

Florida's Trespassing Laws: A Recipe for Discrimination and Abuse of Power?

If you have been to a shopping mall, convenience store, restaurant or other public place anywhere in Florida, you have probably seen this sign posted:

All (jurisdiction name) police officers are authorized representatives to advise any person to leave the premises. Failure to do so after being so instructed may result in an arrest for trespass after warning. Florida State Statute Section 810.09.

You have just been introduced to one of the most strictly enforced trespassing laws in the United States, which is codified in the Florida Statutes at Section 810.09. In a nutshell, it allows a property owner or his authorized representative to remove anyone it wishes removed from the premises for any reason and turn any law abiding ordinary citizen into a second class citizen for life. However, when the private property concerned happens to be a public establishment such as a shopping mall, retail or convenience store, or even a place of amusement such as a theme park or a movie theater, this is where legalized discrimination and abuse of power can take place. With this in mind, this is what this white paper is all about.



Typical blanket trespass warning signage found throughout Florida. This sign in Broward County is an example of the many blanket trespass warning signs found throughout the state.

Common Law Definition of Trespassing

Trespassing is defined in common law as going upon the property of someone else without invitation of the owner. Over the years court decisions and laws have interpreted this common law to differentiate between residential and commercial property, particularly as public places of establishment have been built.^{1 2}

All of this is centered on access by the general public. Private property owners who own commercial private property used as a public place of establishment that have a duty to exercise due care as a public establishment is considered an implied invitation for one to enter the property at will.

Below is a table of access of private property as it relates to the general public. It shows how access to private property is implied based on its use.

Table of access to private property in a public environment

Residential private property with always no right of access unless expressly invited by the owner	Homes, condominiums, apartment complexes, gated residential communities
Commercial public and private property where access must be limited to certain persons and controlled	Office complexes, factories, private utility infrastructure, railroad right of way, public and private schools, industrial parks, correctional facilities
Commercial private property where access is at will of the general public (in other words, implied access)	Shopping centers and malls, grocery stores, department stores, convenience stores, places of amusement, theme parks, movie theaters, restaurants, hotels and motels

In most states certain categories of people when engaged in their duties are exempted from trespassing laws. Such people are police officers, firefighters, public safety personnel, letter carriers, couriers and (in Florida) surveyors. When such people enter any private property in furtherance of their duties, they do not have to fear being charged with trespassing.

Florida's Trespassing Statute

Florida's trespassing laws are codified at Chapter 810 of the Florida Statutes. Of the most interest in this chapter is Section 810.09 of the Florida Statutes which reads as follows:

810.09 Trespass on property other than structure or conveyance.—

(1)(a) A person who, without being authorized, licensed, or invited, willfully enters upon or remains in any property other than a structure or conveyance:

¹ See *Pruneyard Shopping Center vs. Robins*, 447 US 74 (1980): A state can prohibit the private owner of a shopping center from using state trespass law to exclude peaceful expressive activity in the open areas of a shopping center. It should be noted that Florida does not follow the *Pruneyard* doctrine.

² *Lloyd Corp. vs. Tanner*, 407 US 551 (1972).

1. As to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation as described in s. 810.011; or

2. If the property is the unenclosed curtilage of a dwelling and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass, commits the offense of trespass on property other than a structure or conveyance.

(b) As used in this section, the term "unenclosed curtilage" means the unenclosed land or grounds, and any outbuildings, that are directly and intimately adjacent to and connected with the dwelling and necessary, convenient, and habitually used in connection with that dwelling.

