

Testimony of
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Before the Committee on the Judiciary and Public Safety,
the Committee on Housing and Executive Administration, and
the Committee on Human Services
Council of the District of Columbia

**Public Oversight Roundtable Examining the District’s Legislative Prohibition
on Evictions During the COVID-19 Pandemic**

February 4, 2021

The coronavirus pandemic has drawn public attention to long-standing, systemic inequalities in the District, in particular along lines of race and income. Put simply, people of color, individuals with disabilities, and individuals living in poverty are on the front lines, contracting COVID-19 and dying at disproportionate rates, including because of longstanding gaps in access to quality health care, safe and affordable housing, and other resources.¹ These systemic inequalities fall mostly heavily on black residents of the District.

The Council has responded to the pandemic with comprehensive protections for tenants that currently prohibit landlords from serving tenants with eviction notices, filing new eviction cases, or executing actual evictions. As a result, not a single District resident has been evicted during the pandemic. These protections now are at risk, however, with a Superior Court judge ruling that the eviction filing moratorium is unconstitutional. If this ruling stands – and, worse still, if the reasoning of this ruling is used to invalidate other parts of the Council’s emergency response – tenants will face serious, imminent, and irreparable harm.

Attorneys at the Legal Aid Society of the District of Columbia² have spoken to hundreds of low-income tenants at risk of eviction since the beginning of the pandemic. Based on the experiences

¹ Executive Office of the Mayor, Coronavirus Data – Total Deaths by Race, available at <https://coronavirus.dc.gov/page/coronavirus-data>.

² The Legal Aid Society of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Over the last 89 years, tens of thousands of the District’s neediest residents have been served by Legal Aid staff and volunteers. Legal Aid currently works in the areas of housing, family law, public benefits, immigration, and consumer protection. We also help individuals with the collateral consequences of their involvement with the criminal justice system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. More information about

of these tenants and the stories they have shared with us, as well as national and local studies and data and our own observations of the current court process, we believe it is critical that all stages of the eviction process remain on hold during the pandemic. Ending any of the current protections would lead to serious, immediate, and irreparable harm for tens of thousands of tenants:

- Thousands of tenants across the District remain at imminent risk of eviction, with sharp disparities falling along racial and income lines.
- Many tenants who receive eviction notices or court papers will leave without fighting their case, leading to community spread of COVID-19 even without actual evictions.
- Tenants forced to defend their homes in court through a remote hearing process are at a significant disadvantage, again with sharp disparities along racial and income lines.
- The mere filing of an eviction case, regardless of the outcome, can become a permanent mark on a tenant's record, forcing them into less safe housing in the future.

Finally, Legal Aid is submitting separate written testimony on the ongoing delays and challenges we are witnessing with the District's various rental assistance programs. The District soon will receive another \$200 in federal funds for rental assistance, but it may take months for this assistance to reach landlords and protect tenants. If the eviction filing moratorium remains in place while this money is distributed, many tenants facing eviction for nonpayment of rent may be able to avoid an eviction filing altogether and the long-term consequences it may carry.

The District's Severe and Deepening Affordable Housing Crisis

In a city where the average rent for a one-bedroom apartment now tops \$2,000 per month, households with low and moderate incomes — many headed by people of color — are being left behind.³ Since 2002, the District has lost over half of its low-cost rental units, those renting for \$800 or less.⁴ As private market affordable options continue to disappear, subsidized housing remains out of reach for most tenants. The centralized waiting list for subsidized housing maintained by the D.C. Housing Authority (DCHA) has been closed for seven years and still numbers just under 40,000 families.⁵

Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

³ *RentCafe, Washington, DC Rental Market Trends*, available at <https://www.rentcafe.com/average-rent-market-trends/us/dc/washington/>.

⁴ D.C. Fiscal Policy Inst., *Going, Going, Gone: DC's Vanishing Affordable Housing* (March 2015), available at <https://www.dcfpi.org/wp-content/uploads/2015/03/Going-Going-Gone-Rent-Burden-Final-3-6-15format-v2-3-10-15.pdf>.

⁵ D.C. Hous. Auth., *2020 Performance Oversight Hearing - Committee on Housing and Neighborhood Revitalization Responses to Pre-Hearing Questions 28* (March 2020), available at <https://dccouncil.us/wp-content/uploads/2020/03/dcha.pdf>.

