

POTENTIAL REMEDIES FOR UNLAWFUL EVICTIONS IN FEDERAL EMERGENCY AREAS

HEARING BEFORE THE SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES OF THE COMMITTEE ON THE JUDICIARY U.S. HOUSE OF REPRESENTATIVES ONE HUNDRED SEVENTEENTH CONGRESS FIRST SESSION

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Monday, June 14, 2021

U.S. HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS,
AND CIVIL LIBERTIES

COMMITTEE ON THE JUDICIARY

Washington, DC

The Subcommittee met, pursuant to call, at 3:37 p.m., in Room 2141, Rayburn House Office Building, Hon. Steve Cohen [Chair of the Subcommittee] presiding.

Present: Representatives Cohen, Raskin, Ross, Johnson of Georgia, Garcia, Jackson Lee, Johnson of Louisiana, and Fischbach.

Staff Present: John Doty, Senior Advisor; Moh Sharma, Director of Member Services and Outreach & Policy Advisor; Jordan Dashow, Professional Staff Member; Cierra Fontenot, Chief Clerk; John Williams, Parliamentarian; James Park, Chief Counsel, Constitution Subcommittee; Will Emmons, Professional Staff Member/Legislative Aide, Constitution Subcommittee; James Lesinski, Minority Counsel; Sarah Trentman, Minority Senior Professional Staff Member; Andrea Woodard, Minority Professional Staff Member; and Kiley Bidelman, Minority Clerk.

Mr. COHEN. The Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, and Civil Liberties will come to order.

Without objection, the Chair is recognized and authorized to declare a recess of the Subcommittee at any time.

I welcome everyone to today's hearing on the potential remedies for unlawful evictions in Federal emergency areas.

Before we continue, I would first like to thank the Committee for its indulgence in putting up with the airlines flight delays, but we made it.

I would like to remind Members we have established an email address and distribution list dedicated to circulating exhibits, motions, or other written materials that Members might want to offer as part of our hearing today. If you would like to submit materials, please send them to judiciarydocs@mail.house.gov, and we will have them distributed to Members and staff as quickly as we can.

Finally, I ask all Members and Witnesses, both in person and those appearing remotely, to mute your microphones when you are not speaking. This will help prevent feedback and other technical

issues. You may unmute yourself at any time you seek recognition, and, of course, those of you who are virtual can unmask yourself.

For those in the room, I note—Mr. Johnson liked that one. For those in the room, I note that updated guidance from the Office of the Attending Physician provides that those who are fully vaccinated from COVID-19 do not need to wear masks or maintain social distancing. If you are not fully vaccinated, you are required to continue wearing a mask and maintain six feet of social distancing.

I take it, Mr. Johnson has been fully vaccinated, and I welcome you to the club.

I will now recognize myself for an opening statement.

The purpose of today's hearing is to discuss the issue of unlawful evictions during the COVID-19 pandemic and potential legislative remedies to address such unlawful evictions during national emergencies. The COVID-19 pandemic has ravaged this country and the world, impacting people's health, jobs, and their daily activities.

In the United States, millions of people have lost their jobs, experienced reduced income, and lost loved ones due to the novel coronavirus. For many of these people, the past year has been a struggle to put food on the table, pay their bills, and afford rent. These struggles have been especially pronounced in communities of color, which have been disproportionately impacted by the pandemic.

Even before the pandemic began, a lack of affordable housing and evictions had been long-standing issues. They have been long-standing issues in America forever.

According to 2018 statistics, nearly half of all renter households were rental-cost burdened, paying more than 30 percent of their income towards rent. On average, between 2000 and 2016, more than 3.6 million eviction cases were filed in the U.S. per year.

Early on in the pandemic, experts warned how the loss of jobs and income due to coronavirus public health measures could lead to an eviction crisis. In response, the Federal Government took action.

Congress passed the CARES Act, which included an eviction moratorium. After that moratorium expired in the summer of 2020, the Centers for Disease Control and Prevention issued an eviction moratorium, which has been extended several times, both legislatively and administratively, and is now slated to expire at the end of the month.

While these moratoria were not perfect, they offered many people a reprieve and helped them stay in their apartments and houses during a time when the best thing we could do for our health and the health of others was to stay at home. Unfortunately, since these moratoria were put in place, there have been reports across the country of landlords engaging in unlawful evictions to circumvent them.

These so-called self-help evictions could generally be defined as actions or courses of conduct by a landlord intended to oust the tenant without the benefit of a judicial proceeding. They can take many forms, from a landlord changing the locks on an apartment, or cutting utilities, to refusing to make essential repairs, or moving a tenant's furniture and belongings out of their apartment.

Tenants facing these self-help evictions often have limited avenues for recourse, especially low-income tenants who do not have the resources to afford legal representation or fight that eviction in court.

These actions by unscrupulous landlords to circumvent federal moratoria, which are meant to protect public health, are appalling and merit a response. That is why I introduced H.R. 1451, the Emergency Eviction Enforcement Act of 2021, to address self-help evictions during national emergencies.

This bill would provide a private right of action in federal court against landlords for tenants who are evicted without duly issued court orders. Tenants would also have a right of action when the landlord threatens, harasses, intimidates, or creates a hostile environment for the tenant, or impairs the habitability of their home for the purpose of causing them to vacate the property.

In addition to entitling successful plaintiffs to injunctive relief and repossession of the property, my bill would also entitle them to damages, which, in addition to repairing some of the damage done to the tenants by these unlawful evictions, would also help deter landlords from engaging in this unlawful conduct to begin with.

If anything, one of the key lessons of the past year is the government was not adequately prepared to respond to a public health crisis. As we took to respond to the issue of unlawful evictions during the pandemic, it is important that we plan for the next pandemic or other national emergency.

This is why my bill would apply not just to unlawful evictions occurring during the current national public emergency—health emergency, but also in any area declared by a President as a national emergency in the future under the National Emergencies Act, Public Health Services Act, or the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

The loss of one's home can have a tremendous negative impact on a family, including on their safety, health, and ability to work. In the Western District of Tennessee, which includes my congressional district, we are already seeing the impact of legal evictions as the District Court in—for the Western District of Tennessee struck down this moratorium.

Even in areas where the CDC moratorium is still in effect, unlawful evictions continue with limited recourse for the tenants who experience them. We owe it to the American people, who have suffered so much in the past year, to take action.

Our Witnesses today will make clear how pervasive unlawful evictions are throughout the country during the current pandemic and the long-lasting impact these evictions can have, especially on low-income people and people of color, who were disproportionately impacted by both the pandemic and the eviction crisis.

There are obviously economic effects, but there are emotional, psychological, unsettling effects, and ones that can follow children and people for years and years to come, being evicted from your house.

I thank our Witnesses for joining us today, and I look forward to their testimony.

It is now my pleasure to recognize the Ranking Member of the Subcommittee, the gentleman from Louisiana, Mr. Johnson, for his opening statement.

Mr. JOHNSON of Louisiana. Thank you, Chair Cohen.

It will be no surprise that we have a bit of a disagreement about this subject.

The Founding Fathers recognized that a right to property is a right that protects liberty itself. John Adams observed property must be secured, or liberty cannot exist.

In the Fifth Amendment, the Founders protected private property from government overreach, providing, quote, “that no person shall be deprived of life, liberty, or property without due process of law, nor shall private property be taken for public use without just compensation.”

Indeed, private property is a principle that finds its roots all the way back into our Judeo-Christian traditions, beginning in the passages in the first books of the Old Testament. Yet, today, Americans’ fundamental right to private property is under threat.

Last summer, as rioters destroyed mom-and-pop stores in cities across America, some elected officials encouraged those individuals. For instance, Portland District Attorney Mike Schmidt dropped over 90 percent of riot- and protest- related offenses from the unrest last year and stated, quote, “Sometimes it takes some property damage.” He said, “it takes more than just peaceful protests to get the government’s attention,” unquote.

Here in Congress, somebody referred to the federal law enforcement officers who worked to stop the looting and destruction as, quote, “stormtroopers,” and even raised money to bail out rioters. One of our colleagues has gone so far as to urge citizens to, quote, “get more confrontational,” in the face of months of civil unrest.

Now, the Democratic Party has in its sights apparently federalizing landlord tenant law, having landlords in my home State, Louisiana, be controlled by the same Federal dictates as those in New York City or Los Angeles during a national emergency.

The COVID-19 pandemic posed serious threats to Americans’ health and economic well-being, but one-size-fits-all mandates from Washington, DC, are not the way to address those concerns.

Landlord-tenant law has long been the domain of states because it arises from each state’s own common-law traditions. Each State should remain free to determine those questions, like how and when a landlord can evict a tenant who poses a danger to him or the community, a tenant who has been delinquent on their rent for a certain period of time, or a tenant who has broken other terms of their lease.

Most of all, the pandemic is now receding, and Americans across the country are returning to their normal lives. We should be looking forward and not using a past threat to impose onerous policies for the future.

The Democrats’ policies are reckless in this regard. They are spending Americans’ hard-earned money, and causing inflation across the economy, especially on the price of household’s goods. Each dollar spent by ordinary families now buys less than it did just six months ago.

Democrats keep extending the enhanced unemployment benefits, incentivizing Americans not to work while millions of good-paying jobs are unfulfilled.

Democrats are catering to teachers' unions. They are keeping schools closed and forcing many parents out of the workforce to stay home and care for their children. It is no wonder Americans are moving out of Democrat-run cities to safer and freer States.

The Democrat policies are defunding the police and catering to tone-deaf teachers' unions and closing schools and shutting down churches, while tattoo parlors are able to operate down the street, ignoring homelessness and imposing ever-increasing taxes. These are all the reasons many Americans are leaving cities like San Francisco, New York City, and Chicago.

California, New York, New Jersey, Michigan, and Illinois, all historically Democrat-run, lost a combined four million residents since 2010. That Census data accounts for this exodus before the pandemic, further exposed these cities for being so poorly run.

How about Democrats do what is right for the American people. Why don't we open the schools? Why don't we tamp down on unnecessary spending and get Americans back to work? These ill-advised policies are weighing down an American economy trying to rebound from the global pandemic. It is time for America to get back to work.

For those who are still unable to return, there are ample Federal and State resources to assist in housing costs. Now, paying, law-abiding tenant should ever be thrown out without legal recourse. The contract between a tenant and a landowner must be honored, and State courts should be quick to reconcile any breaches of these contracts.

Our responsibility in Congress is not to hand out free housing. It is to protect private property rights of every single American. This fundamental principle is a cornerstone of our country, and it has served as the bedrock of fostering the greatest economy the world has ever seen. I hope that this hearing today makes that clear.

I thank the Chair, and I yield back.

Ms. ROSS. [Presiding.] Thank you, Mr. Johnson.

We welcome our Witnesses and thank them for participating in today's hearing.

I will now introduce each of the Witnesses and, after each introduction, will recognize that Witness for his or her oral testimony.

Please note that each of your written statements will be entered into the record in its entirety. Accordingly, I ask that you summarize your testimony in five minutes.

To help you stay within that time, for our Witnesses testifying in person, there is a timing light on your table. When the light switches from green to yellow, you have one minute to conclude your testimony. When the light turns red, it signals your five minutes have expired.

For our Witnesses testifying remotely, there is a timer in the Zoom view that should be visible at the bottom of your screen.

Before proceeding with testimony, I would like to remind all our Witnesses that you have a legal obligation to provide truthful testimony and answers to this Subcommittee and that any false state-

ment you make today may subject you to prosecution under section 1001 of title 18 of the United States Code.

Our first Witness is Hilary Shelton.

Mr. Shelton is director of the NAACP's Washington Bureau, and its senior vice President for advocacy and policy. Mr. Shelton is responsible for advocating the Federal public policy issue agenda of the oldest, largest, and most widely recognized civil rights organization in the United States.

Mr. Shelton's government affairs portfolio includes critical—crucial issues, such as affirmative action; equal employment protection; access to quality education; stopping gun violence; ending racial profiling; abolition of the death penalty; access to comprehensive healthcare; voter rights protection; Federal sentencing reform; and a host of civil rights enforcement, expansion, and protection issues. He is very busy.

Mr. Shelton holds degrees in political science from Howard University, in communications from the University of Missouri in St. Louis, and legal studies from Northeastern University.

Mr. Shelton, you are recognized for 5 minutes.

STATEMENT OF HILARY O. SHELTON

Mr. SHELTON. Thank you very much, and good afternoon.

I want to say good afternoon to Chair Cohen, Ranking Member Johnson, and esteemed Members of the Subcommittee.

I would also like to thank you for inviting me here today to discuss a pressing topic as we fight against the unlawful evictions of tenants taking place even during the middle of a national health emergency.

This issue is especially concerning to the NAACP. As you mentioned, the NAACP is an over 100-year-old organization that has focused on these issues as part of a movement for decades upon decades.

As you are aware, the COVID-19 pandemic and the economic crisis that followed had a direct and negative impact on many Americans in several aspects of their lives, whether it be on their physical, mental health well-being, education opportunities, or financial situations. For those already in economic distress, those living paycheck to paycheck, struggling to afford rent and pay bills, the pandemic exacerbated an already dire situation.

The severe lack of affordable housing in this country, and the high rate of evictions among people of color long preceded the COVID-19 pandemic. This crisis has brought this issue to the forefront of the national conscience and shined a light on the pain many individuals and families are experiencing right now and have experienced for decades.

Now, I don't want to get into a debate over whose pain hurts more. However, during all this, a common theme that we see in this country has been made evident once again. Whenever America goes through a storm, African Americans and communities of color are hit the hardest.

As the country locked down and economic activity slowed, millions lost their jobs and their only means to pay for the basics, like housing and food. So, as we saw hospitals fill up with sick Ameri-

cans, we also saw, and still see today, thousands upon thousands of individuals and families forced out of their homes because they can no longer pay rent.

In light of the massive wave of evictions and the potential for millions more due to the course of the pandemic, and the slow economic recovery, the Federal government stepped up and implemented a moratorium on evictions to provide much-needed temporary relief for families in distress.

Though this moratorium was a necessary step to cushion the cushioning blow—crucial blow of American families, that can only be looked at as a Band-Aid solution at best. Despite its good, this wall of protection is slowly crumbling as a Federal district court in Memphis, Tennessee, recently ruled in favor of the landlords and allowed evictions to proceed.

These self-help evictions, where landlords take it upon themselves in circumventing the eviction moratoriums to remove tenants from their dwellings, are displacing already vulnerable families, and once again, disproportionately hurting people of color throughout the country.

Even as this country begins to get back onto its feet, we see the economy start to grow again, millions of families are still in dire financial circumstances and need the time and support to recover from the hardship of the past year.

As long as these moratoriums are in place, tenants should remain temporarily protected from the fear of becoming homeless and thrown even more deeply into the spiral of poverty.

This is why Congress must fight to ensure that eviction moratoriums put in place due to a public health emergency are not being ignored by landlords who are eager to get back to business as usual. That is why I am here today, to show our strong support and advocate wholeheartedly for H.R. 1451, the Emergency Eviction Enforcement Act of 2021.

This bill will go a long way towards providing tenants the protections and level playing field that they deserve when they are in dispute with their landlords. Landlords will no longer be able to ignore eviction moratoriums or try to create hostile environments to push tenants off their property.

To understand the potential impact of this bill, you only need to look at the crisis taking place in Congressman Cohen's home district in Memphis, Tennessee. Though a federal order will protect Americans from evictions until July, at least in word, the reality on the ground right now is much different since a Federal court essentially invalidated the moratorium on evictions.

As local and national restrictions on evictions begin to ease, thousands will be forced from their homes and into distress, especially African American renters, whom we know are more likely to face eviction compared to their White counterparts.

So, with that, let me close for now, but look forward to questions. The challenge is here for us in recognizing that different things hit different communities in different ways, and, even as we go to look to find new jobs and new opportunities, African Americans are finding the time between leaving one job and going to another is usually twice or longer than it is for most other Americans.

Listen, I thank you very much and look forward to your questions.
[The statement of Mr. Shelton follows:]

**House Judiciary Subcommittee on the Constitution, Civil Rights and Civil Liberties
Hearing on “Potential Remedies for Unlawful Evictions in Federal Emergency Areas”
June 14, 2021
Testimony submitted by
Hilary O. Shelton
National Association for the Advancement of Colored People (NAACP)**

Good afternoon, Chairman Cohen, Ranking Member Johnson, and esteemed Members of this subcommittee. I would like to thank you for inviting me to be here today to discuss a pressing topic as we fight against the unlawful evictions of tenants taking place even during the middle of a national health emergency. This issue is especially concerning to me and the National Association for the Advancement of Colored People (NAACP) because of its disproportionate impact on communities of color.