(2)(a) Except as provided in this subsection, trespass on property other than a structure or conveyance is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) If the offender defies an order to leave, personally communicated to the offender by the owner of the premises or by an authorized person, or if the offender willfully opens any door, fence, or gate or does any act that exposes animals, crops, or other property to waste, destruction, or freedom; unlawfully dumps litter on property; or trespasses on property other than a structure or conveyance, the offender commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) If the offender is armed with a firearm or other dangerous weapon during the commission of the offense of trespass on property other than a structure or conveyance, he or she is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any owner or person authorized by the owner may, for prosecution purposes, take into custody and detain, in a reasonable manner, for a reasonable length of time, any person when he or she reasonably believes that a violation of this paragraph has been or is being committed, and that the person to be taken into custody and detained has committed or is committing the violation. If a person is taken into custody, a law enforcement officer shall be called as soon as is practicable after the person has been taken into custody. The taking into custody and detention in compliance with the requirements of this paragraph does not result in criminal or civil liability for false arrest, false imprisonment, or unlawful detention.

(d) The offender commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property trespassed is a construction site that is:

1. Greater than 1 acre in area and is legally posted and identified in substantially the following manner: "THIS AREA IS A DESIGNATED CONSTRUCTION SITE, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."; or

2. One acre or less in area and is identified as such with a sign that appears prominently, in letters of not less than 2 inches in height, and reads in substantially the following manner: "THIS AREA IS A DESIGNATED CONSTRUCTION SITE, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY." The sign shall be placed at the location on the property where the permits for construction are located. For construction sites of 1 acre or less as provided in this subparagraph, it shall not be necessary to give notice by posting as defined in s. 810.011(5).

(e) The offender commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property trespassed upon is commercial horticulture property and the property is legally posted and identified in substantially the following manner: "THIS AREA IS DESIGNATED COMMERCIAL PROPERTY FOR HORTICULTURE PRODUCTS, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."

(f) The offender commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property trespassed upon is an agricultural site for testing or research purposes that is legally posted and identified in substantially the following manner: "THIS AREA IS A DESIGNATED AGRICULTURAL SITE FOR TESTING OR RESEARCH PURPOSES, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."

(g) The offender commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property trespassed upon is a domestic violence center certified under s. 39.905 which is legally posted and identified in substantially the following manner: "THIS AREA IS A DESIGNATED RESTRICTED SITE AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."

(h) Any person who in taking or attempting to take any animal described in s. 372.001(10) or (11), or in killing, attempting to kill, or endangering any animal described in s. 585.01(13) knowingly propels or causes to be propelled any potentially lethal projectile over or across private land without authorization commits trespass, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. For purposes of this paragraph, the term "potentially lethal projectile" includes any projectile launched from any firearm, bow, crossbow, or similar tensile device. This section does not apply to any governmental agent or employee acting within the scope of his or her official duties.

(i) The offender commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property trespassed upon is an agricultural chemicals manufacturing facility that is legally posted and identified in substantially the following manner: "THIS AREA IS A DESIGNATED AGRICULTURAL CHEMICALS MANUFACTURING FACILITY, AND ANYONE WHO TRESPASSES ON THIS PROPERTY COMMITS A FELONY."

(3) As used in this section, the term "authorized person" or "person authorized" means any owner, his or her agent, or a community association authorized as an agent for the owner, or any law enforcement officer whose department has received written authorization from the owner, his or her agent, or a community association authorized as an agent for the owner, to communicate an order to leave the property in the case of a threat to public safety or welfare.

What we're talking about is contained in Section 810.09 (2) (b) of the Florida Statutes. It basically states that if a person is commanded to leave the property by the owner or authorized agent and refuses, the person has committed the offense of trespassing.

Simply put, a property owner or their authorized agent (usually a store manager) can exclude (and even ban for life) anyone from the premises for any reason regardless of race, sex, marital status, age or national origin. Such exclusion is under threat of arrest and criminal prosecution for trespassing. All of this is without the benefit of due process and trial.

Imagine, for a moment, you patronize a store which is convenient and close to home for you. One day the door is slammed shut on you for life when a store manager or store associate tells you that you are no longer welcome permanently. Now imagine that you are a United States citizen returning home from a trip to Europe and the moment you approach the U.S. Customs and Border Protection counter at the airport, the officer denies you entrance into the United States and you are permanently excluded from the United States.³

Welcome to the world of the excluded for life class.

