force in constructing social hierarchies and enforcing exclusionary policies.*

INTRODUCTION: CONTACT SPACE..... 462

I. BACKGROUND..... 464

    A. Background Facts on the NoMa Underpass Installations ..... 464

    B. Methods of Rhetorical Analysis ..... 469

        1. Constitutive Rhetoric ..... 469

        2. Visual Rhetoric ..... 470

II. ANALYSIS..... 471

---

\* © 2025, Jay Arora.

1. BILLIE EILISH, *bury a friend*, on WHEN WE ALL FALL ASLEEP, WHERE DO WE GO? (Darkroom/Interscope Records 2019).

A. *Inherited Language* . . . . . 471

1. The Language of Public Art . . . . . 471

2. A Culture of Safety . . . . . 473

3. Legal Discourses on Homelessness . . . . . 474

B. *Art of the Text* . . . . . 475

1. The Lights Above . . . . . 476

2. The Concrete Below . . . . . 476

C. *Rhetorical Community* . . . . . 477

III. CONCLUSION . . . . . 479

INTRODUCTION: CONTACT SPACE

Rio de Janeiro-based artist Ricardo Basbaum’s 2000-piece *Capsules (NBP x me-you)* offers museumgoers some rare, tacitly-desired relief—they can take a nap. Housed in the prestigious Tate Modern in London, the work consists of four steel capsules built to function as beds, complete with fabric bedding and pillows.<sup>2</sup> Indeed, *Capsules* is designed to be interacted with by the public, and Tate’s collection text describes how Basbaum effectively invites the viewer to “[break] down normal behavior and social codes” by climbing inside.<sup>3</sup> Basbaum’s participatory work as an artist exists in the context of contemporary Brazilian neo-concretism, a movement created in the mid-20<sup>th</sup> century in response to ongoing urbanization, industrialization, and a rise in authoritarian politics—Brazilian neo-concrete art often utilizes mixed materials and is predicated in sensory engagement, subjective experience, and bodily involvement.<sup>4</sup> By grounding their work in a phenomenological approach via experimental, living techniques, the neo-concrete artists sought to critique hegemonic institutions and express humanity’s specific, daily reality as a living organism.<sup>5</sup> *Capsules* transforms all parties present, drawing a shared subjectivity between sleeper and viewer as they both become aware of their own vulnerabilities and the structural forces that imprison them via the presence of their opposite. Basbaum describes this effect as “becoming other with the artwork . . . [as] alterity is mutually reinforced and where *me* and *you* are continuously replaced by a larger and external contact area.”<sup>6</sup> By participating in the work, audience members break through the multiple layers separating them until they are effectively *sleeping together*.<sup>7</sup>

2. Ricardo Basbaum, *Capsules (NBP x me-you)*, 2000, mixed media, Tate Modern, <https://www.tate.org.uk/art/artworks/basbaum-capsules-nbp-x-me-you-t11863>.

3. *Id.*

4. Renato Rodrigues da Silva, *Interdisciplinarity & Participation in Contemporary Brazilian Art*, 11 FILLIP (2010), <https://fillip.ca/content/interdisciplinarity-and-participation-in-brazilian-art>.

5. Ferreira Gullar, *Neo-Concrete Manifesto*, 391 (originally published 1959) (last visited Dec. 9, 2024), <https://391.org/manifestos/1959-neo-concrete-manifesto-ferreira-gullar/>.

6. Ricardo Basbaum, *Post-Participatory Participation*, AFTERALL, Autumn/Winter 2011, at 90, 101.

7. Basbaum, *supra* note 2.

*Capsules'* philosophical implications mirror this Note's objects of focus, the twin public art installations *Rain* and *Lightweave* located in two underpasses of Washington, D.C.'s NoMa district. These works are experiential in nature, raising questions about the possibility of a community where sleeping bodies are visible as they occupy makeshift spaces. However, while Basbaum embraces the utopic potential of shared subjectivity, the installations regard such visibility and contact as a barrier to establishing community identity. The latter perspective reflects the nationwide legislative effort to relocate or remove an area's encamped homeless population by criminalizing sleeping in public, a strategy ultimately sanctioned by the Supreme Court in the 2024 decision *City of Grants Pass, Oregon v. Johnson*. Indeed, *Rain* and *Lightweave* were commissioned by the NoMa's governing body as part of a broader initiative to gentrify NoMa and make it more appealing to its growing number of increasingly wealthy residents.<sup>8</sup> For the two pieces to be installed, the underpasses, spaces that can shield homeless people from the harsh elements and offer some privacy, had to be cleared of the people and personal objects that constituted the encampment. While the beautified underpasses remain haunted by this violent history, they also engage in present harms via barricades that deny shelter or freedom of movement to anyone occupying or utilizing the space. *Rain* and *Lightweave* are designed to be freshly, continuously experienced by pedestrians; as rhetorical artifacts, these installations are always already articulating and re-articulating new policies and judicial opinions (like *Grants Pass*) that crack down on homeless people.

While the artistic intention behind *Rain* and *Lightweave* is to symbolize a revitalized, attractive neighborhood,<sup>9</sup> these installations communicate past and present violence through their foundation, form, and function, resulting in an aestheticization of the displacement and criminalization of homeless people. The first section of this piece offers background information on these two public art fixtures, specifically focusing on how their origins and development directly correlate with efforts to remove homeless encampments from these spaces. This is demonstrated not merely in these underpasses but throughout the country via a wave of cultural dialogues, statutory actions, and judicial decisions. Following this is an explanation of the analytic methodology applied here, which relies primarily on James Boyd White's methodology of *constitutive rhetoric*. White's framework is supplemented by the tools of Sonja K. Foss to evaluate visual imagery from a rhetorical perspective. This marriage of critical perspectives enables

---

8. Jeff Clabaugh, 'Retail follows roofs': Why the NoMa area in DC is booming, WTOP NEWS (Nov. 6, 2023), [https://www.dcpolicycenter.org/publications/once-upon-time-noma/](https://wtop.com/business-finance/2023/11/noma-is-booming-where-did-that-name-come-from/#:~:text=Where%20the%20name%20%22NoMa%22%20came,to%20the%20birth%20of%20Beatlemania.&text=The%2035%2Dsquare%2Dblock%20area,north%20of%20the%20train%20station; David Rusk, Once Upon A Time in NoMa, D.C. POLICY CENTER (June 05, 2017), <a href=).

9. Press Release: NoMa Parks Foundation to Illuminate Lightweave Installation in L Street NE Underpass on April 9, NoMA BID (April 3, 2019), <https://nomabid.org/news/press-release-noma-parks-foundation-to-illuminate-lightweave-installation-in-l-street-ne-underpass-on-april-9/>.

one to analyze how these art fixtures *speak* without written or verbal language and how that speech constitutes a community that is hostile to the population of unhoused people.