My name is Hilary Shelton, and I am the Director of the NAACP Washington Bureau and the Senior Vice President for Policy and Advocacy. I have been with the NAACP Washington Bureau for over 20 years. Founded in 1909, the NAACP is our nation’s oldest, largest, and most widely recognized grassroots based civil right organization. We currently have over 2200 membership units in every state throughout our nation, as well as on American military installations in Asia and Europe. Our mission statement declares that our goal is “...to ensure the political, educational, social and economic equality of rights of all persons and to eliminate racial hatred and racial discrimination.”

As you all know, the COVID-19 pandemic and the economic crisis that followed had a direct and negative impact on many Americans in several aspects of their lives, whether it be on their physical health, mental wellbeing, or financial situations. For those already in economic distress, those living paycheck to paycheck, struggling to afford rent and pay bills, the pandemic exacerbated an already dire situation. The severe lack of affordable housing in this country and the high rate of evictions among people of color long preceded the COVID-19 pandemic, but this crisis has brought this issue to the forefront of the national conscience and shined a light on the pain many individuals and families are experiencing right now and have experienced for decades. Now, I don't want to get into a debate over "who's pain hurts more", however, during all of this a common theme that we see in this country has been made evident once again: whenever America goes through a storm, African Americans and communities of color are hit the hardest.

As the country locked down and economic activity slowed, millions lost their jobs and their only means to pay for the basics like housing and food. So, as we saw hospitals fill up with sick Americans, we also saw and still see today thousands of individuals forced out of their homes because they can no longer pay rent.

In light of the massive wave of evictions and the potential for millions more due to the course of the pandemic and the slow economic recovery, the federal government stepped up and implemented a moratorium on evictions to provide much-needed temporary relief for families in distress.

Though this moratorium was a necessary step to cushion the crushing blow on American families, this can only be looked at as a “band-aid” solution at best. Despite its good, this wall of protection is slowly crumbling, as a federal district court in Memphis, Tennessee recently ruled in favor of landlords and allowed evictions to proceed. These “self-help” evictions, where landlords take it upon themselves and circumvent eviction moratoriums to remove tenants from their dwellings, are displacing already vulnerable families and once again disproportionately hurting people of color throughout this country. Even as this country begins to get back to its feet and we see the economy start to roar again, millions of families are still in dire financial circumstances and need the time and support to recover from the hardships of the past year. As long as these moratoriums are in place, tenants should remain temporarily protected from the fear of becoming homeless and thrown into the spiral of poverty. This is why Congress must fight to ensure that eviction moratoriums put in place due to the

public health emergency are not being ignored by landlords who are eager to get back to “business as usual.”

In all of this, I believe it is vital that this issue is not looked at solely as one concerning housing, but as one of racial equity and fighting to ensure that it exists in all facets of our society.

That is why I am here to strongly support and advocate wholeheartedly for H.R. 1451, the Emergency Eviction Enforcement Act of 2021. This bill will go a long way towards providing tenants the protection and level-playing field that they deserve when they are in dispute with their landlords. Landlords would no longer be able to ignore eviction moratoriums or try to create hostile environments to push tenants off of their property. To understand the potential impact of this bill, you only need to look at the crisis taking place in Congressman Cohen’s very own district in Memphis, Tennessee. Though a federal order will protect Americans from eviction until July, at least in word, the reality on the ground right now is much different since a federal court essentially invalidated this moratorium on evictions. As local and national restrictions on evictions begin to ease, thousands will be forced from their homes and into distress, especially Black renters, whom we know are more likely to face eviction compared to their white counterparts.

If we as a nation want to address racial disparities in a serious manner, this is the fight to get behind. We must ensure that renters and tenants of color have the support they need to get back on their feet. Momentum is shifting towards landlords as the economy recovers, vaccines become widespread, and eviction moratoriums get nullified, but this does not change the reality that millions of Americans are still in dire financial situations and hanging on the edge.

H.R. 1451 will work to prevent so-called “self-help” evictions from taking place as they will ensure that federal orders are followed and eviction proceedings do not take place without a judge’s consent. Tenants will be treated with the dignity that they deserve as their landlords cannot harass, intimidate, or threaten them into leaving and they become entitled to injunctive relief and damages in the case that they are wrongfully treated by their landlords. Until this pandemic is fully behind us and the economy has stabilized, Americans need the support of their government to stay on their feet. As long as there is a public health emergency and eviction moratoriums are in place, landlords are obligated to treat their tenants with respect and not try to circumvent the law.

The Emergency Eviction Enforcement Act of 2021 will ensure tenants are supported during this devastating pandemic or any other national emergency, and that is why the NAACP supports this bill. We owe it to the families who

have suffered tremendously over the past year. We want to again thank Chairman Cohen and the many others that have indorsed and support this crucial legislation. I also hope you will all consider the good that can come out of a bill like this and the many lives you will help by stepping up to the challenge.

Thank you again for inviting me here today to speak to you about evictions in this country and their connection to the fight for racial equity. I stand ready to answer any and all of your questions.

Mr. COHEN. [Presiding.] Thank you, Mr. Shelton.

The NAACP has often been known as the conscience of the country, and you are the voice of that conscience. Thank you so much.

Our next Witness is Cindy Cole Ettingoff. Ms. Ettingoff is the CEO and general counsel for Memphis Area Legal Services, Incorporated. She is involved in the Tennessee Statewide task force focusing on housing, unemployment, and access to justice.

Prior to joining Legal Services, she practiced in the areas of labor and employment law, representing employers, employees, and unions in OSHA, Wage and Hour, National Labor Relations Act, title VII, FMLA, ADA, ADEA, and other employment law matters.

Ms. Ettingoff is a commissioner on the Tennessee Alternative Dispute Resolution Commission, past Chair of the Tennessee Bar Association Dispute Resolution Section, current President of the Tennessee Association of Professional Mediators, and is the representative of the heralded Memphis Area Legal Services, founded by Mike Cody and others.

Ms. Ettingoff earned her J.D. degree from the University of Memphis Cecil C. Humphreys School of Law and has an M.S. in cell biology and B.S. in microbiology from the University of Memphis.

Ms. Ettingoff, you are recognized for 5 minutes.

STATEMENT OF CINDY ETTINGOFF

Ms. ETTINGOFF. Thank you.

I certainly appreciate the opportunity to speak with you today, and, of course, you mentioned Memphis Area Legal Services, MALS, to those of us. It is an LLC-funded nonprofit law firm that provides pro bono legal services primarily for individuals with low income or no income.

MALS also offers services through the Memphis Fair Housing Center Program, which we administer, and that program serves to increase homeownership opportunities; promote decent, affordable housing; and ensure equal opportunity in housing. All that to say MALS has a great deal of experience in the area of housing, particularly when it comes to lawful and unlawful evictions.

Now, as Mr. Shelton mentioned, while COVID-19 was stressful for everyone, it was and still is a nightmare for poor people. It has been an even greater nightmare for poor people of color. It has been said that when America catches a cold, Black America catches pneumonia, and that has certainly been the experience of many of our clients.

As a result of COVID, many of our clients lost jobs. Many, if not most of our clients, live paycheck to paycheck. As a result, when job loss occurred, they had no reserves that would have enabled them to continue to pay rent.

Now, while some employees are being asked to return to work, not all are, and many of them are being asked to return to the same job for less pay. So, the underlying economic problems that exacerbated the COVID-generated eviction emergency continue.

We are aware, of course, that the CARES Act eviction moratorium and the CDC eviction moratoria were intended to prevent the eviction of citizens who were unable to pay their rent due to COVID-19. Despite those moratoria, the last 14 months, MALS

has continued to receive calls from individuals who are being threatened with unlawful eviction, or who had actually already been unlawfully evicted.

Existing laws provide that if an eviction is unlawful, the tenant has the right to bring a legal action, but the right to bring an action is not at all the same thing as the ability to bring a legal action.

Landlords well know that if a tenant did not have money to pay rent, they are unlikely to have funds to pay for legal representation. Those tenants frequently turn to MALS and other legal aid organizations.

In fact, during the moratorium, MALS received approximately 1,200 requests for legal assistance that involved evictions, and MALS takes as many of those cases as it can, certainly. Of course, with results of high demand in staffing limits, there are times when clients must be turned away.

National statistics reflect that 91 percent of landlords are represented by counsel, while less than four percent of tenants are represented by counsel. Clearly there is an imbalance of access to justice.

So, that leaves us with the question of how do we level the playing field to prevent unlawful evictions during national emergencies, such as the COVID pandemic? What might be the best remedy for unlawful evictions?

In my opinion, the best remedy for unlawful evictions is for the evictions to never occur, and that requires deterrence. To deter unlawful evictions, it is my belief that the penalty for engaging in the unlawful conduct has to exceed the monetary benefits of the content, and that is what H.R. Bill 1451 may well do. It may Act as a deterrent and may thereby prevent unlawful evictions.

Unlawful evictions cause so much harm to our communities and to the future of our communities through our children. To stop unlawful evictions, particularly during national emergencies, a message must be sent to those landlords who understand and exploit the imbalance of power between those who can afford to fight against injustice, and tenants who cannot. The threat of treble damages is certainly one of those messages that can be sent, and it is a very clear message.

Now, I assure you that there is a need for such deterrence, and I appreciate the opportunity to speak with you here today. I am happy to answer any questions. I look forward to them here shortly.

[The statement of Ms. Ettingoff follows:]



Memphis Area Legal Services, Inc.
Serving the Tennessee Counties of Shelby, Fayette, Lauderdale and Tipton



Cindy Cole Ettingoff
CEO and General Counsel

André C. Wharton
Board President

**STATEMENT OF CINDY COLE ETTINGOFF
CEO & GENERAL COUNSEL
MEMPHIS AREA LEGAL SERVICES, INC.**

U.S. HOUSE COMMITTEE ON THE JUDICIARY

**SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND CIVIL LIBERTIES
HEARING ON "POTENTIAL REMEDIES FOR UNLAWFUL EVICTIONS IN FEDERAL
EMERGENCY AREAS"**

JUNE 14, 2021

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I thank Chairman Nadler and Ranking Member Jordan of the U.S. House Committee on the Judiciary, and Chairman Cohen and Ranking Member Johnson of the Subcommittee on the Constitution, Civil Rights and Civil Liberties, for inviting me to submit this statement and to address the hearing on Potential Remedies for Unlawful Evictions in Federal Emergency Areas. My name is Cindy Cole Ettingoff and I am the CEO and General Counsel for Memphis Area Legal Services, Inc. (MALS). MALS provides pro bono legal services for the Tennessee counties of Fayette, Lauderdale, Tipton and Shelby. I greatly appreciate the opportunity to share information about unlawful evictions based upon MALS' extensive work involving evictions during the COVID-19 pandemic.

As background, in March 2020, when COVID first necessitated the closing many business, Shelby County was considered the second poorest large metropolitan area with a population of 1,000,000 or more in the United States.¹ Monthly unemployment rate reports from the TN Department of Workforce Development between March 2020 and the present indicate that for all but one reporting period, Shelby County, TN had the highest unemployment rate in the state.²

Based upon a study by Dr. Elena Delavega of the University of Memphis, School of Social Work, published in 2020, the city of Memphis has a poverty rate of 21.7% with the rate of child poverty being 35%. The City of Memphis poverty rate for Blacks is 26.1%, for Hispanics/Latinos is 29.2%, while the poverty rate for non-Hispanic Whites in the city of Memphis has continued to decrease to 9.3%. In the Memphis Statistical Metropolitan Area (MSA), which includes parts of Tennessee, Arkansas, and Mississippi, the overall poverty is 15.4%, child poverty is 23.7%, poverty for people over age 65 is 10.7%, Black poverty is 22.6%, Hispanic or Latino poverty is 21.9%, and non-Hispanic White poverty is 6.9%.³

Poverty is certainly not limited to the Memphis/Shelby County area. Poverty is experienced throughout our country.⁴ Unfortunately, poverty and evictions go hand in hand. Poverty often leads to eviction, both lawful and unlawful, because anything that impacts income, such as job loss, inability to go to work because of personal illness or the illness of a child, loss of transportation, or childcare issues can result in the inability to pay rent. As pointed out by Professor Matthew Desmond of the Princeton Eviction Lab, Black women with children are at the highest risk of eviction of any renting population.⁵ Persons of color have been more likely

¹ Elena Delavega PhD, MSW, School of Social Work, University of Memphis, & Gregory M. Blumenthal, PhD, GMBS Consulting, *2020 Memphis Poverty Fact Sheet*, https://www.memphis.edu/socialwork/research/files/documents/2020povertyfactsheet_correct.pdf

² <https://www.tn.gov/workforce/tennessee-economic-data-/labor-force-statistics/unemployment-rates.html>

³ Elena Delavega PhD, MSW, School of Social Work, University of Memphis, & Gregory M. Blumenthal, PhD, GMBS Consulting, *2020 Memphis Poverty Fact Sheet*.

⁴ Priyanka Boghani, *How COVID Has Impacted Poverty in America*, <https://www.pbs.org/wgbh/frontline/article/covid-poverty-america/>

⁵ Why Eviction Matters, <https://evictionlab.org/why-eviction-matters/#who-is-at-risk>

to get sick, be hospitalized, and die from COVID,⁶ and also to suffer the economic consequences of the pandemic, including job and income loss and food and housing insecurity.⁷ Although the previously mentioned factors were present prior to COVID, the pandemic greatly impacted the ability of many impoverished individuals to work.⁸ Some individuals who were furloughed or lost jobs due to COVID are not able to return to work or are not being recalled to work resulting in a continuing inability to pay their rent. Many of those who seek MALS services report having been without employment for over a year.

Lawful Evictions vs. Unlawful Evictions

An understanding of the mechanics of lawful eviction and how it differs from unlawful ouster is important. With a lawful eviction, the tenant is given notice,⁹ generally 14 days to pay the rent in full and avoid eviction or be subjected to a hearing in court at which a set out is usually established. The tenant has an opportunity to appear in court and seek a continuance, request mediation, or contest the eviction. If possession of the property is granted to the landlord, the normal time before setout will occur is 10 days. Regardless, in a lawful eviction tenants have the benefit of knowledge of when set out is likely to occur and have the ability to make some effort to move their most needed personal belongings elsewhere.

This notice and opportunity are missing with unlawful eviction. The tenant may return home to find the lock changed or the door removed and what remains of their belongings on the street or gone. That means clothing, children's toys and stuffed animals, beds and bedding, chairs, plates, utensils, photos, awards, school books or laptops, medicine and medical equipment can be placed at the curb. Our experience has been that even if the tenant arrives shortly after the set out occurs, many, if not all of their possessions are gone. Imagine the impact on a child who has gone to the grocery with her mother returning home to find that her home and everything she had is gone. While set out without a court order is illegal and a violation of state law, the remedies provided by law are not readily available to poor tenants.

Relative Inaccessibility of Current Legal Protections

⁶ *Id.*

⁷ Matthew Desmond & Rachel Tolbert Kinbro, *Eviction's Fallout: Housing, Hardship, and Health*, 94 *Social Forces* 295, 317 (2015).

⁸ Priyanka Boghani, *How COVID Has Impacted Poverty in America*, <https://www.pbs.org/wgbh/frontline/article/covid-poverty-america/>

⁹ Non-Legislative Commission on the Study of Landlord-Tenant Laws, 35 *U. Ark. Little Rock L. Rev.* 739, 761 (2013).

If the eviction is unlawful, the tenant can bring a legal action, but if the tenant did not have money to pay rent, they are unlikely to have funds to pay for legal representation. They frequently turn to MALS. Among the legal services provided by MALS is representation of those who have experienced unlawful evictions. In fact, during the moratorium, MALS received approximately 1,200 requests for legal assistance involving evictions. It is difficult to ascertain the exact number of eviction assistance requests received by MALS that involved unlawful evictions because MALS tracking has historically not distinguished between lawful and unlawful evictions and does not include the number of declined unlawful eviction cases. Moreover, many tenants report that they do not seek legal assistance after an unlawful ouster because survival, primarily finding a safe place to sleep for the night, is their first priority.