The result of this deepening affordability crisis is that low-income families are paying far too much of their limited incomes for housing. Nearly two-thirds of extremely low-income households in the District pay half or more of their monthly income towards rent, a threshold that HUD classifies as “severely housing cost burdened”.⁶ In fact, nearly half of these families pay 80 percent or more of their monthly income towards rent.⁷ And this issue also is one of racial equity; of the approximately 27,000 extremely low-income, severely rent-burdened households, 88 percent are headed by a person of color.⁸

The shortage of affordable housing, and accompanying heavy rent burdens are having devastating effects on Washingtonians with low incomes, particularly black households. A study by the National Community Reinvestment Coalition found that about 40 percent of the District’s lower-income neighborhoods experienced gentrification between 2000 and 2013, giving the city the greatest “intensity of gentrification” of any city across the country for that period.⁹ The District also saw the most black residents — more than 20,000 — displaced from neighborhoods, mostly by white, affluent, recent transplants.¹⁰ An updated study covering 2013 to 2017 found that the District “still has a high intensity of gentrification” with displacement continuing.¹¹

The Coronavirus Pandemic Is Exacerbating the District’s Existing Affordable Housing Crisis, Putting Tens of Thousands of Tenants at Risk of Eviction

Against this backdrop, the national economy now is facing what is being described as the worst economic crisis since the Great Depression.¹² As of February 2, 2021, over 172,000 District employees have filed for unemployment.¹³ Survey data collected by the Census Bureau throughout the pandemic indicate that over 40 percent of District residents have lost employment income since mid-March.¹⁴

⁶ D.C. Fiscal Policy Inst., *A Broken Foundation: Affordable Housing Crisis Threatens DC’s Lowest Income Residents* 3 (Dec. 8, 2016), available at <https://www.dcfpi.org/all/a-broken-foundation-affordable-housing-crisis-threatens-dcs-lowest-income-residents/>.

⁷ *Id.*

⁸ *Id.* at 1.

⁹ National Cmty. Reinvestment Coal., *Shifting Neighborhoods* (March 2019), available at <https://ncrc.org/gentrification/>.

¹⁰ *Id.*

¹¹ National Cmty. Reinvestment Coal., *Gentrification and Disinvestment 2020* (June 2020), available at <https://ncrc.org/gentrification20/>.

¹² Alan Rappeport & Jeanna Smialek, “I.M.F. Predicts Worst Downturn Since the Great Depression,” *New York Times* (Apr. 14, 2020), available at <https://www.nytimes.com/2020/04/14/us/politics/coronavirus-economy-recession-depression.html>.

¹³ D.C. Dep’t of Emp’t Servs., “Unemployment Compensation Claims Data,” available at <https://does.dc.gov/publication/unemployment-compensation-claims-data>.

¹⁴ U.S. Census Bureau, *Week 22 Household Pulse Survey: Jan. 6-18 – Detailed Tables, Employment Table 1*, available at <https://www.census.gov/data/tables/2020/demo/hhp/hhp22.html>. The Census Household Pulse Survey has collected survey data from jurisdictions across the United States, including the

This loss of income is putting tens of thousands of District residents at risk of eviction. The latest Census survey indicate that over 17,000 households in the District are not current in their rent payments, and over 33,000 households had little or no confidence in their ability to pay February rent.¹⁵ The current figures likely are buoyed by the fact that many low-income families recently received extra one-time stimulus payments. As of the end of December 2020, nearly 48,000 households reported that they were not current in their rent payments.¹⁶

The burden of this economic and housing crisis is falling disproportionately on low-income black and Latinx families. Eighty percent of the families reporting that they are not current in their rent and 90 percent of the families with no confidence in their ability to pay February rent are black or Latinx.¹⁷ Those most affected are families with children headed by single black women with reported 2019 annual income of \$25,000 or less, the majority of whom report loss of employment income since mid-March 2020 and no current employment.¹⁸

In a normal 2020, we would have expected to see approximately 30,000 eviction cases filed against tenants in the District.¹⁹ Because of federal and local moratoria on the filing of new cases, only a little more than 8,000 eviction complaints were filed in D.C. Superior Court last year.²⁰ In other words, as of now the District is at least 22,000 cases behind, even for normal times.

Legal Aid's housing attorneys and legal assistants are speaking with tenants at risk of eviction every day. Since we opened our new tenant hotline in March 2020, we have received over 1,800 calls and spoken to many hundreds of tenants at risk of eviction.²¹ Many have lost income and

District, since the week of April 23, 2020. The latest data reflects surveying between January 6 and 18, 2021.