The analysis section is segmented into three subsections, which follow the three-part structure of White's framework: (1) The inherited language, (2) the art of the text, and (3) the rhetorical community.<sup>10</sup> In brief, the first subsection assesses the milieu from which *Rain* and *Lightweave* emerge, a culture that pursues urban safety and defines homelessness through the language of abjection, focusing also on the relationship between these works and systems of legal discourse. The second subsection interrogates how the public artworks, through their form, function to aestheticize the violent practice of eradicating homeless encampments. The final subsection evaluates the ethical implications of a community reconstituted by these public artworks.

## I. BACKGROUND

### A. Background Facts on the NoMa Underpass Installations

As a moniker, "NoMa" rolls off the tongue. Its four-letter spelling and two-syllable pronunciation are patently evocative of "SoHo" and "WeHo," trendy locales in major cities where young people flock to live, socialize, and shop. If its name is catchy, it is entirely by design—the neighborhood is also a manufactured piece of marketing, part of an initiative begun in the late 1990s to re-brand a 35-square-block in Washington, D.C., north of Massachusetts Avenue from a distressed, high-poverty area to a "mixed-use technology, media, arts, and residential district."<sup>11</sup> Today, that vision has largely been achieved: NoMa has become the fastest-growing neighborhood in the country, with 20002 leading all other zip codes in major cities for new apartment construction numbers.<sup>12</sup>

Nevertheless, this boom in development and gentrification has not come without consequences. Studies have shown dramatic changes in racial and economic demographics in NoMa: The area went from having a Black population of 92% in 2000 to 52% in 2010, and the median household income rose from \$42,192 in 2013 to \$100,421 in 2020.<sup>13</sup> NoMa is currently the site of the city's largest concentration of homeless tent camps, specifically underneath the neighborhood's numerous underpasses and nearby warehouses.<sup>14</sup> The Department of Housing and Urban Development defines *homelessness* by centering on individuals

10. James Boyd White, *Law as Rhetoric, Rhetoric as Law: The Arts of Cultural and Communal Life*, 52 U. CHI. L. REV. 684, 692 (1985).

11. Clabaugh, *supra* note 8.

12. Jeff Clabaugh, *2 DC ZIP codes lead nation for new apartment construction*, WTOP NEWS (Oct. 20, 2023, 9:00 AM), <https://wtop.com/business-finance/2023/10/two-dc-zip-codes-lead-nation-for-new-apartment-construction/>.

13. Jonathan, *The Light Art of Displacement: The NoMa Bid Lobbies to Remove Encampments from Underpasses*, WRAP (Feb. 17, 2023), <https://wraphome.org/2023/02/17/the-light-art-of-displacement-the-noma-bid-lobbies-to-remove-encampments-from-its-underpasses/>.

14. Aaron Howe, *The City and the City: Tent Camps and Luxury Development in the NoMa Business Improvement District (BID) in Washington, D.C.*, 28 INT'L J. HIST. ARCHAEOLOGY 165, 167 (2024).

or families without or at immediate risk of losing a “fixed, regular and adequate nighttime residence.”<sup>15</sup> Placed in opposition to more standard, solitary places for sleeping, such locations are defined along the lines of irregularity and exposure—HUD notes that unsheltered homeless people’s nighttime residences may include either a designated temporary shelter or “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, or camping ground.”<sup>16</sup> While the cited reasons vary from financial instability, bodily/mental distress, or interpersonal strife, the absence of a private place to sleep is central to the status of being homeless.

The rise in such homeless encampments in NoMa, particularly in the area’s many underpasses, prompted a strong push by the NoMa Business Improvement District (BID)<sup>17</sup> to excise the location of these homeless encampments—one open letter published by the BID in 2019 depicted an abject scene in these encampments, full of “used and bloody hypodermic needles and other drug paraphernalia, rotting food, trash, broken glass, public nudity, prostitution, sales of illegal drugs, and human urine and feces.”<sup>18</sup> In the face of such an abject vision, NoMa BID tasked itself with shifting not just the economic outlook of the neighborhood but also its aesthetic identity, establishing the NoMa Parks Foundation in 2012. After receiving a \$50 million commitment from the D.C. government to acquire land, build parks, and enhance public space, the NoMa Parks Foundation announced the NoMa Underpass Design Competition in 2012—a competition jury that included the Director of the Smithsonian American Art Museum, a Washington Post columnist, a local art curator, and the Chair of the NoMa Parks Foundation would find artists to “reimagine” the four underpasses on Florida Avenue, L, M, and K Streets Northeast created by the Amtrak and Metro railroad tracks.<sup>19</sup> The competition aimed to “transform the four underpasses . . . from their current unappealing condition into light-

15. 24 C.F.R. § 582.5.

16. *Id.*; see generally SAMANTHA BATKO ET. AL., UNSHELTERED HOMELESSNESS: TRENDS, CHARACTERISTICS, AND HOMELESS HISTORIES (Dec. 2020), <https://www.urban.org/sites/default/files/publication/103301/unsheltered-homelessness.pdf> (explaining that homelessness has been further divided into two categories, “sheltered” or “unsheltered.” While the focus of this Note is on the latter category, it is vital to recognize the existence of the sheltered homeless population who live in unstable or non-permanent living situations).

17. Department of Small and Local Business Development, *Business Improvement Districts (BIDs)*, DC.GOV (last visited Dec. 9, 2024), <https://dslbd.dc.gov/service/business-improvement-districts-bids>. According to the D.C. Dept. of Small and Local Business Development, a BID is a public-private partnership defined as a “self-taxing district established by property owners to enhance the economic vitality of a specific commercial area. The tax is a surcharge to the real property tax liability. The tax is collected by the District of Columbia and all revenues are returned entirely to the nonprofit organization managing the BID. Business and property owners control the BID and how funds are spent. There are currently 12 BIDs in the District of Columbia.”

18. Robin-Eve Jasper, *An Open Letter From the NoMa BID About Underpass Encampments*, NoMa BID (Aug. 21, 2019), <https://nomabid.org/wp-content/uploads/2024/01/An-Open-Letter-From-the-NoMa-BID-About-Underpass-Encampments-2019.pdf>.