Under the present law, an unlawfully evicted tenant could pay the filing fee, file a civil warrant in state court, and seek to represent themselves. However, if the tenant could not pay rent, he/she is unlikely to be able to pay the filing and service fees. Assuming a means of getting a lawsuit filed is found, absent working knowledge of the rules of civil procedure and evidence a tenant is unlikely to be successful in representing themselves. Moreover, the best means of proving ownership and value of items that were lost due to unlawful eviction, such as a receipt or credit card bill, were also likely lost in the unlawful eviction.

Unlawful eviction is a setback for people who were already struggling.¹⁰ If an individual is unable to pay rent, they would almost certainly not be able to procure new housing and beds and clothing and food for their children. Unlawful eviction results in more than just the loss of housing or personal items, it is an emotional trauma for children and adults, with potentially long-term effects.

An unlawful eviction will almost certainly have a negative impact on a child's education. Whether unlawful eviction results in the child having to attempt to rapidly change schools or being unable to go to school because they have no address with which to enroll in school, or the loss of the child's school issued books and equipment, or loss of the child's shoes and school uniforms, the impact is dramatic. Transportation to get the student to school may also be lacking.¹¹ If students are homeless for an extended period of time, they may be relocating frequently and may not be able to attend school regularly.¹² In fact, studies have shown that children who are homeless are significantly less likely to be functioning at grade level than their non-homeless peers.¹³ Even if re-enrollment can be accomplished, starting anew in the middle of the school year

¹⁰ Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 Am. J. of Sociology 88, 102 (2012).

¹¹ *Id.*

¹² *Id.* at 491.

¹³ *Id.* Daniel and Sun point out that "only one-third of homeless students read at the same grade level as more than half of their domiciled peers of the same age." *Id.*

or with a lapse in attendance while attempting to re-enroll in school can act as an impediment to learning.¹⁴ Clearly, eviction has traumatic and long-lasting legal, social, and health consequences for the lessee and their children

In June 2020, in the National Housing Law Project survey of legal aid attorneys nationwide, 91% of the respondents reported illegal evictions in their areas.¹⁵ Although the extended CDC eviction moratorium which is set to end on June 30, 2021, remains in place for most of the country, the moratorium has already ended in west Tennessee. Attorneys representing a group of landlords filed a challenge to the last CDC extension of its halt order. In *Tiger Lily LLC et al. v. HUD et al.*, No. 21-5256 (March 29, 2021). The 6th Circuit Court of Appeals, in an emergency appeal, confirmed the lower court ruling that the CDC's action extending the moratorium on evictions exceeded the scope of the CDC's authority. The end of the eviction moratorium for western Tennessee placed Memphis Area Legal Services in the position of being on the frontline of evictions, both lawful and unlawful.

A Closer View of Unlawful Eviction

Approximately eighteen months ago I met with a client who came to MALS offices frantic because an unlawful set out had occurred. As part of the set out, one of the occupants, who was bedridden and on oxygen was placed in her wheelchair outside in December. The whole family was traumatized. The tenant video recorded the event from the time when he and his family drove up to their home to find their belongings and housemate outside. Christmas presents for the children had been placed on the street. In the video, the children and the man's wife were crying and screaming. The evictee was asking for mercy on the part of the set out crew. The entire family was attempting to grab their belongings from the curb before they could be stolen. That family had found a new place to live and had planned to move as soon as Christmas was over and their next housing was available. It is also worth noting that even if property has not yet been stolen while setting on a curb, additional damage often results to the property because the eviction process does not require any care be taken with the items being removed. Furniture may be set out in the rain. Furniture is often broken or damaged.

¹⁴ Philip T.K. Daniel & Jeffrey C. Sun, *Falling Short in Sheltering Homeless Students: Supporting the Student Achievement Priority Through the McKinney-Vento Act*, 312 E. Law Rep. 489, 489-491 (2015).

¹⁵ National Housing Law Project, *Survey of Legal Aid Attorneys*, July 2020, <https://www.nhlp.org/wp-content/uploads/Evictions-Survey-Results-2020.pdf>.

H.R. 1451 and Congressional Action

Much of the preceding information has been focused on the harms visited upon tenants by unlawful evictions and the fact that most tenants do not have an adequate means of addressing such unlawful evictions. Accordingly, the subject matter of H.R. 1451, the Emergency Eviction Enforcement Act of 2021, is of significant importance to the citizens served by MALS and others who might face unlawful eviction during a national emergency. The bill could provide a means of addressing a number of the challenges of individuals subjected to unlawful evictions and could also provide resources and assistance to these individuals. The bill proposes to allow an unlawful eviction lawsuit to be brought in federal court by the Attorney General, in addition to the private cause of action afforded a tenant. The bill also offers the opportunity for treble damages, which could provide a strong deterrent for a landlord contemplating unlawful eviction. Given that most evicted tenants cannot afford paid legal assistance and not all tenants may be able to obtain pro bono legal assistance, the proposed legislation could be extremely beneficial to those experiencing unlawful eviction during a national emergency. This bill could provide those who have suffered an unlawful eviction during a national emergency additional, much-needed means of access to justice.

Mr. COHEN. Thank you, Ms. Ettingoff, and go Tigers.

Our third Witness is Joel Griffith. Mr. Griffith is a research fellow at the Institute for Economic Freedom and Opportunity of the Heritage Foundation.

Previously, he worked as a researcher for a former member of *The Wall Street Journal* editorial board and was Deputy Research Director of the National Association of Counties, also known as NACo. He also was director of the Center for State Fiscal Reform at the American Legislative Exchange Council, also known as ALEC.

Mr. Griffith received his J.D. from Chapman University Dale E. Fowler School of Law with a dual emphasis in alternative dispute resolution and federal income taxation. He received a B.S. from Pensacola Christian College.

Mr. Griffith, you are recognized for 5 minutes.

STATEMENT OF JOEL GRIFFITH

Mr. GRIFFITH. Thank you, Chair Cohen, Vice-Chair Ross, Ranking Member Johnson, and other Members of the Committee, for the opportunity to testify today. My name is Joel Griffith, and I am a research fellow at the Heritage Foundation.

This testimony will focus on eviction moratoria, along with a proposed private cause of action in Federal courts for wrongful eviction.

The eviction moratoria of the past year unfairly burdened property owners. With the cost of societal shutdowns, they create unintended consequences, and they implicate serious illegal and constitutional concerns.

Last year, for the first time in our Nation's history, State and local governments intentionally suppressed and criminalized entire swaths of economic activity. The eviction moratoria, whether implemented by Federal, State, or local governments, forced property owners to subsidize these destructive shutdowns, and enabled politicians to shirk responsibility.

Keep in mind, by December of 2020, the 10 States with the fewest economic restrictions in place averaged far lower unemployment than those States with draconian restrictions. Economic conditions varied widely State to State. Just compare Florida to New York.

Property owners in those States which are shut down should not be forced to subsidize those State and local politicians that are choosing to shutter these businesses, close schools, and ruin livelihoods. Regardless of the intended beneficiaries of moratoria, these eviction moratoria allowed many, who are not even impacted financially, to live rent free throughout the past year.

Data from the National Multifamily Housing Council showed only a minimal increase of 2.2 percentage points in late rental payments in July 2020 versus July 2019. Despite the relatively small increase in the number of people that were making their rental payments late, many local governments chose to preemptively issue moratoria on evictions throughout the entire pandemic.

The near complete eradication of evictions, coinciding with only a slight rise in those making delinquent rent payments, strongly suggests that this moratorium allowed many, who were neither im-

pacted by COVID-19, nor experiencing financial hardship, to live rent free with no immediate personal consequences.

These eviction moratoria produce harmful ripple effects. Landlords may need to increase rents to mitigate the heightened risk of future moratoria, prospective renters may find themselves subject to increased security deposits and tighter credit checks, and, ultimately, fewer affordable housing units might be constructed.

Quality of life for other tenants is impacted as well as landlords are unable to evict many tenants for disorderly conduct, illegal drug use, and criminal activity.

Moratoria also invoke serious constitutional and legal concerns. They often violate the Takings Clause of the Fifth and the 14th Amendments, along with the contract clause. Without a doubt, the CDC's ban on eviction proceedings was unlawful, because it exceeded its congressional mandate.

The Executive Order last year prohibiting landlords from using the court system to evict tenants until the end of the year was predicated on the Public Health Services Act, which authorizes regulations necessary to prevent the introduction, transmission, or spread of communicable diseases. Examples of congressionally authorized actions that were actually listed in the Act come nowhere close to including eviction moratoria. Even the order itself shows that this ban was meant as an economic relief measure, not a tool to protect the public from the spread of disease.

In short, both the CDC action itself, the eviction moratorium, and the intent to counter the economic impact rather than the health impact of COVID-19, violated the express will of Congress. Even if Congress had authorized the CDC to enact an eviction moratorium, such authorization itself would have been unconstitutional.

Congress can only delegate to the Executive Branch the powers granted to it by the Constitution, and the Commerce Clause, upon which the CDC powers are based, does not provide a basis for Congress to prohibit citizens from seeking legal recourse in State courts for enforcement of contract provisions.

All regulations enacted under the Commerce Clause require that the regulation itself must be necessary and proper for carrying into execution the powers granted to it by Congress. Denying landlords access to State courts to enforce eviction law is not a proper use of Federal government power, even if the eviction process itself were economic in nature.

Banning access to State courts, forbidding a State court from exercising its lawful jurisdiction is an abuse of Federal power. In fact, such a ban on access in courts is itself a violation of the First amendment of our Constitution, which guarantees that we have the right to petition the government for redress of grievances, and this includes the right to request the court to issue an order for eviction.

I thank you again for inviting me today, and I look forward to your questions.

[The statement of Mr. Griffith follows:]



CONGRESSIONAL TESTIMONY

Testimony before the
House Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Civil Liberties
“Potential Remedies for Unlawful Evictions in Federal Emergency Areas”
 U.S. House of Representatives
June 14, 2021
Joel Griffith
 Research Fellow in Financial Regulations
 The Heritage Foundation

Thank you Chairman Cohen, Vice-Chair Ross, Ranking Member Johnson, and other members of the committee for the opportunity to testify today. My name is Joel Griffith. I am a Research Fellow in Financial Regulations at The Heritage Foundation. The views I express in this testimony are my own and should not be construed as representing any official position of The Heritage Foundation.

This testimony will focus on why the eviction moratoria instituted by the CDC, Congress, and state governments were unfair, unnecessary, and economically harmful. In addition, this testimony will discuss the proposed private cause of action in federal courts for wrongful eviction.

Government-mandated shutdowns and restrictions in response to the COVID-19

pandemic caused unemployment to soar from near-record lows in January to generational highs just months later.

Policy makers forced property owners to shoulder much of the economic fallout of these decisions with eviction moratoriums.

With the threat of evictions rising, the federal CARES Act in March 2020 imposed a four-month eviction moratorium—along with a ban on late fees—on the more than 28% of rental properties financed with federally backed mortgages or participating in federal housing programs.¹

An executive order followed on September 4, 2020, banning property owners from commencing the eviction process in courts until the end of 2020.² This was predicated on

¹ Congressional Research Service, “CARES Act Eviction Moratorium,” April 7, 2020, <https://crsreports.congress.gov/product/pdf/IN/IN11320> (accessed June 13, 2020).

² Federal Register, “Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19,” September 4, 2020, <https://www.federalregister.gov/documents/2020/09/04/2020-18111>.

the Public Health Services Act.³ States and dozens of cities followed suit with their own versions of moratoria.⁴ For instance, Portland, Oregon, declared a moratorium for some renters lasting up to six months after the emergency ends.⁵

This impacted fundamental constitutional rights while eroding the separation of powers (through executive branch misapplication of the Public Health Services Act) and federalism (by encroaching on the right of states to determine their own eviction processes).

These eviction moratoria unfairly burden property owners with the costs of societal shutdowns, create unintended consequences, and implicate serious legal and constitutional concerns.

- **The Eviction Moratoria Forced Property Owners to Subsidize the Destructive Shutdowns Implemented by State and Local Policymakers**

Property owners should not be forced to subsidize state and local decisions to shutter businesses and ruin livelihoods. Moratoria shift the costs of overly restrictive shutdowns to federal taxpayers and allows governors additional latitude to keep society shuttered with one-size-fits-all policies. Targeted, temporary, and local economic restrictions may be necessary, but those decisions, and the costs that they incur, should be weighed by the

responsible policymakers.⁶ Moratoria incentivize state and local policymakers to continue destructive shutdowns and allows them to shirk responsibility.

State or local governments wishing to provide rental relief for those impacted by their shutdowns should do so through transparent, democratically implemented assistance. This spreads the cost of aid across the entire community, rather than placing the entire burden on a small group of property owners.

Consider Pittsburgh with 330,000 renter households.⁷ During the peak of the COVID-19 pandemic, unemployment increased by 11.2 percentage points to 16.4%.⁸ A surge in delinquencies directly proportional to the increase in the overall unemployment rate would result in nearly 37,000 delinquent rental units.

With a median two-bedroom apartment rental in Pittsburgh of \$910 monthly, a program covering half the rental costs for three months on these units would cost the city \$50 million, less than 9% of the city's annual operating budget.^{9,10}

That type of profligate spending comes with its own downsides, but at least allows residents to hold politicians accountable. Moratoriums, on the other hand, concentrate the costs initially on the property owners—allowing politicians to escape accountability. However, the broader

³ 19654/temporary-halt-in-residential-evictions-to-prevent-the-further-spread-of-covid-19 (accessed June 13, 2021).

⁴ 42 U.S.C. §264.

⁵ <https://www.govinfo.gov/link/uscode/42/264?type=usc&year=mostrecent&link-type=html>.

⁶ National Low Income Housing Coalition, "Eviction and Foreclosure Moratoriums," <https://nlihc.org/eviction-and-foreclosure-moratoriums>

⁷ <https://www.dailysignal.com/2019/02/28/oregons-proposed-rent-controls-would-shrink-supply-of-housing/> (accessed June 13, 2021).

⁸ Ditch et al., "Bipartisan Senate COVID-19 Package Should do More to combat COVID-19, Remove Wasteful Spending," The Heritage Foundation, December 14, 2020, <https://www.heritage.org/budget-and-spending/report/bipartisan-senate-covid-19-package-should-do-more-combat-covid-19-remove> (accessed March 15, 2021).

⁹ Department of Housing and Urban Development, "Comprehensive Housing Market Analysis for Pittsburgh, Pennsylvania," July 1, 2016, <https://www.huduser.gov/portal/publications/pdf/PittsburghPA-comp-17.pdf> (accessed June 13, 2021).

¹⁰ Federal Reserve Bank of St. Louis, Series PITT342URN, <https://fred.stlouisfed.org/series/PITT342URN> (accessed June 13, 2021).

¹¹ Amelia Josephson, "The Cost of Living in Pittsburgh," July 10, 2019, <https://smartasset.com/mortgage/the-cost-of-living-in-pittsburgh> (accessed June 13, 2021).

¹² Pittsburgh City Council, *City of Pittsburgh 2020 Budget & Five Year Plan*, December 17, 2019, [https://apps.pittsburghpa.gov/redtail/images/8055_Operating_Budget_as_approved_by_Council_12-17-19\(3\).pdf](https://apps.pittsburghpa.gov/redtail/images/8055_Operating_Budget_as_approved_by_Council_12-17-19(3).pdf) (accessed June 13, 2021).

public faces the economic repercussions in future years.

- **Eviction Moratoria Allowed Many Who Were Not Impacted Financially to Live Rent-Free**

Eviction moratoria were a needlessly blunt tool to address the financial hardships from the COVID-19 shutdowns.

The Census Bureau Household Pulse Survey tracking the impact of COVID-19 on financial health indicates that 19% of renters failed to pay rent in June 2020, during the heart of the shutdowns.¹¹ That compares with approximately 16% reporting failure to pay or deferral in the month of March 2020.¹²

Of interesting note, only about 9% of Census Bureau respondents reported a loss of income for themselves or anyone they reside with. In fact, loss of income appears to be a factor for only half of those failing to pay rent.

Data from the National Multifamily Housing Council, which tracks more than 11 million professionally managed apartment units, showed only a minimal deterioration in rental payments year over year.¹³

In July 2020, 77.4% of units had made a rental payment by the 6th of the month, down just slightly from 79.7% in 2019.