Discriminatory Treatment in Privately Owned and Operated Public Places

Back before the demonstrations in the 1950's which led to the passage of the Civil Rights Act of 1964, legalized discrimination was rampant especially in southern states like Florida. Such laws were called the "Jim Crow" laws, which basically meant separate but equal.

Practically everything we take for granted nowadays was all segregated: Movie theaters, restaurants, restrooms – any public place. Lots of other places refused flatly to cater to minorities like hotels, motels, stores – even public schools.

In short, minorities were treated as second class citizens, under color of law, until 1954 and the case of *Brown v. Board of Education*. This landmark court case brought the end to segregated public schools. Ten years later the Civil Rights Act of 1964 brought an end to discrimination based on race, among other things.

The Civil Rights Act applies to not only employers but to public accommodations. Before this law minorities, especially in St. Petersburg, were subjected to substandard treatment everywhere. An example would be the lunch counter

³ As long as you have your United States passport and you did not renounce your American citizenship, as an American citizen you are guaranteed the right to return home.

protests in the 1950's where minorities wanting a lunch were subjected to signage marking certain sections of the restaurant closed.

Now that the Civil Rights Act made most forms of discrimination illegal, managers of public accommodations had another tool in their arsenal if minorities wanted to be excluded from their places: Enforcement of trespassing laws depending on the state. In Florida, its trespassing laws are the most draconian in the nation in which managers have the right to exclude anyone, including minorities, as they please for any reason. That's right, anyone and any reason whatsoever.

Three examples in 2007 and one example each in 2008 and 2010

Walt Disney World's Downtown Disney, May 2007: In an effort to make minorities not welcome on Disney property, several people were declared second class citizens by the Orange County Sheriff's Office on the orders of Disney Security by issuing them trespass warnings and banning them for life. After extensive media coverage by not only the *Orlando Sentinel* and Central Florida News 13 (Orlando's counterpart to Tampa's Bay News 9) but the *Tampa Tribune* and the *St. Petersburg Times*, as well as the parents of one of the persons banned from Disney for life threatening legal action against Disney, Disney agreed to a one-year ban rather than a lifetime ban.

According to a Central Florida News 13 article, 48 people as of May 2007 were banned from Disney⁴ and according to an article in the *Orlando Sentinel* that the majority of trespass warnings issued were to minorities. Is this the way Disney treats visitors by judging them as criminals and shutting them out for the rest of their lives?

International Plaza, Tampa, December 2007: During the height of the holiday shopping season malls everywhere get exceptionally crowded, and International Plaza is no exception. Being close to Tampa International Airport, International Plaza gets a lot of taxi cab traffic.

According to a *Tampa Tribune* article on 24 December 2007, it was reported that the security staff of International Plaza were harassing taxicab drivers when passengers are being picked up or dropped off. International Plaza went to extremes such as charging one taxicab driver with trespassing and having trespass warnings issued which bans one from International Plaza for one year. Taxicab drivers retaliated against International Plaza's draconian way of conducting business with the public by refusing to pick up or drop off passengers there, known as a boycott.⁵

Tyrone Square Mall, St. Petersburg, December 2007: A person in his fifties went to J.C. Penney at Tyrone Square Mall to return merchandise just a few days before Christmas. Right after making a donation into a Salvation Army kettle this person forgot where he parked his vehicle. In pursuit of searching for his vehicle, Tyrone Square security looked at things the other way and accused this person of looking into other parked vehicles. The St. Petersburg Police Department was contacted and, although no arrest was made, Tyrone Square security declared this person a second class citizen by banning him from Tyrone Square Mall for life by issuance of a

⁴ *FSU Prospects Accuse Disney of Racial Profiling*, Central Florida News 13 article, 27 June 2007

⁵ *Cabbies to Boycott Plaza*, *Tampa Tribune*, 24 December 2007

trespass warning and having his photo taken like he was getting booked, in order to add to the humiliation.⁶

Is Tyrone Square Mall becoming another International Plaza, St. Petersburg style? Tyrone Square Mall has been a hotbed of complaints of discriminatory treatment against minorities by security for many years. Perhaps Simon Properties, the owners of Tyrone Square Mall, ought to experience what is like being banned from the United States at the border for life.