19. *NoMa Parks Foundation Announcing Second Underpass Art Park Finalist on L Street*, NoMa PARKS (Jun. 23, 2015), <https://nomaparks.org/2015/06/23/noma-parks-foundation-announces-second-underpass-art-park-finalist-on-l-street/>.

filled, artistic spaces and improve the experiences for pedestrians, cyclists, and vehicular traffic.”<sup>20</sup>

In 2015, after fielding nearly 250 submissions from across the world, the competition jury selected the first two of the planned four underpass designs: *Rain*, designed by Thurlow Small Architecture + NIO architects, and *Lightweave*, designed by Future Cities Lab, would adorn the M Street and L Street Northeast underpasses, respectively.<sup>21</sup> The two pieces share many aesthetic commonalities, as they both incorporate LED light rods functioning like lampposts hanging the underpass ceiling; these lights would stay on and respond to activity. The light fixtures in *Rain* resemble long, thin icicles protruding from above, the brightness levels pulsating and creating a surreal, fluid effect that evokes the work’s namesake. *Lightweave* has a similar LED bulb design, while the shape of the fixtures might best be described as clothes hangers bent out of shape and hung on an overhead rack. The press release from the competition-winning announcement describes the pitch for the art installation:

‘Lightweave’ will translate ambient sounds from passing trains and other sounds of the neighborhood into dynamic auroras of patterned light. ‘Lightweave’ will animate the underpass with variable intensities of illumination while creating a meditative and interactive experience. Similar to dropping a single pebble into an undisturbed pond, waves of light will slowly oscillate through the space. Multiple sounds will create dynamic visual overlaps.<sup>22</sup>

Reflecting the liminal qualities of an underpass, the proposal describes an installation that blurs the line between functionality and aesthetics. The underpass is transformed from a transitional point to be passed through into a space to linger.

And yet, the issue of *lingering* is much thornier in practice, shedding more profound light on the actual function of these installations. In 2018, as part of the construction processes for *Rain* and *Lightweave*, the D.C. government engaged in “clean-up” efforts to vacate the existing encampments on the various Northeast underpasses.<sup>23</sup> On January 11, D.C. Metropolitan Police Department removed encampments of the two underpasses designated for the art installations following

20. Finalists Announced for the NoMa Underpass Design Competition, NOMA PARKS (Aug. 14, 2014), <https://nomaparks.org/2014/08/14/finalists-announced-for-the-noma-underpass-design-competition/>.

21. Lark Turner, NoMa BID Selects Rainstorm Installation For M Street Underpass, URBAN TURF (April 17, 2015), [https://dc.urbanturf.com/articles/blog/noma\\_bid\\_selects\\_rainstorm\\_installation\\_for\\_m\\_street\\_underpass/9781](https://dc.urbanturf.com/articles/blog/noma_bid_selects_rainstorm_installation_for_m_street_underpass/9781); *The NoMa Parks Foundation has selected the design concept for L Street, NE underpass*, PRINCE OF PETWORTH (June 23, 2015), <https://www.popville.com/2015/06/the-noma-parks-foundation-has-selected-the-design-concept-for-l-street-ne-underpass-check-out-a-rendering/>.

22. Rachel Sadon, *NoMa Parks Foundation Chooses Second Underpass Design*, DCIST (Jun. 23, 2015), <https://dcist.com/story/15/06/23/noma-parks-chooses-second-underpass/>.

23. Jake Maher, *DC clears out homeless camps to install \$2 million art display*, ST. SENSE MEDIA (Feb. 7, 2018), <https://streetsensemedia.org/article/dc-homeless-encampment-immediate-disposition-noma/>.



a two-week notice to vacate.<sup>24</sup> Two weeks later on January 24, all residents of the K Street NE encampment located just a block south were given less than 24 hours to vacate, as this was considered an ‘immediate disposition of public property,’ which does not require prior notice.<sup>25</sup> One local homeless resident noted that many occupants scattered and were unable to be located.<sup>26</sup>

Reflecting the policy goals of Washington, D.C., the Code of Municipal Regulations has outlined that “no person or persons shall set up, maintain, or establish any camp or any temporary place of abode in any tent, wagon, van, automobile, truck, or house trailer, of any description, or in any combination, on public or private property, without the consent of the Mayor of the District of Columbia.”<sup>27</sup> The local Department of Health and Human Services is responsible for clearing the encampments, and their protocol is first to issue a 14-day notice to vacate before acting.<sup>28</sup> Due to the large amount of federal property in the District, the National Park Service has also increasingly engaged in encampment clearing—following a relaxation of many policies surrounding camping laws due to the coronavirus pandemic, the National Park Service signaled a shift in policy when they issued press release in 2022 indicating they would be fully enforcing the federal no-camping regulation with the “goal of full enforcement across all national park lands in the District by the end of 2023.”<sup>29</sup> That year, while the NPS had originally posted signs in McPherson Square that the encampments would be cleared on April 12, 2023, this date was moved up to February 15, two months earlier—the announcement was only released two days prior to the modified date of enforcement.<sup>30</sup> While NPS justified the change by citing rapidly deteriorating safety conditions for both the unhoused population and pedestrians, the choice to move the enforcement date from spring to winter reflects the unequal burden when reifying urban policy goals.<sup>31</sup>

Nationwide, an ever-growing number of communities have instituted laws that restrict where homeless people can set up encampments (often euphemistically referred to as *anti-camping laws*),<sup>32</sup> placing civil and criminal penalties on illegal trespass. The National Homelessness Law Center found in 2019 that the number of cities with at least one anti-camping law had nearly doubled since the study began in 2006, with 72% of surveyed cities in the United States having at least one law restricting camping in public; further, 51% of surveyed cities had at

---

24. *Id.*

25. *Id.*

26. *Id.*

27. D.C. Mun. Regs. tit. 24, § 121.1 (2025).

28. *Encampment Protocol Engagement FAQ*, OFF. OF THE DEPUTY MAYOR FOR HEALTH AND HUM. SERVICES, [https://dmhhs.dc.gov/sites/default/files/dc/sites/dmhhs/page\\_content/attachments/Encampment%20Protocol%20Engagement%20FAQ.pdf](https://dmhhs.dc.gov/sites/default/files/dc/sites/dmhhs/page_content/attachments/Encampment%20Protocol%20Engagement%20FAQ.pdf) (last visited Apr. 5, 2025).

29. Jeffrey P. Reinbold, *Record of Determination for Clearing the Unsheltered Encampment at McPherson Square and Temporary Park Closure for Rehabilitation*, NAT’L PARK SERV. (Feb. 13, 2023), <https://www.nps.gov/nama/learn/management/mcphersonrod.htm>.

30. *Id.*

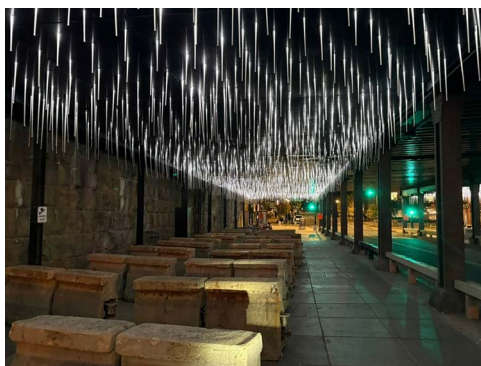
31. *Id.*

32. Peer Marie Oppenheimer, *The Illusion of Public Space: Enforcement of Anti-Camping Ordinances Against Individuals Experiencing Homelessness*, 2023 UNIV. OF CHI. LEGAL F. 463, 464 (2024).

