

Racial Discrimination and Eviction Policies and Enforcement in New York



A Report of the
New York Advisory Committee to the
U.S. Commission on Civil Rights

March 2022

Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

Acknowledgements

The New York Advisory Committee deeply appreciates the contributions of each of the invited speakers who presented to the Committee during their public meetings in connection with this topic. The Committee is also grateful to members of the public who spoke during the selected periods of public comment, and those who shared testimony in writing. The Committee sends special thanks to Carolyn Allen who supported the New York Advisory Committee over multiple terms during her career at the U.S. Commission on Civil Rights.

**New York Advisory Committee to the
U.S. Commission on Civil Rights**

This report details civil rights concerns the New York Advisory Committee to the U.S. Commission on Civil Rights examined regarding eviction policies and enforcement in New York. The Committee submits this report as part of its responsibility to study and report on civil rights issues in the state. The contents of this report are primarily based on testimony the Committee heard during virtual public meetings held on February 19, 2021, June 4, 2021, June 23, 2021, June 25, 2021, and July 16, 2021. The Committee also reviewed related testimony submitted in writing during the relevant period of public comment. This report was adopted by a vote of 9 to 4 at a Committee meeting held January 21, 2022. The dissenting members were provided an opportunity to prepare a dissenting statement. Such statements are appended to the report.

The report begins with a brief background of the Committee's proposed project, followed by a summary of the testimony the Committee received on this topic. It then identifies primary findings as they emerged from this testimony. Finally, it makes recommendations for addressing related civil rights concerns. While other important topics may have surfaced throughout the Committee's inquiry, matters that are outside the scope of this specific civil rights mandate are left for another discussion.

**New York Advisory Committee to the
U.S. Commission on Civil Rights**

Bryanne Hamill, *Chair, New York Advisory Committee*, New York City

Athena Mutua, *Vice Chair, New York Advisory Committee*, Buffalo

Iris Chen, New York City

Vivian Louie, New York City

Jamil Dakwar, New York City

Glenn Magpantay, Jackson Heights

Donald Derham, Floral Park

Rafael Mangual, Forest Hills

Tiffany Graham, South Beach

Steven Raga, Woodside

Mat Kladney, New York City

Michal Rosenn, New York City

Robert Klump, Williamsville

Craig Trainor, New York City

TABLE OF CONTENTS

I.	Introduction.....	3
II.	Background.....	6
III.	Summary of Testimony	38
A.	Invited Speaker Biographies	38
1.	Legal Scholars.....	38
2.	Researchers	40
3.	Academics.....	42
4.	Advocates.....	46
5.	Government.....	48
6.	Multi-Sector	51
B.	Overview	54
1.	Consequences of Eviction.....	57
2.	COVID-19 and Evictions.....	58
C.	Factors Impacting Evictions	61
1.	Segregation	62
2.	Impact of Redlining.....	65
3.	Affordable Housing Availability.....	68
4.	Zoning.....	69
5.	Wealth Gap	70
6.	Crime-free Ordinances.....	71
7.	Eviction Records	73
8.	Source of Income as Proxy for Race	74
9.	Rent Control.....	75
10.	Housing Precarity	77
11.	Substandard Housing Conditions	78
12.	Housing as a Home vs. Investment	79
D.	Data	81
1.	Renters	81
2.	Landlords	103

Table of Contents

E.	Eviction Enforcement	114
F.	Major Recommendations from Speakers	129
1.	Federal	130
2.	New York State	139
3.	Albany.....	142
4.	Buffalo	145
5.	New York City	146
IV.	Committee Findings and Recommendations	148
A.	Findings	148
B.	Recommendations	163
V.	Appendix.....	178
A.	Committee Member Statements of Dissent	178
B.	Project Proposal	178
C.	Briefing Agendas	178
D.	Briefing Minutes	178
E.	Briefing Slides	178
F.	Briefing Transcripts	178
G.	Written Testimony	178

I. INTRODUCTION

The U.S. Commission on Civil Rights (Commission) is an independent, bipartisan agency established by Congress and directed to study and collect information relating to potential discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, national origin, or in the administration of justice. The Commission has established advisory committees in each of the 50 states and the District of Columbia. These Advisory Committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction.

On November 20, 2020, the New York Advisory Committee (Committee) to the U.S. Commission on Civil Rights voted unanimously to take up a proposal to study potential racial discrimination in eviction policies and enforcement in New York. The proposed scope of this project was limited to an examination of the federal, state, and local policies and enforcement of housing laws meant to prohibit racial discrimination in rental housing eviction practices in three cities representing different regions, economies, and cultures of New York State, namely Albany, Buffalo, and New York City (NYC). The proposed purpose of this project was to allow the New York Advisory Committee to advise the Commission regarding civil rights concerns with racial discrimination in rental housing evictions.

This project included a gathering of data, documents, testimony, and expert opinions, and, crucially, the lived experiences of those directly impacted by evictions. In this report, the Committee outlines the testimony heard during public meetings during their period of inquiry, and then provides recommendations to the Commission to send to appropriate federal, state, and local entities.

These public meetings were advertised in the Federal Register and recorded. Committee Members also shared information related to these meetings with their networks. The meetings included time for public comment in which anyone who wished to share information had the opportunity to do so during the meeting, or by following up in writing following the meeting. The Committee also accepted written statements submitted by those who were unable to attend the public meetings. All meetings with testimony received were recorded and transcribed.

The Committee planned who to seek testimony from during seven public meetings held between December 2020 and May 2021. The Commission shared a press release to call for speakers who might be able to address the Committee's study topic on December 18, 2020,¹ and Committee members were encouraged to share this call for speakers with their networks.

¹ U.S. Commission on Civil Rights. "The New York Advisory Committee to the U.S. Commission on Civil Rights Announces Study on Residential Rental Eviction Policies and Enforcement, Calls for Speakers." Press release, Dec. 18, 2020, <https://www.usccr.gov/files/2020-12-18-NY-PR-Call-for-Speakers.pdf>.

Initial questions the Committee sought to address as part of their study included:

- Which communities, if any, are disparately impacted or unequally treated by evictions in the identified cities?
- What are the impacts of eviction on communities of color?
- What are the impacts of tenant nonpayment and eviction remedies on landlords?
- What factors, in addition to financial issues, are driving New York's high eviction rates?
- What role, if any, does structural racism play in eviction policies and enforcement, and how is it effectively addressed?
- How is the COVID-19 crisis exacerbating evictions and any discrimination therein?
- What new, existing and/or targeted policies and enforcement measures have or may prove successful in preventing evictions generally and protecting those in more vulnerable communities from eviction and discrimination, specifically?
- What are the potential unintended consequences of current policies on tenants and/or landlords?
- To what degree do new, existing and/or targeted policies fail to address the potential intersections between structural racism and the eviction crisis?
- Whether and to what degree are current policies imposing costs on landlords that are then passed on to tenants thereby exacerbating the shortage of affordable housing?

To achieve balance in perspective of the testimony received, all members of the bipartisan Committee were encouraged to conduct outreach to potential panelists and share the views their proposed speaker might offer to the Committee's study that would add to the Committee's understanding of the issue. During a series of public meetings, the Committee decided who to invite to share a variety of perspectives during the briefing panels, including individuals impacted by evictions, researchers, academics, advocates, legal scholars, and government officials. The Committee conducted outreach to 79 potential panelists, 40 of whom indicated interest in sharing testimony, and 39 of whom declined or did not respond to the Committee's interest. Of those who indicated interest in sharing testimony, the Committee invited 30 panelists to share testimony on this topic at their public briefings. Committee members encouraged interested speakers who were not added to the panels to participate in public comment during the briefings, or submit written testimony.

There were five periods of open public comment, held at the end of each meeting with testimony. In order to make it easier for individuals impacted by evictions to participate, the Committee

organized two public forums, one for renters, and one for landlords, and accepted testimony as anonymous if the individual preferred. The Committee received written testimony on this topic from interested members of the public as well. Committee members were also encouraged to share research articles with one another related to the current eviction crisis in order to better understand the issues to consider in their study.

In order to reach a wider audience of speakers for potential comment during the periods of public comment, the Commission shared press releases of the Committee's planned briefings in English, Mandarin, and Spanish, along with an additional press release announcing one of the Committee's briefings that was rescheduled due to the Juneteenth federal holiday.² The Commission shared announcements related to the Committee's study on the U.S. Commission on Civil Rights website, Facebook, Twitter, and Craigslist. Social media posts were shared with the Committee for dissemination with their networks.

Ninety-three landlords, renters, and other interested members of the public joined the Committee's briefings and/or provided written testimony during the relevant periods of public comment following the briefings. Simultaneous translation in Mandarin and Spanish were provided at the June 4, 2021, June 25, 2021, and July 16, 2021, briefings. Written testimony received in Mandarin was translated to English for inclusion in the Committee's report. All cited speakers had the opportunity to review this report's Summary of Testimony section to ensure their remarks were captured as intended from December 1, 2021, through December 14, 2021.

Among their duties, the Advisory Committees of the Commission are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, national origin, or in the administration of justice; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; and forward advice and recommendations to the Commission. With this in mind, this report relies on studies and data generated by third parties and is not subject to an independent review.

This report's findings result directly from the testimony received and reflect the views of the cited panelists. While each assertion was not independently verified by the Committee, panelists were chosen to testify due to their professional experience, academic credentials, subject expertise, and/or firsthand knowledge of the topics at hand. In keeping with their responsibilities as an Advisory Committee to the Commission, and in light of the testimony heard on this topic, the New

² U.S. Commission on Civil Rights. "New York Advisory Committee Announces Public Briefing on Potential Racial Discrimination in Residential Rental Eviction Policies and Enforcement." News release, July 14, 2021. <https://www.usccr.gov/news/2021/new-york-advisory-committee-announces-public-briefing-potential-racial-discrimination>.

York Advisory Committee prepared recommendations on this topic for the Commission's attention.

During its January 21, 2022, public meeting, the Committee carefully considered how to honor and respect individuals when using racial and ethnic terminology in this report. To be consistent with terminology speakers used themselves in their remarks and research, racial and ethnic terms included in this report's Summary of Testimony section generally reflect the terms used by the cited speakers. In this report's Introduction, Background, Legislative Authority, and Recommendations sections, the Committee chose to use the following terms when indicating race or ethnicity: "Black," "White," "Hispanic/Latino," "Asian/Asian American," and "Indigenous."

II. BACKGROUND

A. Overview

Introduction

There is an eviction crisis in the United States.³ It is a crisis that disproportionately impacts persons of color and is evidenced by wide racial disparities.⁴ Women and families with children are also particularly vulnerable to eviction, with Black women, half of whom are mothers, most at risk.⁵ "Eviction occurs when a landlord expels a tenant from a property, resulting in an involuntary move for renter households."⁶ It predominately affects low-income renters (people who rent their

³ Benfer et al., "The COVID-19 Eviction Crisis: an Estimated 30-40 Million People in America are at Risk," The Aspen Institute, Aug. 7, 2020, <https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk/>; *See also*, Matthew Desmond, *Evicted: Poverty and Profit in the American City* (New York: Penguin Random House, 2016).

⁴ *Ibid.*

⁵ Benfer et al., "The COVID-19 Eviction Crisis: an Estimated 30-40 Million People in America are at Risk," The Aspen Institute, Aug. 7, 2020, <https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk/>; Gracie Himmelstein and Matthew Desmond, "Eviction and Health: a Vicious Cycle Exacerbated by a Pandemic," *Health Affairs*, Apr. 1, 2021, <https://www.healthaffairs.org/doi/10.1377/hpb20210315.747908/full>; Abigail Higgins, "An 'Eviction Apocalypse' is Coming, Experts Warn. Black Women will Bear the Brunt," *The Lily*, July 20, 2020, <https://www.thelily.com/an-eviction-apocalypse-is-coming-experts-warn-black-women-will-bear-the-brunt/>; Sophie Beiers, Sandra Park, and Linda Morris, "Clearing the Record: How Eviction Sealing Laws can Advance Housing Access for Women of Color," *ACLU*, Jan. 10, 2020, <https://www.aclu.org/news/racial-justice/clearing-the-record-how-eviction-sealing-laws-can-advance-housing-access-for-women-of-color/>; Dyvonne Body, "A Glimpse into the Eviction Crisis: Why Housing Stability Deserves Greater Attention," Aspen Institute, July 24, 2019, <https://www.aspeninstitute.org/blog-posts/a-glimpse-into-the-eviction-crisis-why-housing-stability-deserves-greater-attention/>.

⁶ Dyvonne Body, "A Glimpse into the Eviction Crisis: Why Housing Stability Deserves Greater Attention," Aspen Institute, July 24, 2019, <https://www.aspeninstitute.org/blog-posts/a-glimpse-into-the-eviction-crisis-why-housing-stability-deserves-greater-attention/>; *see also*, Carl Romer, Andre M. Perry, and Kristen Broady, "The Coming Eviction Crisis will hit Black Communities the Hardest," *Brookings*, Aug. 2, 2021, <https://www.brookings.edu/research/the-coming-eviction-crisis-will-hit-black-communities-the-hardest/>.

homes),⁷ and is one of the extreme outcomes of housing insecurity.⁸ For some, it affects the very neighborhoods in which they reside;⁹ it may also entrench and further expand neighborhood segregation. And eviction has devastating short and long-term, very often irreversible, consequences.

For example, “eviction is a leading cause of homelessness, not simply immediately after the eviction, but for years afterwards.”¹⁰ Those evicted from their homes face increased chances of subsequent physical and mental health issues, and eviction can interfere with child development.¹¹ In fact, “studies have linked eviction to an increased incidence of adverse birth outcomes, including low birth weight, prematurity, and infant mortality.”¹² And children exposed to eviction “have a higher prevalence of food insecurity and worse educational outcomes than other low-income children living in rental housing.”¹³ The poor health among adults associated with eviction includes higher all-cause mortality, including higher suicide mortality and higher rates of hospitalization.¹⁴ Beyond “displacement, the impact of an eviction can also cut [renters] off from access to quality public transportation, schools, and work,”¹⁵ and, result in decreased access to credit,¹⁶ making finding a new home more difficult. Finally, those evicted from their homes are often forced to move into lower-quality housing (“that is, homes with broken appliances, exposed

⁷ Gracie Himmelstein and Matthew Desmond, “Eviction and Health: A Vicious Cycle Exacerbated by a Pandemic,” *Health Affairs*. Apr. 1, 2021. <https://www.healthaffairs.org/doi/10.1377/hpb20210315.747908/full/>.

⁸ *Ibid.*

⁹ *See, e.g.*, Katie Moran-McCabe and Scott Burris, “Eviction and the Necessary Conditions for Health,” 385 *N Engl. J Med.* 1443 (2021), DOI: 10.1056/NEJMp2031947 (noting “Eviction also impairs the health and social connectedness of communities. When there is high turnover in a neighborhood, residents are less likely to feel invested in their community and the community’s capacity to thrive and to offer a supportive living environment is weakened.”)

¹⁰ Megan Jula, “The Pandemic will Likely Make America’s Eviction Crisis Even Worse,” *PBS News Hour*, Sept. 29, 2020, <https://www.pbs.org/newshour/economy/the-pandemic-will-likely-make-americas-eviction-crisis-even-worse>.

¹¹ Megan Jula, “The Pandemic will Likely Make America’s Eviction Crisis Even Worse,” *PBS News Hour*, Sept. 29, 2020, <https://www.pbs.org/newshour/economy/the-pandemic-will-likely-make-americas-eviction-crisis-even-worse>; *see also*, Carl Romer, Andre M. Perry, and Kristen Broady, “The Coming Eviction Crisis will hit Black Communities the Hardest,” *Brookings*, Aug 2, 2021, <https://www.brookings.edu/research/the-coming-eviction-crisis-will-hit-black-communities-the-hardest/>.

¹² Gracie Himmelstein and Matthew Desmond, “Eviction and Health: A Vicious Cycle Exacerbated by a Pandemic,” *Health Affairs*. Apr. 1, 2021. <https://www.healthaffairs.org/doi/10.1377/hpb20210315.747908/full/>, (also noting that “a large body of research demonstrates that housing is an important social determinant of health”).

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ James Bell, “Beyond displacement: How the Ripple Effects of an Eviction can Last for Years,” *PublicSource*, Nov. 11, 2020, <https://www.publicsource.org/eviction-collateral-impact-displacement-employment-transit-school-mental-health/>.

¹⁶ Gracie Himmelstein and Matthew Desmond, “Eviction and Health: A Vicious Cycle Exacerbated by a Pandemic,” *Health Affairs*. Apr. 1, 2021. <https://www.healthaffairs.org/doi/10.1377/hpb20210315.747908/full/>; Benfer et al., “The COVID-19 Eviction Crisis: an Estimated 30-40 Million People in America are at Risk,” *The Aspen Institute*, Aug. 7, 2020, <https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk/>; *see also*, Matthew Desmond, *Evicted: Poverty and Profit in the American City* (New York: Penguin Random House, 2016) also noting that “a large body of research demonstrates that housing is an important social determinant of health.”

wires, or inadequate heating”¹⁷) in poorer neighborhoods, and are more likely to face subsequent moves.¹⁸ These factors have led some to suggest that eviction is not simply a result of low incomes and poverty but a cause of poverty - reinforcing and perpetuating it.¹⁹ Overall, eviction is a crisis that has severe personal and public costs.

The COVID-19 pandemic and accompanying economic crisis greatly exposed and exacerbated housing instability and precarity among renters. Though the eviction crisis long predated the pandemic, the abrupt job losses and furloughs it caused in the hospitality and other low-wage industries immediately rendered a massive number of households unable to meet rent obligations and were thus at risk of losing their homes through eviction.²⁰ Further, both fear and studies emerged suggesting that evictions increased the spread of the virus because evictions force renters into “overcrowded living environments, doubling up, [and] transiency,” while limiting their access to healthcare and decreasing their ability to comply with pandemic mitigation strategies (e.g., social distancing, self-quarantine, and hygiene practices).²¹ Federal, state, and local government agencies as well as courts moved to institute a variety of measures, including eviction moratoriums, to address COVID-induced harms.²² In doing so, they mitigated some of the harshest

¹⁷ Ibid.

¹⁸ Gracie Himmelstein and Matthew Desmond, “Eviction and Health: A Vicious Cycle Exacerbated by a Pandemic,” *Health Affairs*. Apr. 1, 2021. <https://www.healthaffairs.org/doi/10.1377/hpb20210315.747908/full/>, *supra* note 2 (also noting that “a large body of research demonstrates that housing is an important social determinant of health”); Carl Romer, Andre M. Perry, and Kristen Broady, “The Coming Eviction Crisis will hit Black Communities the Hardest,” *Brookings*, Aug 2, 2021, <https://www.brookings.edu/research/the-coming-eviction-crisis-will-hit-black-communities-the-hardest/>.

¹⁹ Megan Jula, “The Pandemic will Likely Make America’s Eviction Crisis Even Worse,” *PBS News Hour*, Sept. 29, 2020, <https://www.pbs.org/newshour/economy/the-pandemic-will-likely-make-americas-eviction-crisis-even-worse/>; Matthew Desmond, *Evicted: Poverty and Profit in the American City* (New York: Penguin Random House, 2016).

²⁰ See James A. Parrott and Lina Moe, “The Covid-19 New York City Economy Three Months in: Reopening, and a Continuing Low-Wage Worker Recession,” *New School Center for N.Y.C. Affairs*, June 29, 2020, https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/5efa0f3ae6f525590ab1bb68/1593446207224/CNYCA_Covid-19Economy_June29Report.pdf; N.Y. State, Department of Labor, *Labor Statistics for the New York City Region*; N.Y. State Department of Labor. “Employed, Unemployed, and Rate of Unemployment by Place of Residence for New York State and Major Labor Areas, June 2020.” News release, July 21, 2020; N.Y. State, Department of Labor, *Labor Force Status by Race and Ethnicity: Beginning 2012*. <https://data.ny.gov/Economic-Development/Labor-Force-Status-by-Race-and-Ethnicity-Beginning/ykyj-hw45>; See also N.Y. State, Department of Labor, *Current Population Survey Data New York State: 1970 - 2019*, https://labor.ny.gov/stats/PDFs/current_pop_survey_data.pdf.

²¹ Benfer et. al., “Eviction, Health Inequality, and the Spread of COVID-19: Housing Policy as a Primary Pandemic Mitigation Strategy,” *98 J. Urban Health*, (2021), <https://doi.org/10.1007/s11524-020-00502-1>; Kathryn M Leifheit et. al., “Expiring Eviction Moratoriums and COVID-19 Incidence and Mortality,” *190 American Journal of Epidemiology* 250 (2021). <https://doi.org/10.1093/aje/kwab196>.

²² Discussing federal action, see e.g., David Brand, “New York Court System Delays Evictions Until at Least Oct. 1,” *Queens Daily Eagle*, Aug. 12, 2020, <https://queenseagle.com/all/new-york-court-system-delays-evictions-until-at-least-oct-1/>; Laurie Goodman, Karen Kaul and Michael Neal, “The CARES act Eviction Moratorium Covers all Federally Financed Rentals—That’s one in Four U.S. Rental Units,” *The Urban Institute*, Apr. 2, 2020, <https://www.urban.org/urban-wire/cares-act-eviction-moratorium-covers-all-federally-financed-rentals-thats-one->

predicted outcomes.²³ Nevertheless, Black, Hispanic/Latino, and Indigenous individuals disproportionately died from the virus.²⁴ And though the tsunami of evictions predicted to occur upon the end of eviction moratoriums has not happened, evictions and eviction filings are increasing and may eventually surpass pre-pandemic rates.²⁵

The pandemic exposed the link between housing as a social determinate of health, affordability, and eviction. As Moran-McCabe and Burris, in their recent article in the *New England Journal of Medicine*, commented:

Safe, affordable housing is a foundation of good health; it is essential to people's ability to thrive in school and work and necessary for building strong families and communities. Housing markets and policies in the United States have failed to supply enough affordable, healthy housing, and they address housing shortages with perhaps the cruelest and most inequitable of legal practices: eviction.²⁶

The high number of evictions occurring in the United States, they continue, is a "symptom of broader interconnected diseases: structural racism, yawning economic inequality, and the commodification of housing."²⁷ These sentiments support the idea that although evictions may be

[four-us-rental-units](#); Sarah Stein and Nisha Sutaria, *Housing Policy Impact: Federal Eviction Protection Coverage and the Need for Better Data*, Federal Reserve Bank of Atlanta, Community Development Publication (Atlanta, 2020) <https://www.frbatlanta.org/community-development/publications/partners-update/2020/covid-19-publications/200616-housing-policy-impact-federal-eviction-protection-coverage-and-the-need-for-better-data.aspx>. On New York, see, *Executive Order No. 202.48: Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency*, NY.GOV (July 6, 2020), <https://www.governor.ny.gov/news/no-20248-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>; Caroline Spivack, "These are the Protections New Yorkers Have From Eviction," *Curbed NY*, Aug. 10, 2020, <https://ny.curbed.com/2020/3/26/21192343/coronavirus-new-york-eviction-moratorium-covid-19>; David Brand, "New York Court System Delays Evictions Until at Least Oct. 1," *Queens Daily Eagle*, Aug. 12, 2020, <https://queenseagle.com/all/new-york-court-system-delays-evictions-until-at-least-oct-1>; Tenant Safe Harbor Act, S. Res. S8192B, 2020 Leg. Sess. (N.Y. 2020), <https://www.nysenate.gov/legislation/bills/2019/s8192/amendment/b>. <https://legislation.nysenate.gov/pdf/bills/2019/S8192B>.

²³ Benfer et al., "The COVID-19 Eviction Crisis: an Estimated 30-40 Million People in America are at Risk," The Aspen Institute, Aug. 7, 2020, <https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk/>.

²⁴ Centers for Disease Control and Prevention, "Disparities in Deaths from COVID-19," Dec. 10, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/racial-ethnic-disparities/disparities-deaths.html>.

²⁵ Sophie Kasakove, "With Cases Piling Up, an Eviction Crisis Unfolds Step by Step," *New York Times*, Nov. 7, 2021, <https://www.nytimes.com/2021/11/07/us/evictions-crisis-us.html>; Rachel Siegel and Jonathan O'Connell, "The Feared Eviction 'Tsunami' has not yet Happened. Experts are Conflicted on why," *Washington Post*, September 28, 2021, <https://www.washingtonpost.com/business/2021/09/28/eviction-cliff-moratorium-rental-assistance/?request-id=7abec874-9c24-42c2-9fad-482c2cb3e302&pml=1>; Jay Parsons, "Eviction Doomsday Isn't Coming. Here's why," *GlobeSt*, Aug 2, 2021, <https://www.globest.com/2021/08/02/eviction-doomsday-isnt-coming-heres-why/?sreturn=20211029150516>.

²⁶ Katie Moran-McCabe and Scott Burris, "Eviction and the Necessary Conditions for Health," *385 N Engl. J Med.* 1443 (2021), DOI: 10.1056/NEJMp2031947 (noting "Eviction also impairs the health and social connectedness of communities. When there is high turnover in a neighborhood, residents are less likely to feel invested in their community and the community's capacity to thrive and to offer a supportive living environment is weakened.")

²⁷ *Ibid.*

necessary in some circumstances, they should be rare. They should not be the default practice of failed policies or tools for unjust bargaining, harassment, and racism.

Evictions can be formal or informal. Research suggest that formal evictions constitute no more than about a third of evictions.²⁸ A formal eviction often begins when a landlord files a complaint in court, after having issued a notice for the renter to vacate the premises by a certain date without the renter having done so.²⁹ The process ends with the renter vacating the premises at any point in the process, or with an execution of a warrant for removal and removal unless some other settlement is reached. Most research reviews eviction filings and warrants of execution to measure evictions.³⁰

Scope

This report focuses on the disproportionate impact of eviction on people of color, including in the administration of justice, in three major New York cities: Albany, Buffalo and NYC. However, eviction is a national problem. It cuts across regions and across race, gender, and other protected classes, increasingly encompassing larger numbers of White individuals. In fact, almost half of *all* renter households across the nation pay more than 30% of their income on housing, rendering them *rent cost burdened* (the standard is a household should pay no more than 30% of income on housing). A quarter of renters are *severely rent cost burdened*, paying more than 50% of their income on rent alone.³¹ What this means is that almost half of all renter households in the U.S. struggle, and could possibly face eviction, when they suffer a financial emergency such as job loss, medical problems or other unexpected expenses, including the landlord raising the rent.³² Thus, it

²⁸ Matthew Desmond, *Evicted: Poverty and Profit in the American City* (New York: Penguin Random House, 2016), 399.

²⁹ See, e.g., David Robinson, Justin Steil, and Patricia Cafferky, “Evictions in Boston: The Disproportionate Effects of Forced Moves on Communities of Color,” *City Life/Vida Urbana*, 2020, https://d3n8a8pro7vhm.cloudfront.net/themes/5eee7e564445ea4f9a6f3080/attachments/original/1592786979/EvictionReport_Final_Spreads.pdf?1592786979.

³⁰ Ibid.

³¹ Benfer et al., “The COVID-19 Eviction Crisis: an Estimated 30-40 Million People in America are at Risk,” The Aspen Institute, Aug. 7, 2020, <https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk/> (based on 2018 numbers). The 30-percent of income standard is widely used as a measure of housing affordability. For a discussion of the standard, see, Christopher Herbert, Alexander Hermann, and Daniel McCue, “Measuring Housing Affordability: Assessing the 30-Percent of Income Standard,” Joint Center for Housing Studies of Harvard University, Sept. 25, 2018, <https://www.jchs.harvard.edu/research-areas/working-papers/measuring-housing-affordability-assessing-30-percent-income-standard>.

³² National Low-Income Housing Coalition, “Out of Reach 2021: The High Cost of Housing,” at 2 (2021); David Robinson, Justin Steil, and Patricia Cafferky, “Evictions in Boston: The Disproportionate Effects of Forced Moves on Communities of Color,” *City Life/Vida Urbana*, 2020, https://d3n8a8pro7vhm.cloudfront.net/themes/5eee7e564445ea4f9a6f3080/attachments/original/1592786979/EvictionReport_Final_Spreads.pdf?1592786979 (noting on page 49 that “evictions and housing instability are closely related to income and wealth. With unstable or low-paying employment and few assets to provide a safety net in the event of a financial emergency, low-income families are particularly vulnerable to eviction).

is unsurprising that the most common reason for eviction is that renters fall behind on paying their rent.³³

The deeper problem lies at the intersection of a national shortage of *affordable* housing, stagnant wages for most workers and rising housing rents, which is expected to worsen with expected inflationary pressures. In 2015, “not a single U.S. County [had] enough rental housing for low-income residents.”³⁴ As of 2020, according to the National Low-Income Coalition, little had changed.³⁵ The affordable housing shortage is in part a function of decades of stagnant wages for most middle and low-income workers³⁶ (there exists plenty of rental housing for higher-income families). And this long-term stagnation has occurred in the context of increasing economic inequality, with a possible bifurcation of the economy manifested in declining middle class jobs and a concomitant rise in jobs at the extremes of low-wage and high-wage.³⁷ Unaffordability has been equally compounded by decades of rising housing rents that have significantly outstripped

³³ Megan Jula, “The Pandemic will Likely Make America’s Eviction Crisis Even Worse,” PBS News Hour, Sept. 29, 2020, <https://www.pbs.org/newshour/economy/the-pandemic-will-likely-make-americas-eviction-crisis-even-worse>; see also, The Federal Reserve, Board of Governors of the Federal Reserve System, Assessing the Severity of Rent Burden on Low-Income Families, by J. Larrimore and J. Schuetz, Dec. 22, 2017, <https://www.federalreserve.gov/econres/notes/feds-notes/assessing-the-severity-of-rent-burden-on-low-income-families-20171222.htm>.

³⁴ The Federal Reserve, Board of Governors of the Federal Reserve System, Assessing the Severity of Rent Burden on Low-Income Families, by J. Larrimore and J. Schuetz, Dec. 22, 2017, <https://www.federalreserve.gov/econres/notes/feds-notes/assessing-the-severity-of-rent-burden-on-low-income-families-20171222.htm>; Claire Groden, “Not a Single U.S. County has Enough Affordable Housing,” Fortune, June 19, 2015, <https://fortune.com/2015/06/19/affordable-housing/>.

³⁵ National Low-Income Housing Coalition, “The Gap: A Shortage of Affordable Homes,” National Low-Income Housing Coalition, Mar., 2020, https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2020.pdf.

³⁶ See, e.g., Drew DeSilver, “For Most U.S. Workers, Real Wages Have Barely Budged in Decades,” Pew Research Center, Aug. 7, 2018, <https://www.pewresearch.org/fact-tank/2018/08/07/for-most-us-workers-real-wages-have-barely-budged-for-decades/>; John Schmitt, Elise Gould, and Josh Bivens, “America’s Slow-motion Wage Crisis: Four Decades of Slow and Unequal Growth,” Washington Post, Nov. 10, 2021, <https://www.washingtonpost.com/business/2021/11/10/inflation-wages-workers-october/>; KelloggInsight, “What’s Causing Wage Stagnation in America?,” Kellogg School of Management at Northwestern University, Dec. 2, 2019 based on research by Efraim Benmelech, Nittai K. Bergman, Hyunseob Kim (arguing that previous “explanations pointed to globalization and automation. But research shows that employer concentration is also to blame), <https://insight.kellogg.northwestern.edu/article/wage-stagnation-in-america>; Allison Schrager, “Wage Stagnation and its Discontents: Rethinking the Safety Net to Encourage a More Dynamic Economy,” Manhattan Institute, Sept. 9, 2021, <https://www.manhattan-institute.org/schrager-wage-stagnation-rethinking-safety-net>; The Ludwig Institute for Shared Economic Prosperity (LISEP), “New Analysis Reveals 20 Years of Stagnant Wage Growth for American Workers,” CISION PR Newswire, Mar 25, 2021, <https://www.prnewswire.com/news-releases/new-analysis-reveals-20-years-of-stagnant-wage-growth-for-american-workers-301256324.html>. But see, Richard V. Reeves, Christopher Pulliam, and Ashley Schobert, “Are Wages Rising, Falling, or Stagnating?,” Brookings, Sept. 10, 2019, <https://www.brookings.edu/blog/up-front/2019/09/10/are-wages-rising-falling-or-stagnating/>.

³⁷ National Low-Income Housing Coalition, “Out of Reach: The High Cost of Housing,” 3 (2021), https://reports.nlihc.org/sites/default/files/oor/OOR_2019.pdf.

wage rates, marking a gap between incomes earned and rents required.³⁸ Although wages at the moment (December 2021) seem to be on the rise,³⁹ housing costs are also rising,⁴⁰ as are basic goods and services, making it unlikely that this gap will be reduced.

The State of New York (NY) has one of the highest rental rates in the country. Almost half of NY residents are renters and 47% of renter households are rent burdened.⁴¹ In mid-sized NY cities, including Albany, Buffalo, Rochester, Syracuse, and Yonkers, a full third of household renters are not simply rent cost burdened but *severely* rent cost burdened, rendering them vulnerable to eviction and homelessness.⁴² For example, a study by the Partnership for the Public Good found that Buffalo has a massive eviction problem with a private eviction filing rate far higher than those in comparable cities such as Milwaukee, Cleveland, Cincinnati, and Philadelphia. It also found that the majority of eviction filings were for rent nonpayment; that most tenants had unresolved repair issues - raising the issue of housing quality; and that women and people of color were disproportionately impacted.⁴³

NYC is a particularly high cost area where over two-thirds of its residents are renters. Again, over half of NYC renters are rent cost burdened. A 2019 study by New York University (NYU) Furman Center found that among four other large cities, NYC ranked second, after D.C., in terms of eviction filing rates. The study also found that areas of NYC with higher concentrations of Black and Hispanic/Latino residents saw 2019 eviction filing rates nearly seven times higher than those in predominately White areas.⁴⁴ Further, a recent settlement between the NYC Housing Authority, NYC, and the U.S. Dept. of Housing and Urban Development (HUD) - arranging for increased

³⁸ See e.g., National Low-Income Housing Coalition, “Out of Reach: The High Cost of Housing,” 2 (2021) https://reports.nlihc.org/sites/default/files/oor/OOR_2019.pdf; Alicia Mazzara, “Rents Have Risen More Than Incomes in Nearly Every State Since 2001,” Center on Budget and Policy Priorities (CBPP), Dec. 10, 2019, <https://www.cbpp.org/blog/rents-have-risen-more-than-incomes-in-nearly-every-state-since-2001>; The Federal Reserve, Board of Governors of the Federal Reserve System, Assessing the Severity of Rent Burden on Low-Income Families, by J. Larrimore and J. Schuetz, Dec. 22, 2017, <https://www.federalreserve.gov/econres/notes/feds-notes/assessing-the-severity-of-rent-burden-on-low-income-families-20171222.htm>.

³⁹ Jeanna Smialek, “Wages are Rising, but can They Keep up with Inflation?” New York Times, Nov. 5, 2021, <https://www.nytimes.com/2021/11/05/business/economy/wages-inflation.html>.

⁴⁰ Maurie Backman, “Rents Have Soared Over ten Percent. Three Things you can do to Keep up,” Nasdaq, Nov. 27, 2021, <https://www.nasdaq.com/articles/rents-have-soared-over-10.-3-things-you-can-do-to-keep-up>.

⁴¹ Housing Justice for All, “Cuomo’s Housing Crisis: Homelessness and Unaffordability in New York State,” ISSUU, Apr. 3, 2018, <https://static1.squarespace.com/static/5a13558e9f8dce3da92b5d97/t/5ac3b0a1352f538fafdfb432/1522774179978/Cuomos+Housing+Crisis+Report+3.2018.Final+Vers.pdf>.

⁴² NYU Furman Center, “Rental Assistance Need in Five of New York’s Mid-Sized Cities,” The Stoop, Oct. 14, 2020, <https://furmancenter.org/thestoop/entry/rental-assistance-need-in-five-of-new-yorks-mid-sized-cities>.

⁴³ Partnership for the Public Good and Push Buffalo, “Evicted in Buffalo: The High Costs of Involuntary Mobility,” Partnership for the Public Good and Push Buffalo, Mar. 4, 2020, https://ppgbuffalo.org/files/documents/housing_neighborhoods/general/housingneighborhoods-evicted_in_buffalo.pdf.

⁴⁴ NYU Furman Center. “State of the City 2019 Eviction Filings,” 2019. <https://furmancenter.org/stateofthecity/view/eviction-filings>.

federal oversight of the Housing Authority - indicate that NYC itself contributes to the problem of poor quality in housing and its disproportionate impact on persons of color. Black and Hispanic/Latino households represent 45.2% and 44.7% of all Housing Authority households, respectively.⁴⁵

Evictions and Intentional Discrimination, Discriminatory Effects and Segregation

The Fair Housing Act of 1968 as amended (FHA)⁴⁶ applies to evictions and related policies.⁴⁷ Although it is impossible to capture all of the ways in which racism and discrimination manifest in housing, the FHA can be understood as seeking to address racial discrimination by prohibiting three aspects of the problem; namely prohibiting intentional discrimination, unjustified discriminatory effects and segregation.

The Act has two prongs: one prohibiting discrimination and the other requiring government action to overcome segregation.⁴⁸ The first prong prohibits discrimination in the sale or rental of housing, and it prohibits both intentional discrimination (disparate treatment) and discriminatory effects, whether or not there is intent to discriminate (disparate impact). Further, with regard to discriminatory effects, a demonstration that a specific policy causes significant disparities constitutes evidence of disparate impact. For instance, if the policy and practices of eviction have a disproportionate impact on Black and Hispanic/Latino Americans and is manifest in significant disparities, arguably, the disparities constitute evidence of disparate impact and are a civil rights concern. Further, while evictions may serve a useful purpose in some circumstances, if significant

⁴⁵ Howard Husock, “How New York’s Public Housing Fails the City’s New Poor,” Manhattan Institute, Oct. 3, 2017, <https://media4.manhattan-institute.org/sites/default/files/IB-HH-1017-v2.pdf>. The agreement included the appointment of a monitor whose mandate is the provision of decent, safe, and sanitary housing conditions in NYCHA properties and reforming NYCHA management, following NYCHA’s admission to significant deficiencies in the physical conditions of its properties, untrue statements made to HUD and deceptive practices regarding property inspections. The agreement is available on the monitor’s website: <https://nychamonitor.com/wp-content/uploads/2019/03/Final-Executed-NYCHA-Agreement.pdf>. Notably, the agreement has been criticized as inadequate for unfairly placing the financial burden of investing in NYCHA to fund repairs on New York City and not on the federal government. NYCHA has experienced federal funding cuts of more than \$2.7 billion since 2001. See Benjamin Weiser, Luis Ferre-Sadurni, Glenn Thrush and J. David Goodman, “De Blasio Cedes Further Control of NYCHA but Avoids Federal Takeover,” New York Times, Jan. 31, 2019, <https://www.nytimes.com/2019/01/31/nyregion/hud-nycha-deal.html>.

⁴⁶ FHA, 42 U.S.C. §§ 3601 et seq.

⁴⁷ See, e.g., Deena Greenberg, Carl Gershenson & Matthew Desmond, Discrimination in Evictions: Empirical Evidence and Legal Challenges, 51 HARV. C.R.-C.L. L. REV. 115, 146-147 (2016), https://scholar.harvard.edu/files/mdesmond/files/greenberg_et_al_.pdf; see also, *Bloch v. Frischholz*, 587 F.3d 771 (7th Cir. 2009) (en banc).

⁴⁸ Heather Abraham, Fair Housing’s Third Act: American Tragedy or Triumph? 39 YALE L. & POL’Y REV. 1, 17-18, 53-55 (2021) (noting that “Congress set forth two distinct but complementary mandates: (1) an anti-discrimination mandate, requiring equal treatment on the basis of race, color, national origin, and religion (and later sex, familial status, and disability) and (2) an affirmative mandate that requires the federal government to use its resources to deconstruct segregated housing patterns;” referring to the two provisions as siblings, not distant cousins; and noting that courts have continuously found that the Act requires more than the prohibition of discrimination).

eviction-related racial disparities are found in New York State, the goal of this report is to find and recommend helpful alternatives to this practice or ones that minimize eviction's harms.

Many scholars and researchers suggest that discrimination remains pervasive in the housing market.⁴⁹ However, much of the research, particularly as it relates to intentional discrimination and discriminatory effects, deals with access to housing and the search for housing – the front - end of engaging the housing market and its various agents. Many methodologies and techniques have been developed to assess discrimination in this context, including using “fair housing testers”⁵⁰ to ferret out evidence of intentional discrimination.