¹⁵ *Id.*, Housing Table 1b., 2b.

¹⁶ *Id.*, *Week 21 Household Pulse Survey: Dec. 9-21 – Detailed Tables*, Housing Table 1b., available at <https://www.census.gov/data/tables/2020/demo/hhp/hhp21.html>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ District of Columbia Courts, *Statistical Summary 5 (2019)*, available at <https://www.dccourts.gov/about/organizational-performance/annual-reports>. Annual filings in the Landlord and Tenant Branch of D.C. Superior Court have averaged a little over 30,000 new cases annually each year between 2015 and 2019. *Id.*

²⁰ New case filings can be monitored by looking up D.C. Superior Court dockets at <https://eaccess.dccourts.gov/eaccess/home.page.2>. Cases are numbered sequentially as filed, and filings can be searched by case number in the format YYYY LTB #####.

²¹ Legal Aid also has received requests for help through the Landlord Tenant Legal Assistance Network (LTLAN), a coalition of six legal services providers running a shared telephone intake system to provide advice, brief services, and representation to tenants facing eviction and other housing issues. LTLAN is made possible by funding appropriated by the Council and awarded by the D.C. Bar Foundation under the Civil Legal Counsel Projects Program. See D.C. Bar Foundation, *Critical Network Collaboration for Eviction Defense* (updated Aug. 18, 2020), available at <https://www.dccbarfoundation.org/post/critical-network-collaboration-for-eviction->

are behind on their rent. Some qualify for unemployment insurance and still are struggling with higher expenses, or are having trouble paying the rent with fewer extra federal benefits available. Still others have had trouble accessing unemployment or have been wrongly denied benefits. Others do not qualify for unemployment, because of their work history, the type of work or income they had before, or their documentation status. Many are searching for work and not finding replacement income. For all of these tenants, rental arrearages are accruing.

Tenants who contact us also are afraid. We have heard from many tenants whose landlords are threatening to lock them out illegally or otherwise are engaging in a pattern of harassment and intimidation. Many tenants are confused about their rights and are fearful of what lies ahead. While some tenants who reach us qualify for rental assistance – to the extent it is available – others do not meet the criteria for current programs. Many tenants would like to enter a tenant payment plan with their landlords, but they are unsure when they will have enough income to make payments toward the balance they owe. They are wondering whether they should stay and fight for their housing or just give up and leave. Without significant financial assistance for tenants, we fear that many of these individuals and their families will face eviction and, ultimately, displacement from their homes and the District.

In Response to Calls From Tenants and Advocates, the Council Has Enacted Life-Saving Protections, Including Stopping the Eviction Process During the Pandemic

Recognizing these unprecedented challenges, the Council enacted comprehensive emergency and temporary legislation to protect tenants from eviction. Actual evictions are barred for the duration of the public health emergency, currently through March 17, 2021.²² Landlords cannot file new eviction cases or serve eviction notices during the public health emergency and for 60 days after, currently through May 16, 2021.²³ Other protections include a bar on late fees and new rent increases and requirements for tenant payment plans.²⁴

These emergency protections were not all put in place at once. To put the history in context, it is important to bear in mind that eviction in the District is a complex, multi-stage process, with five distinct steps required:

1. Landlord serves tenant with pre-court eviction notice;
2. Landlord files and serves eviction court complaint;
3. Court hold hearing(s) in case;
4. Courts enters judgment against tenant in case; and
5. Law enforcement oversee physical eviction of tenant.

defense. Legal Aid is grateful to members of the Housing Committee and others members of the Council who created and have continued to support this critical program.

²² D.C. Code § 42-3505.01(k).

²³ D.C. Code § 16-1501(b).

²⁴ D.C. Code §§ 42-3194.01; 42-3502.08; 42-3509.04(c),(d) 42-3505.31(c); D.C. Code § 42-3281.

After the Mayor declared a public health emergency on March 11, 2020, tenants and advocates, including Legal Aid, worked closely with members of the Council and their staff to help formulate policies to protect tenants.²⁵ Over the weekend of March 14-15 and into Monday, March 16, Legal Aid immediately began advocating with the Council to stop actual evictions. On March 17, the Council approved its first emergency legislation in response to the pandemic, which included provisions to prohibit actual evictions and language intended to prohibit service of eviction complaints during the public health emergency.

As early as March 19, only two days later, Legal Aid started expressing concerns that the language on service of process would not actually stop service of complaints. We started reaching out to Councilmembers and their staff with a list of other suggested, additional protections; at the top of the list was stopping the filing of new eviction complaints.