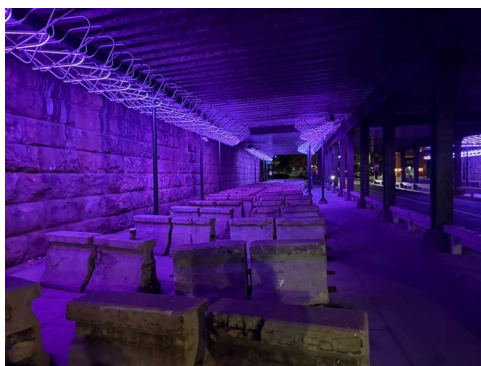
least one law restricting sleeping in public.<sup>33</sup> The criminalization of sleeping outdoors was deemed not to be “cruel & unusual punishment” under the Eighth Amendment by the Supreme Court in *Grants Pass*, thus sanctioning laws that bar homeless people from necessary acts of survival.<sup>34</sup>

The apparent differences between the current online promotional images<sup>35</sup> and the current physical state of *Rain* and *Lightweave* reflect a disparity in the stated goal of the sister works and their actual functional purpose. Their current state, as of October 2024, is captured in the images below and will be explored in the following analysis.

*Rain*, October 2024<sup>36</sup>



*Lightweave*, October 2024<sup>37</sup>



---

33. Eric S. Tars, *Criminalization of Homelessness*, in *ADVOCATES' GUIDE 2021: A PRIMER ON FEDERAL AFFORDABLE HOUSING & COMMUNITY DEVELOPMENT PROGRAMS* 6-36, 6-36 (2021); NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY, *HOUSING NOT HANDCUFFS 2019: ENDING THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES* 12 (2019).

34. City of Grants Pass v. Johnson, 603 U.S. 520, 550 (2024).

35. Underpass Art Installations, NoMA BID, <https://nomabid.org/public-art/underpass-art/> (last visited Dec. 9, 2024).

36. Jay Arora, Photograph of *Rain* (Oct. 27, 2024).

37. Jay Arora, Photograph of *Lightweave* (Oct. 27, 2024).



## *B. Methods of Rhetorical Analysis*

### 1. Constitutive Rhetoric

James Boyd White's mode of constitutive rhetoric is utilized here to decode how legal language operates to shape the culture and community from which it is born.<sup>38</sup> Formulated in the 1980s, this methodology arose amid what White describes as a then-present state of legal discourse that sterilely frames the law as "a set of rules merge[d] with . . . a set of institutions and processes. The overriding metaphor is that of the machine; the overriding value is that of efficiency."<sup>39</sup> This discursive movement can be framed as existing within an intentionally exclusionary closed universe; conversely, White's constitutive rhetorical analysis of the law is deeply invested in language as operating within a "flux of experience" as "speakers located in particular times and places [speak] to actual audiences about real people. . . . Language is . . . perpetually reaffirmed or rejected in a social process."<sup>40</sup> This theory implies that the law is not merely mechanical in function nor limited in scope but instead plays a generative role in defining characters and communities. White lays out three fundamental components of constitutive rhetorical analysis: i) scholars consider the milieu from which a rhetorical artifact emerges and operates, ii) the specific language utilized by the rhetor to reconstitute this milieu, and iii) the kind of community established by said language.<sup>41</sup>

The first step of analysis involves investigating the rhetorical artifact's "inherited language," or the contemporaneous landscape that informs and influences the text. White sees this inheritance as broad in scope, factoring not just judicial precedent and existing statutes but also including the "maxims, general understandings, [and] conventional wisdom" that must be encountered in the world before the rhetor can subjectively interpret them.<sup>42</sup> This might be thought of as encompassing the social universe of the text, which in turn births the motives and values that animate the conflict at the heart of the artifact.<sup>43</sup> Yet, as with any social network, the social universe of the text cannot be all-encompassing. The rhetorical critic considers subjects that have been over-specified and those that have been left behind outside the discursive web.<sup>44</sup> In this way, much like how the actual concept of *inheritance* is often accompanied by harsh disputes around in/exclusion in trusts and estates, White's inherited language can be conceived of as a history of the conflict over which and what kind of voices will define the world.

The second step, the analysis of the "art of the text," is the method that best reflects White's investment in the power of specific wording and his distaste for

38. White, *supra* note 10, at 692.

39. *Id.* at 686.

40. *Id.* at 686, 692.

41. JAMES BOYD WHITE, JUSTICE AS TRANSLATION 99 (1990).

42. White, *supra* note 10, at 689-90.

43. *Id.* at 701.

44. *Id.* at 684-702.

what can be thought of as paraphrasing. Indeed, when noting the particularly loaded meanings in American culture of words like “property” or “family,” White points out that these words have a “life and force of their own,” and their unique powers cannot be replaced with definitions or translated into other terms without destroying their indelible, complex nature.<sup>45</sup> Borrowing lessons from the analysis of poetry, which entails aesthetic consideration and the decoding of semiotic patterns in verse, White encourages critics to locate the particular words and images that populate a rhetorical artifact to determine their significance and the investments of the speaker, such that the text might reconstitute the discourse it has inherited.<sup>46</sup>

Lastly, and perhaps most crucial to the philosophical project of constitutive rhetoric, is White’s consideration of the “rhetorical community” created by the text. With any judicial opinion, for example, the critic should consider not merely the result within the limited framework of which party has emerged from the dispute victorious or which precedent remains good law, but how the text has “validated or authorize[d] one form of life—one kind of reasoning, or kind of response to argument, one way of looking at the world and at its own authority—or another.”<sup>47</sup> On a synecdochical level, the rhetorical community comprises “Ideal Readers” who aspire to respond to the text and become what the text prompts them to be, as their current station is magnified in contrast with that idealized ethical identity.<sup>48</sup> In many ways, it would appear that the relation between the inherited language and the rhetorical community is circular, as these objects of inquiry must gestate in the stew of cultural consciousness before they can remake that culture in their image.

## 2. Visual Rhetoric

While following White’s analytic structure and general ethos of constitutive rhetorical criticism, this Note is concerned not solely with written texts but primarily with visual works of art. Therefore, I also rely on the techniques for rhetorically evaluating visual imagery offered by seminal rhetorical critic Sonja K. Foss. Foss contends that fully capturing human experiences in a media-saturated world requires moving rhetorical scholarship beyond a sole focus on oral or written speech to incorporate rhetoric of “architecture, paintings, sculpture, drawing, photography, and in urban, graphic landscape, and industrial design.”<sup>49</sup>

Foss begins this analysis by determining the *function* of the visual artifact based on the critic’s interpretation of its physical data instead of the creator’s

45. JAMES BOYD WHITE, WHEN WORDS LOSE THEIR MEANING 11 (1984).

46. *Id.* at 12.