Eviction, however, represents back-end processes.⁵¹ Once a family is evicted, they must find another place to call home and thus encounter the front-end barriers to housing access. These barriers, together with eviction, lead many to move to poorer quality housing, in poorer and segregated neighborhoods. Nevertheless, in the case of evictions, landlords have already leased a home to the renter, and presumably if bias exists, it does not appear to have interfered with the initial rental arrangement.⁵² Thus, later presuming or ferreting out intentional discrimination is

⁴⁹ See generally, PERSPECTIVES ON FAIR HOUSING, (VINCENT J. REINA, WENDELL E. PRITCHETT AND SUSAN M. WACHTER EDITORS, 2021); Peter Christensen & Christopher Timmins, Sorting or Steering: The Effects of Housing Discrimination on Neighborhood Choice, NATIONAL BUREAU OF ECONOMIC RESEARCH, (July 2018, Revised June 2021), Working Paper 24826 <http://www.nber.org/papers/w24826>; Judson Murchie and Jindong Pang, “Rental Housing Discrimination Across Protected Classes: Evidence from a Randomized Experiment,” 73 *Regional Science and Urban Economics* 170 (2018); National Fair Housing Alliance (NFHA), “The Case for Fair Housing: 2017 Fair Housing Trends Report,” National Fair Housing Alliance, 2017, <https://nationalfairhousing.org/wp-content/uploads/2017/07/TRENDS-REPORT-2017-FINAL.pdf>; Dorceta E. Taylor, *Toxic Communities: Environmental Racism, Industrial Pollution, and Residential Mobility* (2014); Margery Austin Turner, et. al, “Housing Discrimination Against Racial and Ethnic Minorities,” U.S. Dept. of Housing and Urban Development (HUD) (2013), https://www.huduser.gov/portal/Publications/pdf/HUD-514_HDS2012.pdf; The National Council of La Raza, “Puertas Cerradas Housing Barriers for Hispanics,” (2013), https://equalrightscenter.org/wp-content/uploads/puertas_cerradas_housing_barriers_for_hispanics_online.pdf; DOUGLAS S. MASSEY AND NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* (1993). See also on segregation, Stephen Menendian, Samir Gambhir and Arthur Gales, “The Roots of Structural Racism Project: Twenty-First Century Racial Residential Segregation in the United States,” *Othering & Belonging Institute* (June 2021), <https://belonging.berkeley.edu/roots-structural-racism>; Stephen Menendian, Samir Gambhir and Chih-Wei Hsu “The Roots of Structural Racism: The 2020 Census Update,” *Othering & Belonging Institute* (October 2021), <https://belonging.berkeley.edu/roots-structural-racism-2020>; Heather Abraham, “Fair Housing’s Third Act: American Tragedy or Triumph?” 39 *YALE L. & POL’Y REV.* 1 (2021); RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2017); MARIA KRYSAN AND KYLE CROWDER, *CYCLE OF SEGREGATION: SOCIAL PROCESSES AND RESIDENTIAL STRATIFICATION* (2017).

⁵⁰ See, e.g., Fair housing Institute, “Fair Housing Testers – Testing for Housing Discrimination,” <https://fairhousinginstitute.com/fair-housing-testers/>.

⁵¹ Matthew Desmond and Carl Gershenson, “Who gets evicted? Assessing individual, neighborhood, and network factors,” 62 *Social Science Research* 36(2), 363 (2017) (based on a dataset in Milwaukee and describing housing access as front-end processes and eviction as backend processes).

⁵² *Ibid.*, at 372 (explaining:

Because of the economic and racial segregation of cities like Milwaukee, a biased landlord with property in, say, a poor black neighborhood has little chance of replacing black tenants with white ones or low-

difficult. Further, most housing courts do not disaggregate litigating parties by race, gender, and other categories of people protected by the FHA.⁵³ Moreover, methodologies and techniques for discerning discrimination in the eviction context are newly developing.⁵⁴ Consequently, eviction research often relies on studies that impute identity and/or are based on neighborhood-composition analyses;⁵⁵ the latter rendered reliable given deep-rooted segregation.

Yet there is some early evidence of intentional discrimination and fairly substantial evidence of discriminatory effects in eviction. For instance, intentional discrimination is documented in cases such as *Tejada v. Little City Realty LLC*.⁵⁶ There, Hispanic/Latino persons living in rent-stabilized apartments claimed that the landlord was harassing them in an effort to displace them with White individuals. The judge in denying the landlord's motion to dismiss noted the following: "New York City provides powerful tenant protection laws. Nevertheless, landlords, as reported, are increasingly resorting to harassment and other tactics to circumvent legal protections...."⁵⁷ Further, in a recent incident, illustrating a different context, Bronx tenants' lawyers suggest that a NY

income tenants with a more financially-secure family. Neighborhood segregation produces housing market segmentation. Accordingly, operating in certain neighborhoods largely entails renting exclusively to certain demographic groups. If the racial and economic composition of a landlord's tenant base remains stable, then what fluctuates is family composition and size. Accordingly, while landlords may have no interest in disproportionately exposing women or racial minorities to eviction—net of economic and eviction-warranting factors—they do have an interest in replacing large households with smaller ones, or families with childless tenants.)

⁵³ Hepburn, Peter, Renee Louis, and Matthew Desmond. "Racial and Gender Disparities among Evicted Americans." 7 *SOCIOLOGICAL SCIENCE* 649, 650 (2020) (finding racial and gender disparities in a national study on eviction and explaining the methodology as follows:

(W)e drew on court records of eviction cases filed between 2012 and 2016 against roughly 4.1 million individuals in 39 states. We used these data to calculate a set of counts and rates that offer the most comprehensive examination to date of racial and gender disparities among evicted renters in the United State... However, although administrative data from court systems contain millions of records, they provide limited information about each case. Records included case numbers, names of plaintiffs (e.g., landlords, property managers) and defendants (tenants), defendant addresses, and filing dates... Defendant gender and race/ethnicity were not recorded in eviction records.

⁵⁴ Matthew Desmond, Carl Gershenson, "Who gets evicted? Assessing individual, neighborhood, and network factors," 62 *SOCIAL SCIENCE RESEARCH* 362, 363 (2017) (noting that "the only study to date that has examined discrimination in the eviction decision has focused on the role of children).

⁵⁵ See e.g., Hepburn, Peter, Renee Louis, and Matthew Desmond. "Racial and Gender Disparities among Evicted Americans." 7 *SOCIOLOGICAL SCIENCE* 649 (2020); Timothy A. Thomas, Ott Toomet, Ian Kennedy, and Alex Ramiller, "The State of Evictions: Results from the University of Washington Evictions Project: Data," <https://evictions.study/washington/> (noting that "the analysis is based on automatically processing the actual pages from the eviction court documents, converting the eviction addresses to census tracts, and estimating race and sex based on the name and tract.").

⁵⁶ *Tejada v. Little City Realty LLC*, 308 F. Supp. 3d 724 (Dist. Court, ED New York 2018).

⁵⁷ *Id.*, at 726.

landlords' attorney's racist comment about Asian/Asian Americans is simply a symptom of a much larger problem.⁵⁸

In terms of discriminatory effects, studies have found wide disparities in eviction.⁵⁹ Research conducted in the early 2000s found that people of color, particularly Black and Hispanic/Latino people, constituted approximately 80% of people facing eviction in cities across the country.⁶⁰ And recent data indicate that in seventeen states, Black women were evicted at twice the rate of White renters.⁶¹ Further a study on eviction filings in Boston, conducted after Matthew Desmond's famous Milwaukee research,⁶² found that "eviction filings were heavily concentrated in low-income neighborhoods of color;" and, *above and beyond indicators of poverty*, eviction filings [were] more likely in neighborhoods with a higher share of Black renters, and lower educational attainment.⁶³ It also found that within neighborhoods, filings were "more likely in non-owner-occupied properties, and properties that have been more recently constructed or renovated [with] a higher assessed value per square foot."⁶⁴ Ultimately, the study found a "clear overlap between the rate of eviction filings in market rate rental housing and pronounced racial segregation."⁶⁵

Finally, research has posited discrimination in a host of eviction related policies and practices such as crime-free ordinances,⁶⁶ and eviction records.

The second prong of the FHA requires the government to take affirmative steps to overcome segregation and to foster inclusive communities.⁶⁷ If eviction policies, practices, and related

⁵⁸ Jane Wester, Racist Comment by New York Landlords' Attorney Is Symptom of Larger Problem, Bronx Tenants' Lawyers Say, *The New York Law Journal* (August 31, 2020), <https://www.law.com/newyorklawjournal/2020/08/31/racist-comment-by-new-york-landlords-attorney-is-symptom-of-larger-problem-bronx-tenants-lawyers-say/>.

⁵⁹ See for instance, Hepburn, Peter, Renee Louis, and Matthew Desmond. "Racial and Gender Disparities among Evicted Americans." *7 Sociological Science* 649 (2020).

⁶⁰ Deena Greenberg, Carl Gershenson & Matthew Desmond, *Discrimination in Evictions: Empirical Evidence and Legal Challenges*, 51 *HARV. C.R.-C.L. L. REV.* 115 (2016).

⁶¹ Sophie Beiers, Sandra Park, and Linda Morris, *Clearing the Record: How Eviction Sealing Laws Can Advance Housing Access for Women of Color*, ACLU (Jan. 10, 2020), <https://www.aclu.org/news/racial-justice/clearing-the-record-how-eviction-sealing-laws-can-advance-housing-access-for-women-of-color/>.

⁶² Matthew Desmond, *Evicted: Poverty and Profit in the American City* (New York: Penguin Random House, 2016).

⁶³ David Robinson, Justin Steil, and Patricia Cafferky, "Evictions in Boston: The Disproportionate Effects of Forced Moves on Communities of Color," *City Life/Vida Urbana* (2020), p. 21, https://d3n8a8pro7vhm.cloudfront.net/themes/5eee7e564445ea4f9a6f3080/attachments/original/1592786979/EvictionReport_Final_Spreads.pdf?1592786979.

⁶⁴ *Ibid.*, at 73.

⁶⁵ *Ibid.*, at 35.

⁶⁶ See, e.g., Deborah N. Archer, "The New Housing Segregation: The Jim Crow Effects of Crime-Free Housing Ordinances," 118, 2 *Mich. L. Rev.* 173 (2019), <https://repository.law.umich.edu/mlr/vol118/iss2/2>.

⁶⁷ See Heather Abraham, *Fair Housing's Third Act: American Tragedy or Triumph?* 39 *YALE L. & POL'Y REV.* 1, 53 (2021). She explains:

Section 3608(e)(5) provides that the Secretary of Housing and Urban Development 'shall administer the programs and activities relating to housing and urban development in a manner

policies are found to contribute to segregation, then again, there is an affirmative duty on government to find ways to limit the practice of eviction or minimize its harms as well as to find ways to overcome segregation itself.⁶⁸

Segregation is a self-perpetuating structural phenomenon historically instituted.⁶⁹ And it is a base component of the U.S. housing market through which race and socio-economic status interact and plays itself out. The section turns to it next.

Inherited Structures and Systemic Dynamics

In many ways, it is unsurprising that Black people and other people of color are disproportionately vulnerable to eviction and eviction-related processes. First, people of color are more likely to be renters, rather than homeowners. For instance, 73.3% of White individuals own their homes (owner-occupied) as compared to 57.7% of Asian or Pacific Islander Americans, 50.8% of Indigenous/Alaskan Americans, 47.5% of Hispanic/Latino Americans and 42.1% of Black Americans (a 31.2 percentage point difference between White and Black Americans).⁷⁰ Second, White American families have approximately 10 times more wealth than Black and Hispanic/Latino families (a racial wealth gap),⁷¹ which gives them the cushion to better survive unexpected expenses. Third, White workers earn more money than Black, Indigenous, and Hispanic/Latino workers.⁷² For example, the median Black and Hispanic/Latino worker in 2016 earned 65% and 63% of the median White worker, respectively; or 65 and 63 cents for every dollar

affirmatively to further the policies of [fair housing].’ Extending the mandate across the government, section 3608(d) provides that ‘all executive departments and agencies shall administer their programs and activities relating to housing and urban development (including any Federal agency having regulatory or supervisory authority over financial institutions) in a manner affirmatively to further the purposes of this subchapter and shall cooperate with the [HUD] Secretary to further such purposes. Id. at 54.

⁶⁸ Devin Rutan and Renee Louis, “To Root out Segregation, Biden Must Tackle Evictions,” Bloomberg City Lab, July 12, 2021, <https://www.bloomberg.com/news/articles/2021-07-12/evictions-are-a-part-of-housing-discrimination>.

⁶⁹ See, e.g., MARIA KRYSAN AND KYLE CROWDER, CYCLE OF SEGREGATION: SOCIAL PROCESSES AND RESIDENTIAL STRATIFICATION (2017).

⁷⁰ USAFACTS, *Homeownership Rates Show That Black Americans are Currently the Least Likely Group to own Homes*, 2019 Census of Population series, <https://usafacts.org/articles/homeownership-rates-by-race/>; By Jacob Passy, The Value Gap: Black homeownership rate hits lowest level since the 1960s — that’s unlikely to change in Pandemic Year2: MarketWatch, March 23, 2021, <https://www.marketwatch.com/story/most-black-americans-arent-homeowners-how-can-we-change-that-11615431459>.

⁷¹ Liz Mineo, “Racial Wealth gap may be a key to Other Inequities,” Harvard Gazette, June 3, 2021, <https://news.harvard.edu/gazette/story/2021/06/racial-wealth-gap-may-be-a-key-to-other-inequities/>; Kriston McIntosh et. al., “Examining the Black-White Wealth gap,” Brookings, Feb. 27, 2020, <https://www.brookings.edu/blog/up-front/2020/02/27/examining-the-black-white-wealth-gap/>. Note: Indigenous wealth has not been measured since 2000. Kimberly Amadeo, “Racial Wealth gap in the United States,” Balance, Updated Nov. 23, 2020, <https://www.thebalance.com/racial-wealth-gap-in-united-states-4169678>.

⁷² National Low-Income Housing Coalition, “Out of Reach: The High Cost of Housing,” 6-7 (2021), https://nlihc.org/sites/default/files/oor/2021/Out-of-Reach_2021.pdf.

earned by White workers in the middle of the income distribution.⁷³ The lowest-income Black and Hispanic/Latino workers earned 54% and 66% of the lowest-income White workers.⁷⁴ Fourth, Black, Indigenous, and Hispanic/Latino families are disproportionately low-income and very low income,⁷⁵ defined in terms of household earnings – at or less than 80% and 50%, respectively, of the median family income for the area in which they live.⁷⁶ This socio-economic group of renters are the most vulnerable to eviction, and again are disproportionately people of color. Finally, these groups experience high levels of segregation, with Black Americans the most isolated and segregated in the metropolitan areas in which they reside in large numbers.⁷⁷

What this means, as Moran-McCabe and Burris note, is that people of color “often come to the housing market with less ability to pay reasonable rents for high-quality homes than White Americans do.”⁷⁸

Most scholars and experts working in this area emphasize that these racial disparities in home ownership, wealth, income, and consequently education are not accidental.⁷⁹ Rather, they are the

⁷³ National Low Income Housing Coalition, “Racial Disparities Among Extremely Low-Income Renters” (discussing 2019 report), <https://nlihc.org/resource/racial-disparities-among-extremely-low-income-renters#:~:text=Regardless%20of%20race%2C%20the%20majority,white%20extremely%20low%2Dincome%20renters.>

⁷⁴ Ibid.

⁷⁵ Ibid., (discussing “extremely low-income renters (30% of median income for area) and noting “twenty percent of black households, 18% of American Indian or Alaska Native (AIAN) households, and 16% of Hispanic households are extremely low-income renters. Six percent of White non-Hispanic households are extremely low-income renters).

⁷⁶ HUD, “Methodology for Determining Section 8 Income Levels” (FY 2019), <https://www.huduser.gov/portal/datasets/il/il19/IncomeLimitsMethodology-FY19.pdf>.

⁷⁷ Michela Zonta, “Racial Disparities in Home Appreciation,” Center for American Progress, July 15, 2019, [BorrowersOfColor-report.pdf \(americanprogress.org\)](https://www.americanprogress.org/report/borrowers-of-color-report) at 3; Also a recent report by the Othering and Belonging Institute that found evidence that segregation among Hispanic and Asian Americans is increasing. See, “FAQ: The Roots of Structural Racism,” July 13, 2021, updated December 2, 2021, Othering & Belonging Institute, <https://belonging.berkeley.edu/faq-roots-structural-racism>.

⁷⁸ Katie Moran-McCabe and Scott Burris, “Eviction and the Necessary Conditions for Health,” 385 N Engl. J Med. at 1444 (2021), DOI: 10.1056/NEJMp2031947 (noting “Eviction also impairs the health and social connectedness of communities. When there is high turnover in a neighborhood, residents are less likely to feel invested in their community and the community’s capacity to thrive and to offer a supportive living environment is weakened.)

⁷⁹ See generally e.g., PERSPECTIVES ON FAIR HOUSING, (VINCENT J. REINA, WENDELL E. PRITCHETT AND SUSAN M. WACHTER EDITORS, 2021); Peter Christensen & Christopher Timmins, Sorting or Steering: The Effects of Housing Discrimination on Neighborhood Choice, NATIONAL BUREAU OF ECONOMIC RESEARCH, (July 2018, Revised June 2021), Working Paper 24826 <http://www.nber.org/papers/w24826>; Judson Murchie and Jindong Pang, “Rental Housing Discrimination Across Protected Classes: Evidence from a Randomized Experiment,” 73 Regional Science and Urban Economics 170 (2018); National Fair Housing Alliance, “The Case for Fair Housing: 2017 Fair Housing Trends Report,” National Fair Housing Alliance, 2017, <https://nationalfairhousing.org/wp-content/uploads/2017/07/TRENDS-REPORT-2017-FINAL.pdf>; Dorceta E. Taylor, Toxic Communities: Environmental Racism, Industrial Pollution, and Residential Mobility (2014); Margery Austin Turner, et. al, “Housing Discrimination Against Racial and Ethnic Minorities,” U.S. Dept. of Housing and Urban Development (HUD) (2013), https://www.huduser.gov/portal/Publications/pdf/HUD-514_HDS2012.pdf; The National Council of La Raza, “Puertas Cerradas Housing Barriers for Hispanics,” (2013),

inherited product, in part, of historical policies and practices through which both government and private parties intentionally constructed, engineered, and enforced (including through White mob violence) segregated neighborhoods and racialized markets.⁸⁰ They constitute the intersecting, overlapping, mutually-reinforcing processes of race and socio-economic status. And they represent the patterns of dispossession, exploitation, exclusion, and subordination present in a country built on the brutal dispossession of Indigenous people and their land, the exploitation of African labor and expertise in the race-based economic system of Black chattel slavery, the expropriation of Hispanic/Latino lands and rights, and the exclusion of Asian/Asian Americans.⁸¹ In contrast, for instance, while the formerly enslaved were even denied the famed promise of “forty acres and a mule” at the end of slavery,⁸² the government gave - virtually for free - as much as 160 acres of (Indigenous) land to White “homesteaders” under the various Homestead Acts.⁸³ Today, almost 50 million American families, who are overwhelmingly White, trace a legacy of property to these Acts.⁸⁴

https://equalrightscenter.org/wp-content/uploads/puertas_cerradas_housing_barriers_for_hispanics_online_.pdf; DOUGLAS S. MASSEY AND NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* (1993); *see also* on segregation, Stephen Menendian, Samir Gambhir and Arthur Gailles, “The Roots of Structural Racism Project: Twenty-First Century Racial Residential Segregation in the United States,” *Othering & Belonging Institute* (June 2021), <https://belonging.berkeley.edu/roots-structural-racism/>; Stephen Menendian, Samir Gambhir and Chih-Wei Hsu “The Roots of Structural Racism: The 2020 Census Update,” *Othering & Belonging Institute* (October 2021), <https://belonging.berkeley.edu/roots-structural-racism-2020/>; Heather R. Abraham, “Fair Housing’s Third Act: American Tragedy or Triumph?,” 39 *Yale L. & Pol’y Rev.* 1 (2021); RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2017); MARIA KRYSAN AND KYLE CROWDER, *CYCLE OF SEGREGATION: SOCIAL PROCESSES AND RESIDENTIAL STRATIFICATION* (2017); Katie Moran-McCabe and Scott Burris, “Eviction and the Necessary Conditions for Health,” 385 *N Engl. J Med.* at 1444 (2021), DOI: 10.1056/NEJMp2031947 (noting “Eviction also impairs the health and social connectedness of communities. When there is high turnover in a neighborhood, residents are less likely to feel invested in their community and the community’s capacity to thrive and to offer a supportive living environment is weakened).

⁸⁰ Heather R. Abraham, “Fair Housing’s Third Act: American Tragedy or Triumph?” 39 *Yale L. & Pol’y Rev.* 1 (2021).

⁸¹ *See generally, e.g.,* Natsu Saito, *Settler Colonialism, Race, and the Law* (2020); Patrick Wolfe, *Traces of History: Elementary Structures of Race* (2016).

⁸² Eric Foner, *Reconstruction: America’s Unfinished Revolution 1863-1877, 70-71* (1988) (discussing the possible origins of the phrase).

⁸³ Homestead Act, 12 Stat. 392 (1862); *see also* Homestead Act, HISTORY (Aug. 21, 2018), <https://www.history.com/topics/american-civil-war/homestead-act> [<https://perma.cc/HCS5-U37R>]. “The Homestead Act of 1862 excluded blacks because it was limited to persons who were American citizens or who had filed necessary documentation to become citizens. It was impossible for blacks to establish American citizenship because [the] Dred Scott [case] had held that blacks were not and could not be citizens under the Constitution.”

⁸⁴ *See* Homestead Act, HISTORY (Aug. 21, 2018), <https://www.history.com/topics/american-civil-war/homestead-act> [<https://perma.cc/HCS5-U37R>]. “The Homestead Act of 1862 excluded blacks because it was limited to persons who were American citizens or who had filed necessary documentation to become citizens. It was impossible for blacks to establish American citizenship because [the] Dred Scott [case] had held that blacks were not and could not be citizens under the Constitution.” Also see, Jonathan K. Stubbs, *Implications of a Uniracial Worldview: Race and Rights in a New Era*, 5, 1 *Barry L. Rev.* 15 n.56 (2005); and Keri Leigh Merritt, “Land and the Roots of African-American Poverty,” *AEON*, Mar. 11, 2016, <https://aeon.co/ideas/land-and-the-rootsof-african-american-poverty> [<https://perma.cc/7SG7-E2LX>].

These policies were complemented by labor and other policies and practices which, for example, forced Black Americans into debt peonage and convict leasing in order to keep them both poor and in a state of servitude in the South,⁸⁵ or sought to eliminate the economic competition of Chinese workers in the West.⁸⁶ The Homestead Acts were simply some of the early land policies that would eventually shape U.S. housing markets.⁸⁷

These other land-related policies included, most foundationally, segregation laws, which emerged more fully in the early twentieth century and dictated the residential separation of different groups;⁸⁸ along with the series of policies that commodified housing and created a for-profit market for homes.⁸⁹ Given that markets generally operate through money in exchange for goods, what this means is, if people have no money, they cannot access housing through this market. This series of policies also wrote race, nationality (foreignness), and socio-economic status into the very definition and appraisal of a home's market value by linking it to neighborhoods.⁹⁰ Simultaneously they incentivized the structure of investment/disinvestment in housing and neighborhoods along these same lines of race, nation, and class.⁹¹ In doing so, the valuations, upon which investment hung, further structured and reinforced segregation with segregation also facilitating the processes created by these policies, to the advantage of White Americans and at the expense of others.

⁸⁵ See, e.g., DOUGLAS A. BLACKMON, *SLAVERY BY ANOTHER NAME: THE RE-ENSLAVEMENT OF BLACK AMERICANS FROM THE CIVIL WAR TO WORLD WAR II* (2008) (tracing the system of convict leasing of Black Americans in the U.S. after the end of slavery).

⁸⁶ See NATSU SAITO, *SETTLER COLONIALISM, RACE, AND THE LAW* (2020); PATRICK WOLFE, *TRACES OF HISTORY: ELEMENTARY STRUCTURES OF RACE* (2016); Gracie Himmelstein and Matthew Desmond, "Eviction and Health: A Vicious Cycle Exacerbated by a Pandemic," *Health Affairs*. Apr. 1, 2021. <https://www.healthaffairs.org/doi/10.1377/hpb20210315.747908/full/>.

⁸⁷ See, e.g., Homestead Act, 12 Stat. 392 (1862).

⁸⁸ See, e.g. Carl Nightingale, *Segregation: A Global History of Divided Cities* 1-4, 19 (2012)(explaining that the practice of segregation goes back some 70 centuries but noting on page 19 that *racial* segregation or "segregation by race was the first type of urban residential segregation created by representatives of a single civilization [Western]and then spread across the planet"); Stephen Menendian, Samir Gambhir and Arthur Gailles, "The Roots of Structural Racism Project: Twenty-First Century Racial Residential Segregation in the United States," *Othering & Belonging Institute* (June 2021), <https://belonging.berkeley.edu/roots-structural-racism>.

⁸⁹ Michela Zonta, "Racial Disparities in Home Appreciation," Center for American Progress, July 15, 2019, [BorrowersOfColor-report.pdf \(americanprogress.org\)](https://www.americanprogress.org/report/borrowers-of-color/) at 3 (noting that "the federal government sought to stabilize financial conditions for homeownership by establishing the Home Owners' Loan Corporation (HOLC), the Federal Housing Administration (FHA), and the secondary mortgage market").

⁹⁰ Michela Zonta, "Racial Disparities in Home Appreciation," Center for American Progress, July 15, 2019, [BorrowersOfColor-report.pdf \(americanprogress.org\)](https://www.americanprogress.org/report/borrowers-of-color/). Also, see generally, Guy Stuart, *Discriminating Risk: The U.S. Mortgage Lending Industry in the Twentieth Century* (2003); Henry L. Taylor, "Land values and the Enduring Significance of Racial Residential Segregation." *Poverty & Race Research Action Council* 30, (2021): pp. 19-26. <https://www.prrac.org/land-values-and-the-enduring-significance-of-racial-residential-segregation/>; David Imbroscio, "Race Matters (Even More Than you Already think): Racism, Housing, and the Limits of The Color of Law." *JOURNAL OF RACE, ETHNICITY, AND THE CITY* 2, 1(2020): pp.29-53.

DOI:101080/26884674.2020.1825023. Also see generally, KEEANGA-YAMAHTTA TAYLOR. *RACE FOR PROFIT: HOW BANKS AND THE REAL ESTATE INDUSTRY UNDERMINED BLACK HOMEOWNERSHIP* (2019).

⁹¹ See e.g., Michela Zonta, "Racial Disparities in Home Appreciation," Center for American Progress, July 15, 2019, [BorrowersOfColor-report.pdf \(americanprogress.org\)](https://www.americanprogress.org/report/borrowers-of-color/).

Specifically, the Home Owners' Loan Corporation (HOLC), in response to the Depression, together with the Federal Housing Administration, more fully in the post-war years, "introduced the publicly backed, low down payment, fully amortizing, long-term, fixed-rate home mortgage loans," which spurred home ownership among the working and middle classes and the development of the housing market.⁹² In the 1930s and building on already established practices, the HOLC formulated a process that assigned home values not simply on the basis of how many bedrooms or baths the house contained but upon the neighborhood of which it was a part. Simultaneously, it assigned the highest value and thus highest investment ratings to those neighborhoods comprised of upper income White Americans. Captured in the nationwide maps it created, HOLC assigned the lowest rating – outlined in red on the maps (redlining) – to those neighborhoods comprised of poorer people, and/or ethnic minorities, and/or negatively racialized groups, such as Black Americans. Mixed neighborhoods, whether racially or economically mixed, or including multifamily homes, commercial, or other enterprises, were also assigned low ratings, on the premise that these other elements signaled the decline of property values in a neighborhood. The racist valuation formulas instituted through the market has in many ways become a self-fulfilling prophecy;⁹³ such that the entry of even high-income Black Americans into a previously all White neighborhood signals the decline of the neighborhood and thus also property values, while the entry of White individuals into a predominately Black neighborhood may signal imminent gentrification and the increase in the neighborhood's property values.⁹⁴

The Federal Housing Administration later adopted and further institutionalized HOLC's racialized valuation process and incentive structure which continued the vast flow of public and private monies to what would become White economically exclusive suburban residential neighborhoods uniformly of single-family homes.⁹⁵ This was done at the expense of and while divesting from

⁹² Michela Zonta, "Racial Disparities in Home Appreciation," Center for American Progress, July 15, 2019, [BorrowersOfColor-report.pdf \(americanprogress.org\)](#) at 3 (noting that these developments also spurred the development and expansion of the construction industry.). This is an often-told narrative. See, e.g., *National Fair Housing Alliance, "The Case for Fair Housing: 2017 Fair Housing Trends Report," National Fair Housing Alliance, 2017, https://nationalfairhousing.org/wp-content/uploads/2017/07/TRENDS-REPORT-2017-FINAL.pdf at 14-39; See also John Powell, (lower case intentional), *Structural Racism: Building upon the Insights of John Calmore*, 86 N.C. L. REV. 791, 813, (2008), <https://scholarship.law.unc.edu/cgi/viewcontent.cgi?article=4312&context=nclr> (discussing a structural approach).*

⁹³ GUY STUART, *DISCRIMINATING RISK: THE U.S. MORTGAGE LENDING INDUSTRY IN THE TWENTIETH CENTURY* (2003).

⁹⁴ See GUY STUART, *DISCRIMINATING RISK: THE U.S. MORTGAGE LENDING INDUSTRY IN THE TWENTIETH CENTURY* (2003); Jesse Mumm, "The Racial Fix: White Currency in the Gentrification of Black and Latino Chicago." 79 *Journal of Global and Historical Anthropology* 102 (2017). But see literature on preferences, cost of preferences and tipping, for example, Cutler, David M., Edward L. Glaeser and Jacob L. Vigdor, "The rise and decline of the American ghetto," 107 *Journal of Political Economy* 455 (1999); Card, David, Alexandre Mas, and Jesse Rothstein. "Tipping and the Dynamics of Segregation." 123 *The Quarterly Journal of Economics* 177 (2008), <http://www.jstor.org/stable/25098897>.

⁹⁵ Michela Zonta, "Racial Disparities in Home Appreciation," Center for American Progress, July 15, 2019, [BorrowersOfColor-report.pdf \(americanprogress.org\)](#) [BorrowersOfColor-report.pdf \(americanprogress.org\)](#) at 4

central city neighborhoods consisting of various housing types and occupied by a diversity of peoples. These policies were supplemented by other policies meant to maintain White neighborhoods and the value of White property, such as for example: 1) restrictive covenants in leases that restricted sale of the property to White individuals only, thereby prohibiting its sale to middle class Black Americans who could afford to move into these areas, among others;⁹⁶ 2) urban renewal and highway plans which used federal funds to build highways “that sequestered Black communities and facilitated White flight” from urban areas to suburbia and yet provided easy access to downtown areas;⁹⁷ 3) segregation by law of public housing including its later concentration of poor people within them, their placement in poor communities often of color and the impoverishment and deterioration of the structures;⁹⁸ 4) local plans that destroyed Black and other communities for the establishment of lakes, parks, etc., for White communities’ enjoyment (including NYC’s Central Park);⁹⁹ and 5) local zoning laws, some of which, for example, reserved the area for single family residences with large mandated lot sizes making them too expensive for poorer Americans to move into the neighborhood. These laws also blocked the establishment of multifamily homes or public housing in these neighborhoods;¹⁰⁰ placements which might have

(noting that “The FHA and the Veterans Administration loan programs adopted the HOLC rating system. These programs denied credit to inner-city communities of color, served predominantly white buyers, and spurred white flight and suburbanization.”)

⁹⁶ RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* 77-92 (2017).

⁹⁷ Michela Zonta, “Racial Disparities in Home Appreciation,” Center for American Progress, July 15, 2019, [BorrowersOfColor-report.pdf \(americanprogress.org\)](https://www.americanprogress.org/report/borrowers-of-color-report) a 4 -5; RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* 127-131 (2017).

⁹⁸ See e.g., United States Federal Housing Administration, “Underwriting Manual: Underwriting and Valuation Procedure Under Title II of the National Housing Act” (Washington: 1938), available at <https://www.huduser.gov/portal/sites/default/files/pdf/>; United States Housing Authority Bulletin No. 18 on Policy and Procedures, February 13, 1939 available at <https://credo.umass.edu/view/full/mums312-b090-i027>; *Banks v. Housing Authority of City and County of San Francisco*, 120 Cal. App. 2d 1 (First District, Division I, California 1953) (affirming judgement declaring in part that a “neighborhood pattern policy” violative of the Constitution); *Shelley v. Kraemer*, 334 U.S. 1 (1948) (discussing and rendering unenforceable restrictive covenants); *Buchanan v. Warley*, 245 U.S. 60 (discussing and striking down a racial segregation ordinance); *Plessy v. Ferguson*, 163 U.S. 537 (1896); and RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* 17-37 (2017). The 1949 Housing Act reauthorized and expanded the U.S. 1937 Housing Act, ch. 896, 50 Stat. 888 (42 U.S.C. 1437 et seq.) but further restricted public housing access to very low-income people.

⁹⁹ See, e.g., Gilligan, “An entire Manhattan village owned by black people was destroyed to build Central Park,” *Timeline.com* Feb. 17, 2017, <https://timeline.com/black-village-destroyed-central-park-6356723113fa>; Jennifer Lee, “Sunken Black History: Recreational spots across the U.S. hide some dark, murky secrets,” *History of Yesterday*, Jul 20, 2021, <https://historyofyesterday.com/sunken-black-history-2e702ee0a469>; NATIONAL PARKS SERVICE, *Seneca Village*, New York City, <https://www.nps.gov/articles/seneca-village-new-york-city.htm> (*in 1853, the New York State legislature chose 750 acres of land in New York City to be the site of the new park*).

¹⁰⁰ See e.g., *United States v. City of Black Jack*, 508 F.2d 1179 (1974); *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977). See also *Bowen v. City of Atlanta* 159 Ga. 145, 125 S.E. 199 (1924) and *Kostas, James S.* (1952) “Constitutionality of Residential Segregation Ordinances,” *Kentucky Law Journal*: Vol. 41 : Iss. 2 , Article 7. (1952) Available at: <https://uknowledge.uky.edu/klj/vol41/iss2/7>.

facilitated poorer and/or people of color's entry into what was ultimately constructed as resource rich areas of opportunity with access to "good" jobs, schools, food, healthcare, etc.¹⁰¹

Again, these real property-related practices were complemented by other racist and class-related policies. These included, for example, the New Deal's facially neutral but intentionally racially impactful exclusions of "agricultural workers" and "domestics" – industries in which most Black Americans worked at the time - from its labor protecting provisions.¹⁰² Or, the relegation of Black children and other children of color to poorly funded schools, each constituting part of a network of interlaced systems of racial and class oppression and discrimination.¹⁰³ The effect was to contribute to the racial wealth gap constituted in part by the lack of home ownership among people of color, income inequality and impoverishment, and the development of some neighborhoods as spaces of opportunity,¹⁰⁴ at the expense and underdevelopment of others, among other social ills.

Judicial decisions and other legislative acts, including the passage of the Fair Housing Act in 1968,¹⁰⁵ rendered many of these policies illegal. But the lack of political will necessary to fully fund and enforce the Act,¹⁰⁶ for example, as well as the emergence of subtler and newer policies and practices of discrimination failed to disrupt many of the practices and systemic dynamics historically put into place. For example, public and private redlining of certain communities continued.¹⁰⁷ This redlining though now appeared as rational market driven business practices and decisions meant to avoid risky investments in poor communities; often the very same communities rendered underdeveloped and impoverished by past redlining!¹⁰⁸ At the same time, during the housing bubble in the run-up to the 2008 Recession, new market-driven efforts targeted Black Americans, among others, in what some call reverse redlining and others call predatory

¹⁰¹ See generally, RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2017) and john a. powell, "Race, Place and Opportunity," *The American Prospect*, September 21, 2008, <https://prospect.org/special-report/race-place-opportunity/>.

¹⁰² Perea, Juan F., *The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act*, 72 *OHIO ST. L.J.* 195 (2011).

¹⁰³ Wiecek, William M., "Structural Racism and the Law in America Today: An Introduction," 100 *KENTUCKY LAW REV.* (Article 2) 6 (2011), <https://uknowledge.uky.edu/klj/vol100/iss1/2/> (briefly discussing these New Deal issues in reference to structural racism).

¹⁰⁴ john a. powell, "Race, Place and Opportunity," *The American Prospect*, September 21, 2008, <https://prospect.org/special-report/race-place-opportunity/>.

¹⁰⁵ 42 U.S.C. § 3604(a)-(b).

¹⁰⁶ See generally e.g., Heather Abraham, *Fair Housing's Third Act: American Tragedy or Triumph?* 39 *YALE L. & POL'Y REV.* 1, (2021) (discussing the lack of enforcement of the Act and focusing on the affirmative furthering housing provision).

¹⁰⁷ See Henry-Louis Taylor, Jr., Jin-Kyu Jung, and Evan Dash, "The Harder We Run: The State of Black Buffalo in 1990 and the Present," U.B. Center for Urban Studies, Sept. 2021, p.68-69, <https://right2thecity.files.wordpress.com/2021/10/taylorhl-the-harder-we-run.pdf> (explaining how "the City literally drew up maps that ranked neighborhoods and then steered development away from the lower-ranked areas, of which the Eastside of Buffalo where most Black Buffalonians live was one.)

¹⁰⁸ Rationales advanced in opposition to the Community Reinvestment Act. See e.g., Barr, Michael S. *Credit Where It Counts: The Community Reinvestment Act and Its Critics*, 80 *N. Y. U. L. Rev.* 513 (2005), <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1059&context=articles>.

inclusion.¹⁰⁹ Here Black Americans, who historically were denied access to loans, were encouraged to buy or refinance their homes through bank loans but were issued subprime loans, even when they qualified for prime loans.¹¹⁰ The results were massive dispossession and wealth extraction from them and their neighborhoods through foreclosures.¹¹¹ Other policies and practices include the increased use of credit scores, which are often lower for Black and Hispanic/Latino Americans, assuming they are even credit visible;¹¹² and “steering” members of these groups away from quality housing in their home searches, among many other practices.

And finally, the current crisis is deeply shaped by the inherited judicial procedures for housing and eviction. As Mary Spector explains, almost every state has inherited a summary procedure for adjudicating eviction cases, a procedure designed to provide a quick mechanism for landlords to remove renters from housing.¹¹³ Instead of balancing the interest of landlord and tenant, the process privileges landlords, compromising fairness for speed,¹¹⁴ and is reinforcing what already may be unequal bargaining positions. The unbalanced inequity of the procedure is compounded by the fact that the majority of landlords have legal representation while the majority of the tenants do not,¹¹⁵ all of which have both racial and class implications in landlord and tenant relationships and wealth.

On Landlords

While the summary eviction procedure slants the scales of justice in favor of landlords, landlords are a heterogeneous category and do not all have the same resources. Eviction also harms landlords, particularly mom-and-pop landlords, often understood as those who live in the neighborhood, property owners who rent up to three single-family houses, or those who occupy

¹⁰⁹ National Fair Housing Alliance (NFHA), “The Case for Fair Housing: 2017 Fair Housing Trends Report,” National Fair Housing Alliance, 2017, <https://nationalfairhousing.org/wp-content/uploads/2017/07/TRENDS-REPORT-2017-FINAL.pdf> at 30-33; Paige Glotzer, “Redlining, Predatory Inclusion, and Housing Segregation,” Black Perspectives, Mar. 10, 2021, <https://www.aaihs.org/redlining-predatory-inclusion-and-housing-segregation/> (discussing Taylor, *Race for Profit* supra note X); Marko Stojkovic, *The Threat of Predatory Lending*, 22 PUB. INTEREST L. RPTR. 40 (2016), <https://lawcommons.luc.edu/cgi/viewcontent.cgi?article=1523&context=pilr>.

¹¹⁰ National Fair Housing Alliance (NFHA), “The Case for Fair Housing: 2017 Fair Housing Trends Report,” National Fair Housing Alliance, 2017, <https://nationalfairhousing.org/wp-content/uploads/2017/07/TRENDS-REPORT-2017-FINAL.pdf> at 30-33. Also see, Steil JP, Albright L, Rugh JS, Massey DS. “The Social Structure of Mortgage Discrimination,” 33 HOUS STUD. 759 (2018), doi:10.1080/02673037.2017.1390076.