On March 27, the federal CARES Act went into effect, prohibiting new eviction case filings for a 120-day period. But the CARES Act was incomplete – it only applied to tenants facing eviction from federally-connected properties for nonpayment of rent. Implementation also was complicated, with many tenants expected to be in the dark about the status of their properties under the new federal law. On April 1, Legal Aid and other advocates started reaching out to all Council offices asking for emergency legislation to stop the filing of eviction complaints and fill these gaps; at that point an additional 823 cases had been filed since the Superior Court had shut down on March 13.

A prohibition on new eviction cases was in the draft emergency legislation for the Council's April 7 legislative meeting, but the language was pulled out at the last minute because it raised concerns under the Home Rule Act. Legal Aid immediately began communications with the General Counsel's office, through Chairwoman Bonds and her staff, to fix the language. New language focusing the prohibition on landlords, rather than the Court, came out of this process and ultimately was adopted.

At the same time, we also learned that at least some Councilmembers believed that landlords no longer were serving complaints. Others believed the CARES Act might already provide sufficient protections. Landlords were continuing to serve complaints, and Legal Aid quickly found examples and provided those to the Council. We explained that when an eviction complaint is filed, even if it is not served, it becomes part of the tenant's permanent eviction record, causing last harm for future housing opportunities.²⁶ We also pointed out all of the reasons the federal CARES Act was not enough, including that landlords were continuing to file complaints in violation of it.

²⁵ Legal Aid collaborated closely with the Office of the Tenant Advocate in our Council advocacy on these issues. We also were in close communication with other legal services providers and tenant organizers throughout this period. While this history focuses on Legal Aid's role – where we have direct knowledge – many tenants and other advocates supported this effort.

²⁶ The Council since has enacted emergency and temporary legislation requiring automatic sealing for some cases and allowing discretionary sealing for others. But as of March through May 2020, no such protections existed.

When the eviction prohibition was not put on the agenda for the April 21 legislative meeting, our advocacy continued. Legal Aid published a blog post pointing to a new national scorecard that rated jurisdictions in terms of protections, putting many ahead of the District because they had prohibited the filing of new cases.²⁷ Ultimately, at the May 12 legislative meeting, the Council clarified its initial intent to stop the eviction process, by adding the prohibition on new case filings.

Even after May, Legal Aid and other providers who work closely with tenants continued to hear stories about tenants receiving eviction notices and moving out. The Office of the Tenant Advocate also learned from the Rental Accommodations Division at the Department of Housing & Community Development, where eviction notices are filed with the government, that landlords had continued to serve these notices throughout the pandemic. At a September 14 roundtable on eviction prevention, Legal Aid and others testified about the need to stop the eviction process from the very beginning, by prohibiting service of these notices. At the September 22 legislative meeting, the Council adopted this measure, further clarifying its intent.

Without the Current Eviction Protections in Place, Thousands of Tenants in the District Face Serious and Imminent from Eviction and Other Forced Moves

Tens of thousands of tenants in the District — particularly low-income households and people of color — will face serious, immediate, and irreparable harm if any of the eviction protections currently in place are lifted. Because a recent Superior Court ruling currently threatens the eviction filing moratorium in particular, our testimony below focuses on how allowing landlords to file new eviction cases will harm tenants.

1. Housing Instability Leads to Greater Transmission of and Death From COVID-19.

The harmful effects that accompany eviction and other forced moves even in ordinary times are significantly magnified by the current crisis. Families facing eviction — including those families actually evicted and those threatened with eviction — often are forced to vacate their homes, increasing housing instability.²⁸ While actual evictions play a strong role, many tenants are forced to move outside the formal eviction process, including tenants who receive an eviction complaint or pre-court notices and choose to move out instead of defending themselves in court. As a recent study of eviction in the District notes, the number of executed evictions “undercounts the true number of evictions since many families facing an eviction leave the home before the Marshal arrives,” and in other cases informal evictions occur, “where landlords threaten eviction and use intimidation to get tenants to leave the home informally.”²⁹

²⁷ Beth Harrison, Legal Aid Society of the District of Columbia, *D.C. Lags Behind On Eviction Protections* (Apr. 24, 2021), available at <https://www.makingjusticereal.org/dc-lags-behind-on-eviction-protections>.

²⁸ See Matthew Desmond, *Evicted: Poverty and Profit in the American City* 4 (2016).