Despite the relatively small increase in missed rental payments and the unprecedented federal unemployment benefits, many local governments preemptively issued moratoria on evictions throughout the pandemic.

The plunge in evictions coinciding with only a slight rise in delinquent rent payments strongly suggests the moratorium allowed many who were neither impacted by COVID-19 nor experiencing financial hardship to live rent-free.

- **The Eviction Moratoria Are Economically Harmful**

Politicians may enjoy a short-term boost in popularity from such measures. However, the unintended consequences are extensive. Initially, the decrease in cash flow affects the landlord only. However, as this persists, delayed maintenance and upgrades ensue.

Some landlords may delay their own mortgage payments, negatively affecting the owners of those mortgages—banks, credit unions, investors, institutional shareholders, and even taxpayers.

As landlords postpone property tax payments, local schools, fire departments, law enforcement, and parks experience a decline in funding.

Landlords will increase rents to mitigate the heightened risk of future moratoria and to recoup revenue already lost. Prospective renters may find themselves subject to increased security deposits and tighter credit checks.

Ultimately, fewer affordable housing units may be constructed.

Quality of life for other tenants is impacted as well. Landlords found it impossible to evict those who are a nuisance to others with

¹¹ United States Census Bureau, "Week 11 Household Pulse Survey: July 9 - July 14, 2020," <https://www.census.gov/data/tables/2020/demo/hhp/hhp11.html> (accessed June 13, 2021).

¹² United States Census Bureau, "Week 1 Household Pulse Survey," https://www2.census.gov/programs-surveys/demo/tables/hhp/2020/wk1/housing1b_week1.xlsx

¹³ National Multifamily Housing Council, Rent Payment Tracker, <https://www.nmhc.org/globalassets/research--insight/rent-payment-tracker/data-downloads/rent-payment-tracker-07222020.xlsx>.

disorderly conduct, illegal drug use, or failure to upkeep premises.

- **Eviction moratoria may violate the Takings Clause of the Fifth and the Fourteenth Amendments along with the Contract Clause**

The eviction process serves as a safeguard to protect our constitutional right to private property. Eviction moratoria may violate the Takings Clause of the Fifth and the Fourteenth Amendments of the U.S. Constitution which guarantee that no person may “be deprived of life, liberty, or property without due process of law.” Some of the numerous lawsuits challenging the CDC moratorium have succeeded.¹⁴ On the state level, moratorium may warrant scrutiny by the Supreme Court for possible violations of Article I, Section 10, Clause 1 of the U.S. Constitution (the Contract Clause) which prohibits states from passing laws “impairing the obligation of contracts.”

- **CDC’s Ban on Eviction Proceedings Was Unlawful Because it Exceeded its Congressional Mandate**

The executive order prohibiting landlords from using the court system to evict tenants until the end of the year. The order stated: “Eviction moratoria — like quarantine, isolation, and social distancing — can be an effective public health measure utilized to prevent the spread of communicable disease.”¹⁵

The executive order was predicated on the Public Health Services Act which authorizes regulations “necessary to prevent the introduction, transmission or spread of

communicable diseases from foreign countries into the states or possessions, or from one state or possession into any other”—international and interstate spread of communicable diseases.¹⁶ Examples listed in Public Health Services Act include “inspection, fumigation, disinfection, sanitation, pest extermination, destruction of animals or articles found to be so infected or contaminated as to be sources of dangerous infection to human beings, and other measures.”

Eviction moratorium is not on this list of authorized regulations. Using the “other measures” term to allow eviction moratoria is inappropriate.

As Heritage legal scholars explain:

“A basic canon of statutory construction—known as the “*ejusdem generis*” (Latin for “of the same kind”) rule—is that when a broad, vague term follows a list of specifics, that term must refer only to the same sort of things listed before it. Nationwide eviction bans are nothing like the localized, limited actions of inspecting, fumigating, or disinfecting specific buildings or neighborhoods or exterminating pests.”¹⁷

Furthermore, even if eviction moratorium were a permitted CDC action under the Public Health Services Act, the CDC should hardly focus only on relocations due to COVID. Total relocations in a typical year far exceed the number of evictions experienced even in the depths of the Great Recession at the end of the last decade. Then, the number of evictions

¹⁴ Trial courts in *Skyworks LTD v. CDC* and *Terkel v. CDC*, declared the CDC Order unconstitutional. See *Terkel v. Centers for Disease Control & Prevention*, No. 6:20-CV-00564, ___ F.Supp.3d ___, 2021 WL 742877 (E.D. Tex. Feb. 25, 2021); see *Skyworks, Ltd. v. Centers for Disease Control & Prevention*, No. 5:20-CV-2407, “2021 WL 911720, at *1 (N.D. Ohio Mar. 10, 2021).

¹⁵ Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55,292 (Sept. 4, 2020), [https://www.federalregister.gov/documents/2020/09/04/2020-](https://www.federalregister.gov/documents/2020/09/04/2020-19654/temporary-halt-in-residential-evictions-to-prevent-the-further-spread-of-covid-19)

[19654/temporary-halt-in-residential-evictions-to-prevent-the-further-spread-of-covid-19](https://www.federalregister.gov/documents/2020/09/04/2020-19654/temporary-halt-in-residential-evictions-to-prevent-the-further-spread-of-covid-19)

¹⁶ 42 U.S.C. §264.

¹⁷ <https://www.govinfo.gov/link/uscode/42/264?type=usc&year=mostrecent&link-type=html>.

¹⁷ Gian Carlo Canaparo, Amy Swearer, Zach Smith, “CDC’s Unlawful, Unconstitutional Moratorium on Evictions,” The Heritage Foundation, September 15, 2020, <https://www.heritage.org/the-constitution/commentary/cdcs-unlawful-unconstitutional-moratorium-evictions> (accessed June 13, 2021).

failed to top 1 million households annually — or fewer than 2.5 million individuals.¹⁸ In contrast, more than 30 million Americans moved from one location to another in 2019 in a healthy economy.¹⁹ This fact further illustrates that the moratorium is an economic relief measure rather than a congressionally authorized disease prevention tool of the CDC.

Even the order itself shows the ban is meant as an economic relief measure, not a tool to protect the public from the spread of disease. For instance, the moratorium excludes people not in poverty or otherwise able to pay their rent. The CDC did not have the requisite congressional authority to ban property owners from utilizing eviction proceedings.

• **CDC's Ban on Eviction Proceedings Was Unconstitutional**

Even if Congress had authorized the CDC to enact an eviction moratorium, such authorization would be unconstitutional. Congress may only delegate to the executive branch the powers granted to it by the Constitution. The Commerce Clause—upon which the CDC powers are based—does not provide a basis for Congress to prohibit citizens from seeking legal recourse in state courts for enforcement of rental contract provisions.

Our Constitution diminished the dangers of centralized power by reserving to the sovereign states retain all powers except those expressly delegated to the national government under our Constitution. One of the most important powers granted to Congress is the power to regulate interstate commerce (the Commerce Clause). Even if regulated activity itself is not interstate commerce (instead being intrastate), Congress may regulate the activity if it is

“economic activity [that] substantially affects interstate commerce.”²⁰ If the regulated activity itself is only intrastate and is not economic in nature, Congress may only regulate such intrastate activity if the regulation is “an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate [noneconomic] activity were regulated.”²¹

For all regulations enacted under the Commerce Clause—whether the activity itself is interstate or intrastate, economic in nature or not economic in nature—the regulation itself must be “necessary and proper for carrying into Execution” the powers granted Congress.²²

The CDC moratorium fails to meet constitutional muster.

The eviction proceedings banned by the CDC is not economic in nature; an eviction proceeding is not a good which can be purchased, sold, or distributed. Even if it were an economic good, the eviction proceedings do not have a substantial effect on interstate commerce. Nor was the CDC moratorium “an essential part of a larger regulation of economic activity.”

Regardless, even if use of the eviction process itself were economic in nature, even if evictions in one state did have a “substantial impact” on interstate commerce, or even if the moratorium were “an essential part of a larger regulation of economic activity,” denying landlords access to state courts to enforce eviction law is not a “proper” use of federal government power. In fact, such a ban on accessing the court is itself a violation of one’s right First Amendment of the U.S. Constitution to “petition the government for a redress of

¹⁸ The Eviction Lab, Princeton University, “National Estimates: Eviction in America,” May 11, 2018, <https://evictionlab.org/national-estimates/> (accessed June 13, 2021).

¹⁹ U.S. Census Bureau, “Geographic Mobility: 2018 to 2019,” November 2019.

<https://www.census.gov/data/tables/2019/demo/geographic-mobility/cps-2019.html> (accessed June 13, 2021).

²⁰ *United States v. Lopez*, 514 U.S. 549, at 560.

²¹ *United States v. Lopez*, 514 U.S. 549, at 561.

²² The Necessary and Proper Clause (Article I, Section 8 of the U.S. Constitution).

grievances.” This includes the right to request the court to issue an order for eviction.²³

Our system of government, including enumerated powers and separation of powers, requires each branch to stay in its assigned lane. And it demands that the federal government respect the sovereignty of the individual states. Creating economic policy through executive order threatens a further encroachment of the executive branch upon the legislative branch.

- **A Federal Wrongful Eviction Cause of Action Raises Similar Constitutional Concerns, Provides a Duplicative Remedy, and Does Not Protect a Federal Statutory or Constitutional Right**

As discussed above, federal regulation of the state eviction process falls outside the powers granted Congress under the Commerce Clause.

Federal causes of action enable citizens to sue government actors for violation of federal statutory rights or constitutional rights or to sue private parties for violating constitutional rights under color of state law. A federal cause of action for wrongful eviction departs starkly from these norms by allowing private parties to sue a private party in federal court for violation of a state statutory provision. The tenant’s cause of action does not involve the violation of a federal statutory right nor a violation of constitutional right.

Furthermore, such a federal cause of action would be duplicative. In all states, landlords

must follow the eviction process delineated by state and local law. A tenant evicted outside the lawful process may sue a landlord in state court for failing to act in accordance with the law.

A separate federal cause of action is unnecessary in addition to being unconstitutional.

- **Draconian Shutdowns in Some States Needlessly Perpetuated Economic Distress on Families**

Unemployment rates and business conditions vary wildly across the nation dependent largely on the restrictions some governors and mayors continue to impose on society. State and local policymakers oversee decisions that affect businesses’ abilities to operate, and they should assume the potential costs of new and ongoing business, school, and other closures they impose. States with the most restrictive economic policies are those that are suffering the largest business and employment losses.

The data certainly bear out the economic decline stemmed from government-mandated closures and people responding to what they heard from some public health officials.

For the first time in our nation’s history, governments intentionally suppressed the supply of goods and services. Likewise, restrictions on consumer activity artificially suppressed demand. An historic plunge in the production of goods, provision of services, and private investment resulted in the second quarter of 2020.²⁴

²³ For a far more thorough analysis of the CDC eviction proceedings moratorium (including why the eviction process itself is not an economic good, see BRIEF OF THE CATO INSTITUTE, PROFESSOR RANDY E. BARNETT, REASON FOUNDATION, INDIVIDUAL RIGHTS FOUNDATION, AND INDEPENDENCE INSTITUTE AS AMICI CURIAE IN SUPPORT OF PLAINTIFFS-APPELLEES in *Terkel v. Centers for Disease Control and Prevention*, in United States Court of Appeals, Fifth Circuit,

<https://www.cato.org/sites/cato.org/files/2021-06/Terkel%20v%20CDC%205th%20Cir.pdf> (accessed June 13, 2021).

²⁴ The nation’s economy in the second quarter of 2020 shrank at a 31.4% annualized rate. Personal consumption dropped at a 33.2% annualized rate. Consumption of personal services dropped 41.8% annualized. Table 1.1.1, Bureau of Economic Analysis, <https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=2&reqid=19&step=2&isuri=1&1921=survey> (accessed February 24,

The robust recovery beginning in the second half of 2020 has closed nearly all of the 10.2 percent economic contraction (real GDP in Q1 of 2021 is down just 0.9 percent from pre-pandemic).²⁵ But much damage remains as a result of the shutdowns and the counterproductive federal jobless bonuses, with 7.6 million fewer individuals employed²⁶ and hundreds of thousands of businesses closed forever, including more than 100,000 restaurants.²⁷

Government-mandated closures and government-influenced public perception of the crisis suppressed and even criminalized economic activity. The skyrocketing federal debt and rapidly expanding central bank balance sheet creates the additional risk of a monetary crisis.

Full economic recovery does not stem from stimulus checks or bailouts from Washington. Rather, it's largely a result of individuals and businesses safely and legally interacting with others. Those properly informed of the actual risks of the virus and the appropriate mitigation measures are enthusiastically participating in this reopening.

The Federal Reserve State Coincident Indexes—an approximation of state GDP—vividly illustrates how variant the economic recovery is based on states.²⁸ This index suggests economic output at the end of 2020 was actually greater than pre-pandemic in Utah, Missouri, Idaho, Nebraska, Alaska,

South Dakota, Mississippi, and Georgia—notably states without crushing, long-lasting shutdowns. The economies in Hawaii, Michigan, Rhode Island, Massachusetts all were more than 10% smaller. Meanwhile, states like New York, Hawaii, and Illinois remain mired in severe recessions.

At the end of 2020, El Centro, California, saw 17.7% unemployed, and Los Angeles suffered 9.9% unemployment. Across New York City, draconian restrictions and an army of compliance officers pushed tens of thousands of businesses out of business, resulting in 8.4% unemployment by the end of 2020.²⁹

Meanwhile, unemployment in numerous communities in Alabama, Idaho, Iowa, Nebraska, South Dakota, and Utah saw unemployment at the end of 2020 at 3% or less. The statewide unemployment rate of under 4% in Alabama, Iowa, Kansas, Nebraska, South Dakota, Utah, and Vermont contrasted sharply with rates at least twice as high in California, Colorado, Connecticut, Hawaii, Illinois, Nevada, New York, and Rhode Island.³⁰ Overall, in December, the 10 states with the fewest restrictions in place³¹ averaged 4.7 percent unemployment—while the 10 states with the most restrictions averaged 7.1 percent unemployment.³²

Conclusion:

Families across parts of the nation face economic hardship as a result of the myriad of lingering unreasonable COVID-19 restrictions

2021). By the middle of 2020, the economy had contracted by 10.2% from its peak. Federal Reserve Bank of St. Louis, Series GDP, <https://fred.stlouisfed.org/series/GDP> (accessed February 24, 2021).

25 <https://fred.stlouisfed.org/series/GDP>

26 <https://fred.stlouisfed.org/series/PAYEMS>

27 "Restaurant Industry in Free Fall; 10,000 Close in Three Months," National Restaurant Association, December 7, 2020, <https://restaurant.org/news/pressroom/press-releases/restaurant-industry-in-free-fall-10000-close-in> (accessed February 24, 2021).

28 Federal Reserve Bank of Philadelphia, State Coincident Indexes, <https://www.philadelphiafed.org/-/media/frbp/assets/surveys-and-data/coincident/coincident-revised.xls> (accessed February 16, 2021).

29 U.S. Bureau of Labor Statistics, Unemployment Rates for Metropolitan Areas, preliminary for December 2020,

<https://www.bls.gov/web/metro/laummtrk.htm> (accessed February 23, 2021).

30 U.S. Bureau of Labor Statistics, Unemployment Rates for Metropolitan Areas, preliminary for December 2020, <https://www.bls.gov/web/metro/laummtrk.htm> (accessed February 23, 2021).

31 Adam McCann, "States with the Fewest Coronavirus Restrictions," WalletHub, January 26, 2021, <https://wallethub.com/edu/states-coronavirus-restrictions/73818> (accessed February 4, 2021).

32 U.S. Department of Labor, Bureau of Labor Statistics, Local Area Unemployment Statistics Data Series, December 2020, <https://www.bls.gov/web/laus/laumstrk.htm> (accessed February 4, 2021).

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enacted by state and local governments. This economic misery persistent across portions of the nation should not be used an excuse to further erode private property rights, enlarge federal power beyond constitutional limits, rewrite legislation by executive fiat, or deny property owners access to the courts.

As the shutdowns end and COVID-19 benefits begin to expire, far-left activists demand look to build upon last year's eviction moratoriums—and demand even more, including rent forgiveness even without proof of hardship on the part of the renter and with possibly no government reimbursement to the landlord by the government.³³

Those efforts represent an abdication of a core government responsibilities; namely, enforcement of private contracts and protection of private property. Forcing property owners to provide free housing is a subtle form of expropriation of private property without just compensation. This breach of federalism, assault on private property rights, and rule by executive fiat should concern us all.