Bonita Beach (Lee County, Florida): During the summer, we flock to the beaches to cool off from the relentless heat of the day. According to a *St. Petersburg Times* article on 5 July 2008, a retired court reporter went out to the beach in a swimsuit, although it may be on the skimpy side, it covers up the body parts as required by Florida Statutes in order to avoid being charged with public nudity. A Lee County Sheriff's deputy wrote this individual a trespass warning apparently banning this individual for life from the Bonita Beach access; however, after going to court the trespass warning was lifted.⁷

Doesn't law enforcement have other things to do rather than ban someone for life all because of a complaint over a swimsuit? That's just another day in the life of Florida's draconian trespassing laws allowing for abuse of power, whether it may be by law enforcement or by store managers.

Wal-Mart Supercenter, 8701 US 19, Port Richey: Yes, America's largest retailer is good or bad depending on how you judge their customer service to be. Just ask Frank Maurer.

In February 2010 Frank Maurer walked into a Wal-Mart Supercenter in Port Richey for fresh blueberries as advertised. According to Wal-Mart's advertising circular, it had offered rain checks for items advertised that were out of stock. Most reputable merchants do offer rain checks for merchandise advertised at a sale price if in the event a merchant runs out of stock.

But not Wal-Mart.

Instead, Wal-Mart's sales associates humiliate Mr. Maurer by telling him that rain checks are not issued despite a store policy to the contrary. The manager of the Wal-Mart Supercenter gets involved and – unbelievably – turns Mr. Maurer from a law abiding citizen into a second class citizen by having the Port Richey Police Department called and having a trespass warning issued against Mr. Maurer. Even though no arrest has been made, Mr. Maurer has been declared a second class citizen by the Port Richey Police Department on the orders of a Wal-Mart Supercenter store manager.

Is this Wal-Mart's corporate policy as far as their Florida operations are concerned: Turn ordinary law abiding citizens into second class citizens by barring them from Wal-Mart for life? Besides, Wal-Mart has been a hotbed of totally poor customer service and Wal-Mart will do anything to have someone banned from their store for life, even if it includes making a false accusation against someone. Perhaps the

⁶ *Lost a Car, Found a Mess, St. Petersburg Times, 23 December 2007*

⁷ *Crazy Summer of Swimsuits and Lawsuits, St. Petersburg Times, 5 July 2008*

manager of the Wal-Mart in Port Richey ought to experience what life is like trying to make a trip to the United States after successfully renouncing American citizenship.⁸

Second Class Citizen Status

We already know what being a second class citizen is: Having your reputation and character shunned in the community, especially to the point that you have to move elsewhere, can be an excellent definition of a second class citizen in a nutshell.

However, Wikipedia – the online encyclopedia – gives a better explanation of the term Second Class Citizen:

*Second-class citizen is an informal term used to describe a person who is systematically discriminated against within a state or other political jurisdiction, despite their nominal status as a citizen or legal resident there. While not necessarily slaves, outlaws or criminals, second-class citizens have limited legal rights, civil rights and economic opportunities, and are often subject to mistreatment or neglect at the hands of their putative superiors. Instead of being protected by the law, the law disregards a second-class citizen, or it may actually be used to harass them.*⁹

Simply put, one lifetime ban from a public place placed upon a person is the equivalent of a person convicted of a felony, all without due process and trial. If it's just a store representative telling a person that they are banned for life, it just paves the way for a store manager (or anyone else in authority) to make damaging statements about the person banned from their premises to anyone else.

Now if law enforcement gets into the picture, then the humiliation is magnified as limitless as the sky. The person banned does not get arrested or given a notice to appear, but is photographed just like an inmate booked into the county jail and given a document called a trespass warning. Most trespass warnings issued by law enforcement agencies in Florida are worded as such:

*(NAME OF LAW ENFORCEMENT AGENCY)
TRESPASS WARNING
FLORIDA STATE STATUTE 810.09*

Name and address of person warned, along with identifiers and report number.