¹¹¹ National Fair Housing Alliance (NFHA), “The Case for Fair Housing: 2017 Fair Housing Trends Report,” National Fair Housing Alliance, 2017, <https://nationalfairhousing.org/wp-content/uploads/2017/07/TRENDS-REPORT-2017-FINAL.pdf> at 30-33.

¹¹² *Ibid.*, at 32-33.

¹¹³ Spector, Mary B., *Tenants' Rights, Procedural Wrongs: The Summary Eviction and the Need for Reform*, 46 Wayne L. Rev. 135 (2000), <https://plus.lexis.com/api/permalink/0bfa12d4-b59a-42d5-a3a6->

¹¹⁴ *Ibid.*

¹¹⁵ Heidi Schultheis and Caitlin Rooney, “A Right to Counsel Is a Right to a Fighting Chance: The Importance of Legal Representation in Eviction Proceedings,” Center for American Progress, October 2, 2019, https://cf.americanprogress.org/wp-content/uploads/2019/10/Right-To-Counsel.pdf?_ga=2.20331835.2032871175.1643928891-1419025460.1643928891.

one of the units in a building containing up to four families.¹¹⁶ Disproportionately people of color, small landlords in normal times operate on thin profit margins of around 10%,¹¹⁷ and must bear the costs of eviction. Now, however, they potentially face increased bankruptcies and foreclosures due to rental deficits occasioned by their tenants' Covid-19-related job losses.¹¹⁸ Overall, as of the middle of July 2021 “an estimated 6.5 million tenants owed \$27.5 billion in back rent and utilities.”

119

Small landlords' problems have been compounded by the eviction moratoriums and the government's slow dispersion of aid, with some 23% reporting that they plan to sell at least one of their properties to cover losses.¹²⁰ Their refuge is institutional investors. During the first half of 2021, institutional investors are said to have poured more than \$77 billion into the rental market.¹²¹ Given rising housing prices, the housing market in general is perceived as promising lucrative returns.¹²² And, troubled mom-and-pop landlords, among others, are increasingly enticed into selling their property by these institutions' all-cash offers.¹²³ Having exploded after the 2008 recession and facilitated by government policies meant to help banks off-load foreclosed upon property,¹²⁴ this institutional activity, in consolidating the industry, could completely reshape the U.S. housing market. And, while institutional investment is touted as potentially stabilizing the market,¹²⁵ it could have the opposite effect.

¹¹⁶ Henry Gomory, “The Social and Institutional Contexts Underlying Landlords' Eviction Practices,” *Social Forces*, June 16, 2021, <https://doi.org/10.1093/sf/soab063>. Language is taken from the FHA. See for example 42 U.S.C. § 3604(b)(1) and § 3603(b)(2).

¹¹⁷ Michelle Conlin, Selling out: America's local landlords. Moving in: Big investors,” *REUTERS* July 29, 2021; Chris Nichols, “Economic Pressures Are Rising on Mom and Pop Rental Owners,” *NPR*, July 7, 2021, <https://www.npr.org/2021/07/07/1013645699/economic-pressures-are-rising-on-mom-and-pop-rental-owners>.

¹¹⁸ See, Benfer et al., “The COVID-19 Eviction Crisis: an Estimated 30-40 Million People in America are at Risk,” *The Aspen Institute*, Aug. 7, 2020, <https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk/> Emily Benfer et al., *supra* note 1.

¹¹⁹ Michelle Conlin, Selling out: America's local landlords. Moving in: Big investors,” *REUTERS* July 29, 2021; Economic Pressures Are Rising on Mom and Pop Rental Owners July 7, 2021.

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

¹²² *Ibid.*

¹²³ *Ibid.*

¹²⁴ Elora Raymond et. al., “Corporate Landlords, Institutional Investors, and Displacement: Eviction Rates in Single-Family Rentals,” *Community & Economic Development Department Federal Reserve Bank of Atlanta*, Dec. 16, 2016, <https://www.atlantafed.org/-/media/documents/community-development/publications/discussion-papers/2016/04-corporate-landlords-institutional-investors-and-displacement-2016-12-21.pdf>

¹²⁵ Michelle Conlin, Selling out: America's local landlords. Moving in: Big investors,” *REUTERS* July 29, 2021; Economic Pressures Are Rising on Mom and Pop Rental Owners July 7, 2021.

A recent study,¹²⁶ building on several others,¹²⁷ found that large-scale landlords file and execute evictions at dramatically higher rates than small landlords and they file them routinely.¹²⁸ Further, they file evictions over lesser amounts of rent owed.¹²⁹ Additionally, they are “more likely to file repeatedly against the same tenants (serial filing) which together with evictions for smaller amounts of rents owed suggest ‘they use filings as a form of rent collection and tenant discipline.’”¹³⁰ That is, these landlords “file evictions with little intention of removing tenants from their properties, instead using filings to compel late rent payments and alter the rental relationship to the landlord’s advantage.”¹³¹ The tenant can stay “as long as they fulfill particular conditions, such as making scheduled debt payments” but do so under agreements that expand the landlords’ power.¹³² “Even though a filing by a large landlord is less likely to reach execution than one by a small owner, large landlords file so often that they still carry out many more executions.”¹³³

The study suggests that “‘large landlords’ eviction practices stem from formal organizational structures that bureaucratize management decisions and businesslike relationships with tenants that discourage social closeness.”¹³⁴ It continues:

Both practices facilitate an understanding of land-lording in which profit is placed over social considerations like a tenant’s well-being, even making those considerations feel inappropriate. In this way, large-scale landlords’ institutions and relationships create instrumental logics that insulate economic reasoning from the interference of social concerns.¹³⁵

Smaller landlords, by contrast, initiate far fewer eviction filings and file them as a last resort. Small landlords, the study suggests, operate in a context in which they live closer to their tenants and build relationships with them as people. Thus, small landlords’ decisions to evict are more morally fraught and when done more tension-filled. Consequently, when small landlords do file for eviction they tend to push toward their execution.¹³⁶ The study explains this social context:

¹²⁶ Henry Gomory, “The Social and Institutional Contexts Underlying Landlords’ Eviction Practices,” *Social Forces*, June 16, 2021, <https://doi.org/10.1093/sf/soab063>.

¹²⁷ *Ibid.*, at 27 (citing, among others, Raymond, Elora Lee, Richard Duckworth, Benjamin Miller, Michael Lucas, and Shiraj Pokharel, “From Foreclosure to Eviction: Housing Insecurity in Corporate-Owned Single-Family Rentals.” 20 *CITYSCAPE* 159 (2018); Immergluck, Dan, Jeff Ernsthansen, Stephanie Earl, and Allison Powell, “Evictions, Large Owners, and Serial Filings: Findings from Atlanta.” *HOUSING STUDIES* 1 (2019); and Matthew Desmond and Carl Gershenson, “Who gets evicted? Assessing individual, neighborhood, and network factors,” 62 *SOCIAL SCIENCE RESEARCH* 36 (2, 363 (2017)).

¹²⁸ *Ibid.*, at 25.

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

¹³¹ *Ibid.*, at 5, 6, 8, 22.

¹³² *Ibid.*, at 5.

¹³³ *Ibid.*, at 27.

¹³⁴ *Ibid.*, at 26.

¹³⁵ *Ibid.*

¹³⁶ *Ibid.*

[C]loser relationships with tenants inflect (small landlord's) management decisions with social meaning, and their ad hoc decision-making gives them the agency to act on that meaning. Accordingly, small landlords make decisions like whether to evict within a complex social matrix rather than according to a flattened economic calculus.¹³⁷

Ultimately the study demonstrates the importance of landlords' social and institutional contexts;¹³⁸ and reveals that the landlord from whom a tenant rents has dramatic consequences for their risk of eviction, while also providing information on housing instability.¹³⁹ As such it "suggests that anti-eviction efforts in a city should target the market's largest landlords, who likely also have the highest eviction rates."¹⁴⁰ Working directly with "or sanctioning these few actors, the study instructs, could have a dramatic effect."¹⁴¹ It concludes that policies that incentivize large-scale capital investment in order to provide affordable housing, such as in Opportunity Zones,¹⁴² etc., may have mixed effects because it stimulates consolidation in rental markets and potentially increases eviction rates.¹⁴³ A "more effective policy might be one that incentivizes capital investment by the current residents and stakeholders in the area, whose social relations in the community might make them more sympathetic to the needs and concerns of other residents."¹⁴⁴

B. Legislative Authority

With respect to this review of relevant legislative authority, the Committee notes that current legislative activity and litigation resulting in judicial decisions at all levels of government may alter these in the intervening time before publication.

I. Federal

Passed in 1968 and amended in 1988, the Fair Housing Act, as previously discussed, aims at protecting individuals from housing discrimination because of their race, color, religion, sex, age, disability, familial status, or national origin.¹⁴⁵ Plaintiffs have also successfully shown

¹³⁷ Ibid.

¹³⁸ Ibid, at 27.

¹³⁹ Ibid., at 28.

¹⁴⁰ Ibid. (noting that in "Boston, the 100 largest private landlords are responsible for 22.5% of all evictions in the private market").

¹⁴¹ Ibid.

¹⁴² The White House Opportunity and Revitalization Council, "Opportunity Zones," <https://opportunityzones.hud.gov/home>, (noting that "Opportunity Zones are economically distressed communities, defined by individual census tract, nominated by America's governors, and certified by the U.S. Secretary of the Treasury via his delegation of that authority to the Internal Revenue Service. Under certain conditions, new investments in Opportunity Zones may be eligible for preferential tax treatment. There are 8,764 Opportunity Zones in the United States, many of which have experienced a lack of investment for decades").

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ 42 U.S.C. § 3604(a)-(b).

discrimination where the defendant excluded people with a criminal history.¹⁴⁶ Courts have found that FHA protections extend to both access to housing and post-acquisition property rights, including prohibiting discriminatory evictions.¹⁴⁷ Finally the Act requires that the government in its activities and programs related to housing affirmatively further fair housing.¹⁴⁸

In determining the existence of discrimination in cases, the U.S. Supreme Court has called for an analysis of the adverse disparate impact endured by members of a protected class, rather than the subjective discriminatory intent of a landlord.¹⁴⁹ This inquiry utilizes a burden shifting framework. First, the plaintiff must allege facts or produce statistics at the pleading stage that show that they are a member of a protected group, that racial disparity exists, and that the defendant's policy, and not other factors, caused the disparity.¹⁵⁰ Then, the burden shifts to the defendant who can provide a defense by "explain[ing] the valid interest served by their policies."¹⁵¹ In June 2021, HUD proposed a rule that would formalize the *Inclusive Communities* rule and negate a 2020 rule, which altered the standard but never went into effect.¹⁵²

The FHA contains a number of exceptions which preempt discrimination claims. If an aggrieved person wants to bring an action alleging housing discrimination, they must do so within 2 years of the last asserted occurrence of a discriminatory practice.¹⁵³ In addition, many types of small landlords are exempt from civil actions under the FHA, including property owners who rent up to three single-family houses,¹⁵⁴ or those who occupy one of the units in a building containing up to four families.¹⁵⁵ Religious organizations are also permitted to deny housing to non-members, as long as membership is not restricted based on race, color, or national origin.¹⁵⁶

In 1974, Congress amended the Housing Act of 1937 to create a rental assistance program, popularly called Section 8, that benefits low- and moderate-income families, elderly people, and people with disabilities.¹⁵⁷ Under the Section 8 program, HUD distributes funds to state-level

¹⁴⁶ See *Jackson v. Tryon Park Apts., Inc.*, 2019 U.S. Dist. LEXIS 12473, *Sams v. GA West Gate, LLC*, No. CV 415-282, 2017 U.S. Dist. LEXIS 13168, 2017 WL 436281 (S.D. Ga. Jan. 30, 2017), *Alexander v. Edgewood Mgmt. Corp.*, No. 15-01140 (RCL), 2016 U.S. Dist. LEXIS 145787, 2016 WL 5957673 (D.D.C. July 25, 2016), or families with children, see *Meyer v. Bear Road Assoc.*, 124 F. App'x 686, 689 (2d Cir. 2005), *Gashi v. Grubb & Ellis Prop. Mgmt. Servs., Inc.*, No. 3:09-CV-1037 (JCH), 2010 U.S. Dist. LEXIS 73926, 2010 WL 2977143 (D. Conn. July 21, 2010).

¹⁴⁷ See *Bloch v. Frischholz*, 587 F.3d 771, 782 (7th Cir. 2009).

¹⁴⁸ 42 U.S.C. §§Section 3608(d) and 3608(e)(5).

¹⁴⁹ *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 539 (2015).

¹⁵⁰ *Id.* at 543.

¹⁵¹ *Id.* at 541.

¹⁵² Reinstatement of HUD's Discriminatory Effects Standard, 86 Fed. Reg. 33590 (proposed June 25, 2021) (to be codified at 24 C.F.R. 100).

¹⁵³ 42 U.S.C. § 3613(a)(1)(A).

¹⁵⁴ 42 U.S.C. § 3604(b)(1)

¹⁵⁵ 42 U.S.C. § 3603(b)(2).

¹⁵⁶ 42 U.S.C. § 3607(a).

¹⁵⁷ 42 U.S.C. § 1437f.

public housing agencies to subsidize the rents of assisted tenants.¹⁵⁸ Landlords who receive rent subsidies are subject to HUD regulations and are not permitted to terminate a tenancy without good cause, such as failure to pay rent, repeated violations of the terms of the lease, or illegal activity.¹⁵⁹ After the initial lease term has elapsed, property owners may terminate leases by citing an additional range of “good causes,” including failure to accept the offer of a new lease; the owner's desire to use the unit for personal or family use; or a business reason (such as the desire to list the unit at a higher rent).¹⁶⁰ Federal regulations also govern tenant screening, renewal, lease provisions, and termination or transfer of tenancies.¹⁶¹ If a tenant experiences illegal discrimination because of race, color, religion, sex, national origin, age, familial status, or disability, the local public housing agency is required to assist in filing a complaint.¹⁶²

The right to adequate housing has been repeatedly recognized as a cornerstone of international human rights law which provides norms to guide federal and state legislation. The Universal Declaration of Human Rights states that everyone has a right to healthy and safe housing in the event of “unemployment, sickness, disability, widowhood, old age or other lack of livelihood.”¹⁶³ In 1966, the International Covenant on Economic, Social and Cultural Rights (ICESCR) codified the right to housing and calls upon states to cooperate internationally to protect this right in the form of economic and technical assistance.¹⁶⁴ The U.N. Committee on Economic, Social and Cultural Rights has further clarified that the right guaranteed by ICESCR comprises seven elements: legal security, availability of services, affordability, habitability, accessibility, convenient location, and cultural adequacy.¹⁶⁵ The treaty also states that the right to housing entails freedom from discrimination based on “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹⁶⁶

While the United States it is not fully bound by the ICESCR, it is required to refrain from acts that would defeat the object and purpose of it. The ICESCR provides for the right to an adequate standard of living, including adequate food, clothing, housing, medical care, and the continuous improvement of living conditions. This minimum protection is often violated by the lack of affordable housing and meaningful protections against evictions which disproportionately impact Black and other minority communities.

And while international human rights law explicitly protects everyone from forced evictions, it unequivocally bans both intentional and disparate impact discrimination in access to housing. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),

¹⁵⁸ 42 U.S.C. § 1437f(c).

¹⁵⁹ 24 C.F.R. § 982.310(a).

¹⁶⁰ 24 C.F.R. § 982.310(d).

¹⁶¹ 24 C.F.R. §§ 982.301-982.317.

¹⁶² 24 C.F.R. § 982.304.

¹⁶³ Univ. Dec. of Hum. Rts., Art. 25.1.

¹⁶⁴ ICESCR, Art. 11.

¹⁶⁵ ICESCR General Comment 4, at para. 8.

¹⁶⁶ ICESCR, Art. 2(2).

which the U.S. ratified in 1994, not only recognizes disparate impact discrimination as a violation of the treaty, but also requires special measures to remedy past discrimination. Such measures could include targeted investments and revisions to zoning restrictions and other methods developed under HUD's efforts to implement the Fair Housing Act's "Affirmatively Furthering Fair Housing" (AFFH) obligations.

The United States carries out its obligations under international law through its constituent states. Therefore, it is appropriate for international legal norms to be considered by state actors. There are many instances of state legislatures and other subnational actors looking to international law for inspiration and guidance on their own legislative policies. States use human rights frameworks in their domestic policies and the international commitments of the United States as relevant sources of legal standards.

Recently, U.S. Dept. of Housing and Urban Development Secretary Marcia Fudge said that "[h]ousing should be a right, not a privilege, and ensuring that every American has a safe, stable home is a national imperative." While it is not clear whether a right to housing exists under federal constitutional law, there is nothing that would prevent New York state from recognizing and enshrining this basic right in its constitution. In contrast to the federal constitution, there are a number of state constitutions that explicitly mention government housing or subsistence requirements. In 2020, California introduced ACA-10, a proposed amendment to their constitution to recognize the human right to housing.¹⁶⁷ In 2021, Connecticut considered SB194, recognizing the human right to housing there, which passed the Senate, but unfortunately was not scheduled for a vote in the House before the end of their session.¹⁶⁸ New York State can and should be the first state to recognize and protect the positive right to housing as a constitutional right and implement it in line with international human rights norms and obligations including in the context of evictions.¹⁶⁹

2. *New York State*

New York Anti-Discrimination Laws

The New York State Human Rights Law (NYSHRL) protects people from housing discrimination based on race, creed, color, national origin, sex, sexual orientation, age, disability, familial status, or marital status.¹⁷⁰ Religious organizations are exempt from this statute.¹⁷¹ New York City's Human Rights Law contains additional protections against "source of income" housing discrimination, "income derived from social security or any form of federal, state or local public

¹⁶⁷ ACA-10 Cal. Leg., Reg. Sess. (Cal. 2020)

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200ACA10

¹⁶⁸ Conn. S. 194, 2021 Gen. Assemb., Reg. Sess. (Conn. 2021).

¹⁶⁹ See "Committee Recommendations," number 30.

¹⁷⁰ N.Y. Exec. Law § 296(2)(a).

¹⁷¹ N.Y. Exec. Law § 296(11).

assistance or housing assistance including section 8 vouchers.”¹⁷² Similarly, the New York State Civil Rights Law protects people from discrimination in publicly assisted housing on the basis of race, color, religion, national origin, ancestry, or disability.¹⁷³ Landlords are also prohibited from discriminating against tenants who have or may one day have children.¹⁷⁴ In addition, the General Obligations Law prohibits real property agreements that contain restrictions based on race, creed, color, national origin, or ancestry.¹⁷⁵ This law does not apply to conveyances or devises to religious associations or corporations for religious purposes.¹⁷⁶

A tenant claiming to be aggrieved by an unlawful discriminatory practice may file a complaint with the New York State Division of Human Rights within one year of the discriminatory act and seek injunctive relief and damages.¹⁷⁷ The Division of Human Rights is empowered to conduct hearings, make factual findings, and issue remedies, such as requiring the violating party to cease and desist discriminatory conduct or awarding compensatory and punitive damages.¹⁷⁸ An aggrieved person also has a private right of action for damages and other remedies unless they have already filed an administrative complaint.¹⁷⁹

Where discriminatory intent is not explicit, housing-related claims pursuant to the NYSHRL must survive the burden-shifting analysis also applied to FHA discrimination claims.¹⁸⁰ Thus, in order to establish a prima facie case of discrimination, a plaintiff must show that they are “a member of a protected class, . . . suffered an adverse . . . action, and . . . has at least minimal support for the proposition that the [housing provider] was motivated by discriminatory intent.”¹⁸¹

In 1987, the Court of Appeals explained that “a municipality may not legitimately exercise its zoning power to effectuate socioeconomic or racial discrimination.”¹⁸²

Rent Control, Rent Stabilization, and Rent Assistance

Although governed by separate statutes, “the differences between Rent Control and Rent Stabilization have become increasingly muted over the years.”¹⁸³ In 1974, the legislature enacted the Emergency Tenant Protection Act (“ETPA”), which enabled New York City and certain other

¹⁷² Admin. Code of the City of N.Y., §§ 8-101 et seq.

¹⁷³ N.Y. Civ. Rights Law §§ 18-c, 47.

¹⁷⁴ N.Y. Real Prop. Law §§ 236-237.

¹⁷⁵ N.Y. Gen. Oblig. Law § 5-331.

¹⁷⁶ *Id.*

¹⁷⁷ N.Y. Exec. Law § 297(1).

¹⁷⁸ N.Y. Exec. Law § 297(4).

¹⁷⁹ N.Y. Exec. Law § 297(9).

¹⁸⁰ *Francis v. Kings Park Manor, Inc.*, 992 F.3d 67 (2d Cir. 2021); *see also McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973) (After initial burden to show discrimination, the burden shifts to the employer to show a non-discriminatory purpose for “employer’s rejection”).

¹⁸¹ *Francis* at 73.

¹⁸² *Suffolk Housing Services v. Town of Brookhaven*, 70 N.Y.2d 122, 129 (1987).

¹⁸³ Andrew Scherer & Fern Fisher, Residential Landlord - Tenant L. in N.Y. § 4:2 (Nov. 2021).

municipalities to regulate apartments completed before January 1, 1974.¹⁸⁴ The Housing Stability and Tenant Protection Act of 2019 (“HSTPA”) extended the ETPA to all counties in New York State, empowering localities to adopt rent regulation when there is a vacancy rate of 5% or more.¹⁸⁵ Outside New York City, permissible rent increases for rent controlled apartments are established annually by the Division of Housing and Community Renewal.¹⁸⁶ Within NYC, they are determined by a Maximum Base Rent system, which caps rent increases at 7.5%.¹⁸⁷

Tenants who live in Rent Stabilized housing have the choice of seeking administrative remedies through the Division of Housing and Community Renewal when their landlords violate provisions of the Rent Stabilization Code, including overcharges, failure to maintain essential services, and failure to renew a lease.¹⁸⁸ The Division of Housing and Community Renewal’s Tenant Protection Unit investigates and prosecutes violations of the rent regulation laws and regulations.¹⁸⁹

Under the COVID-19 Emergency Rental Assistance Program of 2021, New York State had allocated \$2.4 billion, primarily in federal funds, for tenants unable to pay rent.¹⁹⁰ As of November 14, 2021, at 10:00 p.m., due to lack of funds the Office of Temporary and Disability Assistance was no longer accepting new applications for COVID-19 rent assistance, except for households that make between 80% and 120% of the area median income.¹⁹¹

Summary Eviction Proceedings

A landlord may initiate an eviction proceeding against a tenant seeking rent owed and a judgement of possession pursuant to the Real Property Actions and Proceedings Law (“RPAPL”) Article 7. Landlords, neighboring property owners, other tenants, and law enforcement agencies can also file to evict tenants who engage in illegal activity in their apartment, including drug use.¹⁹² In addition to dispossession of the rental unit, tenants evicted for illegal activity may be compelled to pay a civil penalty of up to \$5,000 and the petitioner’s attorney’s fees.¹⁹³

The New York Real Property Law provides protections against retaliatory eviction for tenants who engage in certain protected activity.¹⁹⁴ Protected activity includes good faith complaints about

¹⁸⁴ ETPA §§ 8621-8634.

¹⁸⁵ ETPA § 8623.

¹⁸⁶ 9 NYCRR 2202.1.

¹⁸⁷ 26 N.Y.C. Admin. Code § 26-405(5).

¹⁸⁸ 9 NYCRR 2527.1.

¹⁸⁹ 9 NYCRR § 2520.5(o).

¹⁹⁰ See Kenneth G. Lore and Robert J. Baker, *New York’s COVID-19 Emergency Rental Assistance Program of 2021*, National Housing & Rehabilitation Association (Apr. 20, 2021), https://www.housingonline.com/2021/04/20/new-yorks-covid-19-emergency-rental-assistance-program-of-2021/#_ftnref7.

¹⁹¹ *Emergency Rental Assistance Program (ERAP)*, Office of Temporary and Disability Assistance, <https://otda.ny.gov/programs/emergency-rental-assistance/>, accessed November 14, 2021.

¹⁹² RPAPL § 715.

¹⁹³ *Id.*

¹⁹⁴ RPAPL § 223-b.

health or safety law, the warrant of habitability, and the duty to repair, as well as participation in tenant organizing activities.¹⁹⁵ The law creates a presumption of retaliation in actions where a tenant files a complaint within 12 months of the landlord taking adverse action against them.¹⁹⁶

It is also unlawful for a tenant to be evicted because of their status as a victim of domestic violence.¹⁹⁷

In June 2020, the State legislature passed the Tenant Safe Harbor Act (“TSHA”), which prohibited evictions against tenants who “suffered a financial hardship” during the COVID-19 pandemic beginning March 7, 2020.¹⁹⁸ These TSHA protections most recently have been extended through January 15, 2022.¹⁹⁹ Under the Housing Stability and Tenant Protection Act (“HSTPA”) of 2019, the NYS legislature added and expanded various protections for tenants around the issuing of warrants of eviction. For example, the statute requires courts to vacate a warrant of eviction if the tenant is able to pay rent owed prior to its execution, “unless the petitioner establishes that the tenant withheld the rent in bad faith.”²⁰⁰ The HSTPA also substantially expanded tenants’ opportunity to seek a stay issuance of a warrant of eviction on their dwelling unit for up to a year.²⁰¹

Lastly, it is a misdemeanor for landlords to attempt to forcibly remove tenants from a rental unit using extrajudicial “self-help” eviction practices, including intimidation and disturbing tenants’ peace and repose.²⁰² Tenants who are unlawfully evicted are also entitled to recover treble damages from offending landlords by filing a civil action.²⁰³

3. *Albany*

In 1983, the Common Council of the City of Albany established the Office of Fair Housing, tasked with making recommendations, conducting investigations, and enforcing policies pertaining to discrimination and human rights violations.²⁰⁴ When an aggrieved person alerts the Office of a discriminatory housing practice, it is empowered to investigate, issue subpoenas, hold conferences,

¹⁹⁵ *Id.* § 223-b (1).

¹⁹⁶ *Id.* § 223-b (5).

¹⁹⁷ RPAPL §744(1).

¹⁹⁸ L. 2020, ch. 127.

¹⁹⁹ *Governor Hochul Signs New Moratorium on COVID-related Residential and Commercial Evictions into Law, Effective Through January 15, 2022*, Governor’s Office (Sep. 2, 2021), <https://www.governor.ny.gov/news/governor-hochul-signs-new-moratorium-covid-related-residential-and-commercial-evictions-law>.

²⁰⁰ RPAPL § 749(3).

²⁰¹ RPAPL § 753(1).

²⁰² RPAPL § 768.

²⁰³ RPAPL § 853.

²⁰⁴ Albany Code § 187-6.

conduct hearings, and issue orders.²⁰⁵ Any person who willfully impedes or fails to comply with an action of the Office can be fined up to \$300 or imprisoned for up to 15 days.²⁰⁶

In 2005, the Common Council of the City of Albany established the Commission on Human Rights, tasked with advancing diversity and antidiscrimination.²⁰⁷ The nine-member board meets at least six times a year and is empowered to issue recommendations, conduct studies, publish reports, hold conferences, and investigate incidents of tension between racial, religious, and nationality groups.²⁰⁸ City residents may file a complaint with the Commission if they have been a victim of discrimination in employment, housing, or public accommodations as provided by the “Omnibus Human Rights Law.”²⁰⁹

Since December 2017, the City of Albany requires all new residential and mixed-used developments with at least 50 units to make 5% of their units affordable to persons earning no more than the median income for the City.²¹⁰ Developments that follow stricter affordability standards (20% of units affordable to persons earning 80% of the median income) are granted benefits, including reduced street parking requirements, and increased maximum height.²¹¹ In July 2021, the Common Council of the City of Albany passed the “Prohibition of Eviction Without Good Cause Law.”²¹² The ordinance provides protections for renters against a range of bad faith practices, such as when landlords impose unconscionable rent increases or deliberately violate building codes in an attempt to render an accommodation uninhabitable.²¹³ The ordinance also creates a new cause of action for tenants who have surrendered their housing on the basis of fraudulent statements by their landlord to seek damages, declaratory relief, injunctive relief, and attorney’s fees.²¹⁴

The City of Albany has not instituted rent control practices by opting into the State’s Emergency Tenant Protection Act (ETPA) of 1974, which protects tenants from illegal rent increases.²¹⁵

A “Right to Counsel” bill was introduced in the Albany County Legislature in September 2021.²¹⁶

²⁰⁵ Albany Code § 187-7.

²⁰⁶ Albany Code § 187-9.

²⁰⁷ Albany Code § 42-361.

²⁰⁸ Albany Code §§ 42-362, 42-365, and 42-366.

²⁰⁹ Albany Code § 48-26.

²¹⁰ Albany Code § 375-401(4)(b).

²¹¹ Albany Code § 375-401(4) (a) (iii).

²¹² Albany Code § 30-327.

²¹³ Albany Code § 30-328(A).

²¹⁴ Albany Code § 30-328(B).

²¹⁵ New York Office of Rent Administration, Emergency Tenant Protection Act (ETPA) of 1974, Chapter 576 Laws of 1974 as Last Amended (2019).

²¹⁶ Dave Lucas, “*Right to Counsel*” Legislation Introduced in Albany County, WAMC Northeast Public Radio (Sep 20, 2021, 4:08 PM), <https://www.wamc.org/news/2021-09-20/right-to-counsel-legislation-introduced-in-albany-county>.

4. Buffalo

In 2006 the City of Buffalo adopted a Fair Housing Ordinance making it unlawful for any person engaged in the sale or rental of housing to refuse to sell, rent, or otherwise deny or withhold from any person housing accommodations because of race, creed, color, national origin, sex, disability, familial or marital status, sexual orientation, gender identity, military status, source of income or reliance upon a therapy dog or cat.²¹⁷ Enforcement of the Fair Housing Ordinance is assigned to a Fair Housing Officer designated by the Mayor who is authorized to “receive, investigate and/or refer complaints” of discrimination “to a qualified fair housing agency certified to investigate and handle fair housing complaints.”²¹⁸

However, in response to the failure of the City to enforce the Fair Housing Ordinance and timely address and resolve cases, notwithstanding a perceived step up in enforcement following a 2018 report by a local media outlet on non-enforcement, housing advocates have indicated that they are instead pursuing cases under Erie County and New York State law.²¹⁹ Erie County’s Fair Housing Law, which went into effect on May 22, 2018, prohibits housing discrimination due to race, color, religion, sex, age, marital status, disability, national origin, source of income, sexual orientation, gender identity, military status, familial status, or immigration and citizenship status. Erie County Local Law No. 4, 2018.²²⁰ Erie County has retained Housing Opportunities Made Equal (HOME), a western New York civil rights organization, to assist the County in implementing and enforcing the Fair Housing Law.

The Fair Housing Law provides that the County Executive shall designate the Commissioner of the Department of Environment and Planning (“Department”) to perform enforcement and may designate a not-for-profit fair housing organization (“designee”) to either assist in conducting investigations or to complete an investigation for the Department. Any person or organization, whether or not an aggrieved party, may file a complaint alleging a violation of the Law, such complaint to be filed within one year of the alleged act of discrimination with the Department or the County’s designated entity. In addition, the County or its designee may investigate individual instances and patterns of discrimination prohibited by the law even in the absence of a complaint filed by any individual or organization and may initiate complaints.

The County shall receive and investigate complaints. If, at the conclusion of an investigation, the County or its designee makes a finding of probable cause of discriminatory practice by the

²¹⁷ Buffalo Code § 154-17 et seq.; *see also* City of Buffalo Fair Housing Information: A Guide to Knowing Your Rights (Rev. May 2017), <https://cdn.website-editor.net/fb860054ee264789a81a71326f76d87b/files/uploaded/English.pdf>.

²¹⁸ Buffalo Code § 154-19 (Enforcement).

²¹⁹ *See* Justin Sondel, *Fair housing complaints bypass City Hall*, Investigative Post (Sept. 13, 2021), <https://www.investigativepost.org/2021/09/13/fair-housing-complaints-bypass-city-hall/>.

²²⁰

https://locallaws.dos.ny.gov/sites/default/files/drop_laws_here/ECMMDIS_appid_DOS20180529060015/Content/09021343801f3924.pdf.

respondent, and is unable to resolve the complaint through conciliation, the County or its designee shall certify and refer the matter to the five member Erie County Fair Housing Board (“Board”), created by the law for the purpose of receiving and holding hearings on complaints. At the conclusion of a hearing, the Board will vote to either confirm or dismiss the complaint. If the Board votes to confirm the complaint, the matter shall be referred to the Erie County Attorney's Office. The County Attorney will then institute proceedings in a court of competent jurisdiction, seeking the imposition of monetary and other penalties set forth in the Law. If the Board votes to dismiss the complaint, the complainant may seek to pursue a private cause of action in court.

5. *New York City*

In 1955, Mayor Fiorello LaGuardia founded the New York City Human Rights Commission, primarily to promote “open housing for New York’s racial and ethnic minorities.”²²¹ The Commission oversees “the nation’s most expansive anti-discrimination law: the New York City Human Rights Law.”²²²

Indeed, New York City Human Rights Law (“NYCHRL”) admonishes the Commission and the courts that “[t]he provisions of this title shall be construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof, regardless of whether federal or New York state civil and human rights laws, including those laws with provisions worded comparably to provisions of this title, have been so construed.”²²³

NYCHRL shields “certain groups from policies or practices that discriminate against them in areas such as employment, public accommodations and housing.”²²⁴ NYCHRL goes further than other anti-discrimination laws because it proscribes “policies or practices which, though neutral on their face and neutral in intent, have an unjustified disparate impact upon one or more covered groups.”²²⁵

²²¹ Michael H. Schill, *1996 Local Enforcement of Laws Prohibiting Discrimination in Housing: The New York City Human Rights Commission*, 23 *Fordham Urb. L.J.* 991, 991 (1996).

²²² Mark S. Goldstein & Alexandra C. Manfredi, *NYC Human Rights Law: The ‘Gold Standard’ of Anti-Discrimination Law?* N.Y.L.J. Oct. 27, 2020.

²²³ NYCHRL § 8-130(a).

²²⁴ *Levin v. Yeshiva University*, 96 N.Y.2d 484, 489 (2001) (citing, among others, Administrative Code of City of N.Y. § 8-107).

²²⁵ *Levin v. Yeshiva University*, 96 N.Y.2d 484, 489 (2001) (citing, among others, Administrative Code of City of N.Y. § 8-107). *But see Ricci v. DeStefano*, 557 U.S. 557, 594 (2009) (Scalia, J., concurring) (noting that “disparate-impact provisions place a racial thumb on the scales, often requiring employers to evaluate the racial outcomes of their policies, and to make decision based on (because of) those racial outcomes” and that “type of racial decision making is, as the Court explains, discriminatory”); *Texas Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 576 U.S. 519, 553 (2015) (Thomas, J., dissenting) (“In their quest to eradicate what they view as institutionalized discrimination, disparate-impact proponents doggedly assume that a given racial disparity at an institution is a product of that institution rather than a reflection of disparities that exist outside of it. . . . We should not automatically presume that any institution with a neutral practice that happens to produce a racial disparity is guilty of discrimination until proved innocent”).

NYCHRL makes it an unlawful discriminatory practice to refuse housing accommodations to any person because of that person's "actual or perceived race, creed, color, national origin, gender, age, disability, sexual orientation, marital status, or alienage or citizenship status."²²⁶ This regime permits a plaintiff who falls within its protected classes to file a claim for discrimination if he believes that he was injured by an act of overt discrimination or "an unlawful discriminatory practice based upon disparate impact."²²⁷

A protected-class plaintiff can make out a disparate-impact claim for discrimination in housing where he demonstrates that a defendant's policy or practice "results in a disparate impact to the detriment of any group protected."²²⁸

Once a disparity is established, the burden shifts to the defendant "to plead and prove as an affirmative defense that each such policy or practice bears a significant relationship to a significant business objective of the [covered entity] or does not contribute to the disparate impact."²²⁹ Upon the defendant's pleading of an affirmative defense, the burden shifts back to the plaintiff to demonstrate by "substantial evidence that an alternative policy or practice with less disparate impact is available to" the covered entity which has "fail[ed] to prove that such alternative policy or practice would not serve the [covered entity] as well."²³⁰ Notably, "[t]he mere existence of a statistical imbalance between" the housing concern's "challenged demographic composition and the general population is not alone sufficient to establish a *prima facie* case of disparate impact violation unless the general population is shown to be the relevant pool for comparison, the imbalance is shown to be statistically significant and there is an identifiable policy or practice or group of policies or practices that allegedly causes the imbalance."²³¹

These provisions do not apply to "a building which contains housing accommodations for not more than two families living independently of each other, if the other or members of the owner's family reside in one of such housing accommodations" or "to the rental of a room or rooms in a housing accommodation . . . if such rental is by the occupant of the housing accommodation or by the owner of the housing."²³²

In 2017, the New York City Council passed Right to Counsel legislation for renters facing summary proceedings in Housing Court.²³³ Administered by the Office of Civil Justice of the New

²²⁶ NYCHRL § 8-107(5)(1).

²²⁷ NYCHRL § 8-107(17)(a).

²²⁸ NYCHRL § 8-107(17)(a)(1).

²²⁹ NYCHRL § 8-107(17)(a)(2).

²³⁰ NYCHRL § 8-107(17)(a)(2).

²³¹ NYCHRL § 8-107(17)(2)(b).

²³² NYCHRL § 8-107(5)(4)(1).

²³³ N.Y.C. Admin. Code § 26-1301-1302.

York City Human Resources Administration, the program provides free individualized legal consultations to all renters and free ongoing legal representation for low-income renters.²³⁴

New York City prohibits landlords from attempting to remove tenants from lawfully occupied accommodations by engaging such practices as: threats of force; disturbing the occupant's comfort, repose, peace or quiet; removing their possessions from the dwelling unit; removing the door; rendering the lock inoperable; or changing the lock.²³⁵ Landlords who engage in unlawful eviction practices can be found guilty of a class A misdemeanor and liable for a civil damages of up to \$10,000 per violation.²³⁶

III. SUMMARY OF TESTIMONY

The virtual public meetings where testimony was heard (briefings) were held on February 19, 2021, June 4, 2021, June 23, 2021, June 25, 2021, and July 16, 2021, and included testimony from academics, advocates, government officials, legal scholars, researchers, individuals impacted by evictions, and other relevant stakeholders. Written testimony provided in connection with the Committee's briefings has also been included within the Committee's summary of testimony received. The Committee thanks each of the individuals who took the time to share their expertise and experiences with the Committee.

A. Invited Speaker Biographies

1. Legal Scholars

[Deborah N. Archer](#), Professor of Clinical Law and Co-Faculty Director, Center on Race, Inequality, and the Law, NYU School of Law

Deborah N. Archer is the Jacob K. Javits Professor at New York University, and Professor of Clinical Law and Co-Faculty Director of the Center on Race, Inequality at NYU School of Law. Professor Archer is also the President of the American Civil Liberties Union and a nationally recognized expert in civil rights, civil liberties, and racial justice. She is a graduate of Yale Law School, where she was awarded the Charles G. Albom Prize, and Smith College. She previously worked as an attorney with the American Civil Liberties Union and the NAACP Legal Defense and Educational Fund, Inc., where she litigated in the areas of voting rights, employment discrimination, and school desegregation. She was also a member of the faculty at New York Law School for fifteen years and an associate at the firm Simpson, Thacher & Bartlett. Professor Archer is also a former chair of the American Association of Law School's Section on Civil Rights and Section on Minority Groups. She previously served on the New York City Civilian Complaint Review Board, the nation's oldest and largest police oversight agency, and the 2018 New York

²³⁴ N.Y.C. Admin. Code § 26-1301.

²³⁵ N.Y.C. Admin. Code § 26-521(a).

²³⁶ N.Y.C. Admin. Code § 26-523.

City Charter Revision Commission. Professor Archer received the Otto L. Walter Distinguished Writing Award and the 2014 Haywood Burns/Shanara Gilbert Award from the Northeast People of Color Legal Scholarship Conference. Professor Archer was recognized by the New York Law Journal as one of New York's Top Women in the Law.

[Richard Epstein](#), Laurence A. Tisch Professor of Law, NYU School of Law and Director, Classical Liberal Institute

Richard A. Epstein is the inaugural Laurence A. Tisch Professor of Law at NYU School of Law. Prior to his joining the faculty, he was a visiting law professor at NYU from 2007 through 2009. He has served as the Peter and Kirstin Bedford Senior Fellow at the Hoover Institution since 2000. Professor Epstein is also the James Parker Hall Distinguished Service Professor of Law Emeritus and a senior lecturer at the University of Chicago. His initial law school appointment was at the University of Southern California from 1968 to 1972. Professor Epstein received an LL.D., h.c. from the University of Ghent, 2003. He has been a member of the American Academy of Arts and Sciences since 1985 and has been a Senior Fellow of the Center for Clinical Medical Ethics at the University of Chicago Division of Biological Sciences, also since 1983. He served as editor of the Journal of Legal Studies from 1981 to 1991 and of the Journal of Law and Economics from 1991 to 2001. From 2001 to 2010 he was a director of the John M. Olin Program in Law and Economics at the University of Chicago.