47. WHITE, *supra* note 41, at 101.

48. *Id.* at 100 (“the Ideal Reader of a call to arms will grab the musket from the mantle and head for the training grounds; the Ideal Reader of an advertisement for men’s cologne will buy and use, and buy and use again”); *Id.* at 690.

49. Sonja K. Foss, *A Rhetorical Schema for the Evaluation of Visual Imagery*, 45 COMMUNICATION STUDIES 213, 213-24 (1994).

intent.<sup>50</sup> This is followed by an assessment of whether the image, through its style and substance, supports or detracts from that function; one considers how the “subject matter, medium, materials, forms, colors, organization, craftsmanship, and context” serve to materialize otherwise intangible societal values.<sup>51</sup> This approach fits neatly within White’s analysis of the art of the text, as physical data and particular words are both instrumental to articulating a value system; further, Foss’s and White’s respective methods both consider how these core building blocks can strengthen or weaken the artifacts’ effectiveness (White measures *cohesiveness*).<sup>52</sup> Finally, Foss suggests scrutinizing the implications of this function by applying some given critical lens. This technique can be couched within White’s conception of the rhetorical community due to their mutual ethical considerations of an artifact’s generative power.<sup>53</sup> Scholars have noted that Foss’s framework is especially relevant for analyzing public art, which commands a much larger and more diverse audience than art found in a museum or gallery and has the potential to impact its locale materially; an examination of function at this moment becomes an examination of *consequence*.<sup>54</sup>

## II. ANALYSIS

### A. Inherited Language

As examples of public art, *Rain* and *Lightweave* reflect the voice of a community rather than that of a singular artist/speaker. Public art has increasingly held dual functions, both creating a community identity through aesthetic features and serving a policy goal. The policy goals articulated here, the removal of homeless people from public life, represent a culture that prioritizes community safety above all else. Yet, the vital question of *whose* safety is prioritized remains, as inherent trade-offs exist between those protected and those villainized. The execution of these policy goals through public art is prompted by a legal landscape that grants communities wide latitude over how they wish to respond to the homelessness crisis. Recently, this freedom was sanctioned at the highest level by the 2024 Supreme Court decision *City of Grants Pass v. Johnson*.

### 1. The Language of Public Art

Before one can investigate inherited language and culture, the initial inquiry in the first step of constitutive rhetorical analysis is to identify the speaker.<sup>55</sup> Public art creates somewhat of an issue in this regard—the artifact’s significance

50. *Id.* at 216.

51. *Id.* at 216.

52. Foss, *supra* note 49, at 216; White, *supra* note 10, at 702.

53. Foss, *supra* note 49, at 216; White, *supra* note 10, at 702.

54. Kelly Noris Martin & Victoria J. Gallagher, *You Make it Amazing: The Rhetoric of Art and Urban Regeneration in the Case of The Public*, 32 J. OF VISUAL LITERACY 51, 53-54, 51-72 (2012).

55. White, *supra* note 10, at 684 (“As for law and rhetoric themselves, I think that to see them in the way I suggest is to make sense of them in a more nearly complete way, especially from the point of view of the individual speaker, the individual hearer, and the individual judge.”).

seems to come not from *who* built it but from *where* it was built. The identity of the creator is often obscured, and their voice sublimated. Consider the Chicago Bean—while local tour guides or trivia aficionados may be aware that its designer is named Anish Kapoor, the giant reflective stainless-steel installation gives the viewer the impression that it represents a city’s spirit rather than a singular artist’s vision.<sup>56</sup> Scholar Hilde Hein notes that while private art is taken as “the product of an individual and autonomous act of expression,” the appreciation of which is “a private act of contemplation,” public art “must entail the artist’s self-negation and deference to a collective community.”<sup>57</sup> As such, I foreground my analysis that contending that, regardless of its initial intentions, public art cannot help but become a rhetorical articulation of the identity and value system of the region for which it represents; in the case of *Rain* and *Lightweave*, NoMa BID (and by extension, the District) becomes the disembodied speaker rather than the collectives that respectively designed the two fixtures.

When it comes to public artworks or monuments, Washington, D.C., inherits an embarrassment of riches. If Washington was conceived of as “more than a city . . . [but] a material symbol, a tangible allegory of the possibilities for the nation and for the nation’s cities,” then the logical question for those in power has long been how one can espouse the nation’s virtues and ideals through a designed urban landscape while also creating a livable space for its residents.<sup>58</sup> Today, the answer for any community seems to lie not only in the symbolic role of public art as a source of aesthetic value or local identity but in that art’s functional role in executing local policy goals. One spokesperson of a Vancouver-based urban planning consulting firm noted that they often utilize public art to “address a challenge that a city is looking to solve,” such as increasing safety or improving transportation efficiency, in a manner that is “meaningful for a broader cross section of people.”<sup>59</sup> Much like a throat singer who vocalizes two notes at once to create a single tone,<sup>60</sup> this type of public art constitutes a community by operating on two levels:

56. Kapoor’s original name for the installation was “Cloud Gate.” When “the Bean” became the de facto moniker, Kapoor expressed displeasure with the departure from his intentions. Addy Bink, *The Bean is a beloved Chicago feature. But that isn’t its name*, FOX 59 (Dec. 9, 2023), <https://fox59.com/news/national-world/the-bean-is-a-beloved-chicago-feature-but-that-isnt-its-name/>; Hamou Nik, *The Story of Chicago’s Iconic Bean Sculpture*, HN REPUBLIC, <https://hnrepublic.com/chicago-bean-sculpture/> (last visited Dec. 12, 2024) (the Bean has become a symbol of the city’s “collective identity . . . serving as a reminder of the power of art to bring people together”).

57. Hilde Hein, *What Is Public Art?: Time, Place, and Meaning*, 54 J. AESTHETICS & ART CRITICISM 1, 1-7 (1996).

58. Margaret E. Farrar, *Health and Beauty in the Body Politic: Subjectivity and Urban Space*, 33 POLITY 7, 1-23 (2000).

59. Marianne Dhenin, *Why Public Art Is Good for Cities*, YES MAG. (Dec. 6, 2021), <https://www.yesmagazine.org/health-happiness/2021/12/06/public-art-cities>.