You are hereby notified that your presence is no longer welcome at the following location: (Name of location and address).

Should you be found on the premises in the future, you will be subject to arrest for trespassing pursuant to Section 810.09 of the Florida Statutes.

Given by: Authorized representative, usually a store manager or security

Acknowledging Receipt: Person banned signs on line

Officer's signature: The officer who writes up the trespass warning

⁸ *Wal-Mart offers rain checks, but a lot of stores don't know it*, St. Petersburg Times, 23 February 2010

⁹ Wikipedia article on Second Class Citizen, retrieved 29 December 2007

*Copies are distributed to the person banned, as well as the authorized representative of the premises and the law enforcement officer for the record.*¹⁰

So, in a nutshell, the property owner or their authorized representative has a way to accuse someone of any act – even a legal act – and banish the person for the remainder of his or her life. All the manager needs is to have the law enforcement agency rubber stamp the manager's seal of approval under color of law.

Once a trespass warning is issued, with or without the help of law enforcement, it is the beginning of a program of humiliation and harassment for the person banned which will last a lifetime. Word of a person banned from premises is usually circulated around in secrecy. The banned person has just become a second class citizen.

Let's say a person was banned from a convenience store permanently and the person was banned by the store manager. Using his or her secret communication network, the store manager contacts managers of other stores where the banned person shops at (it could be any store, convenience, grocery or otherwise) and instructs the managers to initiate a regimen of harassment and intimidation against the person banned from the manager's own store. Then the store managers contacted will more than likely follow suit and ban the same person for life from *their* store. Again. And again. Just add law enforcement for better measure.¹¹

Children enrolled in school are no different. For example, if your child is enrolled in Pinellas County Schools and is suspended out of school, part of the Notice of Suspension your child gets can turn your child into a criminal for the rest of his or her life, not only being declared a second class citizen by the principal for violation of the Student Code of Conduct:

*I must also inform you that, while your child is on suspension he/she may not ride the school bus, be on the property of this or any other Pinellas County Public School, or attend any school function or activity without specific permission from the school's office. A violation of this rule may be considered trespassing.*¹²

A person who gets bans for life from so many public premises is not only being branded a second class citizen for life, it can get to the point like if someone is stripped of his or her Florida citizenship.

What? Florida citizenship?

Wait a minute.

¹⁰ The text of this particular trespass warning is from an old St. Petersburg Police Department trespass warning form. Currently a newer version of their trespass warning form is being used.

¹¹ A form of a semi-secret communication network exists: The National Retail Database. Although the National Retail Database tracks people who have committed any form of retail theft regardless of involvement in the criminal justice system, theoretically it could be used as a tool of intimidation by store managers when it comes to one being banned from a retail establishment. However, entries on the National Retail Database are only kept for seven years as it is subject to Federal fair credit reporting laws and there is no mechanism for the general public to see if the National Retail Database has a file on them.

¹² Pinellas County Schools Form 1-1852, *Notice of Suspension*, retrieved from Pinellas County Schools' Central Printing Services website on 29 December 2007.

The State of Florida, being a constituent state of the United States, cannot grant or deny citizenship. Citizenship and the granting or revocation thereof is the supreme power vested in the United States federal government being a sovereign nation. This is embodied in the Fourteenth Amendment to the Constitution of the United States, which states that all persons whether born or naturalized in the United States are citizens of the United States and of the state in which the person resides.

In fact, a series of United States Supreme Court decisions beginning with the case of *Afroyim v. Rusk*, 387 U.S. 253 (1967) makes it nearly impossible for the United States Government to strip a person of his or her citizenship, with very few exceptions.¹³ A person wishing to renounce American citizenship voluntarily, in essence, must leave the United States, appear at the American Embassy or Consulate, and expressly renounce citizenship before an American consular officer.