His books include *The Dubious Morality of the Modern Administrative State* (Manhattan Institute 2019); *The Classical Liberal Constitution: The Uncertain Quest for Limited Government* (Harvard 2014); *Design for Liberty: Private Property, Public Administration and the Rule of Law* (Harvard 2011); *The Case Against the Employee Free Choice Act* (Hoover 2009); *Supreme Neglect: How to Revive the Constitutional Protection of Property Rights* (Oxford 2008); *Antitrust Decrees in Theory and Practice: Why Less is More* (AEI 2007); *Overdose: How Excessive Government Regulation Stifles Pharmaceutical Innovation* (Yale University Press, 2006); *How Progressives Rewrote the Constitution* (Cato 2006); *Cases and Materials on Torts* (Aspen Law & Business; 8th ed. 2004); *Skepticism and Freedom: A Modern Case for Classical Liberalism* (University of Chicago, 2003); *Torts* (Aspen Law & Business 1999); *Principles for a Free Society: Reconciling Individual Liberty with the Common Good* (Perseus Books, 1998); *Mortal Peril: Our Inalienable Rights to Health Care* (Addison-Wesley, 1997); *Simple Rules for a Complex World* (Harvard, 1995); *Bargaining With the State* (Princeton, 1993); *Forbidden Grounds: The Case Against Employment Discrimination Laws* (Harvard, 1992); *Takings: Private Property and the Power of Eminent Domain* (Harvard, 1985); and *Modern Products Liability Law* (Greenwood Press, 1980). He has also edited, with Catherine M. Sharkey, *Cases and Materials on the Law of Torts* (10th edition 2012).

Professor Epstein has written numerous articles on a wide range of legal and interdisciplinary subjects. He has taught courses in administrative law, antitrust law, civil procedure,

communications, constitutional law, contracts, corporations, criminal law, employment discrimination law, environmental law, food and drug law, health law and policy, legal history, labor law, property, real estate development and finance, jurisprudence, labor law, land use planning, patents, individual, estate, and corporate taxation, Roman Law, torts, and workers' compensation. Professor Epstein also writes a legal column, the Libertarian, and is a contributor to Ricochet.com and SCOTUSblog.com.

[Andrew Scherer](#), Visiting Associate Professor and the Policy Director of the Impact Center for Public Interest Law at New York Law School

Andrew Scherer is a Visiting Associate Professor and the Policy Director of the Impact Center for Public Interest Law at New York Law School, where he directs the Right to Counsel Project and the Housing Rights Clinic and co-directs the Housing Justice Leadership Institute. Professor Scherer plays a prominent role in housing policy, access to justice, and other public interest matters, locally, nationally, and internationally. In 2017, efforts of Professor Scherer and others led to NYC legislation establishing a right to counsel in eviction cases, the first such legislation in the country. As of February 2021, seven other jurisdictions in the United States have adopted similar legislation, and efforts to secure a right to counsel in evictions are underway in scores of additional jurisdictions.

Professor Scherer was Executive Director of Legal Services NYC (LS-NYC) from 2001 to 2010 and held a variety of positions at LS-NYC starting in 1978. Among many other affiliations, Professor Scherer was a Senior Fellow at the NYU Furman Center and is a former chair of the Executive Committee of the NYC Bar Association and the current co-chair of its Task Force on the Civil Right to Counsel. Professor Scherer is also the author of the treatise, *Residential Landlord-Tenant Law in New York* (Thomson Reuters), published annually since 1996. He has taught at CUNY Law School, NYU Law School, the Columbia University Graduate School of Architecture, Planning and Preservation, Yangon University in Myanmar (Burma), and Bennington College. He has lectured widely in the United States, Latin America, Africa, and Asia.

2. Researchers

[Peter Hepburn](#), Assistant Professor of Sociology, Rutgers University-Newark and [Renee Louis](#), Research Specialist, Princeton Eviction Lab (presented together)

Peter Hepburn is a Sociologist and Demographer. His research examines how changes to three core social institutions—work, criminal justice, and housing—serve to produce and perpetuate inequality. He uses a variety of quantitative methods and data sources to demonstrate and analyze disparities in exposure to precarious work, the criminal justice system, and housing instability. Throughout his research, Dr. Hepburn develops measures and models that allow for new insight into the variability of lived experience for disadvantaged populations and the transmission of inequality across generations.

Renee Louis joined the Eviction Lab as a Research Specialist after receiving her B.A. from Princeton University where she concentrated in Sociology and received a certificate in Statistics and Machine Learning. Her undergraduate research endeavors ranged from examining nonprofit Twitter behavior, analyzing attitudes towards inequality across forty years of survey data, as well as studying the experiences of student dining hall workers on campus. Her broader intellectual interests include the intersection of qualitative and quantitative methods in the social sciences.

[Sophie House](#), Deputy Director for Policy, Housing Solutions Lab and [Ryan Brenner](#), Research Analyst, NYU Furman Center (presented together)

Sophie House is the Deputy Director for Policy at the Housing Solutions Lab. Before joining the Lab, Sophie was a Legal Fellow at the NYU Furman Center. She also served as a law clerk to the Honorable Andrew D. Hurwitz of the United States Court of Appeals for the Ninth Circuit. She is a graduate of Yale Law School, where she worked with local government attorneys through the San Francisco Affirmative Litigation Project and represented low-income clients in housing proceedings at the Urban Justice Center and New Haven Legal Assistance. She holds a B.A. in Economics from New York University and an MPhil in Comparative Social Policy from the University of Oxford. Ms. House's research focuses on how cities approach challenges related to housing instability, homelessness, and the use of public space.

Ryan Brenner is a Research Analyst at the NYU Furman Center. Prior to joining the Furman Center, Mr. Brenner worked as a service provider in San Francisco's homeless shelters and supportive housing developments. He received a B.S. in Conservation Biology from Colorado State University, a J.D. from Michigan State University, and an M.S. in Public Policy from NYU Wagner. Mr. Brenner is interested in using data to improve urban infrastructure and policy for sustainable development.

[Howard Husock](#), Adjunct Scholar, Domestic Policy Studies, American Enterprise Institute

Howard Husock is a senior fellow in Domestic Policy Studies at the American Enterprise Institute (AEI), where he focuses on municipal government, urban housing policy, civil society, and philanthropy. Before joining AEI, Mr. Husock was vice president for research and publications at the Manhattan Institute. He has also been a director of case studies in public policy and management at the Harvard Kennedy School, a member of the board of directors of the Corporation for Public Broadcasting, and a journalist and Emmy-winning documentary filmmaker.

Mr. Husock has been widely published in policy journals and the popular press, including in *The New York Times* and *The New York Times Magazine*, *The Wall Street Journal*, *The Atlantic*, *The Hill*, *New York Post*, *New York Daily News*, *The Boston Globe*, *The Chronicle of Philanthropy*, *City Journal*, *Forbes.com*, *the Journal of Policy Analysis and Management*, *National Affairs*, *Reason*, *The New Republic*, *Washington Examiner*, and *The Wilson Quarterly*.

His books include *The Poor Side of Town: And Why We Need It* (Encounter Books, September 21, 2021); *Who Killed Civil Society? The Rise of Big Government and Decline of Bourgeois Norms* (Encounter Books, 2019), *Philanthropy Under Fire* (Encounter BroadSides, 2013), and *America's Trillion-Dollar Housing Mistake: The Failure of American Housing Policy* (Ivan R. Dee, 2003). Mr. Husock was a mid-career fellow at Princeton University's Woodrow Wilson School of Public and International Affairs. He holds a BS from Boston University's School of Public Communication.

[Sam Magavern](#), Senior Policy Fellow, Partnership for the Public Good

Sam Magavern serves as a Senior Policy Fellow at Partnership for the Public Good where he co-directed or directed since its founding in 2007 through 2018. He teaches at the SUNY Buffalo Law School and the Cornell University ILR School. A graduate of Harvard University and the UCLA Law School, he serves as the attorney for the City of Buffalo Living Wage Commission and as a member of the Niagara River Greenway Commission.

3. *Academics*

[Emily Benfer](#), Visiting Professor of Law and Public Health, Wake Forest University School of Law, Wake Forest School of Medicine; Visiting Research Collaborator, The Eviction Lab, Princeton University

Emily A. Benfer is a visiting Professor of Law and Public Health at Wake Forest University School of Law and Wake Forest School of Medicine and a visiting Research Collaborator at The Eviction Lab at Princeton University. She is the Chair of the American Bar Association Task Force on Eviction, Housing Stability, and Equity. During the COVID-19 pandemic, she was the principal investigator in a nationwide study of housing policy and eviction systems, and advised federal, state, and local policymakers on health justice and housing policy. She was the co-creator of the COVID-19 Housing Policy Scorecard with The Eviction Lab.

Her clinic practice and research focus on the social determinants of health, with a focus on laws and policies regulating or restricting housing conditions, stability, and access. An expert in eviction laws, housing policy, and health justice, Professor Benfer was the principal investigator in a study of pandemic mitigation policies that control the eviction process and preserve housing. During the COVID-19 pandemic, she advised federal, state, and local policymakers on health justice and housing policy, and was the co-creator of the COVID-19 Housing Policy Scorecard with The Eviction Lab, as well as numerous peer reviewed articles.

Professor Benfer was the founding director of the Health Justice Advocacy Clinic at Columbia Law School and a visiting Distinguished Scholar and Senior Fellow at Yale Law School Solomon Center for Health Law & Policy. Professor Benfer was as a Clinical Professor of Law at Loyola University Chicago School of Law and Loyola University Chicago Stritch School of Medicine

Department of Public Health where she founded and directed an award-winning medical-legal partnership at a Federally Qualified Health Center to resolve the social determinants of poor health for patients.

Professor Benfer served as a teaching fellow and supervising attorney in the Federal Legislation & Administrative Clinic at Georgetown Law Center. She was a legislative lawyer in the successful efforts to pass the ADA Amendments Act, which expanded the rights of Americans with disabilities; to reform the federal definition of lead poisoning and carbon monoxide detector requirements; to require education assistance for children and youth experiencing homelessness in Washington, DC; and to align the Illinois definition of lead poisoning with the Centers for Disease Control and Prevention standard. She has engaged in direct representation, class action litigation, grassroots organizing, creative advocacy strategies, and federal and state policy reform in multiple areas of public interest law, including homelessness, lead poisoning prevention, special education, housing, health, environmental justice, disability, and public benefits at non-profit organizations and a public interest law firm. She was an Equal Justice Works Fellow and a Peace Corps Volunteer.

Her work has been published in law reviews, peer-reviewed journals, and national media outlets, including *Harvard Environmental Law Review*; *Harvard Law & Policy Review*; *Yale Journal of Health Policy, Law, and Ethics*; *Health Affairs*; *Journal of Legal Medicine*; *The New York Times*; *NBC Think*; *Boston Globe*; and *the Washington Post*. She has received numerous commendations for her efforts to address the U.S. housing crisis and secure health justice, including the American Public Health Association David P. Rall Award for Advocacy and a Presidential Commendation from the American Bar Association. Professor Benfer received her J.D. from Indiana University and her LLM from Georgetown Law Center. Views presented by Professor Benfer for the Committee's study on race and evictions are her own and do not necessarily represent the views of her employer.

[Margaretta Lin](#), Lecturer, UC Berkeley Goldman School of Public Policy; Department of City and Regional Planning

Margaretta Lin received her JD from Berkeley Law and Masters in Asian Studies from the University of California at Berkeley (UC Berkeley). She is a Lecturer in City and Regional Planning and Future Histories Lab. Professor Lin is also the founding director of Just Cities, a leading racial justice planning and policy organization. Just Cities recently designed and organized the passage of the nation's North Star fair chance housing policies, which removed structural discrimination and recognized the humanity of people harmed by mass incarceration and racism. Informed by family experiences of war and brutal occupation in her home country and personal experiences of racism and hate crimes in her adopted country of the United States, Professor Lin has served as a lifelong healer of injustice and leader in racial and social justice movements.

Professor Lin designs and teaches new courses on the art and practice of restorative and transformative justice in planning, policy, law, and the humanities. She and Professor Charisma Acey are making justice jazz together, piloting a new Transformative Justice Studio, CYPlan 291.

Professor Lin also teaches planning justice praxis for Urban Studies students. She has taught Economic Justice, a legal clinic, and Mindfulness in Law, and piloted a public policy clinic.

Professor Lin inherited the art of transforming crises into opportunities for justice and spirit from the women in her family who sustained the bodies, minds, and hearts of their families and communities during times of deprivation and oppression. As the Founding Director of the Dellums Institute for Social Justice, Professor Lin organized Bay Area leaders in government, tech, faith, grassroots community organizing to address the growing crisis of racial displacement, creating new policies and unprecedented funds for anti-displacement safety nets. She co-incubated the Black Cultural Zone Collaborative with EastSide Arts Alliance to support Black leadership and power to prevent further displacement and reclaim land, space, and culture.

In senior roles for the City of Oakland during the Great Recession, Professor Lin organized local, state, and federal government agencies, and labor, business, faith, and community leaders to unify around solutions to pressing city crises from budget deficits, unemployment, escalating violence, blight and foreclosure, displacement and homelessness, labor strikes, and the killing of Oscar Grant. These efforts resulted in Oakland securing unprecedented new federal and state resources for community priorities, local innovations in land, housing, and community development policies, and new planning initiatives that prioritized East Oakland neighborhoods historically marginalized by city governments. She has also been the architect of community institutions formed in response to the racial injustice crisis of the day including East Bay Community Law Center's Community Economic Justice Clinic, Youth Together, Youth Uprising, and the Skyline High One Land, One People Center.

Professor Lin's applied research and public policy design areas include the intersections of mass incarceration and racialized displacement and homelessness; human empowerment as an anti-recidivism strategy; people, land, and space planning and policy solutions to historic injustices; Asian American and Black multiracial solidarity; and ethical and courageous leadership development of future planning and policy leaders.

[David Madden](#), Associate Professor, Department of Sociology and Co-Director, Cities Programme, London School of Economics

David Madden is Associate Professor in Sociology and Co-Director of the Cities Programme. He works on urban studies, political sociology, and social theory. His research interests include housing, public space, urban restructuring, and critical urban theory. He has conducted qualitative, ethnographic, and archival research in New York City and London. He is a co-author, with Peter Marcuse, of *In Defense of Housing: The Politics of Crisis* (Verso, 2016). His writing has appeared in leading urban sociology journals as well as *The Guardian*, the *Washington Post*, and *Jacobin*. David holds a Ph.D. from Columbia University.

[Edward W. De Barbieri](#), Professor/Director, Community Economic Development Clinic, Albany Law School

Edward W. De Barbieri teaches courses in community economic development law and directs the Community Economic Development Clinic, which focuses on community-based transactional skills and advocacy. His scholarship examines ways the public can engage in land use approvals and economic development activities and how engagement can lead to reforms in economic and social systems. His articles have appeared or are forthcoming in the *Fordham Law Review*, *Florida State University Law Review*, *Cardozo Law Review*, *Fordham Urban Law Journal*, and *Journal of Affordable Housing & Community Development Law*.

Prior to joining the Albany Law School faculty in 2016, Professor De Barbieri directed a community economic development clinic at Brooklyn Law School and was an Adjunct Professor of Clinical Law at New York University School of Law. His background also includes work as a legal services attorney at the Community Development Project of the Urban Justice Center, beginning as an Equal Justice Works Fellow. He spent his final year of law school conducting research in Ireland as a Fulbright Fellow and is a graduate of Yale Divinity School, where he concentrated in religious ethics.

[Heather Abraham](#), Associate Professor, SUNY-University at Buffalo School of Law

Heather Abraham directs the Civil Rights and Transparency Clinic at the State University of New York (SUNY) - University at Buffalo School of Law, a litigation clinic dedicated to enforcing and advancing civil rights and government accountability, with a particular emphasis on fair housing, open government, and freedom of the press. Professor Abraham's academic research and scholarship focus on enforcement of the federal Fair Housing Act, state, and local human rights laws, and explores how fair housing laws can be used to reduce residential segregation.

She began her legal career as a judicial clerk in the U.S. District Court for the Western District of Michigan, and the U.S. Court of Appeals for the Sixth Circuit. She previously served as a Supervising Attorney in the Civil Rights Clinic at Georgetown Law. Prior to teaching, she worked as a legal services attorney, representing low-income renters in eviction proceedings. In that role, she recognized the need for more proactive and holistic solutions for people with a history of homelessness. In response, she organized a resilient coalition of public and private partners to launch a restorative, problem-solving "Community Outreach Court" to mitigate the collateral consequences of conviction and break the debtor's cycle. In 2018, the Michigan Courts honored her with the Robert Griffin Award for her contributions to the judiciary.

Early in her career, she worked in the U.S. Senate as a legislative staff member and served in the U.S. Peace Corps in Guatemala, where she worked collaboratively with civil servants to rebuild the post-civil war municipal government. She earned her J.D. and Master of Public Policy in

housing and community development from the University of Minnesota. She received her LL.M. from Georgetown Law.

4. *Advocates*

[Sandra Park](#), Senior Staff Attorney, ACLU

Sandra Park is a Senior Staff Attorney in the ACLU Women’s Rights Project. At the ACLU, Ms. Park engages in litigation, policy advocacy, and public education at the federal, state, and local levels to advance gender equality and the rights of women and girls. Ms. Park has advocated for survivors of gender-based violence throughout her legal career. Much of her current work focuses on discrimination faced by victims of domestic violence and sexual assault in housing, law enforcement response, and schools. She leads the ACLU’s work on fair housing, including challenging the impact of evictions on women of color and housing discrimination against survivors of gender-based violence. Ms. Park is also responsible for the ACLU’s work strengthening patients’ genetic privacy rights and addressing the intersection of patent regulation and civil liberties. She represented twenty medical organizations, geneticists, and patients in a groundbreaking lawsuit challenging patent granted on two human genes related to breast and ovarian cancer, resulting in a unanimous 2013 U.S. Supreme Court ruling invalidating gene patents (*Association for Molecular Pathology v. Myriad Genetics*).

Ms. Park currently serves as Board Chair of Girls for Gender Equity and as a Board Member of the New York City Bar Association (New York City Bar). She was selected as a Movement Maker by Move to End Violence, a ten-year initiative of the NoVo Foundation to build the social justice movement in the U.S. to end violence against girls and women. Before joining the ACLU, she worked as a Skadden Fellow at the Legal Aid Society of New York and clerked for U.S. District Judge Alvin Hellerstein of the Southern District of New York. She is a magna cum laude graduate of Harvard College and NYU School of Law.

[Leah Goodridge](#), Managing Attorney, Mobilization for Justice, Inc.

Leah Goodridge is the Managing Attorney for Housing Policy in MFJ’s Housing practice, where she engages in litigation, policy analysis, and legislative advocacy. Prior to becoming Managing Attorney, she served as a Supervising Attorney at MFJ. Her litigation accomplishments include favorable decisions on a defective rent demand, chronic rent delinquency, and an amicus brief for a successful case on disability rights at the New York State Court of Appeals. Since 2018, Ms. Goodridge has served as a tenant member on the New York City Rent Guidelines Board, which determines the annual rent levels for regulated apartments. She is a frequent guest speaker on housing justice at universities across the country and abroad, including Duke University School of Law, Vassar College, and McGill University in Montreal, Canada. Ms. Goodridge’s honors and awards include the 2019 New York County Lawyers Association Public Service Award, the 2018 New York Nonprofit Media Rising Stars Award, and the 2015 Fulbright Specialist Award to

Malta. She is a 2009 graduate of the University of California at Los Angeles (UCLA) School of Law.

[Deborah Thrope](#), Deputy Director, National Housing Law Project

Deborah Thrope is the Deputy Director of the National Housing Law Project (NHLP). Ms. Thrope's work focuses on federal, state, and local policy advocacy to preserve affordable housing and tenants' rights. She provides training and technical assistance to advocates working with low-income tenants and serves as an advisor and editor of NHLP's seminal publication, HUD Housing Programs: Tenants Rights. Ms. Thrope has testified before Congress about increasing economic mobility in the Housing Choice Voucher program and improving living conditions for public housing residents. Before she joined NHLP, Ms. Thrope was a Senior Attorney at the Law Foundation of Silicon Valley and represented clients with disabilities facing eviction and civil commitment.

[Fred Freiberg](#), Executive Director, Fair Housing Justice Center

Fred Freiberg, prior to co-founding the Fair Housing Justice Center in 2004, worked for the Civil Rights Division of the United States Department of Justice where he directed a national testing program that he helped to establish in 1992. From 1999 – 2002, Mr. Freiberg directed the fieldwork in two national research projects conducted by The Urban Institute involving testing – a study of mortgage lending practices and the national Housing Discrimination Study (HDS). During the 1980s, Mr. Freiberg worked as a fair housing consultant for private and public fair housing organizations. He was a founder and the first Executive Director of the Metropolitan Milwaukee Fair Housing Council from 1977-1981. Mr. Freiberg's professional activities for fair housing span more than forty years during which time he has testified in dozens of fair housing cases, published articles on fair housing, and received numerous awards for his accomplishments in the fair housing field. He was also the Executive Producer for the documentary, *A Matter of Place*. In 2016, he appeared in "A House Divided," an episode from the EPIX Original docuseries called *America Divided*. From 2016-2019, he consulted with *Newsday* on the largest investigation into real estate practices conducted by any media outlet in the nation. He is featured in the resulting story "Long Island Divided" and appeared in the video documentary *Testing the Divide*. Mr. Freiberg is one of the nation's leading experts on the use of testing as an investigative tool to enforce civil rights laws. He stepped down as FHJC's Executive Director after serving in this position for nine years and now works part-time on fair housing projects of national significance.

[Laura Felts](#), Policy Analyst Consultant, Special Project Coordinator, City Wide Tenant Union of Rochester and Former Executive Director, United Tenants of Albany

Laura Felts is a housing policy analyst and tenant organizer working with the City-Wide Tenant Union of Rochester to elevate housing as a human right. Ms. Felts' work focuses on bringing tenants together to protect and expand tenant rights to safe, decent, and affordable housing. She is

the former Executive Director of United Tenants of Albany (UTA) and worked as UTA's housing court advocate for many years. She has helped thousands of unrepresented tenants navigate the legal system to prevent evictions in housing court. Ms. Felts has served as a panelist for the U.S. Department of Housing & Urban Development (HUD) and the New York State Office of the Attorney General regarding eviction prevention best practices and navigating tenants' rights & protections during COVID-19. Ms. Felts has also participated in investigatory research with the New York State Senate to improve Code Enforcement laws and has testified before the New York State Senate and Assembly regarding rental housing protections and code enforcement policies.

5. *Government*

[Tzeitel Andino-Caballero](#), Deputy Regional Director, U.S. Department of Housing and Urban Development

Tzeitel Andino-Caballero is the Deputy Director for the Region II Office of Fair Housing and Equal Opportunity of the U.S. Department of Housing and Urban Development. Ms. Andino-Caballero has worked with Region II for ten years where she supports HUD's mission of enforcing fair housing laws and ensuring equity in housing throughout New Jersey, New York, Puerto Rico, and the U.S. Virgin Islands. Ms. Andino-Caballero has been a key leader on some of Region II's high-profile enforcement initiatives, especially in the area of disability rights. Accomplishments include securing a \$65 million agreement to produce over 3,000 mobility and sensory accessible public housing units, as well as negotiating the removal of accessibility barriers from 160 affordable housing developments.²³⁷

Ms. Andino-Caballero is also responsible for monitoring compliance with federal anti-discrimination mandates in over \$20 billion in disaster recovery activities in Region II. Ms. Andino-Caballero has a law degree from the University of Puerto Rico and holds a bachelor's degree in psychology.

[Brian Kavanagh](#), State Senator, 26th Senate District, NYS Senate

Brian Kavanagh, as State Senator, represents more than 320,000 residents in New York's 26th Senate District. Senator Kavanagh was first elected to the Senate in 2017 after representing the 74th District on Manhattan's East Side in the State Assembly, where he was elected to six terms, beginning in 2006. Senator Kavanagh began his government service as an aide to Mayor Ed Koch and served in three Mayoral administrations, working on oversight of housing agencies, helping design and manage a citywide interagency task force on fire safety and code enforcement, and

²³⁷ See, for example, U.S. Dept. of Housing and Urban Development, "HUD REACHES AGREEMENT TO RESOLVE DISABILITY DISCRIMINATION COMPLAINT AND DELIVER AFFORDABLE ACCESSIBLE HOUSING IN PUERTO RICO," May 14, 2021, https://www.hud.gov/press/press_releases_media_advisories/HUD_No_21_086.

improving services for homeless New Yorkers. He later served as Chief of Staff to then-Councilmember Gale Brewer and as a researcher and advocate at Dēmos where he focused on securing voting rights for low-income citizens nationwide. His work focuses on promoting affordable housing, preventing gun violence, protecting the environment, creating a more open and equitable political process, and advancing economic and social justice.

As Chair of the Senate Committee on Housing, Construction, and Community Development, Senator Kavanagh has built on his decades of advocating for access to high-quality, safe, affordable housing for all New Yorkers. In his 14 years in the legislature, Senator Kavanagh has repeatedly taken on the gun industry lobby and won, helping to reduce gun violence in New York and across the country. He is the founder and chair of American State Legislators for Gun Violence Prevention and co-chair of New York Legislators for Gun Violence Prevention. Brian has also been an environmental leader. He was a proud co-sponsor of the Climate Leadership and Community Protection Act, enacted in 2019, which mandates huge cuts in climate pollution, investment in clean, renewable energy sources, and creation of green jobs to promote environmental justice—the most comprehensive and ambitious climate change law in the United States. Promoting cleaner, fairer elections by modernizing voting and establishing effective campaign finance laws has been a central part of Senator Kavanagh’s work as well.

Born and raised on Staten Island, Senator Kavanagh attended Regis High School, Princeton University, and NYU Law School. He is admitted to the New York State Bar and practiced law at Kaye Scholer and Schulte Roth & Zabel. He holds an Irish passport and serves as Treasurer of the American Irish Legislators Society.

[Johnathan Smith](#), Interim Commissioner, NYS Division of Human Rights

Johnathan J. Smith joined Governor Andrew M. Cuomo’s administration in January 2019 and served as Deputy Secretary for Civil Rights and Workforce. In this capacity, he served as the principal advisor and policymaker to the Governor on civil rights and workforce matters. Starting in May 2020, Commissioner Smith has served as the Interim Commissioner for the New York State Division of Human Rights.

Previously, Commissioner Smith served in the Obama Administration as Senior Counsel to the Assistant Attorney General for the Civil Rights Division at the U.S. Department of Justice. He has also worked as the legal director at Muslim Advocates, a staff attorney at the NAACP Legal Defense and Educational Fund, and a litigation associate at Fried Frank Harris Shriver & Jacobson LLP. Commissioner Smith started his legal career as a law clerk to the Honorable Carl E. Stewart of the U.S. Court of Appeals for the Fifth Circuit. Commissioner Smith has also served as a lecturer at the University of Michigan Law School. Commissioner Smith is a graduate of Harvard College, the Harvard Graduate School of Education, and NYU School of Law.

[Carmelyn P. Malalis](#), Chair and Commissioner, NYC Commission on Human Rights

Carmelyn P. Malalis was appointed Chair and Commissioner of the New York City Commission on Human Rights in November 2014 following more than a decade in private practice as an advocate for employees' rights in the workplace.

Prior to her appointment, Commissioner Malalis was a partner at Outten & Golden LLP where she co-founded and co-chaired its Lesbian, Gay, Bisexual, and Transgender Workplace Rights Practice Group, co-chaired its Disability and Family Responsibilities Discrimination Practice Group, and successfully represented employees in negotiations, agency proceedings, and litigation involving claims of sexual harassment, retaliation, and discrimination based on race, national origin, sex, gender identity, gender expression, sexual orientation, age, pregnancy, disability, and religion.

Throughout her career, Commissioner Malalis has demonstrated a fierce commitment to promoting diversity and inclusion and preventing and prosecuting discrimination and intolerance. Since she assumed her role as Chair and Commissioner in February 2015, Commissioner Malalis has revitalized the agency, making it a recognized venue for justice for all New Yorkers through increased enforcement, novel restorative justice approaches to case and conflict resolution, and robust public education and outreach to prevent discrimination in New York City.

She has served on the New York City Bar's Executive Committee and Committee on LGBT Rights, Human Rights Watch's Advisory Committee to its LGBT Rights Program, the American Bar Association's Section on Labor and Employment Law Committee on Diversity in the Legal Profession, and the board of Queers for Economic Justice. Commissioner Malalis earned her J.D. from the Northeastern University School of Law and received a B.A. in Women's Studies from Yale University. She and her wife live in Brooklyn with their two children.

[Jordan Dressler](#), Civil Justice Coordinator, Office of Civil Justice, Department of Social Services, NYC Human Resources Administration

Jordan Dressler is New York City's first Civil Justice Coordinator, appointed by the mayor in 2016 to lead the City's Office of Civil Justice (OCJ). OCJ oversees the provision of free or low-cost legal services to low-income and other vulnerable New Yorkers, including the launch and implementation of New York City's groundbreaking "right-to-counsel" program for tenants facing eviction. Under Mr. Dressler's leadership, OCJ administers civil legal assistance programs that serve over 100,000 New Yorkers every year and regularly reports on civil legal needs and available services in New York City.

Prior to leading OCJ, Mr. Dressler served as Senior Advisor for Strategic Initiatives at the City's Human Resources Administration, where he oversaw interagency and external affairs for HRA and helped to launch and manage operations for New York City's municipal identification card program, IDNYC.

Before joining HRA in 2014, Mr. Dressler served as General Counsel at the Mayor's Office of Criminal Justice providing management and oversight to New York City's indigent criminal and family defense systems. Prior to entering government service, Mr. Dressler spent more than a decade as a criminal defense attorney with the Legal Aid Society in the Bronx and private practice. Mr. Dressler is a graduate of Brown University and the Benjamin Cardozo School of Law.

6. Multi-Sector

[Sheila Boston](#), President, New York City Bar and Partner, Arnold & Porter, and [Roger Maldonado](#), Past President, New York City Bar and Partner, Smith, Gambrell & Russell (presenting together)

Sheila S. Boston is a trial lawyer and litigation strategist who defends clients from initiation of the case through trial and/or settlement. Ms. Boston is valued by her clients for her advocacy skills, dependability, and collaborative spirit. She has successfully litigated before both state and federal courts, with significant MDL experience in mass tort actions, providing litigation avoidance counseling, and conducting audits to evaluate the potential product-related liabilities in proposed corporate acquisitions and reorganizations. She helps her clients by assessing litigation risks and defending lucrative products by weeding out frivolous individual personal injury lawsuits, defending against class actions and mass torts, and devising creative settlement solutions.

Roger Juan Maldonado is a trial lawyer, commercial litigator, and leader of the organized bar with more than 35 years of experience. Mr. Maldonado represents musicians, publishers, and record labels in litigation to enforce their copyrights and contractual rights. In addition, Mr. Maldonado represents art galleries and artists in litigation and investigations. He also assists corporate and commercial institutions in litigation involving claims arising from software development/license disputes, lease agreements, and contract disputes. Mr. Maldonado has experience litigating, arbitrating, and mediating claims involving employment discrimination, employment contracts, and restrictive covenants on behalf of professionals, partnerships, and corporations. In addition to corporate matters, he litigates state and federal environmental and land use review cases in trial and appellate courts.

Mr. Maldonado uses his fluency in Spanish to represent the interests of various Hispanic and American businesses, government entities, and individuals, as well as to investigate allegations of corporate wrongdoing and discriminatory employment practices. He represents students in federal class actions involving special education services, as well as government and commercial creditors with claims in bankruptcy reorganization and liquidation proceedings. Mr. Maldonado advises developers, community groups, and entrepreneurs in litigation involving complex real estate transactions.

[Tim Thomas](#), Research Director, UC Berkeley, Urban Displacement Center

Tim Thomas is a postdoctoral scholar and research director at the Urban Displacement project specializing in urban sociology, demography, and data science. His research focuses on how neighborhood change, housing, and displacement affects household socioeconomic stratification by race and gender in the United States. Dr. Thomas is also the principal investigator for the Evictions Study, a multi-metropolitan analysis on the neighborhood drivers of eviction using census data and text mining court records. Dr. Thomas' research agenda is marked by an intellectual foundation in policy-relevant research operationalized through civic and academic collaborations that address real-world problems and advances scholarly research. In 2019, his team's work on evictions provided empirical evidence that helped pass several tenants protections laws in Washington State.

In addition to his work on evictions, Dr. Thomas has published academic articles and reports on migration, gentrification, homelessness, hate crimes, and displacement. He holds a Ph.D. in Sociology from the University of Washington and was a Moore/Sloan Data Science Postdoctoral Fellow at the University of Washington's eScience Institute.

[Harvey Epstein](#), Assembly Member, NYS Assembly

Harvey Epstein represents the East Side of Manhattan as an Assembly Member, including the neighborhoods of the Lower East Side, East Village, Stuyvesant Town/Peter Cooper Village, Murray Hill, Kips Bay, Tudor City, and the United Nations.

Assemblymember Epstein has been a community leader for more than 20 years. Before he was elected to the Assembly, he served on Community Board 3 for 14 years as its board chair, and chair of its Land Use Committee. A public-school parent, Assemblymember Epstein is a former president of the District 1 President's Council and former PTA president at the Neighborhood School where his children attended. Assemblymember Epstein has engaged in numerous community struggles to protect low-wage workers, local day-care centers, and diversity in admissions at public schools. He is a former Co-President of CoDA, a local political organization, and has worked on numerous progressive campaigns over the past few decades.

Assemblymember Epstein's efforts during his five-year tenure as a tenant member of the Rent Guidelines Board were crucial in successfully orchestrating the first and second rent freezes for one-year leases in the 47-year history of the Rent Guidelines Board. This historic achievement has helped millions of New Yorkers preserve their affordable rent-stabilized apartments.

An experienced leader and advocate for the progressive movement, Assemblymember Epstein has introduced, voted for, and supported legislation that protects the rights of LGBTQIA and non-binary New Yorkers, promotes environmental sustainability, supports public education, and makes voting easier. He has tackled deep inequities in the criminal justice system by fighting to end the excessive use of solitary confinement, to legalize the adult use of marijuana, expunge records for New Yorkers with marijuana-related offenses, reform the parole system, and make it easier for

incarcerated people to earn a college degree. He has also been deeply invested in securing extensive protections for tenants, protecting the environment, saving small businesses, and creating new educational opportunities for people with disabilities.

In his first full term in office, Assemblymember Epstein co-authored and passed the Housing Stability and Tenant Protection Act of 2019 that protects tenants and preserves affordable housing in New York City. He won the passage of legislation to create a dedicated funding stream for public transit, expand early voting for New Yorkers, codify *Roe v. Wade* in the State of New York, and reach net-zero greenhouse gas emissions. He has introduced legislation to tax the ultra-wealthy to fund public housing, as well as legislation to create composting programs in all state agencies and reduce the use of plastic in the state. Assemblymember Epstein has supported the passage of hundreds of pieces of legislation and has been a progressive leader in the state legislature. He continues to fight for racial and economic justice and systemic change through legislation. During the COVID-19 crisis, Assemblymember Epstein used his district office as a staging ground to distribute hundreds of meals and personal protective equipment to residents in need. He partnered with nearby small businesses to introduce legislation to bail out struggling small business owners. In the 2021 budget cycle, he successfully fought for a program to disburse over 1 billion dollars in relief to small businesses and small nonprofits, as well as 2.4 billion in aid to residential tenants.

As a member of the Committee on People with Disabilities, he has been a leader on disability rights in the Assembly. In the context of the 2021 budget, he organized his colleagues and won a 2 million dollar outlay for college students with disabilities—the first time in decades the state has invested in students with disabilities at a significant level. Assemblymember Epstein continues to build grassroots power within the district, encouraging constituents to get more involved in local politics by organizing a youth council for the 74th Assembly District, hosting many community forums, and consistently keeping the community in conversations. Assemblymember Epstein sits on the Assembly committees on Agriculture, Environmental Conservation, Governmental Operations, Higher Education, Housing, Small Business, and People with Disabilities. He chairs the subcommittee on Retention of Homeownership and Stabilization of Affordable Housing.

[Mark Levine](#), Councilmember, District 7, NYC

Mark Levine represents the 7th District in Northern Manhattan as an NYC Councilmember. Serving as the Chair of the Council Committee on Health and as a member of the Progressive Caucus, he is a leader on many issues including housing, education, economic justice, transportation, environmentalism, and more.

Councilmember Levine has been a strong advocate for addressing inequality in New York City. As Parks Chair in the 2014-2017 session, he has successfully pushed for greater equity for parks in New York's low-and-moderate-income neighborhoods. He is also a leading voice on affordable housing issues, including the fight to get legal representation for all tenants in housing court.

Councilmember Levine began his career as a bilingual math and science teacher in the South Bronx. He also founded the Neighborhood Trust Federal Credit Union. In the years before he entered the City Council, Councilmember Levine served as Executive Director of Teach for America-New York, as Executive Director of the Center for After-School Excellence at TASC, and as chair of the Traffic and Transportation Committee on Manhattan Community Board 12.

Councilmember Levine is a long-time Washington Heights resident with his wife and their two sons. He graduated from Haverford College with a B.A. in physics and holds a Master's in Public Policy from Harvard University's Kennedy School of Government.

[Daniel Corbitt](#), Associate Director, Housing Opportunities Made Equal (HOME)

Daniel J. Corbitt, Esq. is the Associate Director of Housing Opportunities Made Equal, Inc. (HOME) and is a veteran of the U.S. Marine Corps. During his tenure at HOME, Mr. Corbitt has coordinated fair housing enforcement projects contracted through the U.S. Department of Housing and Urban Development and New York State Homes and Community Renewal. He has also provided training and consulting services to the New York State Division of Human Rights on fair housing investigation techniques and strategies.

Mr. Corbitt has litigated a variety of housing discrimination cases, including a case against a housing provider who evicted a disabled veteran due to the presence of his assistance animal and multiple cases involving housing providers who discriminated against tenants with non-wage income. Mr. Corbitt graduated magna cum laude from the State University of New York College at Buffalo with a B.A. in anthropology and earned his J.D. from the State University of New York at Buffalo Law School, where he received the Frederick C. Ebert Award in recognition of academic achievement and public service.

B. Overview

In their testimony to the Committee, multiple panelists shared that historical policies relating to intentional segregation, redlining, and zoning, among other practices have shaped, and inform, current eviction policies and enforcement.²³⁸ Deborah Archer, a Professor of Clinical Law and Co-

²³⁸ Deborah Archer, testimony, *Briefing Before the New York Advisory Committee to the U.S. Commission on Civil Rights*, February 19, 2021, Web Hearing, transcript, p. 3 (hereafter February 19, 2021, Web Hearing); Scherer Testimony, *February 19, 2021, Web Hearing*, p. 6; David Madden, testimony, *Briefing Before the New York Advisory Committee to the U.S. Commission on Civil Rights*, June 4, 2021, Web Hearing, transcript, p. 63 (hereafter June 4, 2021, Web Hearing); Sandra Park, testimony, *Briefing Before the New York Advisory Committee to the U.S. Commission on Civil Rights*, June 23, 2021, Web Briefing, transcript, p. 2 (hereafter June 23, 2021, Web Hearing); Thrope Testimony, *June 23, 2021, Web Hearing*, p. 9; Tim Thomas, testimony, *Briefing Before the New York Advisory Committee to the U.S. Commission on Civil Rights*, June 25, 2021, Web Hearing, transcript, p. 10 (hereafter June 25, 2021, Web Hearing); Fred Freiberg, testimony, *Briefing Before the New York Advisory Committee to the U.S. Commission on Civil Rights*, July 16, 2021, Web Hearing, transcript, p. 21 (hereafter July 16, 2021, Web Hearing).