60. Throat-singing is a vocal technique by which a singer uses “precise movements of the lips, tongue, jaw, velum, and larynx” to produce two or more notes simultaneously. This is most associated with folk traditions in Central Asia, where throat-singing is referred to as *Khöömei* and used to imitate sounds of nature. In this context, *Khöömei* might be considered a constitutive activity whereby community identity is created as the speaker (singer) reflects and reinterprets the language of their natural environment. For more information and examples of this unique practice, see *Throat Singing*,

utilitarian and sentimental. The resultant single tone is a unification of mission and meaning: If, for example, when Kansas City used sidewalk murals as colorful and highly visible curb extenders to improve pedestrian safety, then those murals also articulate safety as a value of that city.<sup>61</sup>

## 2. A Culture of Safety

The pursuit of safety, perhaps not surprisingly, has become a significant motive in numerous urban spaces. In 2015, the same year that *Rain* and *Lightweave* were selected from the applicants for the NoMa Underpass Design Competition, a Washington Post poll found that crime was the District's number one problem and that a record-high percentage of respondents reported feeling "'not too' safe or 'not at all' safe in their communities."<sup>62</sup> Indeed, concerns about violent crime are legitimate, and a desire for safety is one of humans' most deeply primordial instincts. However, *safety* as a concept is much more abstract and elusive, as much a response to societal fears and anxieties as it is to material threats; the same governmental forces used to assure safety can often be the source of those fears.<sup>63</sup>

In urban spaces, a perceived lack of safety is often tied to the visible presence of unsheltered bodies. The crisis of homelessness has reached an undeniable severity. On a single night in 2023, a record-high number of people (more than half a million) were experiencing homelessness across the country, with more than half of all homeless individuals being unsheltered.<sup>64</sup> The growing homeless populations in major cities are often framed as indicators of abjection and danger for any passers-by;<sup>65</sup> one neurological study of a group even found that images of homeless people and drug addicts uniquely produced neural patterns consistent with the disgust and fear elicited by pictures of vomit and overflowing toilets.<sup>66</sup> Efforts to improve safety in communities, such as the closure of encampments and the criminalization of essential human functions like sleeping, often aim to remove homeless individuals from public visibility, even though homeless

---

SMITHSONIAN FOLKWAYS, <https://folkways.si.edu/throat-singing-unique-vocalization-three-cultures/world/music/article/smithsonian> (LAST VISITED DEC. 12, 2024).

61. Kate Elizabeth Queram, *An Initiative to Improve Street Safety through Public Art*, NEXT CITY (Mar. 17, 2021), <https://nextcity.org/urbanist-news/an-initiative-to-improve-street-safety-through-public-art>.

62. Aaron C. Davis et. al., *Residents say crime is Washington's No. 1 problem, poll finds*, Washington Post (Nov. 28, 2015), [https://www.washingtonpost.com/local/dc-politics/crime-is-washingtons-no-1-problem-poll-finds/2015/11/18/8462efe4-8cbc-11e5-ae1f-af46b7df8483\\_story.html](https://www.washingtonpost.com/local/dc-politics/crime-is-washingtons-no-1-problem-poll-finds/2015/11/18/8462efe4-8cbc-11e5-ae1f-af46b7df8483_story.html).

63. Izabela Dixon, *War on Terror: Fear of 'Justice'*, 11 SYMBOLAE EUROPAE 209, 221 (2017).

64. DANIEL SOUCY, ET AL., STATE OF HOMELESSNESS: 2024 EDITION, National Alliance to End Homelessness (Aug. 5, 2024), <https://endhomelessness.org/homelessness-in-america/homelessness-statistics/state-of-homelessness/>.

65. Amanda Erickson, *On Admitting That Homeless People Make You Uncomfortable*, BLOOMBERG (Dec. 13, 2019), <https://www.bloomberg.com/news/articles/2013-12-12/on-admitting-that-homeless-people-make-you-uncomfortable>.

66. Lasana T. Harris & Susan T. Fiske, *Dehumanizing the Lowest of the Low: Neuroimaging Responses to Extreme Out-Groups*, 17 PSYCHOLOGICAL SCI. 847, 848 (2006).

individuals are significantly more likely to be the *victims* of violent crime than members of the general population.<sup>67</sup> When considering the rhetorical power of initiatives to improve “safety,” it is imperative to question whose safety is being prioritized and who these policies target in the process.

### 3. Legal Discourses on Homelessness

*Rain* and *Lightweave* are inseparable from the systems of legal discourse that inform anti-homeless statutes, which ultimately enabled the transformation of a space previously offered shelter and community to unhoused people. This is most apparent in the 2024 Supreme Court decision *City of Grants Pass v. Johnson*, which was decided just a mile from the NoMa light installations. It clarifies that cities are entirely within their rights to reasonably criminalize sleeping outside, as this is not a violation of the prohibition against cruel and unusual punishment in the Eighth Amendment of the U.S. Constitution.<sup>68</sup> While this decision came out some years after the construction of *Rain* and *Lightweave*, the anti-camping laws that it upholds are similar to the laws used to clear the underpass and make room for the installations. In doing so, the Court showcases an investment in letting cities create an environment that is comfortable and safe for housed individuals, diminishing the humanity and needs of homeless individuals in the process.

The statute in question, Grants Pass Municipal Code 5.61, prohibits sleeping in public areas and camping on city property.<sup>69</sup> The ordinances provided escalating penalties for violations, with the initial violation triggering a fine and further violations opening up the possibility of criminal trespass charges punishable by a maximum of 30 days in jail and a \$1,250 fine.<sup>70</sup> The plaintiffs, three homeless individuals, filed suit against the city, alleging that the ordinances and related policies were unconstitutional violations of their civil liberties, punishing them for their status as homeless by criminalizing life-sustaining activities.<sup>71</sup> The plaintiffs relied on *Robinson v. California*, a Supreme Court case that held any criminalization of someone’s status (in that case, being a drug addict) was inherently cruel and unusual.<sup>72</sup> In an opinion written by Justice Gorsuch, the Court refused to extend *Robinson* to control involuntary acts, no matter their necessity for survival.<sup>73</sup> Gorsuch gave high import to the many amicus briefs filed by cities and

67. Margot Kushel, *Violence Against People Who Are Homeless: The Hidden Epidemic*, BENIOFF HOMELESS AND HOUS. INITIATIVE (14 July 2022), <https://homelessness.ucsf.edu/blog/violence-against-people-homeless-hidden-epidemic>.

68. *City of Grants Pass v. Johnson*, 603 U.S. 520, 550 (2024).

69. CITY OF GRANTS PASS, OR., MUNICIPAL COD. §§ 5.61.020, 5.61.030 (2023).

70. Rebecca Fisher-Gabbard & Jeff Welty, *Grants Pass: Local Government Authority and the Constitutionality of Laws Against Camping or Sleeping in Public*, N.C. CRIM. L. (Aug. 12, 2024), <https://ncriminallaw.sog.unc.edu/grants-pass-local-government-authority-and-the-constitutionality-of-laws-against-camping-or-sleeping-in-public/#:~:text=An%20individual%20who%20receives%20more,jail%20and%20a%20%241%2C250%20fine.>

71. *Blake v. City of Grants Pass*, No. 1:18-CV-01823-CL, 2019 WL 3717800 at 1 (D. Or. 2019).