Therefore, United States citizenship is a right guaranteed to American native born individuals. It cannot be taken away.

And pursuant to the Fourteenth Amendment to the United States Constitution, the State of Florida as well as the 49 other states of the Union do not have the power to grant or deny citizenship.

So, there is no such thing as Florida Citizenship or a Citizen of the State of Florida. Instead, residing in Florida is considered Florida residency rather than citizenship. Anyone can move into or out of the State of Florida as they please, no governmental permission is required. Just make sure you are properly domiciled as to your residential status.¹⁴

However, there are few ways one could be *legally* classified as a second class citizen and banned for life: One can be banned from a Florida municipality, an entire Florida county or even the State of Florida on the order of a court of law.¹⁵ This form of severe banishment is not very easy to seek as there are factors that have to be considered. Another way one can be legally classified as a second class citizen for life is to be convicted of a sex related offense and declared by the court as a sexual offender and/or sexual predator and current laws mandate identification and reporting for life even after fines are paid and prison time is served (unless, of course, a pardon is granted).

In practice, a person banned from many premises could, in theory, be so intimidated and ridiculed that the person has to leave a part of Florida or perhaps the entire state. The only way a person can remedy his or her second class citizen status by reason of being banned from public premises is through the courts as well as retaliatory ridicule of the establishment that banned the person by the media.

¹³ A United States citizen, whether naturalized or native born, can have his or her citizenship stripped for Treason pursuant to Section 349 (a) (7) of the Immigration and Nationality Act. In the case of naturalized individuals, a Federal District Court can revoke citizenship for deceitful acts related to the application for citizenship.

¹⁴ Obtaining a Florida Driver's License and Florida license plates is a Florida residential requirement.

¹⁵ "Maybe Now Her Stalker Will Stop", *St. Petersburg Times*, 24 November 2006. A circuit judge issued an injunction banishing a person from St. Pete Beach for life.

For Those Overcoming Gambling Addictions

For Floridians who want to get a taste of Las Vegas without going there, there are casinos in Tampa and Miami that are owned and operated by the Indian tribes. After all, these casinos can legally operate despite their being illegal in Florida as the Indian tribes are out of the jurisdiction of the State of Florida.

For some, gambling can become an addictive habit which ruins one's lifestyle. People who overcome gambling addiction do so usually with professional help. The Indian owned and operated casinos show an interest when one is attempting to overcome a gambling problem.

What you know may surprise you.

The Indian casinos have a program where one can exclude himself or herself from participating in gambling. *Actually, it is a self initiated trespass warning which declares the person who is seeking help in overcoming a gambling problem a second class citizen.* What their self exclusion program entails is that the person shows up on the premises of the casino after the paperwork is completed in the future the person has committed the offense of Trespassing pursuant to Section 810.09 of the Florida Statutes and is subjected to arrest.

Perhaps the Indian casinos can do something better to help those who are attempting to overcome a gambling problem rather than just exclude a person. That's just like our United States Government telling a native born citizen of the United States of America: "You have an incurable disease, would you like to leave the country permanently and give up your citizenship to get treatment?"

Employer and Employee Issues

Florida's draconian trespassing laws are also a boon to employers who want to terminate employees for no reason.

Not only Florida has draconian trespassing laws on its books, Florida happens to be an employment at will state as far as the private sector is concerned. What that means in a nutshell is that an employer can terminate an employee for practically no reason at all. Florida private employers routinely go to extremes when it comes to terminating employees by calling law enforcement to have the person escorted from the premises and at the same time have the employee branded as a second class citizen for life by having a trespass warning issued. It is sad, but Florida's laws make it way too easy for employers, store managers and security staff to brand a person as a second class citizen for life, no explanation needed.