Faculty Director of the Center on Race, Inequality, and the Law at NYU and President of the ACLU, and Andrew Scherer, Professor and Policy Director at the Impact Center for Public Interest Law at New York Law School, shared that longstanding federal and local government policies and practices have resulted in enormously disproportionate eviction rates for people of color.²³⁹

Defining structural racism in his remarks for the Committee, Professor Scherer noted that structural racism is the complex, dynamic system through which public policies, institutional practices, cultural representations, historical legacies, and other norms work in interconnected, reinforcing ways across multiple domains to perpetuate racial inequality.²⁴⁰ Scholarship on structural racism integrates systems sciences and critical race theory, the legal doctrine that focuses on the role the law plays in upholding White supremacy.²⁴¹ He shared that because it does not depend upon the discriminatory intent of racist individuals, structural racism perpetuates racial injustice behind a veil of colorblindness and neutrality, and it is able to operate automatically.²⁴²

In *Gaston County v. US*, the Supreme Court recognized the ways in which facially neutral institutions, policies, and laws interacted to produce a racially disparate outcome.²⁴³ In striking down a North Carolina literacy test for voter registration, the Court concluded that Gaston County “deprived its Black residents of equal educational opportunities, which in turn deprived them of an equal chance to pass the literacy test.”²⁴⁴ Structural racism in education perpetuates the “school-to-prison pipeline.”²⁴⁵ Professor Scherer shared that a systematic lack of funding, experienced teachers, and programs in American schools has led to higher rates of incarceration among low-income people and people of color.²⁴⁶ Some scholars have noted that existing legal processes are insufficient to ensure racial justice.²⁴⁷ In the context of structural racism, causation is best understood as a cumulative process within and across domains, rather than a singular, linear

²³⁹ Archer Testimony, *February 19, 2021, Web Hearing*, p. 3; Scherer Testimony, *February 19, 2021, Web Hearing*, p. 6.

²⁴⁰ Scherer Statement, at 23, citing Lawrence, Keith et. al., *Structural Racism and Community Building*, Aspen Institute Roundtable on Community Change. Washington, D.C.: The Aspen Institute, 2004; Scherer at 29, citing William M. Wiecek, *Structural Racism and the Law in America Today: An Introduction*, 100 KY. L. J. 1 (2012).

²⁴¹ Scherer Statement, at 27, citing Chauncey D. Smith, *Deconstructing the Pipeline: Evaluating School-to-Prison Pipeline Equal Protection Cases Through a Structural Racism Framework*, 36 FORDHAM URB. L.J. 1009 (2009).

²⁴² Scherer Statement, at 30, citing William M. Wiecek, *Structural Racism and the Law in America Today: An Introduction*, 100 KY. L. J. 1 (2012).

²⁴³ *Gaston Cty., N. C. v. United States*, 395 U.S. 285, 291 (1969); Scherer Statement, at 27, citing Chauncey D. Smith, *Deconstructing the Pipeline: Evaluating School-to-Prison Pipeline Equal Protection Cases Through a Structural Racism Framework*, 36 FORDHAM URB. L.J. 1009, (2009).

²⁴⁴ *Gaston Cty., N. C. v. United States*, 395 U.S. 285, 291 (1969).

²⁴⁵ Scherer Statement, at 27, citing Chauncey D. Smith, *Deconstructing the Pipeline: Evaluating School-to-Prison Pipeline Equal Protection Cases Through a Structural Racism Framework*, 36 FORDHAM URB. L.J. 1009, (2009).

²⁴⁶ *Ibid.*

²⁴⁷ Scherer Statement, at 24-26, citing John A. Powell, (lower case intentional), *Structural Racism: Building upon the Insights of John Calmore*, 86 N.C. L. REV. 791, 813 (2008).

narrative.²⁴⁸ Professor Scherer called the Committee's attention to the origins of the current eviction process in New York as a summary proceeding originally intended to help landlords remove tenants quickly and without civil procedures that include a right to discovery or counsel.²⁴⁹ The prevalence of summary proceedings in the U.S. grew out of common law concepts dating back to the British feudal system, in which the high social status of landowners was reflected in a procedural framework.²⁵⁰ Beginning in the Colonial Era, American courts used the English legal practices of forcible entry and detainer proceedings to resolve landlord-tenant disputes.²⁵¹

New York's first summary proceeding statute was enacted in 1820 with the intention of providing landlords with a simple, expeditious, and inexpensive means to regain possession of their property.²⁵² This move brought with it profound restrictions to the procedural remedies available to tenants.²⁵³

In 1842, New York established the "right to redemption," which gives tenants facing eviction the opportunity to retain possession of the premises by paying the rent arrears in full.²⁵⁴

In 1924, the Civil Practice Act of 1920 was amended with the intention of providing landlords with a special remedy for receiving a money judgement and possessory judgment in a summary proceeding for the non-payment of rent.²⁵⁵

In 1973, the New York State Real Property Actions and Proceedings Law consolidated landlord-tenant proceedings in one court with the intention of more effectively enforcing housing code compliance.²⁵⁶ The New York City Housing Court was created that year to facilitate improvements in local housing stock; however, in practice, its focus has been almost entirely on evictions rather than repairs.²⁵⁷ Almost immediately after its creation, housing court was flooded by eviction cases.²⁵⁸

²⁴⁸ Scherer Statement, at 24-26, citing John A. Powell (lower case intentional), *Structural Racism: Building upon the Insights of John Calmore*, 86 N.C. L. REV. 791, 813, (2008); *see also* *Gaston Cty., v. United States*, 395 U.S. 285 (cited by the speaker, recognizing how facially neutral institutions, policies, and laws interact to produce a racially disparate outcome).

²⁴⁹ Scherer Testimony, *February 19, 2021, Web Briefing*, p. 6.

²⁵⁰ Scherer Statement, at 3, citing Mary B. Spector, *Tenants' Rights, Procedural Wrongs: The Summary Eviction and the Need for Reform*, 46 WAYNE L. REV. 135 (2000).

²⁵¹ *Ibid.*

²⁵² Scherer Statement, at 5, citing Rasch's New York Landlord Tenant Law Section 29:5. History of Summary Proceedings.

²⁵³ Scherer Statement, at 6, citing *Zenila Realty Corp. v. Masterandrea*, 123 Misc. 2d 1 (Civ. Ct. 1984).

²⁵⁴ Scherer Statement, at 6, citing Rasch's New York Landlord Tenant Law Section 29:5. History of Summary Proceedings.

²⁵⁵ Scherer Statement, at 5, citing *Fleming v. Flanagan*, 178 Misc. 2d 723 (J. Ct. 1998).

²⁵⁶ Scherer Statement, at 6-7, citing Milton, Dennis E., Comment, *The New York City Housing Part: New Remedy for an Old Dilemma*, 3 FORDHAM URB. L.J. 267 (1975).

²⁵⁷ Scherer Testimony, *February 19, 2021, Web Hearing*, p. 7.

²⁵⁸ Scherer Statement, at 7, citing Sateesh Nori, *Housing Court Reforms: Back to the Future?* 46 NYRPLJ 9 (2018).

Significant reforms were made to housing court in 1997, including the creation of new resolution parts and trial parts.²⁵⁹ Although the resolution parts were intended to increase order and efficiency, some argued that the new system pushed unrepresented litigants into settlement.²⁶⁰ Brian Kavanagh, State Senator representing New York's 26th Senate District, shared that the Eviction Lab's Matthew Desmond has noted that evictions used to be rare, but have become really commonplace in recent years and are now frequently used as a tool in rental markets.²⁶¹

1. Consequences of Eviction

Eviction consequences are serious, long-term, and include physical outcomes such as moves to substandard housing or homelessness, and lifelong impacts on rental records as well as health.²⁶²

Eviction has a disproportionate impact on communities of color and is associated with a wide range of negative health outcomes.²⁶³ Widely cited research on the matter has shown that eviction leads to long-term negative effects, such as unemployment, transiency, prolonged homelessness, lack of access to federal housing assistance, and deprivation of necessities like clothing, food, and medical care.²⁶⁴ The likelihood of these consequences is particularly high for low-income mothers, who also face higher rates of parenting stress, depression, and poorer health for their children.²⁶⁵

Evicted individuals have an increased likelihood of emergency room visits, mental health issues, and mortality from substance abuse.²⁶⁶ People who experience homelessness due to an eviction face a decreased lifespan and increased rates of diabetes, hypertension, heart attack, and depression.²⁶⁷

Following an eviction, entire families can be impacted. For women, eviction is associated with an increased likelihood of experiencing physical and sexual violence, and an increased likelihood of

²⁵⁹ *Ibid.*, 8.

²⁶⁰ *Ibid.*

²⁶¹ Kavanagh Testimony, *July 16, 2021, Web Hearing*, p. 23.

²⁶² Hall Testimony, *July 16, 2021, Web Hearing*, p. 28; Benfer Testimony, *June 4, 2021, Web Hearing*, pp. 68-69; Scherer Statement at 12, citing Desmond, Matthew and Kimbro, Rachel, *Eviction's Fallout: Housing, Hardship, and Health*, 94 *Social Forces* 295 (2015); Park Testimony, *June 23, 2021, Web Hearing*, p. 3.

²⁶³ Collins Statement, at 1.

²⁶⁴ Scherer Statement, at 12, citing Desmond, Matthew and Kimbro, Rachel, *Eviction's Fallout: Housing, Hardship, and Health*, 94 *Social Forces* 295 (2015); Benfer Testimony, *June 4, 2021, Web Hearing*, pp. 38-39.

²⁶⁵ Scherer Statement, at 12, citing Desmond, Matthew and Kimbro, Rachel, *Eviction's Fallout: Housing, Hardship, and Health*, 94 *Social Forces* 295 (2015); Benfer Testimony, *June 4, 2021 Web Hearing*, p. 39.

²⁶⁶ Scherer Statement, at 11, citing Collinson, Robert and Reed, Davin, *The Effects of Evictions on Low-Income Households* (Dec. 2018) (unpublished), https://www.law.nyu.edu/sites/default/files/upload_documents/evictions_collinson_reed.pdf and Bradford, Ashley C., and Bradford, W. David, *The Effect of Evictions on Accidental Drug and Alcohol Mortality*, 55 *Health Serv. Res.* 9 (2020).

²⁶⁷ Scherer Statement, at 14, citing National Health Care for the Homeless Council, *Homelessness & Health: What's the Connection*, (Feb. 2019).

eviction in the future.²⁶⁸ The association is stronger for Black women, who statistics show are among the likely targets of eviction.²⁶⁹ It was also asserted that eviction may be associated with a families’ decreased access to nutritious food.²⁷⁰ For children, eviction was claimed to be traumatizing, destabilizing, and associated with reduced life expectancy.²⁷¹ One study was cited to the Committee for the proposition that five-year-old children who experienced an eviction have over twice the prevalence of low food security compared to other children.²⁷²

Eviction Leads to Long-Term Negative Health Outcomes

Physical Health	Mental Health (conditions can attach at filing stage of eviction)	Associated Conditions Among Women	Associated Conditions Among Children	Exposure to Sub-Standard Living Conditions	Barriers to Livelihood (barriers occur even when case dismissed)
<ul style="list-style-type: none"> • Higher Mortality • Respiratory Conditions • High Blood Pressure • Poor Self-Rated General Health • Coronary Heart Disease • Sexually Transmitted Infections • Drug Use 	<ul style="list-style-type: none"> ▪ Depression ▪ Anxiety ▪ Mental Health Hospitalization ▪ Exposure to Violence ▪ Suicide 	<ul style="list-style-type: none"> ▪ Physical Assault ▪ Sexual Assault ▪ Drug Use and Related Harms ▪ Pre-term Pregnancies ▪ Future Housing Instability 	<ul style="list-style-type: none"> ▪ Lead Poisoning ▪ Academic Decline ▪ Food Insecurity ▪ Emotional Trauma ▪ Risk of Chronic Disease in Adulthood ▪ Low Birthweight ▪ Decreased Life Expectancy 	<ul style="list-style-type: none"> ▪ Lead ▪ Mold ▪ Poor Ventilation ▪ Pest ▪ Infestations ▪ Crowding 	<ul style="list-style-type: none"> • Failing credit scores • Downward move • Unemployment • Residential instability • Homelessness • Inability to access social services

Sources available in EA Benfer, et al., Eviction, Health Inequity, and the Spread of COVID-19: Housing Policy as a Primary Pandemic Mitigation Strategy. J. Urb. Health. 2021.

Benfer Testimony, June 4, 2021, Web Hearing Slides, at 59

2. COVID-19 and Evictions

Multiple panelists stressed that COVID-19 is shining a spotlight on longstanding issues in the approach to eviction processes and practices.²⁷³

The Committee heard testimony that the eviction moratorium developed in response to the COVID-19 pandemic was a necessary lifeline for renters who lost their income during the

²⁶⁸ Benfer Testimony, June 4, 2021, Web Hearing, p. 39, 69.

²⁶⁹ Ibid.

²⁷⁰ Scherer Statement, at 13, citing Leifheit, Kathryn M., et. al., *Eviction in Early Childhood and Neighborhood Poverty, Food Security, and Obesity in Later Childhood and Adolescence: Evidence from a Longitudinal Birth Cohort*, 11 SSM - Population Health (2020).

²⁷¹ Benfer Testimony, June 4, 2021, Web Hearing, p. 69.

²⁷² Scherer Statement, at 13, citing Leifheit, Kathryn M., et. al., *Eviction in Early Childhood and Neighborhood Poverty, Food Security, and Obesity in Later Childhood and Adolescence: Evidence from a Longitudinal Birth Cohort*, 11 SSM - Population Health (2020).

²⁷³ Thrope Testimony, June 23, 2021, Web Hearing, p. 6; Soto Testimony, June 25, 2021, Web Hearing, p. 59.

pandemic, acting as a public health measure for disease prevention.²⁷⁴ Transiency, homelessness, and crowded residential environments are associated with a heightened risk of contracting and spreading COVID-19.²⁷⁵ These negative effects disproportionately impact people of color, who are more likely to experience eviction and to contract and die from COVID-19.²⁷⁶

The Committee also heard from landlords that they urgently needed assistance in addressing the combined loss of income and, in some cases, property damage sustained during the pandemic.²⁷⁷

The COVID-19 pandemic laid bare the urgency for responding to both longstanding as well as current eviction concerns.²⁷⁸ With Black families least likely to own their homes and most at-risk of being evicted from rental properties, panelists urged the Committee to seriously consider proactive methods for addressing eviction policies.²⁷⁹ Poor residents in New York State were severely rent-burdened before the COVID-19 pandemic, and there is an enormous shortfall in affordable housing.²⁸⁰ Close to one million renter households are considered extremely low-income,²⁸¹ and approximately 1.2 million New Yorkers are estimated to be at risk of eviction once rental assistance and the eviction moratorium related to COVID-19 end.²⁸²

Ms. Boston and Professor Scherer noted that the racial and economic disparities in eviction filings were further exacerbated by the pandemic, during which half of New York State's Black tenant households fell behind on rent.²⁸³ For the period of May 26-June 7, 2021, over 2.8 million New Yorkers experienced a loss of employment income, 46% of whom were Black and about 29% of whom were Latinx.²⁸⁴

Raul Soto, Director of Public Engagement at East Harlem Tutorial Program, supporting families facing eviction, shared his concern about rent burden and safety during the pandemic.

This pressure of rent burden has been so intense that families will go and take on some significant financial risks in order to make sure that they have a roof over

²⁷⁴ Thrope Testimony, *June 23, 2021, Web Hearing*, p. 6.

²⁷⁵ Scherer Statement, at 9-10, citing Benfer, Emily, et. al., *Eviction, Health Inequity, and the Spread of COVID-19: Housing Policy as a Primary Pandemic Mitigation Strategy*, J. URBAN HEALTH (Jan. 2021).

²⁷⁶ Scherer Testimony, *February 19, 2021, Web Hearing*, p. 7; Scherer Statement, at 9-10, citing Benfer, Emily, et. al., *Eviction, Health Inequity, and the Spread of COVID-19: Housing Policy as a Primary Pandemic Mitigation Strategy*, J. URBAN HEALTH (Jan. 2021).

²⁷⁷ Shitao Testimony, *June 25, 2021, Web Hearing*, p. 43; Jiang Testimony, *June 25, 2021, Web Hearing*, p. 44; Speaker 1 Testimony, *June 25, 2021, Web Hearing*, p. 39; Oh Testimony, *June 25, 2021, Web Hearing*, p. 37; Translated Mandarin Emailed Testimony, at 2.

²⁷⁸ Thrope Testimony, *June 23, 2021, Web Hearing*, p. 6.

²⁷⁹ Freiberg Testimony, *July 16, 2021, Web Hearing*, p. 4; Corbitt Testimony, *June 25, 2021, Web Hearing Slides*, at 41; Abraham Testimony, *June 4, 2021, Web Hearing*, p. 49; Abraham Testimony, *June 4, 2021, Web Hearing*, p. 50.

²⁸⁰ De Barbieri Testimony, *June 4, 2021, Web Hearing*, pp. 45-46.

²⁸¹ De Barbieri Testimony, *June 4, 2021, Web Hearing*, pp. 46.

²⁸² Lin Testimony, *June 4, 2021, Web Hearing*, p. 40.

²⁸³ Boston and Maldonado Statement, at 15.

²⁸⁴ *Ibid.*

their head. [As] an organization that works predominantly with communities that [have] been disproportionately impacted not only by COVID-19, but by systemic issues in the United States, it's definitely a failure of empathy and creativity that we as a society have failed to come up with a solution that doesn't make a single parent of three children decide between paying for their internet for their child to attend school and putting a roof over their head.²⁸⁵

There is a disparate impact of the COVID-19 pandemic on communities of color.²⁸⁶

The Committee received testimony that racial disparities in exposure to COVID-19 are due in part to structural racism in housing.²⁸⁷ Professor Scherer noted that Black and Latinx households are almost twice as likely to lack complete plumbing than are White households.²⁸⁸ The federal response to the pandemic was said to have failed to address health-related housing violations such as access to clean water, leaving racial minorities more susceptible to infection.²⁸⁹

Lucy Block, Research and Policy Associate at the Association for Neighborhood and Housing Development in New York City, shared results from her analysis reviewing rates of eviction and race during the pandemic.

There's just an incredibly stark difference between the ZIP codes where people were dying from COVID-19 that are also people of color, which we can see in health statistics about how COVID-19 has affected and impacted different racial groups. And then this analysis really just revealed how highly those numbers also correlate with eviction filings. And so communities of color were not just getting COVID-19 at higher rates and dying from COVID-19 at higher rates, but they're simultaneously facing eviction from their homes.²⁹⁰

In looking ahead to the expiration of New York's COVID-19 eviction moratorium, Emily Benfer, Visiting Professor of Law and Public Health at Wake Forest University School of Law and School of Medicine and Visiting Research Collaborator at the Eviction Lab at Princeton University, noted that New York should adopt interventions, such as pre-filing eviction diversion, statewide Right to Counsel, and emergency rental assistance, among others, to prevent eviction, especially among low-income and historically marginalized communities at the highest risk of displacement.²⁹¹ Carol Lambert, former Executive Director of the Nonprofit Settlement Housing Fund, noted, "we

²⁸⁵ Soto Testimony, *June 25, 2021, Web Hearing*, p. 59.

²⁸⁶ Lin Testimony, *June 4, 2021, Web Hearing*, p. 40; Husock Testimony, *June 4, 2021, Web Hearing*, p. 8; H. Epstein Testimony, *June 25, 2021, Web Hearing*, p. 19; Soto Testimony, *June 25, 2021, Web Hearing*, p. 59; Block Testimony, *June 25, 2021, Web Hearing*, p. 67.

²⁸⁷ Scherer Statement, at 30-31, citing Ruqaiyah Yearby and Seema Mohapatra, *Law, Structural Racism, and the COVID-19 Pandemic*, 7 J. OF L. & THE BIOSCIENCES 1 (2020).

²⁸⁸ *Ibid.*

²⁸⁹ *Ibid.*

²⁹⁰ Block Testimony, *June 25, 2021, Web Hearing*, p. 67.

²⁹¹ Benfer Testimony, *June 4, 2021, Web Hearing*, p. 39.

would not need rental assistance if another crisis like COVID happened, if everybody who was eligible had Section 8 assistance.”²⁹²

Howard Husock, Adjunct Scholar in Domestic Policy Studies at the American Enterprise Institute, noted the tragic consequences eviction has on a household, “[i]t’s common sense, but tragic, that in light of higher poverty and unemployment rates, for those in communities of color, who’ve also faced the brunt of the effects of the coronavirus, they are at greater risk for eviction.”²⁹³ However, he cautioned against extending concerns about evictions stemming from the COVID-19 pandemic to permanent restrictions on eviction, noting that the Committee should carefully consider restrictions imposed on minority property owners in an effort to preserve the housing ecosystem.²⁹⁴ Mr. Husock also cautioned the Committee against conflating evictions with removals:

[D]ata from a major property management firm indicates that only 10.5% of [renters] facing eviction actually are ultimately physically removed from the premises. The majority go on to stay, work out a rent payment or leave on their own. In many cases then, eviction filings are part of a de facto arbitration process in which property owners, many of whom rely on rental income to meet mortgage payments, perform crucial maintenance, and earn their livelihood, use the courts to work out a compromise.²⁹⁵

C. Factors Impacting Evictions

There are multiple intersections between segregation and redlining, housing conditions, and eviction based on race.²⁹⁶

Multiple panelists cautioned the Committee against assuming segregative policies exist only in the past, highlighting zoning, policing practices, and crime free ordinances in perpetuating and entrenching segregation in housing.²⁹⁷ Professor Benfer noted that underenforced fair housing laws, crime-free ordinances, and single-family zoning increase patterns of segregation and barriers to health and livelihood among communities of color.²⁹⁸ Tim Thomas, Research Director at U.C. Berkeley’s Urban Displacement Center, shared that U.S. policies and practices continue to create a system of segregation, which could lead to de facto apartheid without intervention.

²⁹² Lambert Testimony, *June 25, 2021, Web Hearing*, p. 69.

²⁹³ Husock Testimony, *June 4, 2021, Web Hearing*, p. 8.

²⁹⁴ *Ibid.*, pp. 8, 10-11.

²⁹⁵ *Ibid.*, p. 10.

²⁹⁶ Freiberg Testimony, *July 16, 2021, Web Hearing*, p. 19; Felts Testimony, *July 16, 2021, Web Hearing*, p. 18.

²⁹⁷ Archer Testimony, *February 19, 2021, Web Hearing*, p. 3; Thomas Testimony, *June 25, 2021, Web Hearing*, p. 8; Benfer Testimony, *June 4, 2021, Web Hearing*, p. 38.

²⁹⁸ Benfer Testimony, *June 4, 2021, Web Hearing*, p. 37.

[R]ace is highly related to evictions. And in all the research that we see, it is always the number one variable that predicts evictions. We also control for hundreds of variables that are related to evictions, but every single time, statistically, the models point out that [the percentage of Black people in a population] is the highest predictive variable for evictions. This in itself shows that evictions are a civil rights issue. If we do not handle the eviction crisis, then we will have naturally entered into something that looks akin to apartheid. So we are required to understand what are the policies to help mitigate this.²⁹⁹

1. Segregation

Intentional segregation in government policies for public housing contributed to current residential segregation.³⁰⁰

Multiple panelists described the history of segregation and its role in perpetuating and impacting present-day eviction disparities based on race.³⁰¹

Professor Scherer shared that the federal government mandated racial segregation in early public housing projects, noting that the legacy of those policies is still seen today in who lives in which housing project in New York City.³⁰² Public housing was intentionally segregated when it began in the 1930s, and served to isolate Black populations in under-resourced communities with less access to quality jobs and quality education that could lead towards accumulating enough wealth to buy a home.³⁰³ This is shown in disproportionately high rates of communities of color renting, rather than owning, their own homes.³⁰⁴

Heather Abraham, Associate Professor of Law at SUNY-University at Buffalo School of Law, highlighted that while intentional discrimination based on race is no longer explicitly codified in federal law, it persists in the disparate impact of longstanding housing and criminal records policies and lax enforcement of non-discrimination laws, leading to segregated and devalued communities today that place Black populations at the highest risk for eviction.³⁰⁵

²⁹⁹ Thomas Testimony, *June 25, 2021, Web Hearing*, p. 8.

³⁰⁰ Kavanagh Testimony, *July 16, 2021, Web Hearing*, p. 18; Scherer Testimony, *February 19, 2021, Briefing*, p. 6; Archer Testimony, *February 2019, 2021, Web Hearing*, p. 19; Madden Testimony, *June 4, 2021, Web Briefing*, p. 63; Park Testimony, *June 23, 2021, Web Briefing*, p. 2; Thrope Testimony, *June 23, 2021, Web Briefing*, p. 9; Thomas Testimony, *June 25, 2021, Web Hearing*, p. 10; Block Testimony, *June 25, 2021, Web Hearing*, p. 68; Hepburn Testimony, *June 4, 2021, Web Hearing*, p. 16.

³⁰¹ Scherer Testimony, *February 19, 2021, Briefing*, p. 6; Archer Testimony, *February 2019, 2021, Web Hearing*, p. 19; Madden Testimony, *June 4, 2021, Web Briefing*, p. 63; Park Testimony, *June 23, 2021, Web Briefing*, p. 2; Thrope Testimony, *June 23, 2021, Web Briefing*, p. 9; Thomas Testimony, *June 25, 2021, Web Hearing*, p. 10; Block Testimony, *June 25, 2021, Web Hearing*, p. 68; Hepburn Testimony, *June 4, 2021, Web Hearing*, p. 16; Benfer Testimony, *June 4, 2021*, p. 37.

³⁰² Scherer Testimony, *February 19, 2021, Web Hearing*, p. 6.

³⁰³ Scherer Testimony, *February 19, 2021, Web Hearing*, p. 6.

³⁰⁴ Lin Testimony, *June 4, 2021, Web Hearing*, p. 40; H. Epstein Testimony, *June 25, 2021, Web Briefing*, p. 19.

³⁰⁵ Abraham Statement, at 6.

Carmelyn P. Malalis, Chair and Commissioner of the NYC Commission on Human Rights, noted that New York’s highest court upheld the “Whites-only” policy of Stuyvesant Town, a subsidized housing complex, as recently as 1949.³⁰⁶ Fred Freiberg, Executive Director of the Fair Housing Justice Center, connected concerns around ongoing racial discrimination and multiple policies that result in discriminatory practices.

It is precisely the invisibility of contemporary racial discrimination in housing that ensures its sustainability. This is true in tenant selection practices, land use and zoning policies, the operation of government housing programs, and yes, even in evictions. Residential segregation is reinforced and sustained by continuing racial discrimination, which has a profound and often perilous, lasting intergenerational [effect] for excluded populations, and subsequently divided and marginalized communities.³⁰⁷

Mr. Freiberg emphasized that institutional racism was and remains a persistent force and noted how controlling housing choices blocks access of Black and Latinx renters from “high-performing schools, employment opportunities, health care, parks and recreational resources, safe neighborhoods, and healthy foods,” perpetuating what he described as the cycle of inequality.³⁰⁸ Ms. Collins suggested that housing mobility counseling programs might help break segregation patterns, by helping families with vouchers gain greater access to the schools and neighborhoods of their choice.³⁰⁹ Mr. Freiberg called for fair housing laws to be “vigorously” enforced to break the cycle.³¹⁰

Racial segregation in communities continues today.³¹¹

In addition to intentional segregation in public housing and policies designed to promote homeownership, Black individuals and their families have experienced a confluence of factors impacting their ability to accumulate wealth and resources to retain or obtain quality housing through either homeownership or renting.³¹² Noting that renters cannot accumulate wealth in the same way homeowners can, Mr. Husock shared that the legacy of renting vs. owning homes is seen in the disproportionately high rate of Black tenants in subsidized housing which, at 39%, is approximately three times higher than the Black population.³¹³

There is also a long history in New York in which communities of color have been removed from spaces they owned or occupied for the purpose of urban development that reveals a lack of respect

³⁰⁶ Malalis Testimony, *June 23, 2021, Web Hearing*, p. 12.

³⁰⁷ Freiberg Testimony, *July 16, 2021, Web Hearing*, p. 4.

³⁰⁸ *Ibid.*, p. 3.

³⁰⁹ Collins Statement, at 4.

³¹⁰ Freiberg Statement, at 3.

³¹¹ Kavanagh Testimony, *July 16, 2021, Web Hearing*, p. 18.

³¹² Scherer Testimony, *February 19, 2021, Web Hearing*, p. 6; Lin Testimony, *June 4, 2021, Web Hearing*, p. 40; H. Epstein Testimony, *June 25, 2021, Web Briefing*, p. 19.

³¹³ Husock Testimony, *June 4, 2021, Web Hearing*, p. 17.

and a racial hierarchy.³¹⁴ Commissioner Malalis noted the original dispossession of the Lenape people from their homeland as just one of many examples of intentional exclusion and displacement of communities of color in New York City.³¹⁵

Both Commissioner Malalis and David Madden, Associate Professor in Department of Sociology and Co-Director of the Cities Programme at London School of Economics, shared examples of historical dispossession of property in majority Black and Latinx communities in New York, including the 18th-century dispossession of Black-owned farms and housing in present day Greenwich Village, the 19th-century demolition of majority Black settlement Seneca Village to clear land for Central Park, the 20th-century destruction of majority Black and Latinx San Juan Hill to make land for Lincoln Center, and continuing racialized displacement occurring in many neighborhoods including Harlem, Williamsburg, Bedford-Stuyvesant, and Chinatown.³¹⁶ Dr. Madden noted, “There’s never been an official reckoning with this history.”³¹⁷ Ms. Collins noted that while primarily focused on homeowner displacement, many displacement triggers, like tax liens, affect both homeowners and tenants.³¹⁸

Daniel Corbitt, Associate Director of Housing Opportunities Made Equal, Inc., noted that there is a history of disinvestment in communities of color that includes decisions around infrastructure, such as highways, train lines, and bus routes, that have been used to isolate communities of color without a car from access to important resources like job centers.³¹⁹ As people of color are less likely than White people to own a car, reliable transportation and access to important services is incredibly important.³²⁰ Presenters shared that segregation is related to concentrated poverty and limits housing choice for renters, forcing them to pay higher rents for lower quality housing.³²¹

Professor Abraham discussed the cyclical nature of segregation, urging the Committee to “reframe any thinking that separates the eviction process from residential segregation. Instead, I ask you to think of evictions as part of a larger system that reinforces segregation and allows it to flourish.”³²² She noted that prior intentional segregation, including differences in access to information and

³¹⁴ Madden Testimony, *June 4, 2021, Web Hearing*, p. 43; Malalis Testimony, *June 23, 2021, Web Hearing*, p. 12.

³¹⁵ Malalis Testimony, *June 23, 2021, Web Hearing*, p. 12.

³¹⁶ Madden Testimony, *June 4, 2021, Web Hearing*, p. 43.

³¹⁷ *Ibid.*, p. 44.

³¹⁸ Collins Statement, at 6.

³¹⁹ Corbitt Testimony, *June 25, 2021, Web Hearing*, p. 25.

³²⁰ *Ibid.*

³²¹ Thomas Testimony, *June 25, 2021, Web Hearing*, p. 13; Magavern Testimony, *June 4, 2021, Web Hearing*, p. 16.

³²² Abraham Testimony, *June 4, 2021, Web Hearing*, p. 49; Abraham Statement, at 6, citing *Maria Krysan and Kyle Crowder, Cycle of Segregation: Social Processes and Residential Stratification 12-13, 33-37 (2017)*. MARIA KRYSAN & KYLE CROWDER, *CYCLE OF SEGREGATION: SOCIAL PROCESSES AND RESIDENTIAL STRATIFICATION 12-13, 33-37 (2017)*.

opportunity, result in continued segregation of communities of color into disinvested communities and substandard housing from which they are often evicted when asking for repairs.³²³

2. *Impact of Redlining*

Black families who attempted to purchase homes were restricted by the federal government's policy of redlining. Starting in the 1930s in response to the Great Depression, the federal government created the Federal Housing Administration to underwrite low-interest, low down-payment, long-term loans that were available almost exclusively to White individuals, prompting the growth of the White middle class.³²⁴ In 1935, the Federal Home Loan Bank Board asked the Home Owners' Loan Corporation to look at 239 cities and create "residential security maps" that indicated the security of real estate investments.³²⁵ The Federal Housing Administration and the Veteran's Administration then organized \$119 billion in mortgage insurance payments by following the Home Owners' Loan Corporation's appraisal practices that ranked neighborhoods based on the race and ethnicity of residents.³²⁶ Neighborhoods comprised of people of color were marked red on these maps, preventing access to loans and investments in those neighborhoods, which disproportionately prevented Black individuals and their families from becoming homeowners.³²⁷ Mr. Husock noted Federal Housing Administration redlining policies were segregated by design and advantaged White people in buying houses.³²⁸ Mr. Freiberg emphasized that the housing market reflects the "intentional and coordinated actions" of government and housing industry officials to disenfranchise communities of color.³²⁹ Professor Benfer noted that it resulted in the prevention of wealth accumulation among people of color, urban disinvestment, and lasting segregation.³³⁰ Professor Abraham noted that, as a result, there is unequal access to homeownership and an unequal allocation of resources by zip code.³³¹ Homeownership agreements often contained racial covenants until 1948.³³² Edward De Barbieri, Professor at

³²³ Abraham Statement, at 7.

³²⁴ Corbitt Testimony, *June 25, 2021, Web Hearing*, p. 26; Malalis Testimony, *June 23, 2021, Web Hearing*, p. 12; Thomas Testimony, *June 25, 2021, Web Hearing*, p. 10.

³²⁵ Benfer Statement, at 2-3, citing Emily A. Benfer, *Health Justice: A Framework (and Call to Action) for the Elimination of Health Inequity and Social Injustice*, 65 *Amer. L. Rev.* 275 (2015), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2672396.

³²⁶ Corbitt Testimony, *June 25, 2021, Web Hearing*, p. 26 (redlining map from 1937 made by the Home Owners Loan Corporation).

³²⁷ Malalis Testimony, *June 23, 2021, Web Hearing*, p. 12; Thomas Testimony, *June 25, 2021, Web Hearing*, p. 10; Corbitt Testimony, *June 25, 2021, Web Hearing*, p. 26.

³²⁸ Husock Testimony, *June 4, 2021, Web Hearing*, p. 17.

³²⁹ Freiberg Statement, at 2.

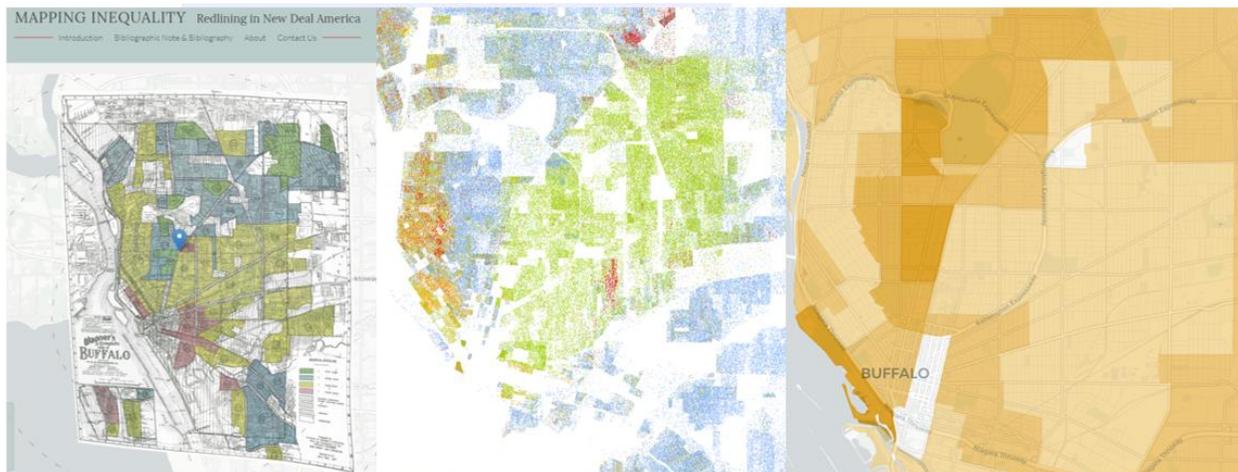
³³⁰ Benfer Statement, at 2-3, citing Emily A. Benfer, *Health Justice: A Framework (and Call to Action) for the Elimination of Health Inequity and Social Injustice*, 65 *Amer. L. Rev.* 275 (2015), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2672396.

³³¹ Abraham Testimony, *June 4, 2021, Web Hearing*, p. 49.

³³² H. Epstein Testimony, *June 25, 2021, Web Briefing*, p. 20.

Albany Law School and Director of the Community Economic Development Clinic, noted that redlining is still impacting purchases in Albany.³³³

Redlining leads to poor housing conditions in predominately Black neighborhoods by restricting the flow of capital in and out of these neighborhoods, causing a cascading effect of tenants struggling to afford unexpected expenses, such as a medical bill, and fighting for repairs and being evicted for that ask.³³⁴ Laura Felts, Policy Analyst Consultant and Special Project Coordinator at City Wide Tenant Union of Rochester, and Former Executive Director at United Tenants of Albany, emphasized that “historically segregated communities that were then subject to redlining have the worst housing conditions.”³³⁵ Mr. Corbitt agreed, sharing that the consequences of these policies is seen today in segregation by race as well as property values that directly correspond to the Home Owners Loan Corporation’s redlining map from 1937, highlighted below.³³⁶ In the 2010 Census racial dot map, also below, green dots correspond with Black populations heavily concentrated in the east side of Buffalo, and blue dots correspond with White populations concentrated north of Buffalo, which corresponds to the distribution of home values.³³⁷



HOLC map, 1937
From the University of Richmond

Racial dot map, 2010
Census data
From the University of Virginia

Median home value, 2010
The New York Times

Corbitt Testimony, June 25, 2021, Web Hearing Slides, at 38

³³³ De Barbieri Testimony, *June 4, 2021, Web Hearing*, p. 46.

³³⁴ Felts Testimony, *July 16, 2021, Web Hearing*, p. 18; Corbitt Testimony, *June 25, 2021, Web Hearing*, pp. 26-27; Magavern Testimony, *June 4, 2021, Web Hearing*, p. 16; Hepburn Testimony, *June 4, 2021, Web Hearing*, p. 16; Abraham Statement, at 7; Benfer Testimony, *June 4, 2021, Web Hearing*, p. 39.

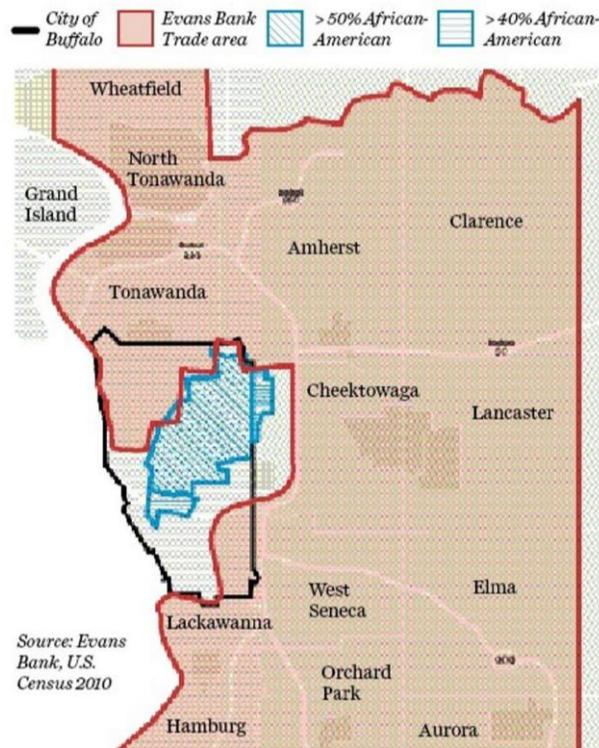
³³⁵ Felts Testimony, *July 16, 2021, Web Hearing*, p. 18.

³³⁶ Corbitt Testimony, *June 25, 2021, Web Hearing*, p. 26; Corbitt Testimony, *June 25, 2021, Web Hearing Slides*, at 38.

³³⁷ Corbitt Testimony, *June 25, 2021, Web Hearing*, p. 26; Corbitt Testimony, *June 25, 2021, Web Hearing Slides*, at 38.

Redlining practices continue today and there are some housing policies that others liken to redlining.³³⁸

Professor Lin noted that the 2008 recession showed direct connections between specific banks and predatory lending activities, which extends to non-profit community development organizations that receive funding from these banks, citing the City of Oakland's suit against Wells Fargo for predatory lending in an effort to capture money for local governments.³³⁹ A 2014 mortgage lending discrimination case in Buffalo, New York revealed that Evans Bank created a map defining their lending area that excluded predominantly Black communities on the east side of Buffalo, with less than 1% of residential mortgages issued to Black borrowers between 2009 and 2012.³⁴⁰



Corbitt Testimony, June 25, 2021, Web Hearing Slides, at 38

³³⁸ Corbitt Testimony, June 25, 2021, Web Hearing, pp. 26-27.