³³ Portland Tenants United, "PTU Demands," <https://www.pdxtu.org/> (accessed June 13, 2021).

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Mr. COHEN. Thank you, Mr. Griffith.

Our final Witness is Katy Ramsey Mason.

Ms. Mason is an assistant professor of law and director of the Medical-Legal Partnership Clinic at the University of Memphis Cecil C. Humphreys School of Law, from which I received my degree as well.

Prior to joining the Memphis law faculty in 2018, she was a visiting associate professor of clinical law and Freedman Fellow with the George Washington University Law School.

From 2011–2015, she was an Equal Justice Works AmeriCorps legal fellow and housing attorney at Lenox Hill Neighborhood House in New York City, where she represented low-income tenants and families in eviction cases and other housing-related matters.

Her scholarship focused on landlord-tenant law, eviction court process, poverty law. Her recent work has appeared in the UCLA Law Review and the University of St. Thomas Journal of Law and Public Policy.

She received her J.D. and M.A. in Latin American studies from the University of Wisconsin-Madison, and her B.A. from Middlebury College.

Professor Ramsey Mason, you are recognized for five minutes.

STATEMENT OF KATY RAMSEY MASON

Ms. RAMSEY MASON. Thank you. Good afternoon.

I thank Chair Cohen, Ranking Member Johnson, and the Members of the Committee for inviting me to speak this afternoon.

My name is Katy Ramsey Mason. I am an assistant professor of law and director of the Medical-Legal Partnership Clinic at the University of Memphis Cecil C. Humphreys School of Law. Go Tigers.

I have represented low-income tenants facing eviction in Wisconsin, New York, and Tennessee. As Chair Cohen mentioned, my scholarship focuses on landlord-tenant law, the eviction court process, and poverty law.

Since the COVID–19 pandemic began in March of 2020, millions of Americans, many of them low-income people of color, have been put at risk of eviction due to nonpayment of rent as a result of the devastating financial impacts of the pandemic.

Recent estimates suggest that around 11 million Americans are behind on rental payments despite millions of dollars of Federal funding that has been allocated through the pandemic stimulus bills.

Early on in this crisis, government at all levels—local, State, and Federal—recognized the severe risks of spreading COVID–19 that were associated with housing displacement and imposed various restrictions and moratoria on eviction.

Unfortunately, illegal evictions, where landlords take the law into their own hands to drive out tenants from rental properties, are an ongoing problem. The issue is particularly serious during a time of national emergency, like the COVID–19 pandemic, when displaced and homeless people are especially vulnerable to contracting and spreading the virus. It is critical that Congress Act to

address this problem, and proposed bill H.R. 1451 will provide important protections for tenants at risk of being illegally evicted.

Even though self-help evictions are illegal in every State, they, nonetheless, continue to happen with regularity. All States have a judicial process in place to govern evictions, but research from leading eviction scholar, Matthew Desmond of Princeton, suggests that nearly half of all evictions take place informally outside of the judicial system. Many of these informal evictions fall into the illegal self-help category.

During the pandemic, the problem of illegal evictions has been exacerbated. In June 2020, 91 percent of legal aid attorneys across the country who were surveyed by the National Housing Law Project, reported illegal evictions in their areas.

While most States do allow tenants to sue landlords who have engaged in illegal self-help, proposed bill H.R. 1451 is not duplicative of existing remedies. It would be an important addition to tenant protection measures that have not always allowed for effective relief.

First, H.R. 1451 is intended to apply only during times of federally declared emergencies, such as the COVID pandemic. The definition of illegal self-help, and the available remedies, can vary significantly from State to State, and this bill provides uniformity and clarity as to what constitutes illegal behavior, and what relief is available to people who are affected.

Second, H.R. 1451 provides multiple mechanisms for enforcement, which is an important improvement over previous Federal tenant protection efforts, including the CARES Act eviction moratorium and the CDC's order that has halted many residential evictions.

H.R. 1451 provides both a private right of action for tenants who have been illegally evicted during a national emergency, and also allows the United States Attorney General to bring causes of action against violators of the law. This will go far toward making the law effective in its purpose. Compliance will be encouraged, bad actors will be deterred, and people who are evicted during emergency times will have a better chance of obtaining the relief that they are entitled to.

Finally, congressional action on this issue is necessary to provide effective protection to vulnerable tenants during times of crisis. The most comprehensive set of protections for tenants during the current pandemic came not from Congress, but from the CDC. That order has been vulnerable to legal challenges, something we have felt acutely here in Memphis.

We are currently the only jurisdiction in the country where the CDC's order is unenforceable, and our low-income tenants have paid the price. Congressional action, as opposed to agency action, would have forestalled many of the claims being brought in the Federal lawsuits against the CDC's order, and provided stability and clarity to the tenants it is intended to protect.

I thank you for your time this afternoon, and I look forward to your questions.

[The statement of Ms. Ramsey Mason follows:]



Cecil C. Humphreys School of Law

**STATEMENT OF KATY RAMSEY MASON
ASSISTANT PROFESSOR OF LAW
UNIVERSITY OF MEMPHIS CECIL C. HUMPHREYS SCHOOL OF LAW**

**U.S. HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND CIVIL
LIBERTIES HEARING ON “POTENTIAL REMEDIES FOR UNLAWFUL EVICTIONS
IN FEDERAL EMERGENCY AREAS”**

JUNE 14, 2021

I thank Chairman Nadler and Ranking Member Jordan of the U.S. House Committee on the Judiciary, and Chairman Cohen and Ranking Member Johnson of the Subcommittee on the Constitution, Civil Rights and Civil Liberties, for inviting me to submit this statement to address the hearing on Potential Remedies for Unlawful Evictions in Federal Emergency Areas. My name is Katy Ramsey Mason, and I am an Assistant Professor of Law and Director of the Medical-Legal Partnership Clinic at the University of Memphis Cecil C. Humphreys School of Law. I have represented low-income tenants facing eviction in Wisconsin, New York, and Tennessee, and my scholarship focuses on landlord-tenant law, the eviction court process, and poverty law.

Since the COVID-19 pandemic began in March 2020, millions of Americans, many of them low-income people of color, have been put at risk of eviction due to nonpayment of rent as a result of the devastating financial impacts of the pandemic. Recent estimates suggest that around 11 million Americans are behind on rental payments, despite millions of dollars of federal funding that has been allocated through the pandemic stimulus bills.¹ Early on in this crisis, governments at all levels – local, state, and federal – recognized the severe risks of spreading COVID-19 that were associated with housing displacement, and imposed various restrictions and moratoriums on evictions. Unfortunately, illegal evictions – where landlords take the law into their own hands to drive tenants out of rental properties – are an ongoing problem. The issue is particularly serious during a time of national emergency like the COVID-19 pandemic, when displaced and homeless people are especially vulnerable to contracting and spreading the virus. It is critical that Congress act to address this problem, and H.R. 1451 will provide important protections for tenants at risk of being illegally evicted.

History of Landlord Self-Help and the Summary Eviction Process

Eviction procedures are governed almost entirely by state and local law. Like many aspects of U.S. law, eviction law and procedure has its roots in English statutory and common law. In feudal England, landlords were allowed to utilize a variety of self-help remedies if a tenant defaulted on their obligation to pay rent, including seizing the tenant's personal property and/or "enter[ing] the premises and us[ing] force short of death or bodily harm to repossess their property."² Gradually, English law began to impose limits on self-help by landlords, largely out of concern over the violence and breaches of the peace that accompanied self-help repossession.³

From the beginning, American landlord-tenant law has taken a dim view of landlord self-help in the context of evictions.⁴ Courts expressed concern about the violence and other harm that could result from landlords attempting to regain possession of property without legal or

¹ Annie Nova, *Millions of Americans Could Face Eviction As Housing Protection Expires in June*, CNBC (May 31, 2021), <https://www.cnbc.com/2021/05/31/millions-of-americans-could-face-eviction-as-housing-protection-expires-in-june.html>.

² Douglas Ivor Brandon et. al, *Special Project: Self-Help: Extrajudicial Rights, Privileges and Remedies in Contemporary American Society*, 37 VAND. L. REV. 845, 946 (1984).

³ See *id.* at 946–47.

⁴ Mary B. Spector, *Tenants' Rights, Procedural Wrongs: The Summary Eviction and the Need for Reform*, 46 WAYNE L. REV. 135, 155 (2000).

judicial oversight.⁵ In order to provide landlords with an efficient alternative to self-help, by the mid-twentieth century, all 50 states had adopted a summary court process for evictions.⁶ Additionally, two model laws promulgated in the 1960s and 1970s, the Restatement (Second) of Property and the Uniform Residential Landlord-Tenant Act, recommended that summary proceedings be the exclusive method of resolving disputes related to possession.⁷ Courts and legislatures concluded that extra-judicial self-help created more problems than it resolved, and that the summary eviction court process was a more effective and safe alternative for landlords who wished to regain possession of real property quickly.⁸ Today, nearly every state explicitly prohibits self-help evictions by statute or case law, and “[v]irtually all give tenants the right to recover damages if landlords resort to self-help.”⁹ There is no jurisdiction in the United States where landlord self-help is the favored approach to settle disputes of possession of rental property.

Evictions and the Affordable Housing Crisis

Even before the pandemic began in 2020, evictions were at a crisis level. Each year, millions of residential tenants across the country are at risk of being evicted, most of them for nonpayment of rent.¹⁰ This goes hand-in-hand with the lack of safe and affordable housing for low-income tenants; most poor tenants spend at least half of their income on housing and utilities.¹¹ Professor Matthew Desmond, a leading eviction researcher, has shown that Black women with children are at the highest risk of eviction of any renting population.¹² People of color are generally at higher risk of eviction than their White counterparts,¹³ and this corresponds with who has been most affected by the COVID-19 pandemic.¹⁴ People of color have been more likely to get sick, be hospitalized, and die from COVID,¹⁵ and also to suffer the economic consequences of the pandemic, including job and income loss and food and housing insecurity.¹⁶

⁵ See *McCauley v. Weller*, 12 Cal. 500, 527 (1859) (stating that California’s forcible entry and detainer statute “was intended to prevent bloodshed, violence and breaches of the peace, too likely to result from wrongful entries into the possession of others”); See also *Mendes v. Johnson*, 389 A.2d 781, 786 (D.C. 1978) (“To sanction the use of self-help ... would be to invite and sanction violence”).

⁶ Spector, *supra* note 4, at 137.

⁷ *Id.* at 137, Brandon, *supra* note 2 at 949–50.

⁸ Spector, *supra* note 4, at 155–56.

⁹ Lynn Foster, *Non-Legislative Commission on the Study of Landlord-Tenant Laws*, 35 U. ARK. LITTLE ROCK L. REV. 739, 761 (2013).

¹⁰ According to the Eviction Lab at Princeton, landlords file on average 3.7 million eviction cases per year across the country. Eviction Lab, <https://evictionlab.org> (last visited June 10, 2021).

¹¹ *Why Eviction Matters* (last visited June 10, 2021), Eviction Lab, <https://evictionlab.org/why-eviction-matters/#who-is-at-risk>.

¹² Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 AM. J. OF SOCIOLOGY 88, 102 (2012).

¹³ *Id.*

¹⁴ *Health Equity Considerations and Racial and Ethnic Minority Groups*, Centers for Disease Control and Prevention (last visited June 10, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html>

¹⁵ *Id.*

¹⁶ See generally Bradley L. Hardy & Trevon D. Logan, *Racial Economic Inequality Amid the COVID-19 Crisis*, The Hamilton Project (Aug. 13, 2020), https://www.brookings.edu/wp-content/uploads/2020/08/EA_HardyLogan_LO_8.12.pdf.

Eviction, legal or illegal, carries serious consequences for tenants that can continue for years afterwards. Professor Desmond's research has demonstrated that eviction is not simply a consequence of poverty; it often results in increased poverty and material hardship for tenants.¹⁷ Following an eviction, finding housing is even more challenging, since many landlords who check credit reports or court records will refuse to rent to tenants who have had eviction cases filed or judgments entered against them.¹⁸ This can impact tenants whose landlords resorted to self-help as well, since many landlords who take matters into their own hands will have at least filed an eviction case in court. Relatedly, eviction can result in long-term consequences for a tenant's credit history. Landlords often report eviction judgments, especially monetary judgments, to credit bureaus, and those reports can stay on tenants' credit histories for years.¹⁹ Even for tenants who manage to avoid a judgment in court, just the filing itself can have a negative impact on their ability to find new housing, since many prospective landlords will not distinguish between eviction filings and eviction judgments.²⁰ In situations where the eviction does get reported to credit bureaus, it can negatively impact the tenant's ability to find employment or qualify for student loans.²¹

Moreover, since Black women with children are most likely to be evicted, the consequences of eviction lie not just with the parents, but with the children as well. If families are evicted and become homeless, children's educational progress is likely to be disrupted, as the family may no longer reside in the district where the child was previously attending school or the family may not have transportation to get the student to school.²² If students are homeless for an extended period of time, they may be relocating frequently and may not be able to attend school regularly.²³ In fact, studies have shown that children who are homeless are significantly less likely to be functioning at grade level than their non-homeless peers.²⁴ Eviction has traumatic and long-lasting legal, social, and health consequences for tenants and children.

Illegal Self-Help Evictions and the Pandemic

Despite the required use of judicial processes to remove tenants from rental properties, landlords too often still resort to illegal self-help evictions. While it is difficult to know exactly how many tenants are illegally evicted since there is usually no paper trail, research suggestions that it is very common. Matthew Desmond's research in Milwaukee shows that nearly half of forced moves by tenants were the result of informal evictions, which includes "when a landlord

¹⁷ Matthew Desmond & Rachel Tolbert Kimbro, *Eviction's Fallout: Housing, Hardship, and Health*, 94 Soc. FORCES 295, 317 (2015).

¹⁸ *Id.* at 299.

¹⁹ D. James Greiner, Cassandra Wolos Pattanayak & Jonathan Hennessy, *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future*, 126 HARV. L. REV. 901, 914 (2013).

²⁰ Katelyn Polk, *Screened Out of Housing: The Impact of Misleading Tenant Screening Reports and the Potential for Criminal Expungement as a Model for Effectively Sealing Evictions*, 15 N.W. J. L. & SOC. POL'Y 338, 339–40 (2020).

²¹ *Id.* at 345.

²² Philip T.K. Daniel & Jeffrey C. Sun, *Falling Short in Sheltering Homeless Students: Supporting the Student Achievement Priority Through the McKinney-Vento Act*, 312 ED. LAW REP. 489, 489–90 (2015).

²³ *Id.* at 491.

²⁴ *Id.* Daniel and Sun point out that "only one-third of homeless students read at the same grade level as more than half of their domiciled peers of the same age," *id.*

simply tells a family to leave, or changes the locks.”²⁵ Unfortunately, this has likely increased during the pandemic.

After the COVID-19 pandemic began in March 2020, local governments, states, and the federal government imposed various restrictions and moratoriums on landlords seeking to evict tenants during the public health crisis. Across the country, the mishmash of varied requirements and protections caused confusion among tenants, landlords, and attorneys, but landlords also quickly grew frustrated with what some perceived to be unlawful limits on their property rights.²⁶ Some landlords, unable to obtain lawful eviction judgments and orders from courts, took matters into their own hands and utilized illegal self-help methods. In June 2020, the National Housing Law Project surveyed legal aid attorneys around the country, and 91% reported illegal evictions in their areas.²⁷ News stories have also documented tenants’ claims of illegal evictions, including stories of landlords changing locks, cutting off utilities, and threatening tenants to try to get them to move out.²⁸

While illegal evictions are common during non-emergency times, the pandemic has lent even more urgency to this issue. On September 4, 2020, the CDC issued an order preventing landlords from evicting tenants for nonpayment of rent if the tenant submitted a declaration to the landlord asserting the protections.²⁹ In its lengthy justification for this extraordinary step, the CDC drew a clear link between housing displacement and the spread of the COVID-19 virus. Since many people who are evicted end up moving in with friends or family, at least temporarily, eviction can lead to overcrowded housing conditions.³⁰ Additionally, residents of homeless shelters were also at greater risk of contracting and spreading the virus.³¹ During times when all of the public health advice is that people should stay home in order to avoid the virus, it is necessary for the federal government to do everything it can to address the problem of housing displacement, including illegal evictions.