Two notable cases came to light in December 2008: One employee in Panama City Beach (the Florida panhandle town, that is) who was terminated for saying "Merry Christmas"¹⁶ and another right here in St. Petersburg for being helpful to a stranded visitor who was given permission to stay at the Radisson Hotel on Roosevelt Blvd. for a few hours, with the supervisor's approval of course¹⁷. In the Panama City Beach case the president of Counts Oakes Properties had law enforcement called to further

¹⁶ *Woman Alleges Firing Over "Happy Holidays" Stance*, 10 Connects News (WTSP-TV), 23 December 2008

¹⁷ *Radisson Responds to Employee Complaint*, 10 Connects News (WTSP-TV), 6 January 2009

harass and intimidate the employee and in the St. Petersburg Radisson Hotel case the general manager had the employee escorted from the hotel for the same reason.

Perhaps the president of Counts Oakes Properties in Panama City Beach and the general manager of the Radisson Hotel on Roosevelt Blvd. in St. Petersburg ought to feel what it is like being banned from the United States at the border for life.

The Homeless

More and more people are becoming homeless thanks to bank loan officers who gave people mortgages that people cannot afford, which contributed to the housing downfall of 2007 which sent home values crashing down the tubes. Their adjustable rate mortgages made their payments so high that people were being forced into the ranks of the homeless by reason of foreclosure.

Here in St. Petersburg and in a few other Florida cities, being homeless can mean discriminatory treatment including being the recipient of not one but so many trespass warnings which turn law abiding citizens into second class citizens, all without due process. In fact a recent report in 2009 done by The National Law Center on Homelessness & Poverty and the National Coalition for the Homeless entitled *Homes Not Handcuffs* lists St. Petersburg as Number 2 in the United States in criminalizing the homeless.^{18 19}

On another note, a plan to enhance security at the BayWalk shopping complex in downtown St. Petersburg has the potential for turning anyone – even homeless persons – into second class citizens. The plan for enhanced security at BayWalk calls for the City of St. Petersburg to relinquish control of the north sidewalk of 2 Av N from 2 St N to 1 St N (which is where Baywalk is located) from city to private control. Since when did the City of St. Petersburg turn over its public sidewalks over to a private entity in the interest of enhanced security?^{20 21}

What can be done to reform Florida's trespassing laws?

This can be easily summarized in the text of a letter I wrote to the *St. Petersburg Times* on 28 June 2007 just after the Disney incident:

Currently Florida's trespassing laws allow for any property owner or their authorized representative, such as a store manager, to exclude anyone from the property for any reason whatsoever for life under threat of arrest for trespass after warning. The current system of enforcement of Florida's trespassing laws, especially when it comes to a public place such a retail establishment or a place of amusement where the public can come and go at will, is legalized discrimination and those who are issued trespass warnings by law enforcement are branded for life.

I can understand the balance between a private property owner's rights and access by the general public. A homeowner or a commercial property owner where there is no general access by the

¹⁸ See <http://www.nationalhomeless.org/publications/crimreport/pressrelease2009.html> (National Coalition for the Homeless site) for the complete report. From my reading the report it seems that store managers are using trespassing laws to discriminate against the homeless.

¹⁹ *Is St. Petersburg really mean to the homeless?* 10 Connects News (WTSP-TV), 17 July 2009

²⁰ *St. Petersburg should be careful before closing public sidewalks to protesters*, St. Petersburg Times article written by Howard Troxler, 19 July 2009

²¹ The City of St. Petersburg at a City Council meeting in October 2009 (which gained national media attention due to an altercation that broke out right after the vote was taken) gave control of the sidewalk to BayWalk.

public is one thing, but when you have private property that is accessed by the general public such as a convenience store or an amusement park, that's another.

I would suggest revising Florida's trespassing laws to only allow the owner or their authorized representative of a retail establishment to ban anyone from their property not to exceed one year, and that this kind of trespass warning is to only be given by a law enforcement officer after an investigation of the facts. A store manager's pure desire to exclude a person for no apparent reason at all, including a person's race, should not be justification. The only time a person can be banned from a retail establishment for life would only be permitted as an order of the court, either in a civil case as part of a court order or a settlement agreement or in a criminal case as part of a conditions of probation. The same thing should apply to public property as well.