³³⁹ Lin Testimony, June 4, 2021, Web Hearing, p. 59.

³⁴⁰ Corbitt Testimony, June 25, 2021, Web Hearing, pp. 26-27, referring to Press Release, New York State Office of the Attorney General, A.G. Schneiderman Secures Agreement With Evans Bank Ending Discriminatory Mortgage Redlining In Buffalo (Sept. 10, 2015), <https://ag.ny.gov/press-release/2015/ag-schneiderman-secures-agreement-evans-bank-ending-discriminatory-mortgage>; see also Matt Glynn, "Evans Bancorp isn't Only Lender at Risk of Redlining Lawsuit," Buffalo News, Sept., 2, 2014, https://buffalonews.com/business/local/evans-bancorp-isn-t-only-lender-at-risk-of-redlining-lawsuit/article_b90cb01f-9e6b-55a3-9f10-a9098b9cea83.html.

3. *Affordable Housing Availability*

Where an individual lives impacts life outcomes.³⁴¹

Lower income neighborhoods of color have less access to quality K-12 education, dictating access to higher education and high-earning employment opportunities.³⁴² Mr. Corbitt highlighted this for the Committee:

Where you live matters because it determines whether or not you have access to high performance schools, fresh foods, access to lending institutions, reliable transportation, jobs that pay a living wage, quality healthcare, green space, and other amenities and services. In fact, it's been said that a person's zip code is a greater determining factor of their health than their DNA. Yet for decades, many neighborhoods, especially urban neighborhoods of color, have been deprived of investments in these and other community assets. Housing discrimination and displacement due to evictions and increasing unaffordability are major drivers of the disparities we see in our communities today.³⁴³

There is inadequate affordable housing targeted towards the populations who most need it.³⁴⁴

The COVID-19 pandemic and related consequences of homelessness have highlighted the shortage of affordable housing.³⁴⁵ In response to a Committee member's question about recalculating Area Median Income (AMI) to better target residents making minimum wage, NY State Assemblymember Epstein and NYC Councilmember Mark Levine noted that increasing affordable housing would be a more comprehensive solution.³⁴⁶ However, Mr. Robert Robinson, a staff volunteer at Partners for Dignity and Rights and coalition member of the Right to Counsel in New York City Coalition and Housing Justice for All, disagreed, noting the current calculations for Area Median Income exclude certain populations and impact the development of affordable housing.³⁴⁷

Assemblymember Epstein stressed a need for more housing in general, and more affordable housing specifically.³⁴⁸ Mr. Corbitt agreed, and emphasized the need to target development of affordable housing in areas of opportunity rather than the historical siting of affordable housing in

³⁴¹ Corbitt Testimony, *June 25, 2021, Web Hearing*, p. 25; Lin Testimony, *June 4, 2021, Web Hearing*, p. 41.

³⁴² Corbitt Testimony, *June 25, 2021, Web Hearing*, p. 25; Lin Testimony, *June 4, 2021, Web Hearing*, p. 41.

³⁴³ Corbitt Testimony, *June 25, 2021, Web Hearing*, p. 25.

³⁴⁴ H. Epstein Testimony, *June 25, 2021, Web Hearing*, p. 31.

³⁴⁵ Corbitt Testimony, *June 25, 2021, Web Hearing*, p. 33; Scherer Testimony, *February 19, 2021, Web Hearing*, p. 5.

³⁴⁶ H. Epstein Testimony, *June 25, 2021, Web Hearing*, p. 32.; Levine Testimony, *June 25, 2021, Web Hearing*, p. 32; Corbitt Testimony, *June 25, 2021 Web Hearing*, p. 32.

³⁴⁷ Robinson Testimony, *June 25, 2021, Web Hearing*, p. 73.

³⁴⁸ H. Epstein Testimony, *June 25, 2021, Web Hearing*, p. 31.

areas of disinvestment.³⁴⁹ Councilmember Levine noted that this could be accomplished through stronger negotiations with developers when there is a land use auction, or program subsidies like 421-a (a real estate tax exemption for the new construction of multi-family rental housing located in certain areas of New York City) that would target affordable housing towards lower income populations.³⁵⁰ Ms. Lamberg shared that making Section 8 more widely accessible for those who otherwise cannot afford housing would help mitigate non-payment of rent related evictions.³⁵¹

Highlighting the importance of the Committee's project on evictions, Assemblymember Epstein stressed the importance of telling city, state, and federal entities to focus on housing: "[W]e need to hear that to deal with the underlying . . . racism, we need to invest deeply in affordable housing. . . [B]udgets are priorities, and if you were telling us our priorities are wrong, that's really helpful for people like me to have those recommendations."³⁵² To illustrate, he shared that the State's budget is \$213 billion, with \$9 billion spent on projects like airports, while only \$2.5 billion was spent on housing.³⁵³

4. Zoning

Zoning impacts where affordable housing can be built,³⁵⁴ perpetuating current patterns of segregation based on race.³⁵⁵

Mr. Husock noted, "[H]ousing supply is an important aspect of addressing the racial wealth gap."³⁵⁶ Multiple speakers shared that racially motivated exclusionary zoning laws and racial covenants add to the impact of redlining by restricting affordable, multi-family homes in suburban communities.³⁵⁷ Mr. Freiberg noted that communities continue to develop zoning codes with various restrictions that prevent low-income, Black, and Latinx populations from moving in.³⁵⁸ Peter Hepburn, Research Fellow at Princeton's Eviction Lab and Assistant Professor at Rutgers University, Professor Abraham, and Mr. Husock recognized the negative impact of exclusionary

³⁴⁹ Corbitt Testimony, *June 25, 2021, Web Hearing*, p. 32.

³⁵⁰ Levine Testimony, *June 25, 2021, Web Hearing*, p. 32; N.Y. Real Prop. Tax Law § 421-a (Consol. 2021).

³⁵¹ Lamberg Statement, at 1.

³⁵² H. Epstein Testimony, *June 25, 2021, Web Hearing*, p. 34.

³⁵³ *Ibid.*

³⁵⁴ Bunkeddeko Testimony, *June 25, 2021, Web Hearing*, p. 11; Freiberg Testimony, *July 16, 2021, Web Hearing*, p. 19.

³⁵⁵ Block Testimony, *June 25, 2021, Web Hearing*, p. 68; Freiberg Testimony, *July 16, 2021, Web Hearing*, pp. 4, 19.

³⁵⁶ Husock Testimony, *June 4, 2021, Web Hearing*, pp. 20-21.

³⁵⁷ Hepburn Testimony, *June 4, 2021, Web Hearing*, p. 21; Block Testimony, *June 25, 2021, Web Hearing*, p. 68; Benfer Testimony, *June 4, 2021, Web Hearing*, p. 37.

³⁵⁸ Freiberg Testimony, *July 16, 2021, Web Hearing*, p. 19.

zoning laws and regulations in limiting the availability of affordable housing options that could allow people to move from renting to owning in suburban communities.³⁵⁹

Richard A. Epstein, Laurence A. Tische Professor of Law and Director of the Classical Liberal Institute at New York University, and Mr. Husock cited zoning as creating barriers to the market, preventing the development of housing that is affordable.³⁶⁰ Accessory dwelling unit restrictions on basement apartments, land use restrictions, and single family zoning restrictions impact landlords who might need rental property, in addition to renters who are seeking to move.³⁶¹ Assemblymember Epstein encouraged the Committee to consider recommending Accessory Dwelling Unit legislation as a means of slowly building out affordable multiple-unit homes without strong opposition from current communities.³⁶²

5. *Wealth Gap*

Black and Hispanic households are more likely to face eviction filings and executed warrants of eviction than White households, even controlling for income.³⁶³

Mr. Brenner shared that the NYU Furman Center's research indicates that wealthier Black households are disproportionately more impacted by eviction or eviction risk than White households,³⁶⁴ although Mr. Husock noted that controlling for income does not indicate how a household budgets its expenses.³⁶⁵

Poverty is second to race in predicting eviction risk, and racial segregation is related to concentrated poverty.³⁶⁶ Discriminatory exclusion from homeownership perpetuates the racial wealth gap.³⁶⁷ Dr. Hepburn noted that evictions are both a cause and consequence of poverty, according to Matthew Desmond in his book, *Evicted*.³⁶⁸ Evictions are associated with higher rates of negative health outcomes, including depression, suicidal ideation, downward moves to worse

³⁵⁹ Abraham Testimony, *June 4, 2021, Web Hearing*, p. 50; Hepburn Testimony, *June 4, 2021, Web Hearing*, p. 21; Husock Testimony, *June 4, 2021, Web Hearing* p. 20.

³⁶⁰ Epstein Testimony, *February 19, 2021, Web Hearing*, p. 12; Husock Testimony, *June 4, 2021, Web Hearing*, pp. 20-21.

³⁶¹ H. Epstein Testimony, *June 25, 2021, Web Hearing*, pp. 20, 31.

³⁶² *Ibid.*, 31.

³⁶³ Brenner Testimony, *June 4, 2021, Web Hearing*, pp. 21-22.

³⁶⁴ Brenner Testimony, *June 4, 2021, Web Hearing*, p. 21.

³⁶⁵ Husock Testimony, *June 4, 2021, Web Hearing*, p. 23.

³⁶⁶ Thomas Testimony, *June 25, 2021, Web Hearing*, p. 13.

³⁶⁷ Husock Testimony, *June 4, 2021, Web Hearing*, p. 17; Corbitt Testimony, *June 25, 2021, Web Hearing*, pp. 26-27; Benfer Testimony, *June 4, 2021, Web Hearing*, p. 56; Bunkeddeko Testimony, *June 25, 2021, Web Hearing*, p. 14.

³⁶⁸ Hepburn Testimony, *June 4, 2021, Web Hearing*, pp. 30-31, *see* Matthew Desmond, *Evicted: Poverty and Profit in the American City* (2016).

neighborhoods, housing conditions, and long-term negative impacts on employment and income.³⁶⁹

Professor Benfer noted, “[w]e have a fundamental problem in our country. Historically, the main vehicle of wealth accumulation is property; yet, a majority (58%) of Black households still do not have access to that, while the majority of White households (72%) do.”³⁷⁰ These lower rates of wealth translate to decreased ability to save and weather unexpected events that can precipitate an eviction.³⁷¹

Speaking to the snowballing effects when one is prevented from accumulating wealth, Mr. Husock suggested buying out or compensating public housing tenants, noting that Black tenants have been overrepresented in public housing since the passage of the National Housing Act of 1949.³⁷² He noted, “One way that we can approach this is, not simply to protect them from eviction, but perhaps to consider buying out their tenancies, allowing them to accumulate wealth and to compensate for the fact that for the many years they’ve lived in public housing, they’ve not been able to accumulate wealth and that is reflected not only in their own household situations, but in the households of their extended family.”³⁷³

Mr. Corbitt stated that the median wealth of White families was 10 times that of Black families, eight times that of Latinx families, and is tied both to homeownership rates as well as property values.³⁷⁴ In the Buffalo-Niagara region, the White homeownership rate is 73.4%, while the Black homeownership rate is 28.9%, and property values in predominately Black neighborhoods “have been eviscerated by redlining and other policies of disinvestment.”³⁷⁵

6. *Crime-free Ordinances*

Crime-free and nuisance housing ordinances perpetuate systems of exclusion and segregation by disproportionately impacting communities of color, resulting in unjust and discriminatory evictions.³⁷⁶

³⁶⁹ Hepburn Testimony, *June 4, 2021, Web Hearing*, pp. 30-31.

³⁷⁰ Benfer Testimony, *June 4, 2021, Web Hearing*, p. 56, citing Harvard College, “The State of the Nation’s Housing,” 2017, pp. 1-6,

https://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/harvard_jchs_state_of_the_nations_housing_2017_chap1.pdf.

³⁷¹ Hepburn Testimony, *June 4, 2021, Web Hearing*, p. 16.

³⁷² Husock Testimony, *June 4, 2021, Web Hearing*, p. 20.

³⁷³ Husock Testimony, *June 4, 2021, Web Hearing*, p. 17.

³⁷⁴ Corbitt Testimony, *June 25, 2021, Web Hearing*, p. 27.

³⁷⁵ Corbitt Testimony, *June 25, 2021, Web Hearing*, p. 27. *See also* Magavern Testimony, *June 4, 2021, Web Hearing*, p. 14.

³⁷⁶ Archer Testimony, *February 19, 2021, Web Hearing*, p. 3; Thrope Testimony, *June 23, 2021, Web Hearing*, p. 8; Emily Benfer, *June 4, 2021, Web Hearing Slides*, at 60; Park Testimony, *June 23, 2021, Web Hearing*, p. 3; Goodridge Testimony, *July 16, 2021, Web Hearing*, pp. 6-7.

Crime-free housing ordinances exist across New York State as local laws and policies that encourage or require private landlords to evict tenants, granting police officers and landlords discretionary authority to decide who gets access to housing based on contact with the legal system, and without due process, oversight, or accountability.³⁷⁷ Similarly, enforcement of nuisance laws, which are most often enforced in communities of color and low-income communities, can lead to punitive actions against those in need of assistance, including victims of domestic violence.³⁷⁸ Cities across the U.S. are increasingly criminalizing life-sustaining behaviors of homeless people, such as camping in public, loitering, begging, and sitting or lying down in particular places.³⁷⁹ Landlords commonly deny housing to people with a criminal record or history of eviction, policies which disproportionately impact people of color.³⁸⁰

Multiple panelists noted crime-free ordinances further racial segregation and disproportionately impact people of color, survivors of domestic violence, and people with mental disabilities, while doing little to stem crime.³⁸¹ An alleged crime, alleged criminal activity, and criminal records, including arrests without conviction, were noted by some panelists as things that might impact housing access by preventing individuals from accessing loans, credit, and certain jobs.³⁸²

Professor Archer shared that these policies allow revocation of a private landlord's authorization to lease housing if they fail to act on the police's determination, and common crime free lease provisions explicitly state that "proof of violation shall not require a criminal conviction."³⁸³ Sophie House, Legal Fellow at the NYU Furman Center, echoed Professor Archer's concerns that crime-free ordinances disproportionately impact Black people in particular by concentrating people with past criminal legal system involvement into fewer communities, further stigmatizing those communities in a manner that links evictions with housing instability and racial segregation.³⁸⁴

Margaretta Lin, Lecturer in City and Regional Planning and Future Histories Lab at UC Berkeley Goldman School of Public Policy and Executive Director of Just Cities, noted, "[n]ot only are formerly incarcerated people denied housing because of their criminal records, their family members also face potential eviction for housing them. Given the over-representation of Black and Latino residents in New York prisons and jails, racial disparities result from public and private

³⁷⁷ Archer Testimony, *February 19, 2021, Web Hearing*, p. 3; Park Testimony, *June 23, 2021, Web Hearing*, p. 4.

³⁷⁸ Collins, *Written Testimony*, p. 6.

³⁷⁹ Scherer Statement, at 14, citing National Law Center on Homelessness & Poverty, *No Safe Place: The Criminalization of Homelessness in U.S. Cities* (2019), https://homelesslaw.org/wp-content/uploads/2019/02/No_Safe_Place.pdf.

³⁸⁰ *Ibid.*

³⁸¹ Archer Testimony, *February 19, 2021, Web Hearing*, p. 3; Park Testimony, *June 23, 2021, Web Hearing*, p. 3.

³⁸² Archer Testimony, *February 19, 2021, Web Hearing*, p. 3.

³⁸³ *Ibid.*

³⁸⁴ House Testimony, *June 4, 2021, Web Hearing*, p. 18.

housing providers discriminating based upon past criminal history. This exemplifies a race-neutral policy operating in racially discriminatory ways.”³⁸⁵

7. *Eviction Records*

Cities across the U.S. are increasingly criminalizing life-sustaining behaviors of homeless people, such as camping in public, loitering, begging, and sitting or lying down in particular places.³⁸⁶ Landlords commonly deny housing to people with a criminal record or history of eviction, policies which disproportionately impact people of color.³⁸⁷

Additionally, having a record of eviction, no matter the outcome, prevents families from accessing rental housing, including federally assisted programs like the Department of Housing and Urban Development’s Section 8 program, public housing, and low-income tax credit program.³⁸⁸ This almost always leads to a downward move to lower quality housing and communities with underfunded schools and higher rates of crime and poverty, which furthers racial segregation.³⁸⁹ There are companies that screen tenants for records of eviction, and eviction proceedings end up on an individual’s credit report regardless of the outcome of the case.³⁹⁰ This allows housing providers to deny family housing due to past rental history.³⁹¹ Deborah Thrope, Deputy Director of the National Housing Law Project, noted that screening tenants for a record of eviction has been referred to as modern redlining, reinforcing systemic racism and raising fair housing and civil rights concerns.³⁹²

Black women are disproportionately impacted by tenant screening practices, as Black women are both more likely to face evictions than White households and other people of color and more likely to have a case filed against them that is later dismissed (but will still show up in an eviction screening).³⁹³ Tenant screenings are particularly challenging for Black women who are survivors of domestic violence, who often face eviction because police have responded to their homes.³⁹⁴

³⁸⁵ Lin Testimony, *June 4, 2021, Web Hearing*, p. 41.

³⁸⁶ Scherer Statement, at 14, citing National Law Center on Homelessness & Poverty, *Protect Tenants, Prevent Homelessness* (2018).

³⁸⁷ *Ibid.*

³⁸⁸ Thrope Testimony, *June 23, 2021, Web Hearing*, p. 8; Benfer Testimony, *June 4, 2021, Web Hearing*, p. 38.

³⁸⁹ Benfer Testimony, *June 4, 2021, Web Hearing*, p. 38; Thrope Testimony, *June 23, 2021, Web Hearing*, p. 8.

³⁹⁰ Thrope Testimony, *June 23, 2021, Web Hearing*, p. 8.

³⁹¹ *Ibid.*

³⁹² *Ibid.*

³⁹³ Park Testimony, *June 23, 2021, Web Hearing*, p. 3.

³⁹⁴ Park Testimony, *June 23, 2021, Web Hearing*, p. 3; Hall Testimony, *July 16, 2021, Web Hearing*, pp. 27-28.

8. Source of Income as Proxy for Race

Source of income is often a proxy for race and otherwise has a disparate impact on Black and Latinx communities in the housing ecosystem.³⁹⁵

Multiple panelists noted that source of income discrimination often serves as a proxy for race.³⁹⁶ Source of income discrimination involves discrimination against those who use governmental subsidies for housing, such as Section 8 vouchers.³⁹⁷ Commissioner Malalis noted that New York State legislators recognized the need for added protections under the law for additional areas where Black and Hispanic people tend to be overrepresented or have experienced disproportionate impact, including lawful source of income discrimination, disability, and immigration status, each of which may act as a proxy for race.³⁹⁸ Black families represent 22% of all households in New York City, but comprise 27% of households headed by an individual with a disability.³⁹⁹ She also described a real world case describing “intersectional identities and proxies that can be used for race even when race discrimination is not directly alleged in a particular case.”⁴⁰⁰ In this case, a landlord discriminated against a tenant, a single Black mother, based on the tenant’s perceived immigration status, and was assessed a civil penalty of \$12,000 and \$28,000 in damages for the tenant.⁴⁰¹

Source of income discrimination has been illegal since 2008 in New York City,⁴⁰² and since 2019 in New York State,⁴⁰³ but has not been rigorously enforced.⁴⁰⁴ Mr. Freiberg noted that racial discrimination and source of income discrimination intersect, disproportionately affecting Black and Brown populations.⁴⁰⁵ Commissioner Malalis shared that Black and Hispanic communities represent 36% and 45% of all Housing Choice Vouchers respectively in New York City, which makes them particularly vulnerable to source of income discrimination.⁴⁰⁶

³⁹⁵ Malalis Testimony, *June 23, 2021, Web Hearing*, p. 22; Malalis Statement, at 4; Abraham Statement, at 7; Eberhart Statement, at 1.

³⁹⁶ Malalis Testimony, *June 23, 2021, Web Hearing*, pp. 22, 29; Malalis Statement, at 4; Abraham Written Testimony, at 7; Eberhart, *Written Testimony*, p.1.

³⁹⁷ Smith Testimony, *June 23, 2021, Web Hearing*, p. 9.

³⁹⁸ Malalis Testimony, *June 23, 2021, Web Hearing*, p. 12, 22.

³⁹⁹ *Ibid.*, 29.

⁴⁰⁰ *Ibid.*, 14-15.

⁴⁰¹ *Ibid.*

⁴⁰² N.Y.C. ADMIN. CODE § 8–107.

⁴⁰³ N.Y. Exec. L. § 296(5)(a)(1) (2019).

⁴⁰⁴ Freiberg Testimony, *July 16, 2021, Web Hearing*, p. 4; Kavanagh Testimony, *July 16, 2021*, p. 12; Eberhart Statement, at 1; Malalis Testimony, *June 23, 2021, Web Hearing*, pp. 13-14; Abraham Statement, at 3, citing POVERTY & RACE RES. ACTION COUNCIL, *Expanding Choice: Practical Strategies for Building a Successful Housing Mobility Program*, App. B. 98–108 (Nov. 2021), www.prrac.org/pdf/AppendixB.pdf (10 N.Y. cities and counties prohibit source of income discrimination by local law).

⁴⁰⁵ Freiberg Statement, at 1.

⁴⁰⁶ Malalis Testimony, *June 23, 2021, Web Hearing*, p. 29.

Mr. Freiberg noted that tenants with rental subsidies, most of whom are Black and Latinx, face widespread discrimination in the housing market.⁴⁰⁷ Multiple speakers noted city laws are under-enforced and offered examples of tenant complaints as evidence.⁴⁰⁸ Mr. Magavern suggested that it is important to understand and address systemic issues that contribute to driving Black tenants to a position of non-payment, including a higher rent burden and substandard housing.⁴⁰⁹

Multiple panelists suggested broader jurisdictional recognition of sources of income as a new protected class.⁴¹⁰ In addition, multiple panelists suggested better enforcement of existing laws.⁴¹¹ Ms. Eberhart recommended the Committee consider creating pathways to hold brokers accountable for working with landlords against prospective tenants with vouchers.⁴¹² In order to address concerns around income source being used as a proxy for race, Ms. Thrope suggested banning criminal history and credit checks in the tenant application process.⁴¹³ Multiple panelists suggested pre-complaint intervention work would also help to address source of income discrimination.⁴¹⁴ Professor Abraham noted, “[s]tate leaders have acknowledged the prevalence of the problem and the need for budget appropriations to enforce existing protections.”⁴¹⁵

9. Rent Control

Panelists expressed diverse viewpoints on rent regulation. Professor Epstein stated that regulations make it expensive to build new housing,⁴¹⁶ incentivize well-off tenants to remain in cheaper apartments despite being able to afford market rents,⁴¹⁷ and disincentivize landlords from putting properties on the rental market. He suggested deregulation of the rental market and ending rent control to increase supply of rental units as a means of addressing current affordable housing issues.⁴¹⁸ Multiple panelists disagreed with this approach.⁴¹⁹ State Senator Kavanagh noted that deregulation does not improve access to rental units and that regulation is needed to prevent discrimination.⁴²⁰ Assemblymember Epstein responded by offering Boston as an example of a city

⁴⁰⁷ Freiberg Testimony, *July 16, 2021, Web Briefing*, p. 4.

⁴⁰⁸ Eberhart, Statement, at 1; Malalis Testimony, *June 23, 2021, Web Hearing*, pp. 13-14; Robinson Testimony, *June 4, 2021, Web Hearing*, p. 71.

⁴⁰⁹ Magavern Testimony, *June 4, 2021, Web Hearing*, p. 24.

⁴¹⁰ Abraham Testimony, *June 4, 2021, Web Hearing*, pp. 49, 51, 60; Malalis Testimony, *June 23, 2021, Web Hearing*, p. 29.

⁴¹¹ Eberhart Statement, at 2; Collins Statement, at 4.

⁴¹² Eberhart Statement, at 2.

⁴¹³ Thrope Testimony, *June 23, 2021, Web Hearing*, p. 8.

⁴¹⁴ Malalis Testimony, *June 23, 2021, Web Hearing*, p. 20; Eberhart Statement, at 2.

⁴¹⁵ Abraham Statement, at 10, citing Press Release, Governor Cuomo and Legislative Leaders Announce FY 2020 Enacted Budget Includes Measures Prohibiting Discrimination Against Tenants Based on Source of Income, NY Division of Human Rights. (Apr. 26, 2019), <https://dhr.ny.gov/source-of-income-press-release>.”

⁴¹⁶ Epstein Testimony, *February 19, 2021, Web Hearing*, pp. 10, 17.

⁴¹⁷ Epstein Testimony, *February 19, 2021, Web Hearing*, pp. 12-13.

⁴¹⁸ Epstein Testimony, *February 19, 2021, Web Hearing*, pp. 10, 17.

⁴¹⁹ Benfer Testimony, *June 4, 2021, Web Hearing*, p. 39; H. Epstein Testimony, *June 25, 2021, Web Briefing*, p. 29; Kavanagh Testimony, *July 16, 2021, Web Hearing*, p. 20.

⁴²⁰ Kavanagh Testimony, *July 16, 2021, Web Hearing*, p. 20.

that had rent regulation and then removed rent regulation laws, resulting in subsequent negative consequences like increased segregation and economic disparity.⁴²¹ In order to start to address issues of racial equity, Professor Benfer noted rent stabilization specifically protects tenants most in need of assistance and suggested targeting rental assistance to historically marginalized communities.⁴²² Ms. Felts suggested emergency federal rent controls be researched as a potential response to the COVID-19 pandemic and its disproportionate impact on renters of color.⁴²³

Multiple panelists shared that regulatory loopholes decrease the effectiveness of rent control laws and undermine tenant protections.⁴²⁴ Ms. Felts identified tax breaks for luxury developers as an example of an existing inefficiency and recommended choosing approaches that target the loopholes.⁴²⁵ The 2019 Housing Stability and Tenant Protection Act (New York)⁴²⁶ was recognized by multiple panelists as an example of a law that eliminated many loopholes and made rent regulation laws stronger, resulting in a substantial reduction in evictions across New York City even before the 2020 COVID-19 pandemic and the related eviction moratorium.⁴²⁷ State Senator Kavanagh highlighted the importance of enforcement for the Committee.

In 2019, through the Housing Stability and Tenant Protection Act, we basically eliminated all of those loopholes and made those laws much stronger. And as a result of that, the data for this is not complete because we did those laws in June of 2019, and of course COVID-19 really did affect the markets in very dramatic ways, beginning of 2020. But, in the fall of 2019, we already saw very substantial reductions in evictions across the board in New York City. And we believe that those are direct result of the [Housing Stability and Tenant Protection Act], the strengthening of those laws.⁴²⁸

Dr. Madden pointed out the importance for government to intervene to de-commoditize the housing market.⁴²⁹ Senator Kavanagh noted the need for government to use all available federal and state resource to prevent evictions, and for the eviction process to be fair and paced to allow opportunity for effective government intervention.⁴³⁰

⁴²¹ H. Epstein Testimony, *June 25, 2021, Web Briefing*, p. 29.

⁴²² Benfer Testimony, *June 4, 2021, Web Hearing*, p. 39; Benfer Testimony, *June 4, 2021, Web Hearing Slides*, at 60.

⁴²³ Felts Testimony, *July 16, 2021, Web Hearing*, p. 10.

⁴²⁴ Felts Testimony, *July 16, 2021, Web Hearing*, pp. 10, 17, 25; Kavanagh Testimony, *July 16, 2021, Web Hearing*, p. 33.

⁴²⁵ Felts Testimony, *July 16, 2021, Web Hearing*, p. 25.

⁴²⁶ 2019 N.Y. Sess. Laws Ch. 36 (McKinney) (codified in scattered sections of N.Y. UNCONSOL. LAW Title 23).

⁴²⁷ Kavanagh Testimony, *July 16, Web Hearing*, p. 20; H. Epstein Testimony, *June 25, 2021, Web Hearing*, p. 21.

⁴²⁸ Kavanagh Testimony, *July 16, 2021, Web Hearing*, p. 13.

⁴²⁹ Madden Testimony, *June 4, 2021, Web Hearing*, pp. 52-53.

⁴³⁰ Kavanagh Testimony, *July 16, 2021, Web Hearing*, pp. 30-31.

10. Housing Precarity

Communities of color face the highest risk of eviction with the lowest ability to weather economic shocks.⁴³¹

Multiple panelists noted that even prior to the pandemic, communities of color faced disproportionate evictions and worse housing conditions than White communities.⁴³² In 2013, 23% of Black and 25% of Hispanic renting families in the U.S. spent at least half of their income on housing.⁴³³ A national study concluded that rent burdens have increased over the past 15 years, forcing low-income families with children (especially families of color) to pay a median of three-fifths of their monthly income on rent.⁴³⁴

Dr. Madden presented data showing that renters in predominantly Black zip codes prior to the pandemic had three times the likelihood of eviction when compared to majority White zip codes, which has risen to five times that of White renters during the pandemic.⁴³⁵

Dr. Thomas offered another supporting example, sharing the Housing Precarity Risk Model with the Committee.⁴³⁶ The model, which was developed in response to COVID-19 pandemic, defines precarity as the resilience a household has to economic shocks and analyzing neighborhood rates of pre-pandemic eviction risk, pre-pandemic displacement risk, 2020 employment, and change in employment over time.⁴³⁷ Dr. Thomas found that 67% of all Black renters live in areas of increased vulnerability for displacement and eviction, compared to 44% of the general population.⁴³⁸ Regarding Black-headed households in particular, Dr. Thomas noted:

As you can see those areas that are highlighted in red, the deeper the red, the more precarious those neighborhoods are. And in fact, a large majority of these precarious neighborhoods fall within racially segregated spaces, as well as spaces that have been facing gentrification or even spaces where Black households have been displaced too, because of gentrification. And when we just look at eviction risk, we're not even looking at displacement, but 73% of all Black-headed renter households live in moderate-to-high eviction risk metropolitan neighborhoods. As the scholar, Matt Desmond said, "[w]hat incarceration is for Black men, evictions

⁴³¹ Thomas Testimony, *June 25, 2021, Web Hearing*, p.7; Block Testimony, *June 25, 2021, Web Hearing*, p. 68.

⁴³² Madden Testimony, *June 4, 2021, Web Hearing*, p. 43; Block Testimony, *June 25, 2021, Web Hearing*, p. 68.

⁴³³ Scherer Statement, at 18, citing Matthew Desmond, *Unaffordable America: Poverty, Housing and Eviction*, 2015.

⁴³⁴ Scherer Statement at 13, citing Larrimore, Jeff and Schuetz, Jenny, Board of Governors of the Federal Reserve System, *Assessing the Severity of Rent Burden on Low-Income Families* (December 22, 2017).

⁴³⁵ Madden Testimony, *June 4, 2021, Web Hearing*, p. 43.

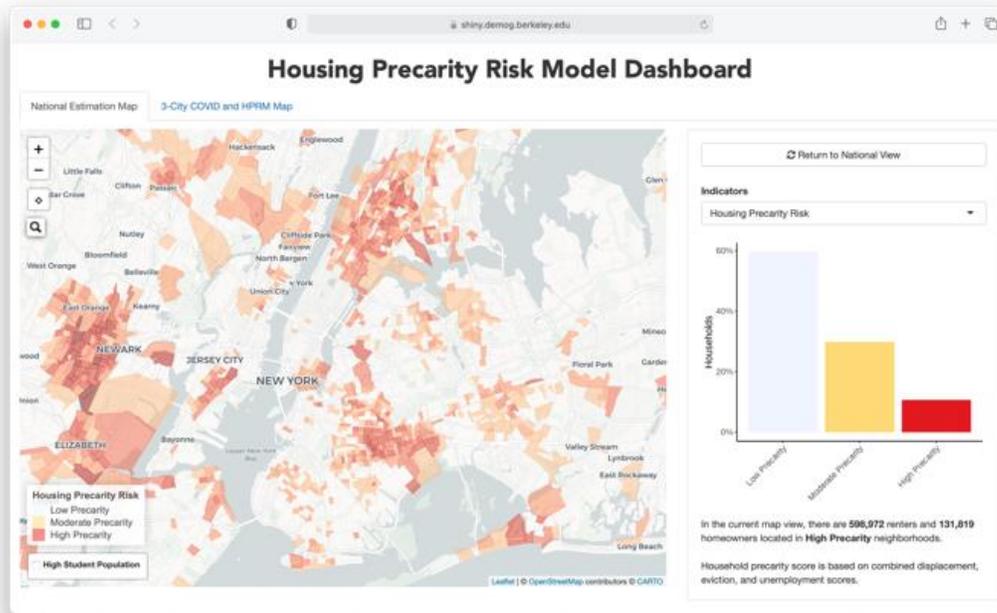
⁴³⁶ Thomas Testimony, *June 25, 2021, Web Hearing*, p. 7.

⁴³⁷ Thomas Testimony, *June 25, 2021, Web Hearing*, p. 7.

⁴³⁸ *Ibid*, 7-8.

are for Black women.” Because largely a lot of these households are led by Black women and there’s a huge disparity on the resources available to them.⁴³⁹

Combined risk of displacement, eviction, and pandemic unemployment



Release date June, 28 @ urbandisplacement.org

urbandisplacement.org - timthomas@berkeley.edu

Thomas Testimony, June 4, 2021, Web Hearing Slides at 12

11. Substandard Housing Conditions

Substandard housing conditions are prevalent in low-income housing and evictions are used to discipline and manage tenants that voice complaints.⁴⁴⁰

Multiple panelists noted a problem of persistent substandard housing conditions in low-income communities.⁴⁴¹ Sam Magavern, Senior Policy Fellow at Partnership for the Public Good, noted nonpayment of rent for repairs can result in a retaliatory eviction by a landlord.⁴⁴² Heather White,

⁴³⁹ Thomas Testimony, *June 25, 2021, Web Hearing*, pp. 7-8; Thomas Testimony, June 25, 2021, Web Hearing Slides, at 12, citing the URBAN DISPLACEMENT PROJECT, urbandisplacement.org (last visited Jan. 14, 2021).

⁴⁴⁰ Hepburn Testimony, *June 4, 2021, Web Hearing*, p. 30; De Barbieri Testimony, *June 4, 2021, Web Hearing*, p. 47; Benfer Testimony, *June 4, 2021, Web Hearing*, p. 55; White Testimony, *June 25, 2021, Web Hearing*, p. 53.

⁴⁴¹ Hepburn Testimony, *June 4, 2021, Web Hearing*, p. 30; De Barbieri Testimony, *June 4, 2021, Web Hearing*, p. 47; Benfer Testimony, *June 4, 2021, Web Hearing*, p. 55; White Testimony, *June 25, 2021, Web Hearing*, p. 53.

⁴⁴² Magavern Testimony, *June 4, 2021, Web Hearing*, p. 16.

a former renter in New York City, offered an example where, because of the landlord's refusal to repair rent-controlled units, tenants experienced an electrical fire and a collapsed ceiling.⁴⁴³

[T]he tenants' group of nine apartments had their own attorney...because our landlord would be charging thousands of dollars to our apartments for repairs that they didn't do. And ...occasionally [we] even would have some pretty serious accidents in the building. For example, we had a fire that required that a tenant move out for many months because they refused to upgrade the electrical system. And we also had a ceiling collapse that went down six floors all the way to the lobby because they refused to do repairs on the rent [controlled] departments. At the same time, the apartments are selling.⁴⁴⁴

Multiple panelists shared that landlords use evictions as disciplinary tools against tenants that raise substandard housing complaints.⁴⁴⁵ Professor De Barbieri responded by offering an example of family in Albany that was subjected to retaliatory eviction proceedings after raising a substandard housing complaint.⁴⁴⁶ Ms. Felts offered an anonymized example of a renter in Albany's predominately Black neighborhood where after withholding rent for non-repair, the renter was subjected to retaliatory eviction proceedings.⁴⁴⁷

Multiple panelists suggested wider adoptions of a Right to Counsel law to help low-income tenants to stave off evictions.⁴⁴⁸ Councilmember Levine offered enforcement of New York City's Right to Counsel law as an example of a tenant-protection tool that helps against evictions.⁴⁴⁹ Senator Kavanagh suggested good cause eviction laws to address discriminatory evictions, where "you can't evict somebody at the end of their term of their lease unless they are not paying the rent."⁴⁵⁰

12. *Housing as a Home vs. Investment*

Housing is a basic human need; government intervention is necessary to reduce segregation and eviction rates.⁴⁵¹

Professor Benfer suggested looking to proposals that support a right to housing model and offered countries like France, Scotland, and South Africa as examples of successful implementation.⁴⁵² She explained that in countries "where housing is a priority, homelessness is a rare event, and it is

⁴⁴³ White Testimony, *June 25, 2021, Web Hearing*, p. 53.

⁴⁴⁴ White Testimony, *June 25, 2021, Web Hearing*, p. 53.

⁴⁴⁵ Kavanagh Testimony, *July 16, 2021*, pp. 13-14, 23; Hepburn Testimony, *June 4, 2021, Web Hearing*, p. 30.

⁴⁴⁶ De Barbieri Testimony, *June 4, 2021, Web Hearing*, p. 47.

⁴⁴⁷ Felts Testimony, *July 16, 2021, Web Briefing*, p. 9.

⁴⁴⁸ Levine Testimony, *June 25, 2021, Web Hearing*, p. 23.

⁴⁴⁹ Levine Testimony, *June 25, 2021, Web Hearing*, p. 23; Felts Testimony, *July 16, 2021, Web Hearing*, p. 9; *see* 2017 NYC Local Law No. 136.

⁴⁵⁰ Kavanagh Testimony, *July 16, 2021*, p. 13.

⁴⁵¹ Madden Testimony, *June 4, 2021, Web Hearing*, p. 64; Madden Testimony, *June 4, 2021, Web Hearing*, pp. 52-53; Block Testimony, *June 25, 2021, Web Hearing*, p. 68.

⁴⁵² Benfer Testimony, *June 4, 2021, Web Hearing*, p. 56.

immediately addressed.”⁴⁵³ Dr. Madden shared that housing is a basic need in the United States and suggested limiting the role of investors and financial firms in the housing market.⁴⁵⁴ Dr. Madden noted that financialization of the housing market (and thus speculation) is a social justice issue because it leads to evictions in communities of color and paves the way for wealthier, White households to move in.⁴⁵⁵ Ms. Block offered an example of private capital displacing low-income communities through rent increases, deteriorating housing conditions, evictions, and appreciation of residential rent values.⁴⁵⁶

Multiple panelists suggested government should take on a more active role in de-commodifying the housing market and increasing the social and public housing footprint.⁴⁵⁷ Dr. Madden noted that public housing in London contributes to vibrant communities:

[I]f you look at a place like London, for example, which is at the same scale as New York and has a similar history with migration and is cosmopolitan in a similar way, social housing, and it’s called council housing in London, is a real, a truly cosmopolitan part of the urban fabric here and is one of the things that protects diversity and difference in London communities—especially places where there is large amounts of new investment, which tends to produce housing that isn’t really useful for the purpose of living in many cases and isn’t providing the same kind of residential environment.⁴⁵⁸

Assemblymember Epstein suggested that private investment is damaging to communities because it exploits housing for short term financial gain, increasing turnover and weakening community ties.⁴⁵⁹ Professor Lin suggested several steps to curb private investment including legal action against non-bank lenders, removing financial incentives in the rental market through vacancy control laws, and creating government registries of rental market speculators.⁴⁶⁰ She shared that New York City’s recent vacancy control laws remove “the financial incentive of these investors who were going to purchase [a] building in the first place, and vacancy control laws [are a] structural fix at a public policy level.”⁴⁶¹ Dr. Madden called for government intervention in the housing market to avoid increased segregation, and emergency measures of stronger financial support to communities of color disproportionately affected by the pandemic.⁴⁶²

⁴⁵³ Ibid.

⁴⁵⁴ Madden Testimony, *June 4, 2021, Web Hearing*, pp. 52-53, 64.

⁴⁵⁵ Madden Testimony, *June 4, 2021, Web Hearing*, p. 43. *See also* Lin Testimony, *June 4, 2021, Web Hearing*, p. 53 (discussing the speculation aspects of financialization).

⁴⁵⁶ Block Testimony, *June 25, 2021, Web Hearing*, p. 68.

⁴⁵⁷ Lin Testimony, *June 4, 2021, Web Hearing*, p. 53; Madden Testimony, *June 4, 2021, Web Hearing*, p. 64.

⁴⁵⁸ Madden Testimony, *June 4, 2021, Web Hearing*, p. 63.

⁴⁵⁹ H. Epstein Testimony, *June 25, 2021, Web Hearing*, p. 20.

⁴⁶⁰ Lin Testimony, *June 4, 2021, Web Hearing*, pp. 53, 59.