²⁹ Brian J. McCabe & Eva Rosen, Georgetown Univ., *Eviction in Washington, DC: Racial and Geographic Disparities in Housing Instability* 13 (Fall 2020), available at <https://georgetown.app.box.com/s/df0d4mruf59wcvqm6cqo9a8pyu8ukeuk>.

This reality is not unique to the District. For example, in one of the most comprehensive studies on eviction available, Matthew Desmond found that in 34% of such situations in Milwaukee, renters who received an eviction notice moved out of their homes without ever going to court.³⁰ More generally, Desmond has documented that low-income renters typically experience significant residential instability, with nearly one in four moves categorized as “forced,” i.e. the result of informal or formal evictions, ranging from landlords harassing and threatening tenants into leaving to sending eviction notices to filing court cases.³¹

These families often turn to doubling up with friends or family, moving amongst different temporary accommodations, or relying on the homeless services system while they search for permanent housing — all options that increase the risk of COVID-19 community spread. COVID-19 is a virus that “spreads very easily and sustainably between people who are in close contact with one another (within about 6 feet),” and “[s]ome people without symptoms may be able to spread the virus.”³² Individuals with stable housing, particularly those individuals who are at-risk or actually become ill, may be able to self-isolate or socially distance at home. When individuals are forced to move, on the other hand, they often end up in shared or congregate housing situations or on the streets, where these recommended protective measures are not possible.³³ For all of these reasons, the Centers for Disease Control and Prevention (CDC) has concluded that in the context of the COVID-19 pandemic, “housing stability helps protect public health.” “[E]viction moratoria — like quarantine, isolation, and social distancing — can be an effective public health measure utilized to prevent the spread of communicable disease.”³⁴

Two recent studies confirm that eviction moratoria - including both moratoria on actual evictions and on new eviction case filings - reduce community spread and resulting deaths from COVID-19. One study examined all 44 states with eviction moratoria and incidence and deaths from COVID-19 before and after moratoria were lifted in those states, controlling for a number of other factors. The authors found that incidence of COVID-19 was 1.6 times higher at 10 weeks after eviction moratoria were lifted and 2.1 higher at 16 weeks, and deaths from COVID-19 were 1.6 times higher at the 7-week mark and 5.4 times higher at the 16-week mark.³⁵ Importantly, the authors concluded that lifting a moratorium on case filings has a separate and statistically-

³⁰ Matthew Desmond, Harvard University Dataverse, *Milwaukee Area Renters Study (MARS)*, available at <https://doi.org/10.7910/DVN/BLUU3U>. Desmond’s data is based on an in-person, comprehensive survey of over 1,000 households in Milwaukee.

³¹ Matthew Desmond, Carl Gershenson, and Barbara Kiviat, “Forced Relocation and Residential Instability among Urban Renters,” *Social Servs. Rev.* (June 2015).

³² Centers for Disease Control & Prevention, *Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19*, 85 FR 55292 (Sept. 4, 2020).

³³ *Id.* at 55294.

³⁴ *Id.*

³⁵ See generally Kathryn M. Leifheit, et al., *Expiring Eviction Moratoriums and COVID-19 Incidence and Mortality* (Nov. 30, 2020), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3739576.

significant impact increasing incidence and deaths, separate and apart from lifting a moratorium on actual evictions.³⁶

A similar study released by the National Bureau of Economic Research found that moratoria on both utility disconnections and various stages of the eviction process promote housing stability and therefore reduce transmission and resulting deaths from COVID-19. The authors conclude that if various policies limiting evictions (moratoria on eviction notices, case filings, actual evictions) had been in place across the United States from early March 2020 through the end of November 2020, COVID-19 infections would have been reduced by 14.2% and deaths would have been reduced by 40.7%. For moratoria on utility disconnections, COVID-19 infections rates would have been reduced by 8.7% and deaths by 14.8%.³⁷

Legal Aid has spoken to a number of tenants during the pandemic who have considered moving out when they received an eviction notice or complaint, even in the middle of the pandemic. I.G. is an elderly individual who currently lives alone, without a local support system of friends or family, in her home of 20 years. She contacted Legal Aid after her landlord served her with a notice to correct or vacate, alleging she was in violation of her lease and that she had to move out by a certain date or a court case would be filed against her. This was Ms. G's first time receiving this kind of notice and she panicked. She started contacting movers and made preparations to move. She felt anxious, hopeless and began to lose sleep. When she contacted Legal Aid, she was convinced that she would become homeless, a particular fear because she had experienced homelessness as a child and was afraid of losing everything. Legal Aid was able to tell Ms. G that the notice was unenforceable because of the eviction filing moratorium, that she could stay at home, and that she would be safe. She described the entire experience as traumatizing and one that no one should have to face during the pandemic.