If any establishment such as Disney or 7-Eleven engages in legalized discrimination by banning a person from the premises for life, that's their business under Florida's existing trespassing laws. However, businesses that practice banning people from the premises for life will suffer in the form of their bottom line and their reputation and goodwill in the community. I feel that our elected officials need to eradicate this form of legalized discrimination by reforming Florida's antiquated trespassing laws.

Any business establishment which practices banning people for life from their premises as part of their business can suffer with their bottom line and reduced business. In fact, business can dip down so much that the business has to close up shop.

We as Americans value and cherish our right to own private property and be left alone from unreasonable governmental influence. However, the reform of Florida's trespassing laws would apply to private property of a commercial nature where there is an implied invitation for access.

The decision of continued access to commercial private property where access is by implied invitation on a permanent basis should be left to the courts. After all, store managers move on to other endeavors routinely. Moreover, authorized representatives of commercial private property such as store managers should not be out there judging ordinary citizens and make adversary statements that brand a person for life.

Our Florida legislators need to really tackle this issue and put an end to this form of legalized discrimination and put it ahead of other priorities. Our state has lost enough residents to other states due to unaffordable housing and the high cost of living since 2004 and we cannot see the eventual unraveling of our state's economy by more people leaving the state not only due to cost of living issues but due to way of life issues as well. Moreover, I believe that an appropriate amendment to the Constitution of the State of Florida banning any form of banishment under any circumstances whether it may be from public or private premises followed by appropriate legislation would be appropriate.²²

Epilogue

The majority of people declared second class citizens by being given trespass warnings and subsequently banned for life are honest, law-abiding citizens who contribute to the good of society. Nothing was done criminally wrong to get someone banned for life.

²² It should be noted that Georgia has an anti-banishment clause in its state constitution; however, there are loopholes that allow banishment to all but one county of Georgia. After all, Georgia has 159 counties in comparison to Florida which has 67 counties.

If a business manager such as a store manager wants to ban someone from the premises, that's their business. However, our Florida laws should cap the length of any trespass warning issued at one year; simply banning someone for life is very draconian and it treats one like a criminal without the benefit of trial. Instead, a business manager can seek a court injunction to ban someone for life after a court hearing.

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Appendix A - Suggested Amendment to Section 810.09 of the Florida Statutes

810.091 Length of time for Trespass Warnings issued pursuant to Section 810.09 2 (2) b and (3) –

1. The owner or his authorized agent may have a Trespass Warning issued to a person. Such Trespass Warning shall be issued by a law enforcement officer based on a review of the facts giving rise to the owner or his authorized agent ordering the Trespass Warning being issued. Such review of the facts need not be elaborate and shall consist at a minimum a brief statement by both parties.
2. The Trespass Warning shall be in writing on a form developed by the law enforcement agency for this purpose with a copy to the owner or his authorized agent, the investigating officer and the person that is the subject of the Trespass Warning being issued.
3. A person's race, sex, color, handicap or national origin alone shall not be the basis for a Trespass Warning being issued.
4. A Trespass Warning so issued may be for a length of time not to exceed one (1) year from the date such Trespass Warning is issued. No Trespass Warning shall be issued which is effective permanently and the Trespass Warning may not be extended.
5. An owner or his authorized agent may enter into an agreement with the law enforcement agency having jurisdiction over the property in question where a law enforcement officer may act as the authorized representative of the owner or his authorized agent to issue a Trespass Warning to a person.
6. A Trespass Warning issued on a person's own accord in relation to a pari-mutuel or gaming facility may be for a length of time not to exceed one (1) year. However, the person has the right to renew a Trespass Warning so issued on his own accord but not to exceed one (1) year.
7. Nothing in this section prohibits an owner or his authorized agent from seeking to have a person excluded on a permanent basis through a civil restraining order action in Circuit Court.

The statute number is hypothetical and is based on proper placement in Chapter 810 in the Florida Statutes.