⁴⁶¹ Ibid., 53.

⁴⁶² Madden Testimony, *June 4, 2021, Web Hearing*, pp. 44-45.

Big, financialized landlords make the rental market more competitive, raising rents for tenants and forcing other smaller landlords to adopt similar practices to compete. For firms like this, eviction is central to their business model. So the financialization of housing is a racial justice issue [in] three ways. . . . First, [firms] frequently see minoritized communities as opportunities to expand their portfolio. And research has shown that for these large-scale property owners, eviction is routine—sometimes using automated eviction apps—but by increasing the presence within communities of color, financialized landlords are contributing to the racialized precarity [of] these communities. Secondly, financial firms also often seek to redevelop these communities—using eviction as a technique for making space for wealthier and Whiter households.

Finally, the financialization [and/or] commodification of housing is undermining policies such as rent stabilization or public housing that protect households, including large numbers of households of color from residential insecurity. The financialization and commodification of housing might seem like colorblind processes. And without a doubt, the changing nature of housing today affects all poor and working-class households. And increasingly, it also affects many households that see themselves as middle-class.⁴⁶³

D. Data

I. Renters

a) National

There is strong evidence of racial disparities in eviction risk and eviction filings.⁴⁶⁴

A long history of systemic bias and housing discrimination is impacting the current eviction crisis.⁴⁶⁵ The COVID-19 pandemic has the potential to exacerbate this crisis.⁴⁶⁶ Ms. Thrope noted that a June 2021 Census Bureau household poll indicated 7.8 million U.S. households were delinquent on rental payments, 3.4 million of which reported that in the next two months they would be likely to leave their homes due to eviction.⁴⁶⁷

The Eviction Lab at Princeton University reviewed racial and gender disparities in eviction rates by analyzing neighborhood data for 1,195 counties in 36 states between 2012 and 2016, consisting of 1.44 million eviction cases with 660,000 judgments.⁴⁶⁸ The research relies on neighborhood- and county-level demographics, rather than the individual-level, because eviction records do not

⁴⁶³ Ibid., 43-44.

⁴⁶⁴ Hepburn Testimony, *June 4, 2021, Web Hearing*, p. 3, 25; Louis Testimony, *June 4, 2021, Web Hearing*, p. 4; Park Testimony, *June 23, 2021, Web Hearing*, pp. 27-28; Smith Testimony, *June 23, 2021, Web Hearing*, p. 28.

⁴⁶⁵ Park Testimony, *June 23, 2021, Web Hearing*, p. 2.

⁴⁶⁶ Thrope Testimony, *June 23, 2021, Web Hearing*, p. 6.

⁴⁶⁷ Thrope Testimony, *June 23, 2021 Web Hearing*, p. 6, referring to Census Bureau, Week 32 Household Pulse Survey: June 9 – June 21 (June 20, 2021) (online at www.census.gov/data/tables/2021/demo/hhp/hhp32.html).

⁴⁶⁸ Hepburn Testimony, *June 4, 2021, Web Hearing*, p. 2.

record the demographic characteristics of defendants.⁴⁶⁹ Renee Louis, Eviction Lab Research Specialist at Rutgers University, shared that their research team found large disparities in eviction filings and evictions between Black and White renters.⁴⁷⁰

On a national level, Black renters disproportionately face eviction, particularly in high-population counties like the Bronx and Queens.⁴⁷¹ In the study, White renters made up 51.5% of all adult renters, but only 42.7% of eviction defendants.⁴⁷² In contrast, Black renters made up 19.9% of all adult renters, but 32.7% of all eviction defendants.⁴⁷³ All other racial groups in the sample were underrepresented, with the greatest underrepresentation occurring among White renters.⁴⁷⁴

Moreover, four-fifths of Black renters lived in counties where evictions are disproportionately filed against Black tenants.⁴⁷⁵ This translates to higher eviction and filing rates for Black renters, who were filed against at a rate of 6.2% and received eviction judgments at a rate of 3.4%, while White renters were filed against at a rate of 3.4% and received eviction judgments at a rate of 2%.⁴⁷⁶ Furthermore, almost 25% of all Black renters in this sample across 36 states live in a county where the Black eviction rate was at least twice that of the White eviction rate.⁴⁷⁷

⁴⁶⁹ *Ibid.*, 3.

⁴⁷⁰ Louis Testimony, *June 4, 2021, Web Hearing*, p. 4.

⁴⁷¹ Scherer Statement, at 21, citing Peter Hepburn, Renee Louis, and Matthew Desmond, *Racial and Gender Disparities among Evicted Americans*, Eviction Lab, 2020.

⁴⁷² Louis Testimony, *June 4, 2021, Web Hearing*, p. 4.; Scherer at 21, referring to Peter Hepburn, Renee Louis, and Matthew Desmond, *Racial and Gender Disparities among Evicted Americans*, Eviction Lab, 2020.

⁴⁷³ Louis Testimony, *June 4, 2021, Web Hearing*, p. 4; Scherer at 21, referring to Peter Hepburn, Renee Louis, and Matthew Desmond, *Racial and Gender Disparities among Evicted Americans*, Eviction Lab, 2020.

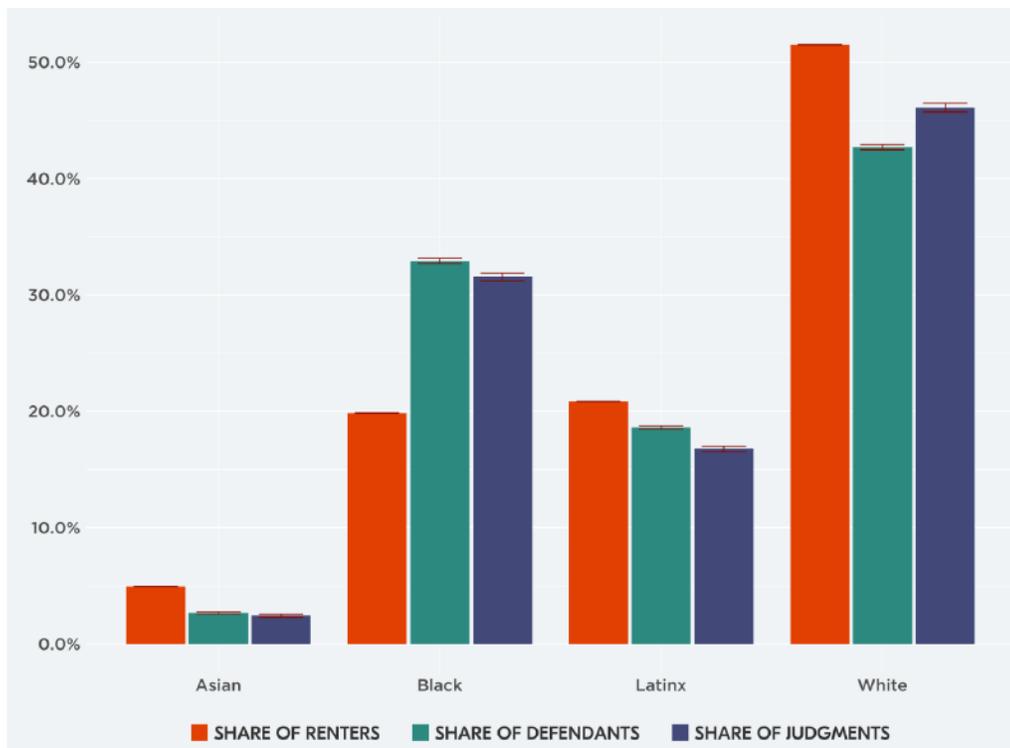
⁴⁷⁴ Louis Testimony, *June 4, 2021, Web Hearing*, p. 4.

⁴⁷⁵ Scherer Statement, at 21, citing Peter Hepburn, Renee Louis, and Matthew Desmond, *Racial and Gender Disparities among Evicted Americans*, Eviction Lab, 2020.

⁴⁷⁶ Louis Testimony, *June 4, 2021, Web Hearing*, p. 4.

⁴⁷⁷ *Ibid.*

Key Results: National



Hepburn and Louis Testimony, June 4, 2021, Web Hearing Slides, at 10

There are racial disparities in serial eviction filings, in which renters receive eviction filings repeatedly for a short period of time at the same address.⁴⁷⁸

Black renters, followed by Latinx and Asian renters, are at a higher risk of serial eviction filings than White renters.⁴⁷⁹

Racial disparities in evictions exist independent of income.⁴⁸⁰

When asked whether racial minorities are more likely to experience eviction controlling for non-payment of rent, Sandra Park, Senior Staff Attorney in ACLU, responded that racial disparities exist in eviction filings,⁴⁸¹ particularly for Black women-headed households.⁴⁸² Having a record

⁴⁷⁸ Ibid.

⁴⁷⁹ Ibid.

⁴⁸⁰ Brenner Testimony, *June 4, 2021, Web Hearing*, p. 21; Hepburn Testimony, *June 4, 2021, Web Hearing*, p. 27; Park Testimony, *June 23, 2021, Web Hearing*, p. 27.

⁴⁸¹ Park Testimony, *June 23, 2021, Web Hearing*, p. 28.

⁴⁸² Ibid., 27.

of an eviction filing, even if it is dismissed, impacts future housing opportunities.⁴⁸³ New York State Division of Human Rights Commissioner Johnathan Smith agreed with other panelists that additional research would be helpful, but racial discrimination appears to be playing a role separate from non-payment.⁴⁸⁴

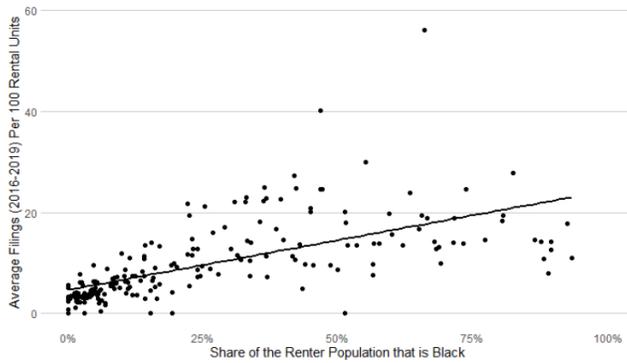
When asked if poorer White renters were less subject to eviction proceedings than slightly wealthier Black renters, panelists indicated the relationship between race and evictions, independent of income, is well documented.⁴⁸⁵ Ryan Brenner, Research Analyst at the NYU Furman Center, shared that when analyzing data on evictions proceedings, "...[the Furman Center has] controlled for income, [and yet] Black and Hispanic households are more likely to face eviction filings and executed warrants of eviction. So, that would stand that even a wealthier Black family would be disproportionately impacted than a lower income White family."⁴⁸⁶

Controlling for median renter income, there is a significant positive correlation between race and filing rate.⁴⁸⁷

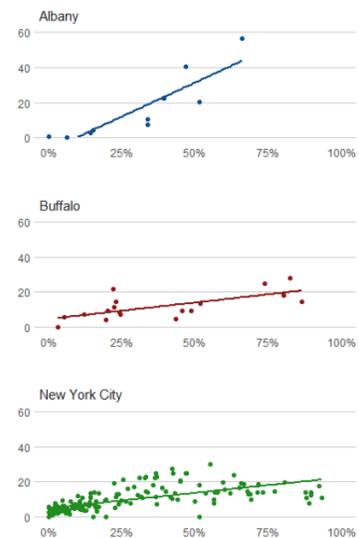
High eviction filing rates are positively correlated with the share of the population that is Black, even when controlling for renter income

Correlation Between Filing Rates and Race of Renters

ZIP Codes in Albany, Buffalo, New York City (2016-2019)



Sources: NYS Office of Court Administration via Housing Data Coalition, American Community Survey, NYU Furman Center



Brenner and House Testimony, June 4, 2021, Web Hearing Slides, at 27

Dr. Hepburn, in agreement with other panelists, noted, that there is ongoing research that indicates there is a lower threshold for filing to evict Black renters than White renters when controlling for

⁴⁸³ Park Testimony, June 23, 2021, Web Hearing, p. 27.

⁴⁸⁴ Smith Testimony, June 23, 2021, Web Hearing, p. 28.

⁴⁸⁵ Brenner Testimony, June 4, 2021, Web Hearing, p. 21; Hepburn Testimony, June 4, 2021, Web Hearing, p. 27.

⁴⁸⁶ Brenner Testimony, June 4, 2021, Web Hearing, pp. 21-22.

⁴⁸⁷ Ibid., 7.

neighborhood income, neighborhood median rent, and other demographic characteristics often associated with eviction rates.⁴⁸⁸ Although data does not reflect personal budgeting methods, Mr. Husock highlighted the consideration that, although higher income Black renters may have more income, they still owe rent at a disproportionate rate.⁴⁸⁹

During the Committee's June 4, 2021, briefing, Committee member Rafael Mangual asked the Researchers panel, "[w]hether, and to what extent, those top-line disparities, such as the statistical overrepresentation of Blacks and Latinos among those facing evictions shrink or grow when one controls for whether, and if so, how much, rent is owed?"⁴⁹⁰

Peter Hepburn responded:

We do have ongoing work that looks at money judgements on eviction cases and the differences in how large the judgments are depending on the race of the defendants and what we have found is that generally people of color, especially Black renters, are being evicted for significantly less than White renters, even when you control for the neighborhood income, neighborhood median rent, and a wide variety of other demographic characteristics that have historically been associated with eviction rates. That suggests that there is a lower threshold for filing to evict against Black tenants than there is against White tenants. Now we're continuing to do work that ties that specifically to the amount of back rent that's owed and the rent in those units. So we are looking to address this question of whether the threshold eviction is set systematically lower against Black tenants.⁴⁹¹

Mr. Husock responded:

I think we have to be careful about what kind of data we draw inferences from. For instance, one of the previous panel members talked about some of these judgments [that] are not even large, for instance, \$1,200. Well, \$1,200 to a small property owner could be a lot of money and so unless we can control for, in some way, the financial situation of the property owner, the fact that smaller judgments are . . . kicking off eviction notices against minority tenants doesn't tell us anything definitive. We need to know about the landlord situation.⁴⁹²

During the Committee's June 23, 2021, briefing, Mr. Mangual asked, "[d]o we have any information on whether, and to what degree, racial disparities shrink once you control for relevant factors like eviction warranting behavior?"⁴⁹³

Ms. Park responded:

⁴⁸⁸ Hepburn Testimony, *June 4, 2021, Web Hearing*, p. 27.

⁴⁸⁹ Husock Testimony, *June 4, 2021, Web Hearing*, p. 23.

⁴⁹⁰ Mangual Testimony, *June 4, 2021, Web Hearing*, p. 26.

⁴⁹¹ Hepburn Testimony, *June 4, 2021, Web Hearing*, p. 27.

⁴⁹² Husock Testimony, *June 4, 2021, Web Hearing*, p. 27.

⁴⁹³ Mangual Testimony, *June 23, 2021, Web Hearing*, p. 27.

I would certainly refer you to the Eviction Lab's testimony, as well as Peter Hepburn. There has been more recent research that looks at, for example, amounts of back rent that are due that have caused eviction filings—some of which have documented the very small amounts of back rent due [that] have triggered eviction filings. There's also been research done on the nature of serial filings where landlords are essentially using the filing of evictions to try to force payment of rent. There's a racial disparity that has been found there where it is actually more likely for a White household to ultimately get a judgment of eviction if you account for serial filings. . . . What we have found is that Black women-headed households are much more likely to face eviction filings that are later dismissed. And so that connects to my concern around eviction records and how those records are then used against applicants categorically to exclude them from future housing opportunities. . . . This area is still relatively nascent in terms of understanding all the different factors that lead to both eviction filings and how we think about outcomes and racial disparities, but what we've seen thus far certainly shows that those racial disparities exist in terms of the filing of evictions. I would point to one other study done by Professor Tim Thomas who has been doing some of this research around the country, and he has tried to control for some of these factors, including in the Seattle area.⁴⁹⁴

Commissioner Smith responded:

I will just say the context of the types of complaints that we see in the Division of Human Rights, where the whole premise of the claim to ultimately succeed, . . . has to be an underlying, obviously successful claim of discrimination of which simply non-payment of rent obviously would not qualify without more—we do see some cases where racial discrimination seems to be playing a role separate from non-payment.⁴⁹⁵

Black women are at the highest risk of eviction and are more likely to face eviction filings that are later dismissed.⁴⁹⁶

Female renters of all races face 15.9% more evictions than male renters across race;⁴⁹⁷ however, 36.2% more Black women are evicted than Black men.⁴⁹⁸ Low-income women, especially Black

⁴⁹⁴ Park Testimony, *June 23, 2021, Web Hearing*, pp. 27-28, referring to Timothy A. Thomas et al., *The State of Evictions: Results from the University of Washington Evictions Project* (Feb. 17, 2019),

<https://evictions.study/washington/> [<https://perma.cc/AY2R-TW92>] and <https://www.urbandisplacement.org/>.

⁴⁹⁵ Smith Testimony, *June 23, 2021, Web Hearing* p. 28.

⁴⁹⁶ Park Testimony, *June 23, 2021, Web Hearing*, pp. 2-3, 27; Goodridge Testimony, *July 16, 2021, Web Briefing*, p. 6; Magavern Testimony, *June 4, 2021, Web Hearing*, p. 13; Louis Testimony, *June 4, 2021, Web Hearing*, p. 4; Scherer Statement, at 18, citing Matthew Desmond, *Unaffordable America: Poverty, Housing and Eviction*, 2015.

⁴⁹⁷ Louis Testimony, *June 4, 2021, Web Hearing*, p. 4.

⁴⁹⁸ *Ibid.*

women, are at particularly high risk of eviction.⁴⁹⁹ In Queens County, Black and Latinx women were both over 3.5 times more likely to be threatened with eviction than White women.⁵⁰⁰

Family status, in addition to race and gender, impacts eviction risk: Black mothers are at the highest risk of evictions.⁵⁰¹ In 17 out of 36 states studied, including New York State, Black women renters had evictions filed against them twice as often as White renters.⁵⁰² Nationally, research suggests that landlords discriminate against families with children in deciding to evict a renter due to non-payment of rent compared to families without children, indicating Black women with children are particularly at risk for eviction.⁵⁰³ Ms. Park noted that White households are more likely to receive a judgment of eviction when serial filings are accounted for, and Black women-headed households are much more likely to receive an eviction filing which is later dismissed, leading to long-term consequences on future housing opportunities.⁵⁰⁴

In opening her testimony to the Committee, Leah Goodridge, Managing Attorney at Mobilization for Justice, Inc., highlighted that pre-pandemic, “Between 2017 and 2019, tenants living in majority Black zip codes were more than three times as likely to be evicted as tenants living in majority White zip codes.”⁵⁰⁵ Within this already strained tenant population, Ms. Goodridge stressed that “Black women are very vulnerable to eviction...Black women have been positioned as nuisances, a person that causes depreciation of property, rather than as people that we should help and give public benefits to and empathy to.”⁵⁰⁶ Ms. Goodridge defined a nuisance as “a person or thing that either cause[s] depreciation of property or causes one to enjoy one’s property less.”⁵⁰⁷ Ms. Goodridge shared the history of nuisance laws with the Committee, drawing the connection from Free Negro Nuisance Laws that made it difficult for slave owners to emancipate their slaves because of a fear that they would become a public burden, to current perspectives that Black women, particularly single Black women with children, are a burden or nuisance whose presence depreciates property today.⁵⁰⁸

Ms. Goodridge focused on the act of “regulating specifically Black tenants and tenants of color” as a systemic practice to avoid a property nuisance that is hidden behind the notion that these tenants are living under cycles of generational poverty, and has been employed since the

⁴⁹⁹ Scherer at 18, referring to Matthew Desmond, *Unaffordable America: Poverty, Housing and Eviction*, 2015.

⁵⁰⁰ Louis Testimony, *June 4, 2021, Web Hearing*, p. 4.

⁵⁰¹ Park Testimony, *June 23, 2021, Web Hearing*, pp. 2-3; Magavern Testimony, *June 4, 2021, Web Hearing*, p. 13.

⁵⁰² Park Testimony, *June 23, 2021, Web Hearing*, pp. 2-3.

⁵⁰³ Magavern Testimony, *June 4, 2021, Web Hearing*, p. 13.

⁵⁰⁴ Park Testimony, *June 23, 2021, Web Hearing*, p. 27.

⁵⁰⁵ Goodridge Testimony, *July 16, 2021, Web Hearing*, p. 6, citing Mironova, Oksana. “Race and Evictions in New York City,” *Community Service Society of New York* (June 2020), <https://www.cssny.org/news/entry/race-evictions-new-york-city#f3>.

⁵⁰⁶ Goodridge Testimony, *July 16, 2021, Web Hearing*, p. 6.

⁵⁰⁷ *Ibid.*

⁵⁰⁸ Goodridge Testimony, *July 16, 2021, Web Hearing*, p. 6, Goodridge Testimony, *July 16, 2021, Web Hearing Slides*, at 10, citing *Ewell v. Tidwell*, 20 Ark. 136, 143 (1859).

Antebellum era until today.⁵⁰⁹ To give an example of the regulation of Black tenants, Ms. Goodridge referred to a 1965 *New York Times* article, which revealed that Black single mothers who applied for housing with the New York City Housing Authority were systematically treated differently and forced to go through another layer of approval with the agency's Social Consultation Unit before being added to the waitlist, if at all.⁵¹⁰ Ms. Goodridge mentioned that such regulation was practiced in other housing authorities as well and even led to legal action in cases like *Thomas v. Little Rock*, in which Black single mothers were subject to segregation.⁵¹¹

Ms. Goodridge noted that this regulation was accompanied by an increase in negative theoretical and policy-based perceptions of Black women tenants. Ms. Goodridge shared that there were analyses that placed the onus of issues within the Black community on the Black single mother, such as the Moynihan Report of 1965 that questioned and blamed the social burden brought on by a Black single mother rather than a White woman in the same situation, who would be viewed with more empathy.⁵¹² Other groups of Black women tenants who remain vulnerable to regulation include those facing gendered violence and those with mental and physical disabilities.⁵¹³

Commissioner Smith shared an example from the New York State Division of Human Rights in which a Black woman was threatened with eviction that was later settled once she filed a complaint with his office:

In 2020, we received a complaint from a Black woman in Brooklyn whose lease expired and was served with an eviction notice just before the pandemic shut down the court system. In her complaint, she alleged racial bias alleging that the landlord [saw] her differently than her White tenant counterparts. For example, she highlighted how the landlord had moved to evict her even though she had actually been current in her rental payments, whereas there was one of her White neighbors who had been withholding his rent for several months, and yet there had been no attempt to evict that individual. After she filed the complaint with the Division alleging racial bias, the landlord negotiated a settlement with the tenant allowing her to stay in the unit.⁵¹⁴

⁵⁰⁹ Goodridge Testimony, *July 16, 2021, Web Hearing*, p. 6.

⁵¹⁰ Goodridge Testimony, *July 16, 2021, Web Hearing*, p. 7; Goodridge, July 16, 2021, Web Hearing Slides, at 11, citing Eric Pace, *City Aide Says Unwed Mothers Are Kept From Public Housing*, *NY Times*, Dec. 10, 1965.

⁵¹¹ Goodridge Testimony, *July 16, 2021, Web Hearing*, p. 7; Goodridge, July 16, 2021, Web Hearing Slides, at 13, citing *Thomas v. Hous. Auth. of Little Rock*, 282 F.Supp. 575 (E.D. Ark. 1967). *See also* *Lewis v. Hous. Auth. of the City of Talladega*, 397 F.2d 178 (5th Cir. 1968); *McDougal v. Tamsberg*, 308 F. Supp. 1212 (D.S.C. 1970).

⁵¹² Goodridge Testimony, *July 16, 2021, Web Hearing*, p. 7 (citing DANIEL P. MOYNIHAN, *THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION* (1965)); *see also* Goodridge, July 16, 2021, Web Hearing Slides, at 13 (citing LINDA GORDON, *PITIED BUT NOT ENTITLED: SINGLE MOTHERS AND THE HISTORY OF WELFARE* 28 (1994)).

⁵¹³ Goodridge Testimony, *July 16, 2021, Web Hearing*, p. 8.

⁵¹⁴ Smith Testimony, *June 23, 2021, Web Hearing*, p. 11.

Researchers recognize there are serious disparities impacting people of color with respect to illegal or informal evictions.⁵¹⁵

Landlord harassment and the threat of eviction cause some tenants to leave before an eviction is filed, but there is very little data that tracks these informal or illegal eviction practices.⁵¹⁶ Many tenants do not know their rights, so they leave before an eviction is filed.⁵¹⁷

There has been an increase in illegal evictions during the COVID-19 pandemic.⁵¹⁸ Of legal services attorneys surveyed during the pandemic about issues they were seeing in their service areas, 91% reported illegal evictions, including lockouts, landlord harassment, and other illegal evictions despite the COVID-19 eviction moratorium.⁵¹⁹ HUD does not collect data regarding evictions among their own properties.⁵²⁰

One renter of color shared with the Committee that he has been harassed by his landlord during the pandemic, even while he had COVID-19 himself.⁵²¹ He noted that she threatened to harm his permanent residency status and wanted to evict him because he is gay, remarking that he is not a good influence for his neighbors.⁵²² Another renter of color shared that they had been harassed by their landlord and threatened with eviction during the pandemic, despite their concerns about living in toxic conditions due to mold and structural instability.⁵²³

b) New York State**Black and Latinx households in New York are approximately twice as likely to be threatened with eviction as White households.⁵²⁴**

The New York State Division of Human Rights has received approximately 2,600 complaints of housing discrimination since 2016, half from the New York City region, 4% in the Buffalo area, and 2% in Albany County.⁵²⁵ Commissioner Smith shared that evictions and threats of eviction have increased since 2016, with slightly over half of the 340 complaints involving allegations of

⁵¹⁵ Thrope Testimony, *June 23, 2021, Web Hearing*, pp. 25-26; Brenner Testimony, *June 4, 2021, Web Hearing*, p. 6.

⁵¹⁶ Thrope Testimony, *June 23, 2021, Web Hearing*, p. 7.

⁵¹⁷ *Ibid.*, 25-26.

⁵¹⁸ *Ibid.*

⁵¹⁹ *Ibid.*, 7.

⁵²⁰ *Ibid.*, 25-26.

⁵²¹ Renter Speaker 3 Testimony, *June 25, 2021, Web Hearing*, pp. 56-57.

⁵²² *Ibid.*

⁵²³ Anonymous Renter, at 1.

⁵²⁴ Louis Testimony, *June 4, 2021, Web Hearing*, p. 5; Madden Testimony, *June 4, 2021, Web Hearing*, p. 43.

⁵²⁵ Smith Testimony, *June 23, 2021, Web Hearing*, p. 10.

racial discrimination originating in New York City, 18 originating in Erie County and the Buffalo area, and seven originating in the Albany area.⁵²⁶ Commissioner Smith elaborated:

Many of the complaints that we have received that I just referenced are still going through the Division's investigatory and our adjudicatory processes, and so, as a result, I can't speak about any of the details of those matters. However, 43 of those matters have resulted in either final orders in favor of the complainant or settlements before finding any finding of fault. These orders and settlements often allowed the complainant to stay in their homes and often include training provisions and often monetary benefits as well. With the amount of these 43 complaints, there's also been around \$120,000 of damages or monetary awards to complainants.⁵²⁷

Assemblymember Epstein noted Black and Latinx populations are twice as likely as White populations to be renters and are also more likely to have vulnerable jobs during the COVID-19 pandemic. Black and Latinx renters are also more likely than homeowners to have long-term financial harms due to the COVID-19 pandemic.⁵²⁸ Using data from the Census Bureau's American Community Survey, Mr. Brenner shared that renters in Albany, Buffalo, and New York City are more likely to be Black and Hispanic, indicating that the population that could potentially receive eviction filings is already disproportionately Black and Hispanic.⁵²⁹

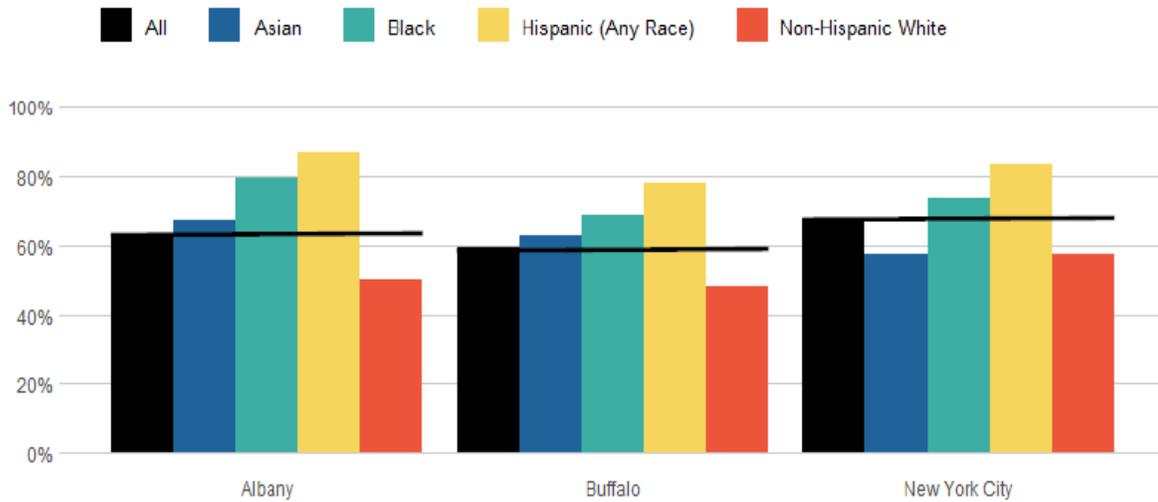
⁵²⁶ Smith Testimony, *June 23, 2021, Web Hearing*, pp. 10-11.

⁵²⁷ *Ibid.*

⁵²⁸ H. Epstein Testimony, *June 25, 2021, Web Hearing*, p. 19.

⁵²⁹ Brenner Testimony, *June 4, 2021, Web Hearing*, p. 5; Brenner and House Testimony, *June 4, 2021, Web Hearing Slides*, at 18.

Share of Households Renting, by Race (2019)



Sources: American Community Survey, NYU Furman Center

Brenner and House Testimony, June 4, 2021, Web Hearing Slides, at 18

Multiple panelists noted that data from New York State’s Office of Court Administration does not include information on tenant race.⁵³⁰

Dr. Hepburn noted that the practice of not recording demographic data on defendants facing eviction is common across the country.⁵³¹ For example, in national data, it is currently unknown whether race or familial status is more predictive of eviction than credit scores or the amount of rent owed.⁵³² Multiple panelists noted that researchers would find this information helpful.⁵³³ However, national research suggest that landlords do discriminate against families with children.⁵³⁴ Dr. Hepburn noted that “[t]here is evidence that disparities based on race do exist, and while researchers are working to conduct additional research to examine these additional relationships. . . . These additional relationships should not discount the scale of [racial] disparities that exist.”⁵³⁵

Mr. Brenner shared that the NYU Furman Center reviewed filings according to zip code and areas with the highest and lowest rates of filing to determine Black and Latinx share of households.⁵³⁶

⁵³⁰ Brenner Testimony, *June 4, 2021, Web Hearing*, p. 6; Hepburn Testimony, *June 4, 2021, Web Hearing*, p. 19, 25.

⁵³¹ Hepburn Testimony, *June 4, 2021, Web Hearing*, p. 19.

⁵³² *Ibid.*, 19.

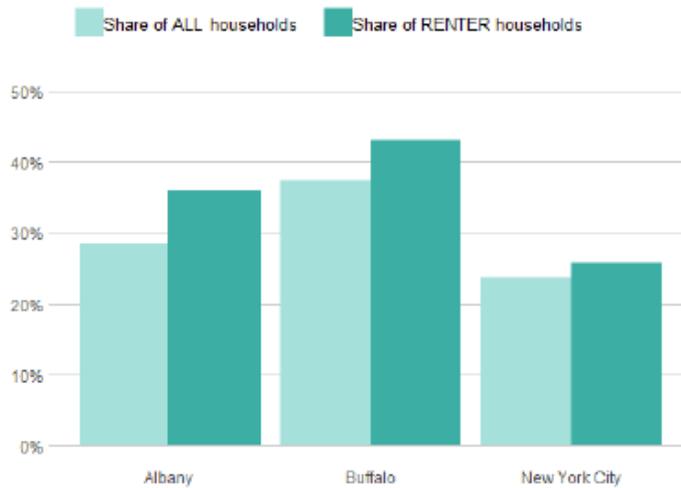
⁵³³ Hepburn Testimony, *June 4, 2021, Web Hearing*, p. 25; Husock Testimony, *June 4, 2021, Web Hearing*, p. 32.

⁵³⁴ Magavern Testimony, *June 4, 2021, Web Hearing*, p. 13.

⁵³⁵ Hepburn Testimony, *June 4, 2021, Web Hearing*, p. 25.

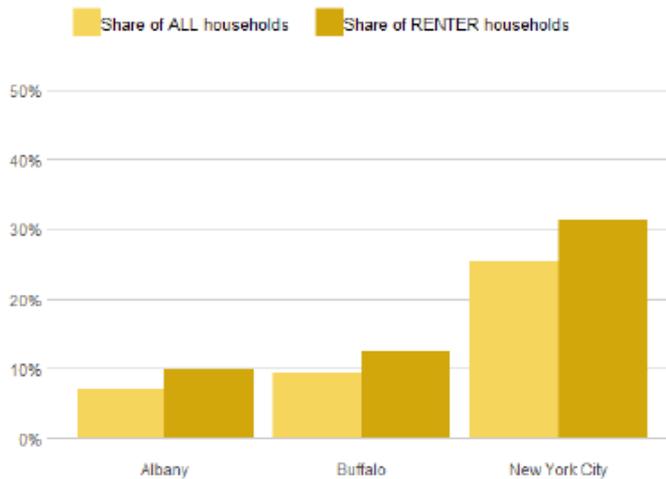
⁵³⁶ Brenner Testimony, *June 4, 2021, Web Hearing*, p. 6.

Black Households (2019)



Sources: American Community Survey, NYU Furman Center

Hispanic (Any Race) Households (2019)



Sources: American Community Survey, NYU Furman Center

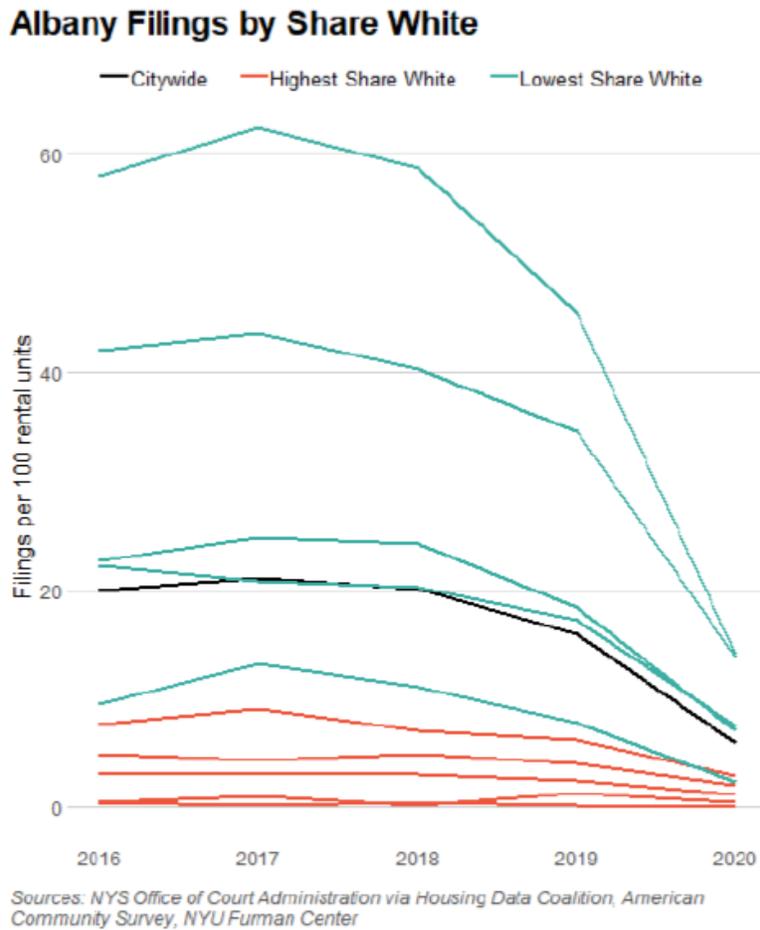
Brenner and House Testimony, June 4, 2021, Web Hearing Slides, at 19

Speaking to the prevalence of discrimination in the housing ecosystem in New York, Cheryl Keshner of the Empire Justice Center, which provides free legal assistance to low-income New Yorkers, shared that a recent *Newsday* investigation of 5,763 housing cases found Asian prospective renters experienced discrimination 90% of the time, Black prospective renters

experienced discrimination 49% of the time, and Latinx prospective renters experienced discrimination 39% of the time.⁵³⁷

c) *Albany*

Zip codes in Albany with the highest population of people of color have the most eviction filings.⁵³⁸



Ryan Brenner and Sophie House, June 4, 2021, Web Hearing Slides, at 24

Furthermore, communities of color in Albany had the highest eviction filing rates both before and during the pandemic, as of the June 2021 briefing data available.⁵³⁹

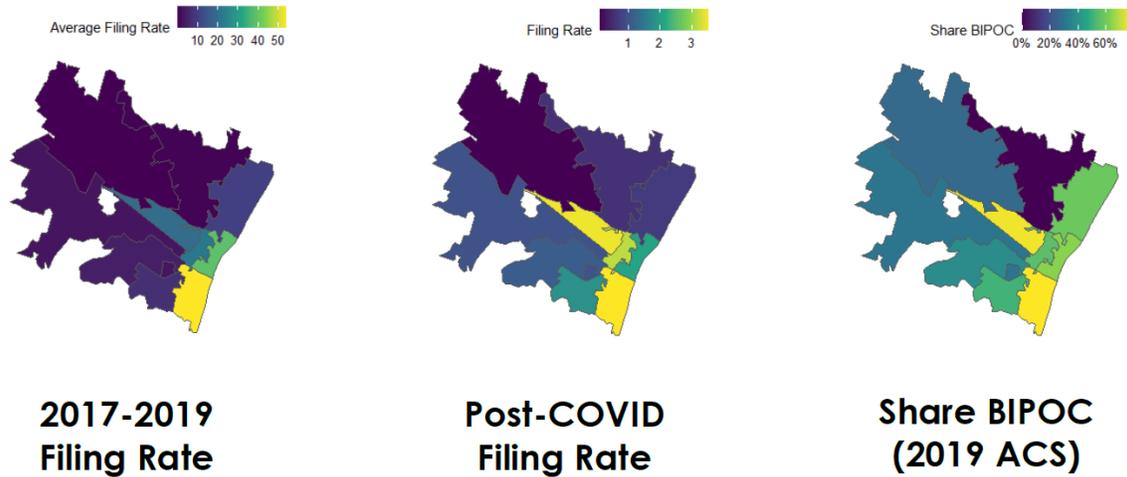
⁵³⁷ Keshner Testimony, June 25, 2021, Web Hearing, p. 61, citing Ann Choi et al., *Long Island Divided*, NEWSDAY (Nov. 17, 2019), <https://projects.newsday.com/long-island/real-estate-agents-investigation/>.

⁵³⁸ Brenner Testimony, June 4, 2021, Web Hearing, p. 6.

⁵³⁹ Ryan Brenner and Sophie House, June 4, 2021, Web Hearing Slides, at 24.

Albany

The areas with the highest eviction filing rates, pre- and post-pandemic, match the areas with the largest BIPOC populations.



Brenner and House Testimony, June 4, 2021 Web Hearing Slides, at 24

Ms. Felts shared that renters in Albany are threatened by a precarious housing landscape that disproportionately impacts households of color, putting them at greater risk of eviction.⁵⁴⁰ As of 2019, 60 percent of Albany residents rent, of which 49 percent of families of color are housing cost burdened, compared to 35 percent of White families.⁵⁴¹ Moreover, 27 percent of those families of color are severely cost burdened.⁵⁴²

Ms. Felts stated that the City of Albany has failed to invest in affordable housing in the face of the rising cost of rent.⁵⁴³ As of 2016, nearly half of all renting households in Albany were earning less than \$25,000 annually and could only afford to pay \$625 per month in rent.⁵⁴⁴ However, only 18 percent of all rental units were priced affordably in that year.⁵⁴⁵ Between 2007 and 2017, Albany lost nearly 10,000 affordable rentals and gained nearly 10,000 units priced outside the means of the low- and middle-income renters.⁵⁴⁶ Households of color disproportionately live on fixed incomes, work in low-paying and inconsistent industries, and are unable to afford the types of rental housing for which the City continuously provides development incentives.⁵⁴⁷

⁵⁴⁰ Felts Statement, at 1.