It is worth noting that recent Census survey data indicate that people of color, and in particular black residents of the District, are more pessimistic about the likelihood they will not be able to pay rent in the future, even if they are current in their rent now. Black tenants in the District comprise 63 percent of those who report being behind in their rent as of January 2021, and 90 percent of those tenants with no confidence in their ability to pay next month's rent.³⁸ The same survey data consistently show that many tenants in the District continue to believe they are likely to have to leave their homes in the next two months due to eviction, *despite the moratorium on actual evictions that has been in place throughout the pandemic*. As of early December 2020, the last dataset before the Superior Court's ruling on the eviction moratorium, 71 percent of tenants surveyed in the District reported this fear.³⁹ These survey data indicate that many tenants – and in particular black tenants – are likely to respond to an eviction notice or court filing by

³⁶ *Id.*, Appx. 6.

³⁷ Kay Jowers, et al., National Bureau of Economic Research, *Housing Precarity & the COVID-19 Pandemic: Impacts of Utility Disconnection and Eviction Moratoria on Infections and Deaths Across US Counties* (Jan. 2021), available at <https://www.nber.org/papers/w28394>.

³⁸ U.S. Census Bureau, *Household Pulse Survey Week 22: Jan. 6-18 – Detailed Tables*, Housing 2b., available at <https://www.census.gov/data/tables/2021/demo/hhp/hhp22.html>.

³⁹ *Id.*, *Household Pulse Survey Week 10: Nov. 25-Dec. 7 – Detailed Tables*, Housing 3b., available at <https://www.census.gov/data/tables/2020/demo/hhp/hhp20.html>.

concluding that they *will* be evicted, making it much more likely they will move out rather than face a protracted court process.

2. Many Tenants Have Trouble Accessing and Fully Participating in a Remote Court Process.

The District has one of the worst digital divides in the nation. Low-income households and those headed by people of color are much more likely to lack access to high-speed internet and desktop computers or tablets. The District estimates that less than 65 percent of residents in Wards 5, 7, and 8 have access to high-speed internet, compared to 85 percent or more in the District's other wards.⁴⁰ This is not surprising, given that Wards 7 and 8 in particular also have the highest concentrations of families living in poverty (23 and 27 percent respectively, compared to 12 percent District-wide).⁴¹ This divide unsurprisingly reflects deep racial inequities. Census survey data from January 2021 show that more than 80 percent of the District households currently reporting lack of regular access to high-speed internet or computers are headed by a black resident.⁴²

These same families are much more likely to face eviction. Seventy percent of all eviction cases are filed against tenants living in Wards 5 (13.7 percent), 7 (22.6 percent), and 8 (34 percent), even though those three Wards only account for 36.7 percent of all renter households.⁴³ These same disparities apply to executed evictions, with researchers finding a strong, positive correlation between the percentage of black residents in a census tract and the rate of executed evictions.⁴⁴

Through our observations of hundreds of court hearings held during the pandemic in pending eviction cases since July 2020, Legal Aid has seen many unrepresented tenants struggle to participate in the remote court process due to lack of technology. It is not unusual for tenants to join by phone but not video, to have trouble muting and unmuting their device, and to express confusion or misunderstanding of what is happening in the hearing. At times, parties join by phone and cannot be heard to even state their name, much less participate in their cases. For tenants who speak a language other than English, the process is particularly daunting.

⁴⁰ Connect.DC - Digital Inclusive Initiative, *Fact Sheet*, available at <https://connect.dc.gov/page/fact-sheet>

⁴¹ DC Health Matters, Demographic Data - Households/Income, available at <https://www.dchealthmatters.org/demographicdata>.

⁴² U.S. Census Bureau, *Week 22 Household Pulse Survey: Jan. 6-18 – Detailed Tables*, Education Table 3, available at <https://www.census.gov/data/tables/2021/demo/hhp/hhp22.html>. Another recent study estimates that 27 percent of Black students and 25 percent of Latinx students in the District lack high-speed internet access at home, compared to only 5 percent of white students. Elizabeth O’Goreck, “DC Student Digital Divide Second Highest Nationally,” Hill Rag (June 22, 2020), available at <https://www.hillrag.com/2020/07/22/dc-has-second-highest-racial-gap-in-student-connectivity-study>.