Existing Illegal Self-Help Eviction Protections

²⁵ Matthew Desmond & Tracey Shollenberger, *Forced Displacement from Rental Housing: Prevalence and Neighborhood Consequences*, 52 DEMOGRAPHY 1751, 1754–61 (2015).

²⁶ See, e.g., *Tiger Lily LLC v. U.S. Dep’t of Hous. & Urb. Dev.*, Compl., Case No. 2:20-CV-02692 (W.D. Tenn., Sept. 16, 2020). The plaintiffs in *Tiger Lily*, who ultimately obtained an order from the District Court invalidating the CDC’s order halting many nonpayment eviction cases, claimed that the order “infringes on the constitutional rights of property owners and managers ... by preventing ..., without authority or proper justification, the free and unrestricted use and enjoyment of their property without just compensation and without due process of law.” *Id.* at 3.

²⁷ National Housing Law Project, *Survey of Legal Aid Attorneys*, (July 2020), <https://www.nhlp.org/wp-content/uploads/Evictions-Survey-Results-2020.pdf>.

²⁸ Safia Samee Ali, *Some Landlords Are Using Harassment, Threats to Force Out Tenants During COVID-19 Crisis*, NBC NEWS (June 14, 2020), <https://www.nbcnews.com/news/us-news/some-landlords-are-using-harassment-threats-force-out-tenants-during-n1218216>; Irina Ivanova, *Memphis Faces Eviction Crisis After Court Strikes Down Federal Ban*, CBS NEWS (April 23, 2021), <https://www.cbsnews.com/news/eviction-memphis-crisis-court-cdc-ban/> (describing a tenant’s story that her landlord tried to evict her using private security guards).

²⁹ Centers for Disease Control & Prevention, *Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19* (updated April 13, 2021), available at <https://www.cdc.gov/coronavirus/2019-ncov/more/pdf/CDC-Eviction-Moratorium-03292021.pdf> [hereinafter “CDC Order”].

³⁰ CDC Order. “Throughout the United States, counties with the highest proportion of crowded households have experienced COVID-19 mortality rates 2.6 times higher than those of counties with the lowest proportion of crowded households.” *Id.*

³¹ *Id.*

There are some existing protections against illegal self-help eviction at both the federal and state levels. Since the beginning of the pandemic, the federal government has imposed two important restrictions on evictions during the pandemic. The first was the eviction moratorium contained in the CARES Act, which prevented public housing authorities and owners of properties with federally backed mortgages or where tenants received federal housing subsidies from initiating or continuing eviction actions against tenants through July 25, 2020.³² The second was the CDC's order, first issued on September 4, 2020, and extended by Congress and the CDC several times, so that its current expiration date is June 30, 2021.³³ The CDC Order prevents landlords whose tenants submit a declaration stating that they are eligible for the protections of the order from evicting tenants before the expiration of the order.³⁴ In each of the three major stimulus bills passed since the pandemic began, Congress has also allocated funding to be used to make payments to landlords on behalf of tenants who have fallen behind on rent during the pandemic.³⁵

In addition to the pandemic protections at the federal level, many states provide a statutory cause of action for tenants whose landlords have resorted to illegal self-help to regain possession of rental properties. For example, Tennessee's version of the Uniform Residential Landlord-Tenant Act states, "If the landlord unlawfully removes or excludes the tenant from the premises or willfully diminishes services to the tenant by interrupting essential services as provided in the rental agreement to the tenant, the tenant may recover possession or terminate the rental agreement and, in either case, recover actual damages sustained by the tenant, and punitive damages where appropriate, plus a reasonable attorney's fee [...]"³⁶ This statute allows a tenant who has been illegally evicted by a landlord to bring a cause of action and seek damages.

However, while this remedy is technically available to illegally evicted tenants, from a practical standpoint, it is often difficult, if not impossible, for tenants to effectively assert these claims in court. Many residential tenants are low-income, and cannot afford to hire private attorneys to represent them in court.³⁷ While many low-income tenants would qualify for free legal services, there is a significant civil justice gap in the United States. Across the country, only about 10 percent of tenants are able to obtain legal representation in eviction proceedings, compared to 90 percent of landlords.³⁸ In some cities, like Memphis, the percentage of tenants

³² CARES Act, Pub. L. No. 116-136, § 4024, 134 Stat. 281 (2020).

³³ CDC Order.

³⁴ *Id.*

³⁵ See Jason DeParle, *Federal Aid to Renters Moves Slowly, Leaving Many at Risk*, N.Y. TIMES (April 25, 2021), <https://www.nytimes.com/2021/04/25/us/politics/rental-assistance-pandemic.html>.

³⁶ Tenn. Code Ann. § 66-28-504 (2021).

³⁷ Andrew Aurand, Dan Emmanuel, Daniel Threet, Ikra Rafi & Diane Yentel, *The Gap: A Shortage of Affordable Homes 2*, Nat'l Low Income Housing Coal. (March 2021), available at https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2021.pdf. According to the National Low Income Housing Coalition, out of the 44 million renter households in the United States, 10.8 million, or nearly one-quarter, are considered extremely low-income, *id.*

³⁸ Heidi Schultheis & Caitlin Rooney, *A Right to Counsel is a Right to a Fighting Chance*, Center for American Progress (Oct. 2, 2019, 12:00 PM), <https://www.americanprogress.org/issues/poverty/reports/2019/10/02/475263/right-counsel-right-fighting-chance/#:~:text=In%20eviction%20lawsuits%20nationwide%2C%20an,cases%20and%20are%20ultimately%20evicted.>

with lawyers in eviction cases is below 5 percent.³⁹ This makes it extremely difficult for tenants, especially those who have been recently evicted, to secure the advice of an attorney when bringing a claim against a landlord.

H.R. 1451 and Congressional Action

H.R. 1451 would provide important protections for tenants who have been illegally evicted that are not currently available under state law, and would fill some of the enforcement gaps left by previous federal emergency tenant protection measures, including the CARES Act.⁴⁰ First, the conduct that H.R. 1451 contemplates as illegal self-help is broader than what many states currently prohibit under illegal ouster statutes, but reflects the reality that many tenants experience. While nearly all states allow tenants to sue landlords for damages if they have been illegally evicted, not every state defines explicitly the conduct that constitutes unlawful self-help.⁴¹ H.R. 1451 specifically lists the types of self-help actions by landlords that are prohibited, and includes things like landlord harassment and intimidation and purposeful neglect of the property, if those things are done with the purpose of making the tenant leave the property.⁴² Since state law can vary so widely in defining prohibited conduct, H.R. 1451 would help to provide clarity and uniformity across the country during times of national emergency.

Second, H.R. 1451 provides multiple mechanisms for enforcement, which is an important feature that has been partially or entirely absent from previous federal tenant protection efforts, including the CARES Act and the CDC Order. The CARES Act contained no enforcement mechanism for violators of its eviction moratorium, leaving tenants who were evicted in violation of that law without any clear path to assert an illegal eviction claim against their landlords.⁴³ The CDC Order contained criminal penalties for violators and charged the Justice Department with “initiat[ing] criminal proceedings as appropriate,” but provided no information about how to make the Justice Department aware of violations.⁴⁴ Additionally, state courts implemented varying interpretations of the CDC Order, and there has been little to no enforcement of the Order by the Justice Department.⁴⁵ H.R. 1451 allows for a comprehensive enforcement scheme, which will go far towards making the law effective in its purpose. With both a private right of action and Attorney General enforcement, compliance would be encouraged, bad actors will be deterred, and tenants who are illegally evicted during times of national emergency will have a better chance of obtaining relief.⁴⁶

³⁹ Preliminary Shelby County General Sessions Court observation data on file with the author.

⁴⁰ See generally Katy Ramsey Mason, *Lessons from Tenant Protection Provisions in Federal Financial Crisis Legislation*, 14 U. ST. THOMAS J. L. & PUB. POL’Y 130 (2020).

⁴¹ Some states have outlawed self-help evictions by case law, but not by statute. See, e.g., *Gorman v. Rattliff*, 712 S.W.2d 888 (Ark. 1986); *Forrest v. Peacock*, 363 S.E.2d 581 (Ga. Ct. App. 1987); *Weber v. McMillan*, 285 So. 2d 349 (La. Ct. App. 1973).

⁴² Emergency Eviction Enforcement Act of 2021, H.R. 1451, 117th Cong. (1st Sess. 2021).

⁴³ Mason, *supra* note 40, at 143.

⁴⁴ CDC Order.

⁴⁵ See Annie Nova, *The CDC Banned Evictions. Tens of Thousands Have Still Occurred*, CNBC (Dec. 5, 2020, 9:45 AM), <https://www.cnbc.com/2020/12/05/why-home-evictions-are-still-happening-despite-cdc-ban.html>.

⁴⁶ Mason, *supra* note 40, at 155–56.

Finally, the COVID-19 pandemic has shown that Congressional action is necessary in order to effectively protect vulnerable tenants during national crises. The most comprehensive tenant protection measure of the current pandemic came not from Congress but from the CDC. While it is commendable that the CDC imposed such robust restrictions on evictions, the CDC Order has been vulnerable to legal challenges as an agency directive that a statute would not have been. At least four federal courts have issued orders invalidating the CDC Order, largely on the grounds that the agency overstepped its authority.⁴⁷ Currently, the Western District of Tennessee, which includes Memphis, is the only jurisdiction in the country where the CDC Order is not in effect, and it remains to be seen whether the CDC will extend the order again beyond its current expiration date of June 30, 2021. If H.R. 1451 becomes law, it will provide important protections to tenants during similar national emergencies, but will not be subject to the same types of legal challenges that the CDC Order has been.

It is imperative for Congress to address the ongoing problem of illegal self-help evictions and act to protect tenants who are most at risk.

⁴⁷ See *Terkel v. Centers for Disease Control & Prevention*, 2021 WL 742877 (E.D. Tex. Feb. 25, 2021); *Skyworks, Ltd. v. Centers for Disease Control & Prevention*, 2021 WL 911720 (N.D. Ohio March 10, 2021); *Tiger Lily LLC v. U.S. Dep't of Housing & Urb. Dev.*, 2021 WL 1171887 (W.D. Tenn. March 15, 2021); *Alabama Assoc. of Realtors v. U.S. Dep't of Health & Human Service*, 2021 WL 2221646 (D.C. Cir. May 5, 2021).

Mr. COHEN. Thank you, Professor.

We will now proceed to the five-minute Rule with questions, and I will recognize myself for five minutes.

Mr. Shelton, Mr. Johnson rightfully said in his opening statement that traditionally, landlord-tenant law is determined by the States. The Federal government, of course, has gotten into certain issues in the Federal Housing Act, which addressed discrimination in housing.

Why is it that, during a national pandemic, as this bill attempts to do, that the Federal government should be the appropriate sponsor of legislation and passer of legislation to protect people who are affected by a national emergency, and particularly African Americans who are, as I think somebody said, the cold and the flu are the pneumonia—the folks who get the pneumonia?

Mr. SHELTON. Thank you very much.

There are a number of reasons. First, of course, when we think about a pandemic, it is not something that just impacts people in a local jurisdiction or a particular State. We are talking about something that has impacted people throughout the United States and outside the United States, throughout the world as well.

As such, we look forward to our Federal Government being able to address issues and challenges along these lines, and that is why the Centers for Disease Control is given the kind of power and authority it is as we see how, when a disease like this pandemic hit, it doesn't limit itself to a certain city. It doesn't limit itself to State lines, as most of our Federalist laws are crafted to address. It expands itself cross State lines, other lines and so forth, to create the damage we are seeing.

As you know, even as our President is visiting other countries in Europe, he recognizes that the impact of the coronavirus is something that is hitting in very different ways. The discussions going on in Britain and otherwise is showing new strains that have created a new set of problems, again, that are much broader and more severe than something in a local community or neighborhood.

Mr. COHEN. Thank you, Mr. Shelton.

Ms. Ettingoff, who gave me the cold and pneumonia story, you have worked with people in the vineyards to—and worked there with people on the ground in Memphis concerning evictions. What impacts can evictions have on tenants beyond just the loss of the current housing, and what does the loss of their current housing do to a person's self-esteem, children's self-esteem, and possibly, even during a pandemic, more importantly during a pandemic, can it cause them to be more vulnerable to disease and spreaders?

Ms. ETTINGOFF. Thank you, Mr. Cohen.

Absolutely. Loss of housing means you are additionally set back. Not only are you in a situation where you are unable to pay your housing, your rental fee, but you had at least your belongings. Your child had their Lovey. Your child had their schoolbooks. Your child had their clothes or their shoes.

To come home and find those belongings either sitting at the street, or more likely, gone, taken, can be an absolute trauma for a child. Then the next situation is where is the child and the parent going to live? Are they going to have to split up children? Are

they going to have to live in the car? Are they going to move from spot to spot?

It affects children's education because, even though—and I know that there is a bill that prohibits it, in Tennessee, we are still having a little difficulty with the notion that you do not have to have a permanent address to register for school. We are still kind of fighting that one on some days, and I am sure that is true in other places as well.

So, what that means is, children are missing school. They are missing school because they don't have their schoolbooks or they don't have their clothes, or they didn't sleep the night before because they were afraid to go to sleep.

So, as a result, you have got sort of an educational background setback. In addition, wherever those children may land may or may not be safe. There may be violence. There may be health issues.

So, for those reasons, it is very, very much more than just losing the apartment that you were living in.

Mr. COHEN. Thank you, Ms. Ettingoff.

Thank you. Thank you.

Ms. Ramsey Mason, tell us specifically why you think Congress needs to Act to address unlawful evictions during national emergencies, why it is distinguished from the traditional Rule of law, which is that it is up to the States, but that why the national emergencies, should we look outside of the traditional States, and how tenants experiencing unlawful evictions, how would they benefit from access to Federal courts?

Ms. RAMSEY MASON. Thank you, Mr. Cohen. I will try to keep my answer brief.

Congress should act, because Congress has acted in many other capacities during the pandemic to address some of the worst impacts that the country has seen as a whole in the last 14 months, and evictions are no different. Evictions, in fact, as Ms. Ettingoff pointed out, have consequences that go far beyond just the legal process, and can impact people for years to come.

It is entirely appropriate for Congress to Act in this situation, in the same way that Congress has mandated mask requirements, in the same way that Congress has provided financial relief to businesses, to people facing unemployment, to people at risk of not being able to pay their mortgages. Tenants should be treated the same way.

As I pointed out in my testimony, the fact that Congress did not Act with regard to an eviction moratorium after the CARES Act moratorium expired has been to the detriment of low-income tenants.

Mr. COHEN. Thank you very much. My time has expired, and I recognize Mr. Johnson for five minutes.

Mr. JOHNSON of Louisiana. Thank you, Mr. Chair.

Mr. Griffith, thanks for being here in person. I appreciate you making the trip all the way from Miami. I think you get the credit for coming the furthest.

There is an inclination right now among many of our Democrat colleagues in Congress to Federalize everything, not just housing with legislation like H.R. 1451, but we see it with voting and policing and many other issues.

Let's talk about housing. Can you discuss the importance of housing law remaining at the State and local levels, rather than a Federal one-size-fits-all issue? I know you talked about it a little bit in your opening, but maybe elaborate a little bit more.

Why is it better, in your view, for eviction policies to be decided on the local level?

Mr. GRIFFITH. Thank you for your question.

Well, it is very basic—on a very basic level, Congress, any time they enact legislation, need to ask is this constitutionally authorized? At its very basic level, as we discussed earlier, this is not a proper exercise of Federal power because the Federal government does not have a role in determining what State law is on local housing policy, but whether or not it is a proper use of government power. We can talk about the practical application of that.

So, even if it were constitutional for Congress to be involved, when we are talking about housing policy, it is best for it to be decided at the local level because it is the best way in which to actually hold local political leaders accountable for the decisions they make.

So, for instance, if the eviction law does not reasonably protect tenants, then the general citizens—citizenry can actually lobby their local politicians to change the law, to make it more difficult to evict, to change the law. When it comes to a situation that we saw in the past year, where we did see so many people in dire economic straits, oftentimes not because of the pandemic itself but because of the shutdowns itself, it actually allows people to hold those politicians accountable, because, if you are feeling the impact of the economic strain that is caused by a shutdown, then you are able to go directly to those political leaders and request that things be changed.