72. See *City of Grants Pass*, 603 U.S. at 547 (discussing *Robinson v. California*, 370 U.S. 660 (1962)).

73. *Id.* at 547.



states in favor of Grants Pass. Describing a scene of “used needles, human waste, and other hazards to make their way to school, the grocery store, or work,”<sup>74</sup> he lets those briefs’ rhetoric inform his abject language, eerily similar to that of the NoMa BID open letter. His language highlights the tension between the needs of housed and unhoused people, ultimately placing much higher regard on the concerns of the former.

Gorsuch upheld communities’ “wide latitude” in their public policy responses to homelessness.<sup>75</sup> In overturning *Martin v. Boise*, the Ninth Circuit decision under which the plaintiffs had initially sued the city, Gorsuch chastised federal judges who would seek to “wrest those rights from the American people and in their place dictate this Nation’s homelessness policy.”<sup>76</sup> NoMa inherits the “wide latitude” of options afforded to communities, relying on this legislative freedom to create novel methods for removing homeless people from an area through the functional, visual language of public art.

*Grants Pass* ultimately abstracts what it means to be human by separating statuses of *being* from survival actions like sleeping or seeking shelter, thus alienating people from their bodily needs. Protection under the law becomes conditional when the only people who can freely act on those bodily needs are those with the resources to do so in private. *Rain* and *Lightweave* elicit similar disorientation: The only people welcome to *enter* this public space are those that can *exit* public space to maintain their bodies.

### B. Art of the Text

By closely analyzing the building blocks of a rhetorical artifact, one can glean how the artifact reconstitutes its discourse. In the case of visual art like *Rain* and *Lightweave*, the defining physical features of these installations acquire unique significance through representational power and association. While the function here (removing homeless people from the underpass) aligns with the standard legislation on the subject, that discourse is reconstituted through aesthetics and experientiality. Currently, the removal of encampments in D.C. is swift and requires little notice, obfuscating the process by which occupied space is cleared and reclaimed—one legal advocate notes that unhoused clients often don’t even know they are being removed, “they [just] come back and all their stuff is gone” as though they were never there at all.<sup>77</sup> Conversely, here, through a constant aestheticized depiction of anti-homeless practices to be imagined by any pedestrian who encounters the installations, the violence of displacement is frozen in time, a site of beautiful, perpetual eviction. This is especially true of the work *Rain*, which visually articulates the project’s function. Two of this installation’s

---

74. *Id.* at 530.

75. *Id.* at 559-60.

76. *Id.*

77. Annemaria Cuccia, *DC is Quietly Closing More Encampments, as Residents Have Fewer Places to Go*, ST. SENSE MEDIA (June 7, 2023), <https://streetsensemedia.org/article/dc-is-quietly-closing-more-encampments/>.

particularly significant physical features are its numerous overhead LED rods and the concrete barriers below.

### 1. The Lights Above

While the 4,000 cascading LED bulbs that hang from the top of the M Street NE underpass are lit 24 hours a day, they are best viewed at night. Walking through this area after the sun has set serves not solely to emphasize the vibrancy of the light fixtures against the darkened sky but to appreciate a more ineffable quality of what these underpasses might represent. Writing on the revelatory nature of the dark, Elie Wiesel once noted that at night, “everything is more intense, more true. . . . [Through it] the day takes on a new and deeper meaning.”<sup>78</sup> Viewing *Rain* in the dark, the unevenly distributed LED bulbs’ vertical, tapered shapes and the fluid intensity of the lights begin to resemble, as the installation title suggests, a rainstorm. There is an irony to the visual representation, as underpasses are common locations for encampments due to their ability to shield residents from rain, snow, and the sun. This visual component reconstitutes the meaning of underpasses as a shelter both materially and literally: Not only does *Rain*’s existence prevent homeless people from sheltering here, but the rain itself has now pushed through the many feet of concrete before continuing its descent. By breaching this protective layer, *Rain* articulates the message that this space can never again function as a shelter from the elements.

These lights can shine throughout the day and respond to the activity of pedestrians because they are connected to the D.C. energy grid, similar to street-lamps. By sourcing its energy through public works, *Rain* becomes an articulation of state power, situating it within a more extensive history of the District enforcing anti-camping laws. This history is experienced as well due to the ghostly pale color of the lighting—the underpass feels haunted by the specters of those people who used to but no longer occupy this very space. Temporality is blurred here—the history of displacement is inescapable in the staid present because of the anxiety about what may become of its future. This atemporal anxiety is characteristic of French philosopher Jacques Derrida’s concept of *hauntology*, which was originally coined to describe how the specter of Marx haunted and would return, in its ghostly state, to the present epoch of free-market capitalism.<sup>79</sup> This philosophical concept can be used to understand time as discontinuous and vulnerable to pasts that permeate the present and wait to return in a future yet to come.

### 2. The Concrete Below

To consider these concrete barriers as components of the art pieces is perhaps counterintuitive, as they are not elements of the original design by the designers of the installations. However, *Rain* and *Lightweave* are not designed to be static,

---

78. ELIE WIESEL, *DAWN*, 5 (1961).

79. See Edyta Lorek-Jezińska & Katarzyna Więckowska, *Hauntology and Cognition: Questions of Knowledge, Pasts and Futures*, 14 *THEORIA ET HISTORIA SCIENTIARUM*, 12-13, 7-23 (2017).

as indicated by the patterns of LED lighting fluctuating in response to sounds and vibrations from cars, trains, and other neighborhood sounds.<sup>80</sup> These installations are connected to a network within the neighborhood; they are not self-contained, they incorporate any spatial, tactile, or auditory interactions so that they may momentarily be a feature of the aesthetic form. By restricting the range of movement and interactions the viewer can have with the installations, the concrete barriers perpetually exercise force on the dynamism and experiential quality of *Rain* and *Lightweave* until they become assimilated into the installations themselves.

These large barriers, in addition to the white signs reading “Cameras in Use” hanging on the metal uprights in the underpass alongside *Rain* and *Lightweave*, clearly diminish the pieces’ effectiveness. While these installations supposedly aim to increase pedestrian accessibility, these obtrusive concrete barriers leave only a narrow space for people to weave through on either side of the roadway, an added difficulty for pedestrians on wheels or any mobility-impaired person—there is a clear lack of any external cohesion between the underpass installations and the community they seek to better.

These concrete blocks, made of sturdy material and arranged in organized rows like soldiers in a battalion, are meant to project strength and power. Yet, this visage of authority instead reveals a sense of anxiety—drastically increasing security typically means one is afraid of an imminent attack. These preventative measures are designed to deter any encampments that may be built underneath the light fixtures, contradicting the message that these spaces are symbols of NoMa’s progress and instead signifying a paranoid, apprehensive campaign of countermeasures. The underpasses become a visual representation of the ceaseless, interminable efforts of communities to both eradicate homeless people from public life and prevent them from re-entering as revenants.