⁴³ McCabe & Rosen, *supra*, at 18-20.

⁴⁴ *Id.* at 21.

Likely due in large part to these barriers, many tenants are not appearing in Court at all. As a result, defaults and judgments for possession have been entered in some of these cases, and those tenants now face eviction when the moratorium on actual evictions ends. For those tenants who do appear, participating in the remote court process solely by phone, with no video, puts litigants at a significant disadvantage. It is much harder for parties to listen, to follow what is happening, and to respond to questions when they are only on the phone. For evidentiary hearings and trials in particular, parties only joining by phone cannot see the judge who is presiding, or the opposing party or counsel who is presenting arguments and questioning witnesses, or exhibits as they are displayed on the screen. Without being able to see a tenants, judges are unable to rely on visual observations to judge their credibility and also to observe when parties are struggling to be heard or to understand the proceedings.

We also know that some tenants still are not receiving notice of their scheduled hearings. Legal Aid attorneys have had and continue to have many experiences in individual cases in which we do not receive mailed notices of an upcoming hearing. We have heard multiple landlord attorneys relay experiencing the same problem. Because we have computers, internet access, and knowledge of how to navigate the Court's website, we are able to monitor our case dockets and find out when hearings are scheduled, though even for us it takes careful monitoring. Many tenants do not have this ability or knowledge.

Our attorneys also have observed cases in which the Court notes on the record that a mailed notice was returned to the Court as undeliverable mail and clearly never was received by the tenant in the case. In some of these cases, the attorney for the landlord who has been present has acknowledged that the tenant remains in possession of the unit. While the Court has continued some of these hearings, others have gone forward without the tenant present or participating.

Legal Aid also has represented tenants in remote hearings and experienced these same problems, even when tenants have the benefit of the assistance of counsel. We have found that many of our clients do not have stable, high-speed internet access at home and/or do not have a computer or tablet to join a court hearing by video. Even for tenants with cell phones, many cannot afford and do not have sufficient data plans to allow joining a hearing by video.

Legal Aid is representing a tenant, N.M., who has limited English proficiency and had a further initial hearing scheduled in her eviction case during the pandemic. When Ms. M received the written notice for the hearing, she did not understand that she would be required to call into the hearing. She thought that the Court was going to call her at the time identified on the notice. She waited by her telephone all morning on the day of her hearing, but never received a call. She was confused by this and had no idea that while she was waiting by her telephone for a call from the Court, a default was being entered against her in her case.

P.F. is a tenant who was sued for eviction by her landlord but never received proper notice of the case. The Court scheduled a remote hearing on her motion to dismiss. Ms. F did not have the necessary technology to participate by video. Fortunately, Ms. F had an attorney from Legal Aid, who was able to get a binder of exhibits delivered to Ms. F's home before the hearing, so that she could follow along with what was happening. Ms. F was not able to see the attorneys who were questioning her, either on direct or on cross. She also was unable to see the judge who

was making a decision in a case that would ultimately determine whether or not she would be able to stay in her home, and the judge was unable to see her when making credibility determinations. As with so many other tenants that we assist, we fear her motion might not have been granted if not for the help of an attorney, who was able to join by video to share exhibits and make arguments.

3. Even the Mere Filing of an Eviction Case Can Make It Difficult for Tenants to Find New Housing, and If the Record Remains Unsealed It Can Cause Lasting Damage

The mere filing of an eviction complaint, regardless of the outcome of the case, can have significant harmful ramifications for tenants. Eviction case records are one of the primary barriers to tenants searching for housing, often resulting in landlords charging higher rents or denying applications altogether.⁴⁵ A 2017 survey by Transunion, one of the three major credit reporting agencies, found that nationally 85 percent of landlords routinely review eviction reports for applicants for their rental housing.⁴⁶ A recent report from Georgetown University examining eviction patterns and practices in the District found that this practice is common, with many landlords relying on data-aggregating companies to prepare reports on the eviction case records of prospective tenants.⁴⁷ As the Georgetown report's co-authors have observed, the ultimate outcome of the case may not matter, because the filing itself does harm: "Property owners make little distinction between a household that experienced an eviction filing and one that has been formally evicted."⁴⁸ Studies in other jurisdictions have reached the same conclusion.⁴⁹