When you Federalize this, you diminish that accountability, and eliminate that responsibility that local politicians should have.

Mr. JOHNSON of Louisiana. That is a great summary. Let me ask you, too, we are also worried about overreach in legislation like this. So, what could an effect of H.R. 1451 be in terms of—let's just say by way of example, Biden Administration declares some sort of noncrisis and national emergency. Let's say, if this bill were to become law, could President Biden, for example, declare climate change a public health emergency, and then, therefore, effectively prevent landlords from evicting nonpaying tenants from their property?

Mr. GRIFFITH. That could be a very valid concern. If you look at the manner in which this emergency—the National Emergency Declaration was put into effect, it was very vague, just the enactment itself.

So, if we can do that for this purpose of declaring—saying there is a pandemic and putting a National Emergency in place to take all these economic actions, the precedent would indeed be set to have the executive branch trump the Legislative Branch and begin enacting regulations under the guise of such an emergency.

That is exactly what we saw happen over the past year with the CDC guidelines, putting in place economic restrictions that had nothing to actually do with the health crisis, but were, in effect, trying to curry political favor.

Mr. JOHNSON of Louisiana. If we open that Pandora's box—you mentioned briefly in your opening—the effect that might have on landlords, especially mom-and-pop landlords, what might they do in anticipation of any future moratoria?

Mr. GRIFFITH. Well, if the Federal government has the ability to bring a cause of action against these private landlords, that, in many instances, will quell their ability to actually move through and protecting their private property rights, because, even if they are in the right, when you, as a private landlord, especially a mom-and-pop landlord, are up against the power and the funding of the Federal government, the attorneys' fees themselves could put you out of business. That would be a danger.

Mr. JOHNSON of Louisiana. Because I have talked to landlords in my district back home, who are deeply concerned about this, and their own families were affected because their income levels were shut off, and, so, their own families are going hungry at the same time that all these other crises are going on.

So, the question is: Wouldn't some people, mom and pops in particular, just get out of the business, stop offering these places for rent, especially for low-income housing units? Then, also, wouldn't those who are still in it raise their rents, because they would have to cover the risks, right?

Mr. GRIFFITH. Yeah. If you are a smaller real estate investor with several properties that you have accumulated to prepare for retirement, for instance, the risk that just one of, say, three of those units might end up in an extended case of somebody unlawfully possessing that property, that could put you out of business. Like, if you are a larger management company with hundreds of properties, you can spread that risk across.

This will, because of that, threaten to further concentrate this ownership in the hands of these larger management companies to the detriment of those that are looking to have a secure retirement by responsibly acting throughout their careers and purchasing two or three of these units to help them to retirement.

Mr. JOHNSON of Louisiana. Also, reduce the availability of low-income housing.

I yield back my time. Thank you.

Mr. COHEN. Thank you, Mr. Johnson. I know you, like me, are available to constituents at all moments of the day, and it would take many, many public servants to equal your efforts.

Ms. Ross, you are recognized for 5 minutes.

Ms. ROSS. Thank you, Mr. Chair, and thank you to all the Witnesses for joining us today.

I just want to remind my colleagues that this hearing is on self-help evictions that are illegal under the law, and that we have heard testimony about these types of evictions that have happened both before the pandemic, and during the pandemic, and are likely to happen after the pandemic.

As we are talking about the pandemic right now, we know that millions of Americans have struggled with homelessness during the pandemic, and millions more are at risk of eviction when the federal and State eviction moratoria expire.

People who are chronically homeless and housing insecure are at substantially higher risk of poor health, as a lack of stable housing,

can result in disruptions to employment, social networks, education, and the receipt of social services benefits. In short, the pandemic exacerbated issues that already were occurring.

Despite local, State, and Federal eviction moratoria, some landlords have engaged in these self-help evictions, nonetheless. In my State of North Carolina, nearly 71,000 evictions were filed between March 2020 and February 2021.

A constituent from my district lost her job during the pandemic, and she and her baby girl were evicted from their home just before Christmas, because they were \$380 short on rent. They didn't know where to go, and they didn't know about the eviction moratorium.

Another constituent and her two children were evicted from their home despite being up to date on rent and providing the landlord with a CDC declaration form temporarily halting residential evictions. However, their lease was up, and their landlord refused to offer renewal.

This is a reality that Americans across the country are facing, and, as I said, were facing before the pandemic.

My first question is for Professor Ramsey Mason. Despite being illegal in all 50 States, self-help evictions persist. Can you tell us why?

Ms. RAMSEY MASON. Thank you, Representative Ross.

I think the short answer is because it is easier and because there is not, in many States, appropriate deterrent for landlords who seek to engage in self-help. Self-help can take many forms, as H.R. 1451 contemplates. It can be something as extreme as a landlord hiring a team of private security guards, showing up at a tenant's home and forcibly removing the tenant and his or her belongings from the property.

It can include changing the locks while the tenant is away from home at the grocery store, at work, picking up kids from daycare, whatever the case may be. It can also include things like calling the utility company and asking for the electricity and the gas and the water to be shut off, or simply threatening a tenant to the point that they actually choose to leave the property because they feel unsafe.

All those are situations that we hear about; that we, as you pointed out, have heard about prior to the pandemic, during the pandemic, and, unfortunately, I am sure will continue to happen as the pandemic ends.

While every State does allow tenants who have been illegally affected, or evicted to sue their landlord proactively to claim damages. On a practical standpoint, for many tenants, that is simply not possible. I mean, tenants are experiencing a number of crises in the aftermath of an eviction, and going to court, or finding a lawyer, going to court, filing a lawsuit, is oftentimes—

Ms. ROSS. I am going to have to stop you there, because you are leading into my next question for—which is for both you and Ms. Ettingoff, and I would like Ms. Ettingoff to go first with whatever time I have remaining.

Is part of this problem due to the fact that legal services aid has been cut so much, and there is a reluctance to set up, fund legal services attorneys?

Ms. ETTINGOFF. Well, it certainly doesn't help things. Let's put it that way. I think I mentioned that the demands far exceed what we have in the way of staffing, so that is certainly true from that perspective.

I think that, as Professor Ramsey Mason was about to say, I believe that because we cannot train people really well enough to represent themselves, they don't have the ability to go down to General Sessions, and they don't know the rules of evidence, and they are merely in a position where they are at someone's mercy—the landlord's mercy, unless legal services can assist them, because they are not going to be in a position where they can use what little money they have got that has to go for food or new housing, to divert that money towards paid legal services.

Ms. ROSS. Oh, the Chair has told me that we can also have Ms. Mason respond.

Ms. RAMSEY MASON. Thank you.

I am not familiar with the intricacies of legal services funding. However, I do know that having attorneys for tenants is an incredibly important aspect to preventing illegal eviction, because, if tenants are represented and are able to successfully bring claims in court, it will act as a deterrent to future bad actors, and it will also empower other tenants to assert claims that are valid in that situation.

Ms. ROSS. Thank you, Mr. Chair. I yield back.

Mr. COHEN. Thank you.

There is hope on the way—help on the way. We have a letter urging more funding for legal services. In the past, I was joined by Mr. Kennedy from Massachusetts, and this year's Mr. Fitzpatrick, Mr. Upton, Mr. Emmer, Ms. Dingell, and Ms. Scanlon has been phenomenal, all as co-leads on the letter, and everybody is welcome. So, hopefully that will happen.

Ms. Fischbach, you are on the video, I guess. There you are. You are recognized for five minutes. Thank you. I have no jokes—

Ms. FISCHBACH. Thank you very much.

Mr. COHEN. I have no jokes today.

Ms. FISCHBACH. Oh, no jokes? Okay.

Mr. COHEN. No jokes.

Ms. FISCHBACH. Well, I appreciate that.

I am just very concerned. I obviously rent a—represent a very rural district, and I am very concerned about the effect of this on what is a tight housing market, and so, I am wondering, Mr. Griffith, if you could—I know you talked a little bit about it with Mr. Johnson, but maybe you could expand a little bit of the effects on those small landlords.

In addition to that, maybe expanding into what it is going to do to the availability. We are looking at a tight market in rural Minnesota, and I am wondering if you have any thoughts on how it would affect this legislation would affect the availability?

Mr. GRIFFITH. Yep. Thank you, Congresswoman.

Well, if we think about what actually happened this past year, for the first time in our Nation's history, we actually criminalized landlords, property owners, who wanted to simply avail themselves of legal protections. This was a complete violation of that First

Amendment, guaranteed right to access the courts to enforce basic contract law.

The Executive Branch went a step beyond, and actually criminalized any State court that would choose to actually enforce their own laws. This has not happened before in the history of the United States. This should be troubling to anyone who cares about the Rule of law.

If you are a landlord, especially a small landlord, now you have to go into every contractual arrangement with a new tenant with the understanding that, for a future national emergency, that the executive branch may put a moratorium on your ability to actually take hold of your constitutional right to enforce the contract that you have made with someone else.

That is going to cause severe reluctance on the part of landlords, and this will impact affordable housing on top of it. I think the primary concern here should be the assault that we saw on the basic Rule of law and basic private property rights.

Ms. FISCHBACH. Thank you, Mr. Griffith. I appreciate that.

Again, I will just express I have real concerns, because, as I have traveled across my district, the one thing that people are talking about is there is just a huge need for more housing. When we have landlords who are willing to do that and put their money on the line to provide housing, rental housing for folks, we are just causing them more headache. I think that it will—I think Mr. Griffith is right. It will—it will really disincentivize people from entering that market.

That is all I have, and I will yield back, Mr. Chair.

Mr. COHEN. Thank you, Ms. Fischbach. You have not been affected by the congressional drug of taking every minute that you have to talk. You limit yourself to what is relevant.

Thank you.

Who is next? Mr. Raskin, you are recognized for 5 minutes.

Mr. RASKIN. Mr. Chair, thank you much. I am wondering whether landlords that are engaged in these vigilante evictions outside of the law are just doing it unilaterally on their own or are there law firms or businesses that have organized to encourage them to do this or to be there to manipulate the process.

Ms. Mason or Ms. Ettingoff.

Ms. ETTINGOFF. I can address that slightly. There is a grid called Get 'em Out that pretty much perpetually pushes the notion of removing tenants and that is how they make their money, that is what they are interested in. In addition, at least locally for us, there has been one law firm with one particular attorney that I can't say definitively that he has pushed the landlords to do it, but he has certainly not discouraged them in any way, even on cases where there should have been some forbearance, he has been unwilling to reason at times. Of course, that is the nature I guess of his business and that is how he earns his livelihood.

However, all attorneys represent the notion that you have the ability to communicate with your client and that you can attempt to direct your client in the direction that might be better for them in a broader sense. That does not appear to have been done in all cases. So, certainly, there has been some indulgence of the notion

of going ahead and sort of engaging in conduct that borders on unlawful or truly isn't unlawful.

Mr. RASKIN. Ms. Mason, do you have anything to add to that.

Ms. MASON. I think Ms. Ettingoff is in a better position than I am to have the bird's-eye view to answer your question. It certainly is an issue where there are many attorneys who are responsible and try to discourage their clients from engaging in illegal behavior.

Again, the fact that it is so difficult for tenants to actually push back when this happens. Many times, we see stories in the media are the way that tenants get traction on these situations. That simply should not be the case. They should be able to effectively access the courts.

Mr. RASKIN. Thanks. Mr. Shelton, let me ask you. It seems like we have got kind of a practical problem out there because I remember in the thick of the crisis when people were being thrown out of work and everything looked kind of hopeless, landlords and tenants got together really to push for aid to the tenants so that they would be able to get aid filtered through the States and the counties down to them and then they would be able to pay for the rent. So, part of what we might be seeing is just the effect of that process not closing the loop.

I mean I just asked my staff to get me some stats on this and there is more than \$30 million that has been left undistributed in the largest county in my district, in Montgomery County. That is money that has not gone to tenants for the purposes of paying their rent. So many people are unemployed and broke and so on. So, what can we do structurally, to deal with this problem to get people the resources they need so we don't end up in this hand-to-hand combat in court or outside of it.

Mr. SHELTON. I would be in strong agreement with it going in that direction. That is to say as we looked at what is happening across the country, some of the solutions that came to mind is things like a modification of section 8 type landlords, as well as we do to others. Making sure that people have a place to stay, and we don't find individuals and families homeless is crucial. We have seen what happens when we don't.

Many of us still remember what happened with the economic downturn and the provisions we worked so hard together to put in place with Dodd-Frank Wall Street reform bill to fix many of these problems as well. As I am looking at issues along these lines, we know what happens. As a matter of fact, the economic downturn of 2008 was not that long ago. We learned with some solutions from that as well.

All that to say is that we need to make sure that there are many families that also do make their living owning small tenements, one, two, three, and four family apartment buildings. My parents were very much in that category as well. They also worked very hard to make sure that people could stay. That should be the struggle here as well. When a pandemic happens, it crosses many governmental lines. When issues like this happen as we are bringing solutions we have to pull from many governmental pots to provide some solution.

Mr. RASKIN. I appreciate that.

I yield back to you, Mr. Chair.

Mr. COHEN. Thank you, Professor Raskin.

Ms. Jackson Lee, no? Sorry, my mistake Mr. Johnson from the great State of Georgia.

Mr. JOHNSON of Georgia. Thank you, Mr. Chair for holding this hearing.

Mr. Griffith, you have spoken with great indignation in your voice and in your manner as you have testified passionately about how eviction moratoria has hurt landlord property owners. Are you familiar with the fact that the CARES Act signed into law by President Trump provided landlord property owners with billions of dollars in PPP and economic injury disaster loans to cover their lost rental payments?

Mr. GRIFFITH. Thank you, Congressman. Thank you for your question. Yes, I am aware of that. Regardless of whether or not—

Mr. JOHNSON of Georgia. Okay. In your opinion, Mr. Griffith, was CARES Act legislation to protect mom and pop landlords by providing them with grants to cover their loss of rental income? Was that a proper use of congressional authority or was it an assault on the Rule of law as you described eviction moratorium as?

Mr. GRIFFITH. Yeah. Thank you. A very important question. Unfortunately, politicians from both political parties throughout the past year have gone beyond what the Constitution prescribes for congressional action. When you look at the aid that was delivered throughout COVID—

Mr. JOHNSON of Georgia. So, I don't want to belabor the point. I know that some folks, and you are probably one of them, just don't believe that government should be there to protect anyone. That it should just be a matter of survival of the fittest and only the strong survive, that Ayn Rand mentality that my colleagues on the other side of the aisle espouse.

I understand that you probably feel that way. Of course, we are talking about legislation here that is going to protect people from unlawful evictions. By the way, sir, you do agree that folks should follow the law when—I mean, there is a law in place, Mr. Griffith, you do believe that folks should go by the book and not resort to self-help evictions. Correct?

Mr. GRIFFITH. Congressman, just to be clear, when it comes to my personal beliefs and the proper role of government there certainly is a role for government to play in assisting people in need, but what we saw over the past year was government action that went far beyond targeted direct—

Mr. JOHNSON of Georgia. President Trump signed the legislation himself. Right?

Mr. GRIFFITH. That is right. Politicians of both parties at times—

Mr. JOHNSON of Georgia. Come on now, Mr. Griffith.

Mr. GRIFFITH. Well, if you look at the—

Mr. JOHNSON of Georgia. You are trying to have it both ways.

Mr. JOHNSON of Louisiana. Would you let him answer the question?

Mr. JOHNSON of Georgia. Let me move on, sir.

Mr. Shelton, what would you say to those who would say that eviction moratoriums are an unlawful limit on their property rights when you are at the same time offering them money to help get

them through the emergency once in a century pandemic that we were all faced with.

Mr. SHELTON. Let me just say that I would say that we need to bring all government resources to bear. Certainly, as we look at what the usual issue is for those who happen to own apartments and so forth, we know that most of the issues that affect them on a daily basis are closer to home.

When we are talking about a pandemic like this, a coronavirus pandemic, which hundreds of thousands of people have already died and the impact crosses every line, economic, race, ethnicity, gender, and otherwise. Then we know that we have to bring to bear the resources from all those places. The money was in place and there is still resource to help those who own the apartment buildings, and we should help them as well. Allowing individuals and families to be put out of their apartments, to be put out of their mental homes in some cases. I think it is outrageous. We have solutions—

Mr. JOHNSON of Georgia. Let me stop you there. Thank you for that answer. Across the course only 10 percent of tenants are able to acquire legal representation in evictions proceedings. Professor Ramsey Mason, how will that fact be mitigated by the legislation that our Chair has proposed, H.R. 1451? How will it help in this circumstance?