### C. Rhetorical Community

Since NoMa BID launched the Underpass Design Competition via its subsidiary, the organizational goal of beautifying and making safer the urban cityscape has come at the cost of the unhoused individuals whose shelter and community had, up until then, existed within those very spaces. The language of crisis in the aforementioned open letter published by then-NoMa BID president Robin-Eve Jasper is a stark reminder of how the installations’ beneficiaries perceive the necessity and inevitability of the interventions of both the District but also the larger national effort to remove encampments from visual public life.<sup>81</sup> Through its Hieronymous Bosch-esque depiction of human waste, sexual deviance, crime, and death currently invisible in the presently sterile underpasses, the open letter reveals

---

80. *A Serpentine Chandelier that Brings Light, Interactivity and Playfulness to an Underpass in Washington DC’s NoMa District*, FUTUREFORMS (last visited Dec. 9, 2024), <https://www.futureforms.us/lightweave>.

81. See Jasper, *supra* note 18.

how the speakers behind the underpass installations view them as constructing and communicating a teleological narrative of social progress and improvement.

In a vacuum, the soft, surreal colors that light up the once dark and decrepit underpasses create a vision of that improvement. A proponent of the underpass installations would likely point to their impact in cleansing the space, removing undesirable individuals, and making it more appealing for residents of NoMa's many apartment buildings or those who want to avail themselves of its shopping and dining locations. Through the rhetorical power of public art, *Rain* and *Lightweave* recontextualize the cityscape and craft a space whereby audience members and passersby can better appreciate their shared community's physical spaces and pleasant disposition. Such audience members can be considered similar to White's concept of an Ideal Reader<sup>82</sup>—instead, *Ideal Viewers*. For these viewers, their sense of community identity and relationship with the underpasses will be pleasantly heightened as they are stimulated by the physical components of these artworks and the motives they express. Conversely, an Ideal Viewer may appreciate the improvements to safety and beauty while remaining skeptical of the anti-homeless rhetoric underpinning the installations. For White, an Ideal individual may still hold contrasting ideas in their mind, finding both valid despite their seeming incongruity.<sup>83</sup>

Indeed, through the effectual displacing of the unhoused community, the viewer may become privy to a space that might otherwise be dangerous and unnavigable such that they can cross through it or appreciate the art installations. However, according to White's model of constitutive rhetoric, it is insufficient to judge the law as a means to effectuate policy goals and get what *we* want—it is crucial to now investigate who we are and what we become through these rhetorical objects.<sup>84</sup> The stakes of investigating this transaction are quite high, as it is not sufficient to claim these installations succeed because of their aesthetic appeal and creation of spaces for new, productive shared experiences. Instead, one must question the ethics of removing an existing community to stimulate a new one.

The more homeless people are punished for their existence, the more the perception of the divide grows between those with consistent housing and those without it; yet, with studies indicating that more than three-quarters of Americans live paycheck to paycheck,<sup>85</sup> the gap between apparent financial stability and calamity can lie on a razor's edge. Like the ever-shifting colors and waves of light in *Rain* and *Lightweave*, like the uneasy distinctions between a person's being and their bodily functions in *Grants Pass*, and like the haunting anxiety that homeless people will one day return to the underpass, it might be said that the world created here is defined not by safety but by precarity.

---

82. WHITE, *supra* note 41, at 100.

83. *See id.*

84. White, *supra* note 10, at 698.

85. Emily Batdorf, *Living Paycheck To Paycheck Statistics 2024*, FORBES (Apr. 2, 2024), <https://www.forbes.com/advisor/banking/living-paycheck-to-paycheck-statistics-2024/>.

### III. CONCLUSION

*Rain* and *Lightweave* are controversial installations meant to positively symbolize a neighborhood that is rapidly being gentrified, a situation that already warrants its own suspicion and critical inquiry. These works specifically further the goals of NoMa BID and the local D.C. government to remove homeless people from public visibility. *Rain* and *Lightweave* thus share a relationship with legal systems of discourse, specifically the *Grants Pass* decision, which sanctions the statutes that remove homeless people from public spaces and enable artworks such as these to be constructed. The physical aspects of the installations, specifically the LED light fixtures and the concrete barriers, loudly mark both past and present hostility to unhoused people. This modifies the traditional practices of clearing encampments, which have used swiftness and silence to shield the public from such unpleasant realities. In the underpasses, while the homeless population is no longer visible, the means of their eradication ironically remain patently clear, transformed into an aesthetic of displacement. Through these means, NoMa can constitute a community identity that prioritizes the safety of the more privileged residents of the area, such that they may freely “live, work, and play”<sup>86</sup> without exposure to destitute bodies.

By focusing attention on the underpass installations, documenting their controversial development process, and framing them within the larger context of the gentrification of the NoMa neighborhood, this Note showcases how visual art can serve as an articulation of cultural values and community standards. Supplementing White’s framework of constitutive rhetoric with Foss’s tools for analyzing visual images is extremely useful in this regard, as it allows the critic to consider how objects lacking in written or verbal language can nevertheless participate in the “cultural and ethical activity of making meaning in relation to others.”<sup>87</sup> This is particularly relevant to the area of public art. Just as White describes how, when a person speaks, they use words made by others and modify those words through personal usage,<sup>88</sup> public art both occupies and reconstitutes a geographic location that pre-dates it. Further, if public art is created with a policy outcome in mind, it inherits the legal and social discourse that informs the issue and transforms that language into something of both functional and aesthetic significance.

As critics expand their lens to capture the rhetorical life of the current visual landscape, this amalgamation of White and Foss’s respective methodologies may prove helpful in decoding a world increasingly mediated through images and screens. For example, this method can be used to analyze internet memes, which constitute a rhetorical community by re-purposing and re-formatting an existing,

---

86. The phrase “Live. Work. Play.” is frequently used in promotional material for the neighborhood, serving as an unofficial slogan for the neighborhood. For some examples, see *About NoMa*, NoMa BID (last visited Dec. 10, 2024), <https://nomabid.org/about-noma/>; *NoMa BID*, NoMa BID (last visited Dec. 10, 2024), <https://nomabid.org/>.

87. WHITE, *supra* note 41, at 275.

88. See *id.* at 276.

inherited language. However, because that inherited language is often visual, communicating messages non-verbally,<sup>89</sup> the analytical tools provided by White alone may be insufficient. By incorporating Foss's technique of using physical components in lieu of words, one may more successfully apply constitutive rhetorical analysis to determine how visual artifacts can be both decorative and determinative. As language fractures into image, and images diffuse into a cultural milieu, the task of criticism becomes to decode what is seen and recover what has been made invisible.

---

89. L. Grundlingh, *Memes as speech acts*, SOC. SEMIOTICS, 4, 1-22 (2017) ("Some memes, such as reaction shots, do not include text . . . which means that the addressee or reader must be able to interpret the meme and any text, or lack thereof, correctly.").