This type of discrimination against tenants in the rental market has enduring impacts. Matthew Desmond has found that tenants who are forced to move often relocate to units with worse conditions, putting the health of themselves and their families at risk. He concludes that discrimination against tenants because of prior eviction cases is a major factor: "Because many landlords reject applicants with recent evictions, evicted tenants are pushed to the very bottom of the rental market and often are forced to move into run-down properties in dangerous

⁴⁵ See generally, e.g., Matthew Desmond, *Evicted: Poverty and Profit in the American City* 297 (2016); Paula A. Franzese, "A Place to Call Home: Tenant Blacklisting and the Denial of Opportunity," 45 *Fordham Urb. L.J.* 661 (2018); WNYC Studios, "The Scarlet E: Unmasking America's Eviction Crisis," available at <https://www.wnycstudios.org/podcasts/otm/scarlet-e-unmasking-americas-eviction-crisis>.

⁴⁶ Cmty. Legal Servs. of Philadelphia, *Breaking the Record: Dismantling the Barriers Eviction Records Place on Housing Opportunities* 9 (Nov. 2020), available at <https://clsphila.org/housing/report-eviction-record-policy/>.

⁴⁷ McCabe & Rosen, *supra*, at 31-32.

⁴⁸ Eva Rosen & Brian J. McCabe, "D.C. makes eviction filings too easy," *Wash. Post* (Nov. 6, 2020), available at https://www.washingtonpost.com/opinions/local-opinions/dc-makes-eviction-filings-too-easy/2020/11/05/ec441a88-1304-11eb-ad6f-36c93e6e94fb_story.html.

⁴⁹ See, e.g., *Breaking the Record, supra*, 5, 8, 11; Lawyers' Committee for Better Housing, *Prejudiced: The Stigma of Eviction Records* 3, 5, 7 (March 2018), available at <https://lcbh.org/sites/default/files/resources/Prejudged-Eviction-Report-2018.pdf>.

neighborhoods.”⁵⁰ Analysis from Desmond’s survey of over 1,000 Milwaukee tenants found that those forced to move are 25 to 35 percent more likely to experience long-term housing problems in their next unit, such as lack of heat, broken appliances, and exposed wiring.⁵¹

Legal Aid has had a focus on this issue, assisting many tenants with filing motions to seal their eviction cases, even without a specific local sealing law in place, and advocating for broader legislative reform with the Council. Below are a few of their stories:

1. C.P. has applied to seven or eight apartments and was rejected from all of them. An office manager at one of those apartments explained to her that the building runs background checks on potential tenants, and, if those background checks turn up old eviction cases, it will be very hard for the potential tenant to be approved. The fact that Ms. P has an old eviction record has discouraged her from applying for new apartments, particularly because the apartments generally charge a nonrefundable application fee.
2. T.R. is a tenant currently living with significant housing code violations. She wants to move somewhere safe and habitable. Ms. R has records of two eviction cases that are getting in the way of her finding housing. Ms. R is a survivor of domestic violence and one of these eviction cases arose because her abuser was living in her apartment.
3. Prior to the public health emergency, L.J.’s landlord sued her for nonpayment of rent. She entered into a consent judgment agreement with her landlord, paid the amount that she owed, and remained at the property. Sometime thereafter, Ms. J decided to move out of her apartment because of the conditions, and she provided her landlord with a notice to vacate. However, Ms. J’s application at the new property, where she had been planning to move, was initially denied because the new landlord found the record of her old nonpayment of rent case.
4. B.R. is a voucher-holder, who was evicted from her apartment in June 2019. She has been homeless ever since. In November 2019, Ms. R found an apartment where she believed she was going to be able to place her voucher. However, at the last minute, the landlord withdrew its offer of an apartment. Ms. W believes that the landlord withdrew its offer because it discovered her eviction record. She has not been able to find housing since then.

For tenants facing eviction for nonpayment of rent, they may be able to avoid an eviction filing and these resulting negative consequences altogether, if only they have enough time to apply for and obtain funds before the filing moratorium is lifted. The delays and challenges we continue to see in the existing rental assistance program are detailed in written testimony we are

⁵⁰ Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 Am. J. Soc. 88, 118 (2012).

⁵¹ Desmond, *Forced Moves, supra*, at 249-51.

submitting from our case manager, Emily Near, who has helped dozens of tenants navigate the process during the pandemic.

Conclusion

Thank you for this opportunity to testify. We look forward to working with this Committee and the entire Council to ensure that tenants are protected from eviction and displacement as the coronavirus pandemic and resulting economic devastation continue.