Ms. RAMSEY MASON. Thank you, Representative Johnson. It would help specifically in as I mentioned earlier the multiple enforcement mechanisms that the legislation contains. H.R. 1451 allows not only for an individual who has been affected by an illegal eviction to bring a private cause of action in court on behalf of him or herself, but also for the Attorney General of the United States to bring an action against a landlord who has violated the law.

That is an incredibly important protection for tenants who are not in a position for whatever reason to assert their own rights or in referencing Congressman Raskin's question earlier, if there seems to be a systemic pattern by particular groups of people who are carrying out illegal evictions.

The Attorney General is certainly in a better position to address that sort of problem than any individuals would be.

Mr. JOHNSON of Georgia. Thank you. I am out of time. I yield back.

Mr. COHEN. Thank you, Mr. Johnson.

Our next Congressperson to ask questions will be Ms. Sheila Jackson Lee for five minutes.

Ms. JACKSON LEE. Thank you very much, Mr. Chair. It is extremely important to hold this hearing. Thank you to all the Witnesses. I am glad that throughout the testimony that has been given in the question-and-answer time, the record has already been established that there is a concern, Mr. Griffith, for the mom and pop owners, the retired persons, and the respect for property. I don't think any of us have negated that.

I work with a lot of real estate persons who themselves own property, small businesses. We have the greatest respect for their economic engine as well.

Let me try to emphasize what this bill does. We have said it over and over again. I think it has been carefully crafted. As it is

marked up, your concern certainly should be readily addressed, but it is to deal with self-help evictions during national emergencies. That is a confined, refined area.

It only represents or acts as a civil rights buffer to the disastrous response that poor people have been able to—unfortunately have been the victims there of.

So, let me under the CARES Act moratorium there was certainly more governance, that eviction protection expired on July 24, 2020. Then came the CDC moratorium which did not have the firewalls. That moratorium is currently expire on June 30, 2021.

As I was coming up today, I was reading that surges in COVID-19 are now surging in States like Texas, because people have randomly put in orders so that—randomly put in orders that would encourage unfortunately of the virus surging because of the delta new variant.

So, we are not out of the pandemic yet. We don't know how long we are going to be in an emergency. We might need to extend it. So, the current evictions under CDC does not protect us against vacating orders and it permits landlords to charge fees and penalties.

Let me just say on the record and I have to quickly ask this question, despite local, State, and Federal prohibitions of self-help evictions are changing locks, cutting off utilities, refusing to make essential repairs, removing their belongings, harassing tenants to create an environment where tenants will leave on their own.

In my own district, and Black people are only 13 percent of the total population but are 40 percent of the homeless population in this nation. In addition, Black Americans are far more likely to be evicted. Latinx communities' 26.1 percent severely monetarily burdened. They too are victims of evictions.

So, as a story someone who had a been a trailer home for 10 years, Cristina, I won't put her last name in, they spent three months without electricity and water because they had missed just a minor amount of the rent.

So, let me go to Mr. Shelton. This gives you a right of action, almost like the Voting Rights Act in section 2 where it happens to you, you can go in and try to get a remedy. Tell me what is so unusual to allow individuals who have had their water turned off, who have been charged fees and been given every sort of trap to get you out of there with a family, what is wrong with having the legitimate right to an action, a private action or the Attorney General having such when all of the rights have been in property owners as Mr. Griffith has said.

We know property means. Many things have been property that certainly have been inappropriate in America. Can you give the answer about the validity of that right of action for these people who are most victimized under your civil rights knowledge?

Mr. SHELTON. It is crucial that they have that protection and power as well. Some of the issues that have come up in our discussions just a bit earlier from those who work for Legal Services now speaks to the issue expertise it takes to maneuver through the system rights in which [inaudible] rights can be protected [inaudible].

Let me just say the long run, I would say that there should be nothing that would prevent that right from being protected. Let me

also say we should make sure there are more resources available for important organizations like Legal Services.

As I have worked with them in eastern Missouri, as well as in Boston, Massachusetts is able to carry out those responsibilities thoroughly.

Ms. JACKSON LEE. So, your view is that a private right of action does it not contravene the Constitution and the Fifth amendment on the right to property or due process. It does not contravene, because there is a court that will make a determination on behalf of the tenant and the landlord. Is that not true?

Mr. SHELTON. That is absolutely true.

Ms. JACKSON LEE. Their property rights would not be snatched away without that intervening court. When the Federal action from the Attorney General comes, it is not snatched away under this particular legislation. There is an arbiter, which is the court. Is that not right?

Mr. SHELTON. That is absolutely true.

Ms. JACKSON LEE. Would it be shameful to leave poor people with no action whatsoever, even allowing the Legal Services Corporation to be able to go into court on their behalf?

Mr. SHELTON. I believe it would be absolutely unconstitutional.

Ms. JACKSON LEE. Thank you so very much.

I yield back, thank you, Mr. Chair.

Mr. COHEN. You are welcome, Ms. Jackson Lee. I appreciate each person who has attended this Committee meeting and I appreciate our witnesses. It has been a good hearing, an important hearing for the American public who have been affected by the coronavirus and unfortunately had difficulties with landlords maintaining their homes.

That concludes today's hearing.

Ms. JACKSON LEE. Mr. Chair, I have some articles, if I might.

Mr. COHEN. Without objection.

Ms. JACKSON LEE. I just want to call their names off because they are important articles if I might very quickly. I ask unanimous consent to put into the record how Houston areas families are being forced from their homes without an eviction. It tells the story of Cristina Rea who had a been in a trailer home for 10 years and the landlord turned off the water and the power in the waning hours of a very hot Houston summer with her and her family.

Then HUD May 18, 2021, growth of homelessness during 2020 was devastating even before the pandemic. I ask unanimous consent to place these articles into the record.

Mr. COHEN. Without objection, it will be done.

[The information follows:]

MS. JACKSON LEE FOR THE RECORD

How Houston-Area Families Are Being Forced From Their Homes Without An Eviction Notice | Houston Public Media

Many of Houston's most vulnerable communities are still struggling to pay their rent during the pandemic. Rent relief programs and the CDC eviction moratorium are meant to protect them — but many are still forced out without an official eviction order.

Share



The Miranda family has been living in their car off and on for three months.

This is part one in a two-part series on how and why people are being evicted in Houston, despite a federal moratorium halting the practice. [Click here for part two](#), about how whether or not you're evicted can depend on what judge you're in front of.

At a trailer park in North Houston, Cristina Rea has spent almost three months without electricity during the tail end of a sweltering Houston

8/10/22, 5:10 PM

How Houston-Area Families Are Being Forced From Their Homes Without An Eviction Notice | Houston Public Media - Reader M...

summer. She lives there with her boyfriend and his mom.

In Spanish, Rea said their landlord shut off power when they were a few days late with rent. Though they still had access to the trailer, the family had been spending many summer nights sleeping in their silver car due to the heat. The landlord also cut off the water supply, so they weren't able to use the restroom or bathe.

Her boyfriend and his mother have lived there more than a decade. She says he should have cut them some slack.

"The third day he just came and cut off everything," Rea says. "It wasn't right."

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But even if they could get their electricity and water back on, their trailer has become uninhabitable. The smell of rot escapes through a wedged-open door that Rea's boyfriend, Juan Miranda, says he can barely open. Inside, the family's clothes, shoes and microwave are all likely destroyed. Debris lies everywhere. Miranda, whose mom owns the trailer, says flooding and wind from Tropical Storm Beta caused their trailer roof to cave in.

"Everything is knocked out," he says. "I lost everything from inside."

8/10/22, 5:10 PM

How Houston-Area Families Are Being Forced From Their Homes Without An Eviction Notice | Houston Public Media - Reader M...



Juan Miranda stands outside his trailer home where his electricity and water were shut off by his landlord.

It's the latest in a string of poor luck since the pandemic.

The couple has struggled to find work — which is why they were late on rent. Rea hasn't received any government aid due to her immigration status. And Miranda didn't qualify for unemployment because he works informal construction jobs.

They don't know who to turn to for help. And they aren't alone.

Josephine Lee works with Latino immigrant families through the non-profit El Pueblo Primero. She said she's talked to many other families who are also going through “self-evictions” — people being informally forced out of their homes.

“All this time the landlord has been pressuring them through different tactics, giving them notices to vacate, putting a padlock on their door,” Lee said. “In response some people have been self-evicting because they don't want to go to court.”

8/10/22, 5:10 PM

How Houston-Area Families Are Being Forced From Their Homes Without An Eviction Notice | Houston Public Media - Reader M...



Juan Miranda says flooding from Tropical Storm Beta caused their roof to collapse and their belongings to be destroyed.

It's not just that some families are forced out by their landlords — they're also losing out on rent relief and other aid because their apartment is under another name, according Rev. Ed Gomez from San Pablo's Episcopal Church in Southeast Houston.

"They don't have leases in their names, they don't have utilities in their names" Gomez said. "It's all under the person who they get to sign for them. And like that there are probably thousands — it's the invisible Houston."

Guadalupe Fernández works in immigration legal aid at the Tahirih Justice Center and serves on the county's eviction task force. She said she gets frustrated when she sees families like the Mirandas in dire straits — yet often unable to access local, state and federal aid.

"If you are not addressing and targeting the most vulnerable, who are you actually helping?" she said.

Fernández said she's seen several barriers that prevent people from getting help.

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How Houston-Area Families Are Being Forced From Their Homes Without An Eviction Notice | Houston Public Media - Reader M...

"It's clear these systems were not designed for folks that are the most vulnerable," Fernández said. "When you're doing an application system online, are you ensuring that (it) has mobile capabilities because you understand that your community, the marginalized community, may have a cell phone and that's how they are going to apply?"

Nonprofits, churches and informal community groups have picked up the slack to meet the stark need for aid — and many funds have been depleted.

Catholic Charities of Houston, for example, has provided more than \$1.6 million for mostly rent and utilities since mid-March. They don't expect the need to let up any time soon.



First, Juan Miranda and his family lost power and water in his trailer. After Hurricane Beta, it became completely unlivable.

For now, the Miranda family is trying to get back on their feet with only the clothes on their backs.

They say it's been hard finding assistance — they've mostly relied on local food banks.

8/10/22, 5:10 PM

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Cristina Rea has two young daughters who are staying with their aunt for now — she hopes she can reunite with them soon.

And she says she's had trouble sleeping. She stays awake wondering what she's going to do for work, and where she'll find the money to eat.

"I'm looking where to work," Rea says. "If there's work cleaning houses, I'll go clean houses. If there's work in remodeling (houses), I go and I work, because it's a little bit of money coming my way so I can keep eating."

"We're practically left with nothing — everything was lost."

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HUD: Growth Of Homelessness During 2020 Was 'Devastating,' Even Before The Pandemic : NPR



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HUD: Growth Of Homelessness During 2020 Was 'Devastating,' Even Before The Pandemic

March 18, 2021 · 6:01 AM ET

Heard on All Things Considered

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8/10/22, 5:11 PM

HUD: Growth Of Homelessness During 2020 Was 'Devastating,' Even Before The Pandemic : NPR

Homeless individuals sleep near a National Guard truck ahead of the inauguration of U.S. President-elect Joe Biden on Jan. 20, 2021, in Washington, D.C.

Spencer Platt/Getty Images

The nation's homeless population grew last year for the fourth year in a row. On a single night in January 2020, there were more than 580,000 individuals who were homeless in the United States, a 2% increase from the year before.

The numbers, released by the Department of Housing and Urban Development Thursday, do not reflect the impact of the pandemic.

"And we know the pandemic has only made the homelessness crisis worse," HUD Secretary Marcia Fudge said in a video message accompanying the report. She called the numbers "devastating" and said the nation has a "moral responsibility to end homelessness."

Among the report's more sobering findings: homelessness among veterans and families did not improve for the first time in many years.



NATIONAL

Renters Are Getting Evicted Despite CDC Order — 'I'm Scared'

Also, more than 106,000 children were homeless during the once-a-year count, conducted in most communities across the nation. While the majority of homeless children were in shelters or transitional housing, almost 11,000 were living outside.

As has been the case for years, a disproportionate share of those experiencing homelessness were Black — about 39% of the total, though African Americans make up about 13% of the nation's overall population. Twenty-three percent of those who were homeless last year identified as Hispanic or Latino.

California was home to the largest number of people experiencing homelessness — 161,548 — according to the 2020 count. A quarter of all homeless individuals in the United States were living in either New York City or Los Angeles.

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For the first time since the government began doing the annual count, the number of single adults living outside — 209,413 — exceeded the number of individuals living in shelters — 199,478.

"I think it's tragic that we have increasing unsheltered numbers," said Nan Roman, president and CEO of the National Alliance to End Homelessness. "We know that unsheltered people have horrible health conditions." Roman noted that these individuals are much more susceptible to disease and premature death than those living inside.

Adding to the concern of housing advocates are signs that many more individuals have moved outside since the count was conducted because of the pandemic.

**NATIONAL**

California Struggles To House Thousands Of Homeless Placed In Hotels During Pandemic

Some individuals have been worried about contracting COVID-19 staying inside, and many shelters have been forced to limit bed space to meet health and safety protocols. This has led to an increase in street homelessness in communities that were unable to provide alternative housing, although some have taken advantage of hotel space left empty during the pandemic.

8/10/22, 5:11 PM

HUD: Growth Of Homelessness During 2020 Was 'Devastating,' Even Before The Pandemic : NPR

Becky Gligo, executive director of Housing Solutions Tulsa, said her Oklahoma county raised money to move more than 400 unsheltered individuals into a hotel or other housing after a major storm hit the area this winter, leaving fewer than a dozen people on the streets.

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"The pandemic has been incredibly hard on everybody for so many reasons. But in some ways, it's really fast-tracked things that we thought would take five, 10 years to get the funding and intention for," Gligo said.

Other providers have also seen what they describe as a silver lining to the pandemic.

John Mendez, executive director of Bethesda Cares, a service provider in Montgomery County, Md., said his group was able to permanently house some individuals who had lived outside for more than a decade and refused to accept assistance until last year.

"Many of them were very scared of what could happen," Mendez said. "It was very desolate."



THE CORONAVIRUS CRISIS

What's Inside The Senate's \$2 Trillion Coronavirus Aid Package

Streets that were usually bustling were suddenly empty. Conveniences, such as bathroom facilities, were no longer available. "By the end of April, they were open to talking about housing for the first time," he said.

Still concerns have grown about what might lie ahead.

"I think we're going to see homelessness increase," said Sean Read, chief program officer at Friendship Place, a nonprofit that serves homeless individuals in Washington, D.C. Homelessness is "generally a delayed response" to economic setbacks, Read noted. Families that have been able to hold on to housing during the pandemic, with the help of government aid and eviction moratoriums, could find themselves out of luck in the coming year.

Read and other providers are hopeful that billions of dollars in housing aid included in a recent \$1.9 trillion COVID relief package will go a long way toward alleviating the crisis.

The amount of aid is unprecedented. The bill provides \$5 billion in homelessness assistance, more than \$20 billion in emergency rental aid and \$5 billion in new housing vouchers.

Roman, of the National Alliance to End Homelessness, noted that the measure also includes direct payments for families, which could keep many in their homes. She said some communities are also planning to use the funds to buy empty hotels that can be used to house more individuals, both temporarily and permanently.

"It's such a huge opportunity at the moment," Roman said. "The question is are we going to be able to seize it."

pandemic homelessness

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<https://www.npr.org/2021/03/18/978244891/hud-growth-of-homelessness-during-2020-was-devastating-even-before-the-pandemic#:~:text=Pam Fess...> 5/15

Mr. COHEN. That does conclude today's hearing. We thank our Witnesses again, our Memphis Witnesses, and our Washington Witness, and our Miami Witness. Thank you for being here and for my tardiness we got the hearing concluded. I thank the Members of the Committee and Ms. Ross for sitting in.

Without objection, all Members will have five legislative days to submit additional written questions for the Witnesses or additional materials for the record.

The hearing is adjourned.

[Whereupon, at 4:56 p.m., the Subcommittee was adjourned.]