⁵⁴¹ Ibid.

⁵⁴² Ibid.

⁵⁴³ Ibid.

⁵⁴⁴ Ibid.

⁵⁴⁵ Ibid.

⁵⁴⁶ Ibid, 2.

⁵⁴⁷ Ibid.

Renters of color in Albany face disproportionately high eviction rates.⁵⁴⁸ From 2016 to 2018, over 5,000 eviction proceedings were filed in Albany City Court, and even after the passage of Tenant Protection Act, eviction filings reached 4,120 for 2019.⁵⁴⁹ In a typical, pre-COVID year, most respondents to eviction proceedings are people of color, and according to United Tenants of Albany, nearly 80% of people who request rent arrears are people of color.⁵⁵⁰

Albany landlords charge high rents for substandard housing, especially in redlined neighborhoods.⁵⁵¹ They often engage in “retaliatory evictions,” evicting tenants to avoid having to make repairs since turnover is cheaper.⁵⁵² These practices leave low-income tenants trapped in cycles of signing one-sided leases for substandard housing.⁵⁵³

Ms. Felts shared that research by Prachi Naik suggests that the racial inequality in Albany’s rental housing market is built upon pervasive structural racism and White supremacy.⁵⁵⁴ According to Ms. Naik, the rental market in the City’s predominantly Black and Brown neighborhoods exhibits a high rate of profit exploitation, meaning that rental housing is priced far beyond the actual value of the housing itself.⁵⁵⁵ Half the landlords in these neighborhoods demand the highest application fees in the City and conduct more stringent credit checks.⁵⁵⁶ Through interviews, Ms. Naik found many landlords espouse an unjustified narrative that low-income people of color “game the system.”⁵⁵⁷ Several landlords explicitly expressed discriminatory attitudes against renting to welfare recipients, low-income families, single mothers, and large families.⁵⁵⁸

⁵⁴⁸ *Ibid.*

⁵⁴⁹ *Ibid.*

⁵⁵⁰ *Ibid.*, 2-3.

⁵⁵¹ *Ibid.*, 3.

⁵⁵² *Ibid.*

⁵⁵³ *Ibid.*

⁵⁵⁴ *Ibid.*, 4.

⁵⁵⁵ *Ibid.*

⁵⁵⁶ *Ibid.*

⁵⁵⁷ *Ibid.*

⁵⁵⁸ *Ibid.*, 5.

Naik (2019) Interview Findings of Discrimination in the City of Albany:
“Three [landlords] openly stated that they refused to accept Section 8 vouchers, even though this kind of discrimination is against the law. These three landlords mainly operate in the more stable neighborhoods of Albany.”
<i>“Another tenant recounted being asked why she was single-parenting her child, whether she was a “victim of domestic violence” and whether her child’s father was going to come around to “cause trouble.”</i>
“Seven out of fourteen landlords reported instituting greater application fees or more stringent credit and financial history reviews in opportunity neighborhoods in order to “avoid the headaches” and “save trouble later on.”
<i>“One tenant spoke of showing up to an open house in her work uniform only to be told by the landlord “We don’t take DSS here.”</i>
“Two landlords stated that they preferred to not accept big families with multiple children unless they “really could not find anyone else” or those families had stellar, verifiable previous landlord referrals.”
<i>“At least five mothers spoke of needing to leave their children at home to attend apartment viewings.”</i>

Felts Statement, at 6

Ms. Felts explained that Albany’s code enforcement adjudication process is ineffective in actually carrying out penalization, enforcing the law, or creating any real change in exploitative landlord behaviors.⁵⁵⁹ When landlords violate the housing code, they are sued by the City in a quasi-prosecutorial proceeding.⁵⁶⁰ According to Ms. Naik, in 2018, the City of Albany won \$364,580 in court judgements for code violations, but only collected roughly \$5,000.⁵⁶¹ Even while they are being sued for code violations, there is no system to stop exploitative landlords from evicting the tenants who filed the complaint or from re-renting the substandard unit to another low-income family.⁵⁶²

Ms. Felts stated that tenants in Albany have few avenues to protect their right to housing free of discrimination because the City’s “Fair Housing Office” is entirely unstaffed, forcing tenants to file their complaints with the New York State Division of Human Rights.⁵⁶³ Processing a complaint can take years to resolve and is very complicated for unrepresented complainants.⁵⁶⁴ Meanwhile, thousands of tenants a year face swift displacement through expedited summary eviction proceedings, in which they cannot use discrimination as a defense.⁵⁶⁵

Ms. Felts told the Committee that race-based housing discrimination in Albany was greatly exacerbated during the COVID-19 pandemic, following a national trend.⁵⁶⁶ As of the Committee’s June 2021 briefing, Ms. Felts noted,

⁵⁵⁹ Ibid.
⁵⁶⁰ Ibid.
⁵⁶¹ Ibid.
⁵⁶² Ibid.
⁵⁶³ Ibid.
⁵⁶⁴ Ibid.
⁵⁶⁵ Ibid.
⁵⁶⁶ Ibid., 6.

When the pandemic hit, there was confusion on the part of the US Department of Housing and Urban Development (HUD) as to whether the homelessness prevention emergency funds historically used to prevent evictions for unpaid rent could still be used during any period where an “eviction moratorium” protection was in place. This policy immediately and on an ongoing basis is detrimental to communities of color who accessed these resources at the highest rates pre-pandemic, and then found themselves at the highest risk of infection, layoffs, and cut hours due to pandemic related crises. The policy has yet to be reversed, despite ongoing failures by federal, state, and local governments to roll out new emergency rent relief programs. Those programs which have been accessible to Albany residents have reached only a tiny fraction of renters in Albany who will face eviction for nonpayment of rent when moratoria expire.⁵⁶⁷

Because Albany and New York State have failed to enact rent forgiveness or arrears mitigation relief, the City may see a “wave of evictions” when moratoria expire.⁵⁶⁸

Ms. Felts suggests a range of local, state, and national policies that can protect Albany renters from eviction and discrimination.⁵⁶⁹ These include enacting and/or expanding rent control, inclusionary zoning, permanently affordable public housing, good cause eviction protections, emergency repair programs, residential occupancy permitting laws, code enforcement, tenant Right to Counsel laws, housing trust funds, tenant opportunity to purchase legislation, a fully staffed Fair Housing Office, and the ability for New York tenants to use fair housing violations as a defense and cause for summary judgement in eviction proceedings.⁵⁷⁰ Ms. Felts also recommends the repeal of the federal Faircloth Amendment⁵⁷¹ and New York’s 485-a⁵⁷² tax break for luxury developments.⁵⁷³

d) Buffalo

Zip codes in Buffalo with the highest populations of people of color have the most eviction filings.⁵⁷⁴

⁵⁶⁷ Ibid, 6.

⁵⁶⁸ Ibid.

⁵⁶⁹ Ibid., 7-89

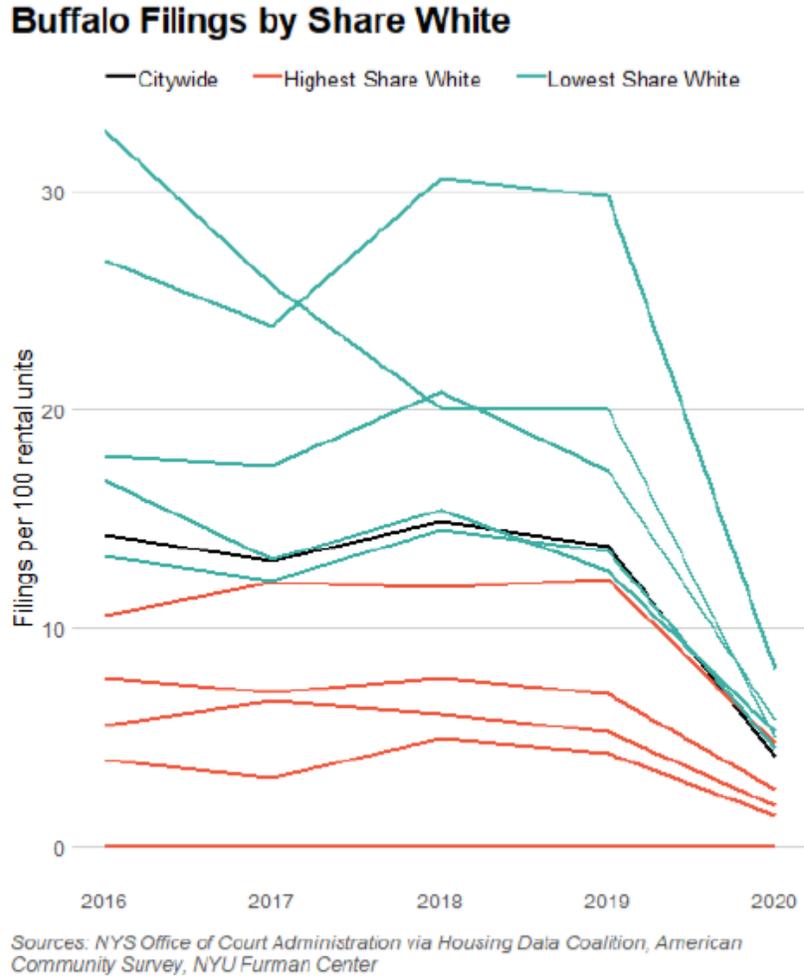
⁵⁷⁰ Ibid.

⁵⁷¹ 42 U.S.C. 1437g(g).

⁵⁷² N.Y. REAL PROP. TAX LAW § 485-a (McKinney 2022).

⁵⁷³ Felts at 7-8.

⁵⁷⁴ Brenner Testimony, *June 4, 2021, Web Hearing*, p. 6; Magavern Testimony, *June 4, 2021, Web Hearing*, p. 12.



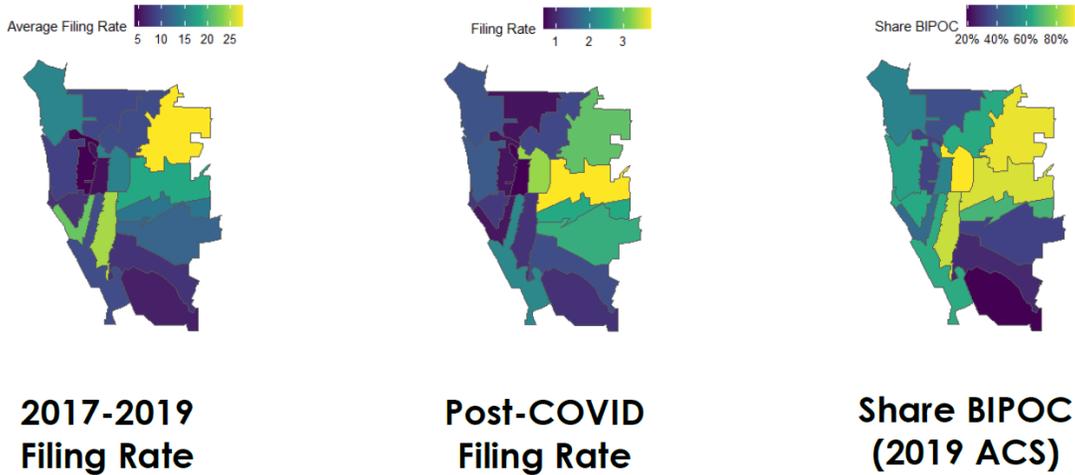
Brenner and House Testimony, June 4, 2021, Web Hearing Slides, at 24

BIPOC in Buffalo suffered the highest eviction filing rates both before and during the pandemic, as of the June 2021 briefing data available.⁵⁷⁵

⁵⁷⁵ Ryan Brenner and Sophie House, June 4, 2021, Web Hearing Slides, at 24.

Buffalo

The areas with the highest eviction filing rates, pre- and post-pandemic, match the areas with the largest BIPOC populations.



Brenner and House Testimony, June 4, 2021, Web Hearing Slides, at 24

Almost 90% of evictions in Buffalo were pursued for non-payment of rent, with the median amount of rent owed at about \$1,200.⁵⁷⁶ Mr. Magavern noted this “suggests that it is a problem that’s amenable to a variety of policy solutions, that the cost to keep people in their housing and avoid all of the negative impacts to them and to the community as a whole is maybe a cost worth paying.”⁵⁷⁷

Of eviction clients in Buffalo served by Neighborhood Legal Services, 80% were women, which Mr. Magavern hypothesized could be due to systemic racism, mass incarceration preventing men from signing leases, higher death rates for Black men, and Black men not signing leases even if they live in the household.⁵⁷⁸

Within the city of Buffalo, the poverty rate for Black people is about 37%, and the poverty rate for White people is about 20%, contributing to extreme segregation in the city which mirrors lower housing values and higher rates of housing complaints due to substandard or dangerous housing conditions.⁵⁷⁹ Mr. Magavern noted that the segregation is clear on the chart below, and that other research has shown that renters on the East Side of Buffalo pay 16% higher housing costs than owners even when their homes were of lower quality.⁵⁸⁰ He noted this is possibly due to the lack of housing choices for people of color due to discrimination, the lack of rising equity in housing

⁵⁷⁶ Magavern Testimony, June 4, 2021, Web Hearing, p. 13.

⁵⁷⁷ Ibid.

⁵⁷⁸ Ibid.

⁵⁷⁹ Ibid., 14.

⁵⁸⁰ Magavern Testimony, June 4, 2021, Web Hearing, p. 15.

values that landlords pass on to renters, and a cycle in which landlords charge higher rents to tenants who are unable to pay them, leading to higher eviction rates which leads to higher costs for landlords, ultimately translating into higher rents for tenants.⁵⁸¹



Source: U-Va. Cooper Center analysis of 2010 Census data, *The Washington Post*.

Magavern Testimony, June 4, 2021, Web Hearing Slides, at 40

e) New York City

In New York City, over 68% of households rent their home, compared to 36% of households nationally and the most severely rent-burdened individuals are people of color.⁵⁸² Of all Housing Choice Voucher participants in New York City, 45% are Latinx renters and 36% are Black renters.⁵⁸³ Black families comprise 22% of all households in New York City but make up 27% of households headed by a person with a disability.⁵⁸⁴

In 2015 and 2020, approximately 35% of all evictions in New York City were filed in the Bronx, followed by Brooklyn at 30%, Manhattan at 19%, Queens at 17%, and Staten Island at 2%.⁵⁸⁵

⁵⁸¹ Magavern Testimony, *June 4, 2021, Web Hearing*, p. 15.

⁵⁸² Dressler Testimony, *June 23, 2021, Web Hearing*, p. 15.

⁵⁸³ Malalis Testimony, *June 23, 2021, Web Hearing*, p. 29.

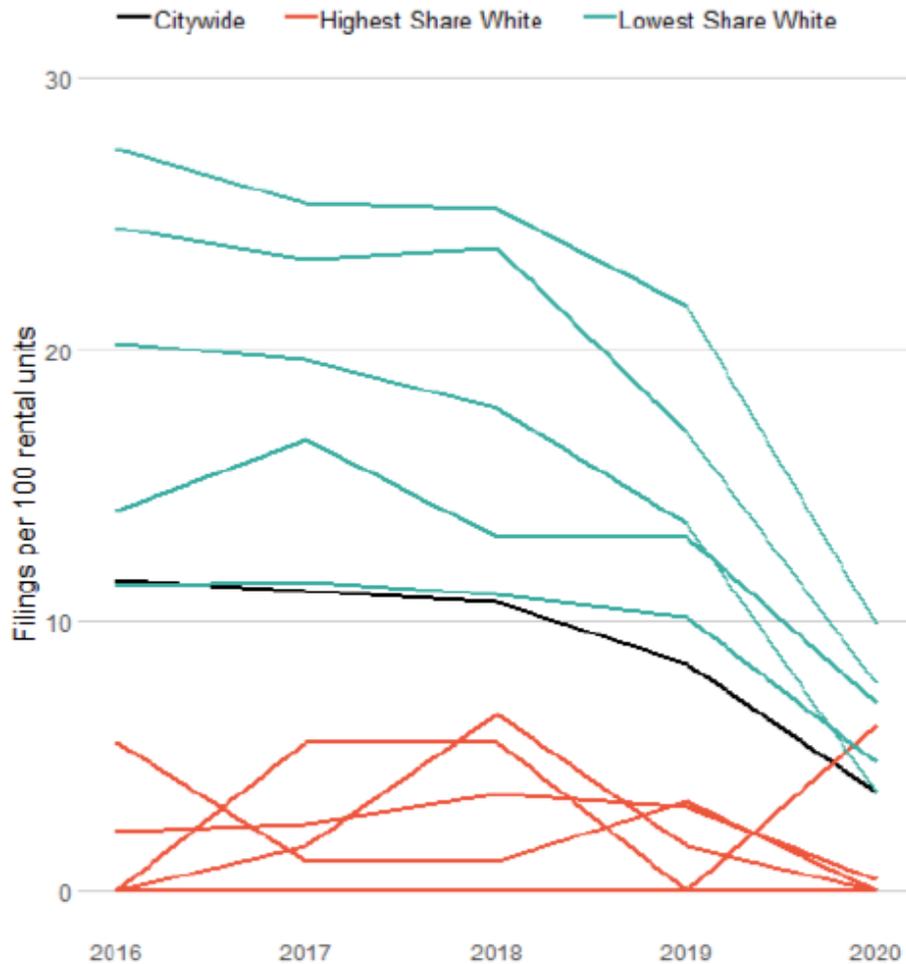
⁵⁸⁴ *Ibid.*

⁵⁸⁵ Scherer Statement, at 18, citing NYC Human Resources Administration, Department of Social Services: NYC Office of Civil Justice Annual Report, 2019.

Thus, the borough with the highest proportion of Black and low-income tenants also has the highest number of evictions, even though it does not have the highest number of total residents.⁵⁸⁶

As in Albany and Buffalo, New York City zip codes with the highest populations of people of color have the most eviction filings.⁵⁸⁷

New York City Filings by Share White



Sources: NYS Office of Court Administration via Housing Data Coalition, American Community Survey, NYU Furman Center

Brenner and House Testimony, June 4, 2021, Web Hearing Slides, at 22

⁵⁸⁶ Scherer Statement, at 19, citing NYC Human Resources Administration, Department of Social Services: NYC Office of Civil Justice Annual Report, 2019; see Deena Greenberg, Carl Gershenson, & Matthew Desmond, *Discrimination in Evictions: Empirical Evidence and Legal Challenges*, 51 HARV. C.R.-C.L. REV. 115 (2016); see Census on Demographics in Boroughs of New York City, 2019.

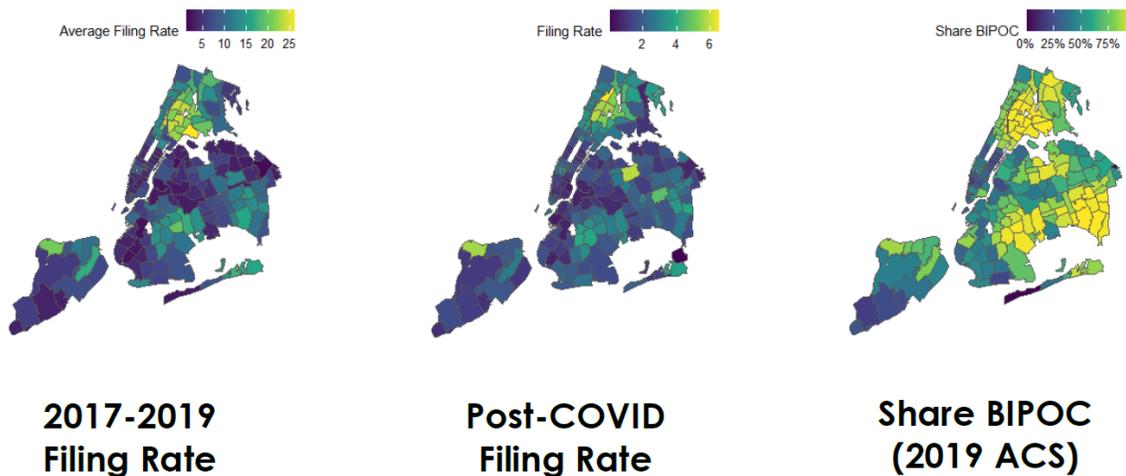
⁵⁸⁷ Brenner Testimony, June 4, 2021, Web Hearing, p. 6.

Before the pandemic, renters in majority Black zip codes were more than three times as likely to be evicted as renters in majority White zip codes in New York City.⁵⁸⁸ Dr. Madden testified that, since the onset of the pandemic, Black renters have been more than five times as likely than White renters to have fallen behind on rent.⁵⁸⁹

Further, BIPOC populations in New York City experienced the highest eviction filing rates both before and during the pandemic (as of the June 2021 briefing).⁵⁹⁰

New York City

The areas with the highest eviction filing rates, pre- and post-pandemic, match the areas with the largest BIPOC populations.



Brenner and House Testimony, June 4, 2021, Web Hearing Slides, at 24

Black and Latinx renters in New York City have both the highest filing and eviction rates compared to White and Asian renters.⁵⁹¹

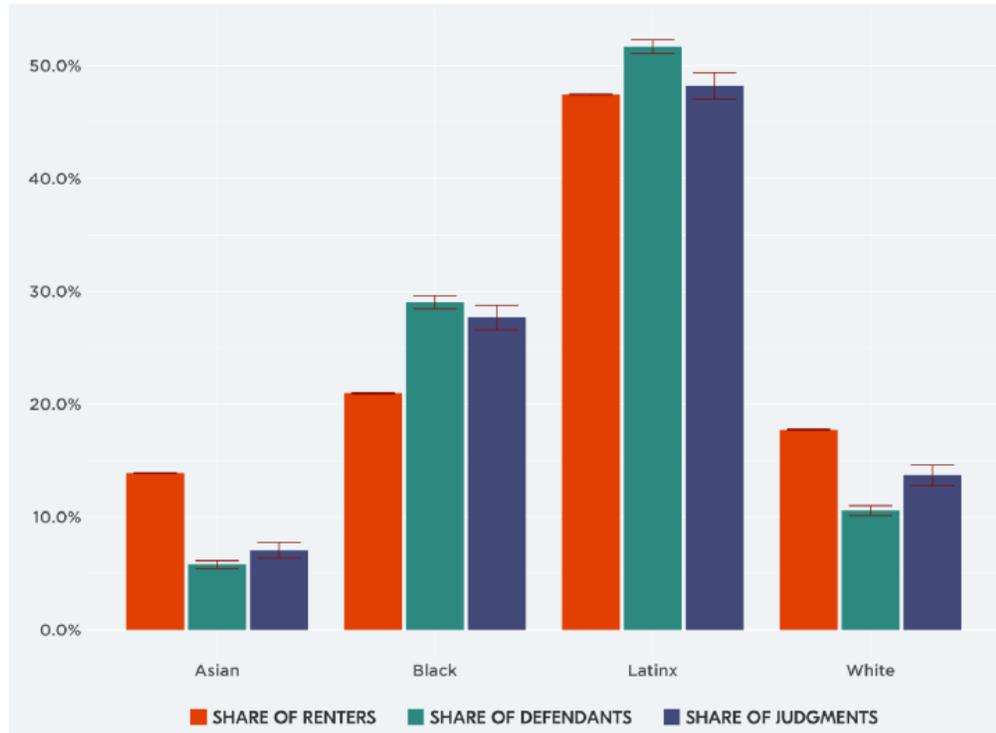
⁵⁸⁸ Madden Testimony, *June 4, 2021, Web Hearing*, p. 43; Goodridge Testimony, *July 16, 2021, Web Hearing*, p. 6, 26.

⁵⁸⁹ Madden Testimony, *June 4, 2021, Web Hearing*, p. 43.

⁵⁹⁰ Ryan Brenner and Sophie House Testimony, June 4, 2021, Web Hearing Slides, at 24.

⁵⁹¹ Louis Testimony, *June 4, 2021, Web Hearing*, p. 5.

Key Results: New York City



Hepburn and Louis Testimony, June 4, 2021, Web Hearing Slides, at 12

Ms. Goodridge noted the empirical data provided by the experts speaking to the Committee showing that people of color are disproportionately evicted is supported through observing tenants in any Housing Court in New York City.⁵⁹²

2. *Landlords*

a) *Demographics*

There is a lack of data on landlord demographics, making it challenging to ascertain any discriminatory intent.⁵⁹³

⁵⁹² Goodridge Testimony, *July 16, 2021, Web Hearing*, p. 26.

⁵⁹³ House Testimony, *June 4, 2021, Web Hearing*, p. 19; Hepburn Testimony, *June 4, 2021, Web Hearing*, p. 28; Lin Testimony, *June 4, 2021, Web Briefing*, p. 61.

The Committee received substantial testimony about the disparate impact of evictions on renters of color.⁵⁹⁴ However, deliberate discriminatory intent based on race is challenging to examine as data on landlord demographics is frequently unavailable in eviction case records.⁵⁹⁵ Landlords often own properties as limited liability corporations (“LLCs”), which makes it difficult to conduct research into intent.⁵⁹⁶ Dr. Hepburn noted that even mom-and-pop landlords often use LLCs.⁵⁹⁷ However, when looking at corporate vs. non-corporate residential landlords, Ms. Louis noted their research reveals corporate landlords tend to evict for less money than non-corporate landlords, indicating a potentially lower threshold for eviction.⁵⁹⁸

Mr. Magavern expanded on the discussion regarding discriminatory intent vs. disparate impact.⁵⁹⁹

One thing to think about in the eviction context is that the landlord who is evicting the family of color made the choice to rent to them in the first place. So in some ways they are a less likely landlord to be animated by racial animus than landlords in general, but it doesn't mean that they're not subject to implicit bias, or overt bias as well, but I do think that it's important to think about how the tenants got into this position of non-payment in the first place and what some of the racial factors are leading to that, in addition to any possible discriminatory feelings by the current landlord. So the fact that it's very common for landlords to discriminate in the decision whether to rent or not means that the tenants of color are paying higher rents. They're effectively taxed by the discrimination because they have fewer choices. [T]hey're paying higher rent. So they're more at risk of nonpayment for that reason. They're in lower quality housing, as we talked about earlier, which also puts them at higher risk for non-payment cases. So, there are those systemic factors that are swelling the pool of African American tenants getting evicted, even apart from the question of whether the landlord in that case is exhibiting racial bias in their actual decision to evict.⁶⁰⁰

Dr. Lin noted that without collecting more data on demographic information on landlords, it is not possible to answer questions about discriminatory intent on the part of landlords in eviction proceedings.⁶⁰¹ Mr. Husock cautioned against drawing inferences from judgments against tenants when the financial situation of the property owner is not known. He noted, “We need to know about the landlord situation. That's one of the themes that I'm trying to underscore in my

⁵⁹⁴ Park Testimony, June 23, 2021, Web Hearing, pp. 2-3; Magavern Testimony, June 4, 2021, Web Hearing, p. 13; Collins Statement, at 1; Scherer Testimony, February 19, 2021, Web Hearing, p. 7; Scherer Statement, at 9-10, citing Benfer, Emily, et. al., *Eviction, Health Inequity, and the Spread of COVID-19: Housing Policy as a Primary Pandemic Mitigation Strategy*, J. URBAN HEALTH (Jan. 2021); Scherer Statement, at 21, citing Peter Hepburn, Renee Louis, and Matthew Desmond, *Racial and Gender Disparities among Evicted Americans*, Eviction Lab, 2020.

⁵⁹⁵ Hepburn Testimony, June 4, 2021, Web Hearing, p. 28.

⁵⁹⁶ House Testimony, June 4, 2021, Web Hearing, p. 19.

⁵⁹⁷ Hepburn Testimony, June 4, 2021, Web Hearing, p. 28.

⁵⁹⁸ House Testimony, June 4, 2021, Web Hearing, p. 19.

⁵⁹⁹ Magavern Testimony, June 4, 2021, Web Hearing, p. 24.

⁶⁰⁰ Ibid.

⁶⁰¹ Lin Testimony, June 4, 2021, Web Hearing, p. 61.

testimony. . . [T]enants matter, but so do property owners, especially when they're small minority property owners."⁶⁰²

Surveys conducted by the Urban Institute reveal some demographic data on landlords. Surveys conducted in August 2020 found that the eviction moratorium was disproportionately impacting Black and Latinx landlords who were struggling to pay their mortgages.⁶⁰³ Despite the disproportionate hardship experienced, 42% of Black landlords and 48% of Latinx landlords offered their tenants rent payment plans, while only 36% of White landlords offered their tenants rent payment plans.⁶⁰⁴

Noting the issue of nonpayment of rent, Mr. Husock stressed that the Committee should lend priority consideration to distributing almost \$50 billion in rental aid, which he noted is comparable to the annual budget of the U.S. Department of Housing and Urban Development.

In the moment, priority must be given to efficiently distributing aid. Eviction [moratorium] should not be open-ended. Concerns about disparate effects on minority tenants shouldn't blind us to the effects on minority property owners and the COVID-19 crisis should not be the occasion for permanent changes in the eviction law.⁶⁰⁵

Professor Epstein, disagreeing with other panelists, noted his concerns about relying on disparate impact vs. discriminatory intent when considering racial discrimination in evictions in New York.⁶⁰⁶

There are three different theories that might be addressed. The first of these is explicit differential treatment on the grounds of race. It is hard to imagine any set of real-world circumstances in which a claim of this sort could be made credibly. In virtually all of these cases the ground for eviction would be nonpayment of rent, and in virtually all of these cases the same policy is enforced in a uniform fashion against persons, so that the same objective and easily verified question can be answered in the same way. The existing protections for tenant[s], pre-COVID, should be sufficient to handle any stray case that might arise.

Next, I do not think that a case of discrimination [can be made] based on disparate impact based on cases like *Griggs v. Duke Power*, 401 U.S. 424 (1971), which adopted a disparate impact system to see whether certain tests were adequate

⁶⁰² Husock Testimony, *June 4, 2021, Web Hearing*, p. 27.

⁶⁰³ Husock Testimony, *June 4, 2021, Web Hearing*, p. 11, citing Lauri Goodman and Jung Hyun Choi, *Black and Hispanic Landlords Are Facing Great Financial Struggles because of the COVID-19 Pandemic. They Also Support Their Tenants at Higher Rates*, URBAN INSTITUTE (Sept. 4, 2020), <https://www.urban.org/urban-wire/black-and-hispanic-landlords-are-facing-great-financial-struggles-because-covid-19-pandemic-they-also-support-their-tenants-higher-rates>.

⁶⁰⁴ *Ibid.*

⁶⁰⁵ Husock Testimony, *June 4, 2021, Web Hearing*, p. 11.

⁶⁰⁶ Epstein Statement, at 1-2, citing Richard A. Epstein, *The Folly Of "Fair" Housing*, HOOVER INST. (July 13, 2015), <https://www.hoover.org/research/folly-fair-housing> (opposing disparate impact regulations for housing).

proxies for some relevant quality, such as a graduate equivalence test for a high school diploma. But in this case, there are no inferences that have to be drawn from one test to another conclusion. It is simply a case that the rent has not been paid, which is a cause for eviction in all cases.

Third, the only possible theory on which discrimination could be found does not rest on anything in Title VII and is in fact dangerous to the operation of our economic and social system. The claim is that if a higher percentage of minority or poor tenants are evicted that counts as a case of discrimination. By this test virtually every proper act becomes a form of discrimination, and landlords who are also struggling under COVID could easily be buried under a host of lawsuits even if they complied with every neutral law dealing with evictions. That view of the subject should be rejected both legally and morally in order to protect the civil rights of landlords, many of whom are small operators who have been as badly [harmed] by COVID as their tenants.⁶⁰⁷

There is evidence of racially biased behavior on the part of landlords and their representatives.⁶⁰⁸

Research has shown landlords choose to use the threat of eviction disproportionately against Black and Latinx renters: “[e]ven before the pandemic, 19% of Latinx tenants and 14% of Black tenants in New York City were threatened with eviction, compared to 8% of White and 4% of Asian communities.”⁶⁰⁹

While data relating to discriminatory intent is lacking in eviction records, Dr. Thomas noted that there is a lot of research that specifically looks at landlord behavior: “[w]hat [is] shown is that there [are] higher rates of mistreatment with Black tenants over White tenants. . . . There’s a lot of maltreatment in behavior that is highly suspect and should be also looked at in addition to the racial disparity that we see.”⁶¹⁰

During the Committee’s July 16, 2021, panel, Mr. Mangual asked, “[c]an anyone give us an empirically based estimate of what percentage of New York evictions are directly attributable to racism on the part of the filing party, and how did you arrive at that number?”⁶¹¹

Senator Kavanagh responded:

I assume that racial discrimination occurs in the eviction market. I assume that because, in almost any other portion of the housing market that is ever studied in America, we find discriminatory practices. It seems highly unlikely that the

⁶⁰⁷ Epstein Statement, at 1.

⁶⁰⁸ Dressler Testimony, *June 23, 2021, Web Hearing*, p. 17; Thomas Testimony, *June 25, 2021, Web Hearing*, p. 17; Boston and Maldonado Statement, at 14.

⁶⁰⁹ Boston and Maldonado Statement, at 14.

⁶¹⁰ Thomas Testimony, *June 25, 2021, Web Hearing*, p. 17.

⁶¹¹ Mangual Testimony, *July 16, 2021, Web Hearing*, p. 26.

landlords and other participants in the market who are overtly and frequently discriminating in whom they choose to rent to initially are not discriminating at the other end of that relationship when they're choosing whom to evict. I would also say though, that given the racial disparity, we know that people are more likely to experience eviction if they are people who are more burdened by housing costs, they are paying much higher levels of their income on housing than other folks. People who are very highly rent burdened...[are] disproportionately people who are protected classifications, and ... those people are likely to experience higher levels of eviction. I think it is indirect, and it's systemic racism in the system and systemic biases that I think lead to greater levels of eviction. Eviction is as much a harm, an effect, of those. It's both an effect and a cause of very harmful things that happen to people in our society.⁶¹²

Ms. Goodridge responded:

[T]he first thing is when you walk into any New York City housing court, and you see who is there, it is overwhelmingly people of color. Now, in terms of empirical data, you can look at the NYU Furman Center, they have shown that, and I'm reading the statistics now, in 2019, it was about 40% of Black tenants, 40% of Hispanic tenants, 6.2% of Asian tenants, and 11% of White tenants in terms of, for the eviction filing rates. There has been data that has shown that, in majority Black zip codes, the Black tenants there are three times more likely to be evicted. There is empirical data to show that people of color are disproportionately evicted...[W]hen you actually walk into any housing court in New York City, you will see the empirical data envisioned.⁶¹³

Jordan Dressler, Civil Justice Coordinator at Office of Civil Justice, Department of Social Services, NYC Human Resources Administration, shared an example of concerning language with the Committee.

Last month in Staten Island, a landlord's law firm served dozens of eviction petitions on tenants, including a tenant notice that read, and I have to quote here, "Chinese Wuhan virus emergency," where it should have said, "Coronavirus emergency." Including this odious language in a legal notice was a perversion of a court rule enacted last fall, for which we and our legal provider partners advocated, that requires the new eviction petition sent to tenants include a notice stating that the tenant may be able to raise pandemic specific defenses in court and should contact OCJ's free legal services program for assistance.⁶¹⁴

⁶¹² Kavanagh Testimony, *July 16, 2021, Web Hearing*, p. 26.

⁶¹³ Goodridge Testimony, *July 16, 2021, Web Hearing*, pp. 26-27.

⁶¹⁴ Dressler Testimony, *June 23, 2021, Web Hearing*, p. 17.

b) COVID-19 Impacts on Landlords**Small landlords are disproportionately impacted by nonpayment of rent and the COVID-19 eviction moratorium.⁶¹⁵**

The COVID-19 pandemic exacerbated longstanding tensions between landlords and tenants, but testimony gathered during the briefings highlighted that systemic factors are creating financial burdens for both landlords and tenants, particularly small landlords for whom rent is a substantial or only source of income.⁶¹⁶ Ms. Collins expressed support for a mindful approach that considers the effects of rental non-payment on small landlords, who are more likely than owners of large buildings to be Black and Latinx and often lack resources to weather months of missed revenue.⁶¹⁷

Mr. Husock noted, “[k]eep in mind that any moratorium that also includes forbearance for small property owners on mortgage payment overlooks the fact that many such owners need rental income for their own life necessities, and consider the importance of the prospect of eviction as a tool for them to maintain the safety of their properties and for the overwhelming majority of tenants who pay rent on time.”⁶¹⁸

Urban Institute researcher Jung Choi shared that during the pandemic, over 40% of small mom-and-pop landlords reported difficulty in making mortgage payments, with this percentage increasing when accounting for landlords of color specifically, who are more likely to have a mortgage, a lower average income, and increased challenges in diversifying risk due to owning only one property.⁶¹⁹ She also noted that approximately 30% of landlords were also pressured to sell their properties during the pandemic, which could affect the housing supply.⁶²⁰

Professor Epstein shared his concerns about landlord responsibility for tenant nonpayment in February 2021.

I think that there are serious constitutional issues that arise if the evictions are blocked, and the state fails to offer compensation for the landlords for the lost rent. Even the rent control laws always allow for eviction in the event of nonpayment of rent and stripping landlords of that right means that the state has effectively transferred ownership of the property, at least for the term of the suspension to the tenant. If there is a social desire to do this, the money in question should not be taken from the landlord, but it becomes a social obligation to use general tax revenues to pay for the loss. It is not permissible for the state to require any one

⁶¹⁵ Oh Testimony, *June 25, 2021, Web Hearing*, p. 37; Collins Statement, at 2; Choi Testimony, *June 23, 2021, Web Hearing*, p. 31.

⁶¹⁶ Oh Testimony, *June 25, 2021, Web Hearing*, p. 37; Collins Statement, at 2; Choi Testimony, *June 23, 2021, Web Hearing*, p. 31.

⁶¹⁷ Collins Statement, at 2.

⁶¹⁸ Husock Testimony, *June 4, 2021, Web Hearing*, p. 11.

⁶¹⁹ Choi Testimony, *June 23, 2021, Web Hearing*, p. 31.

⁶²⁰ *Ibid.*

person to fund those obligations by himself. See *Armstrong v. United States*, 364 U.S. 40, 49 (1960): “The Fifth Amendment’s guarantee that private property shall not be taken for a public use without just compensation was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” The landlords in these cases have, by assumption, committed no wrong that should force them to pay for this social objective, however laudable. The situation is even more indefensible if the moratorium on evictions extends to all tenants, even those with the ability to pay.⁶²¹

In June 2021, one landlord shared the challenges he and his family are facing.

I mean, I really want to cry because I have some rental properties in New York. I also have [two] college kids. I have to pay tuition, which right now I cannot do, and the bank is about to take away my houses and I have three tenants [who are] not paying [any] rent, and they [do not] qualif[y] for the rent relief . . . so I really don’t know where to turn to. I [have] not receiv[ed] rent from one of the tenants for over two years now. This ... and I mean, I just have nowhere to turn to, so I please ask . . . not [to] continue [the eviction moratorium]. You guys have no idea . . . how difficult it is for us to buy property....

I’m not the only one. There’s a lot [of people like me out there]. We are . . . not the people that who should be sacrificed for this. . . . We are the small people. We are the working people. We save our money. We do not go [on] vacation. We do not buy anything at all. We don’t even go out to eat. That’s the money we saved to buy the property and try to raise our famil[ies] and try to keep the people [housed]. But now that . . . New York City [is] doing this to us, I’m sure a lot of people [are] wanting to sell the[ir] house[s] and [get] out of this. This is a mess. I mean, I don’t want to be [a] New York City landlord anymore. I won’t. I regret . . . step[ping] my foot in it.⁶²²

The housing ecosystem across the country includes many participants, including “mom-and-pop” landlords, who are disproportionately rental property owners of color.⁶²³

Mr. Husock explained that, in New York, mom-and-pop landlords include immigrants who use rental properties as part of their efforts towards socioeconomic mobility.⁶²⁴ He also shared an example of a landlord who moved to the U.S. from Jamaica and needs 100% occupancy in his 14 rental units to make his own payments, but had two non-payers prior to the pandemic and two additional non-payers during the pandemic.⁶²⁵ He urged the Committee to consider evictions as part of the larger housing ecosystem, which includes both small property owners who rely on

⁶²¹ Epstein Statement, at 1-2.

⁶²² Landlord Speaker 9 Testimony, *June 25, 2021, Web Hearing*, p. 72.

⁶²³ Husock Testimony, *June 4, 2021, Web Hearing*, p. 9.

⁶²⁴ *Ibid.*

⁶²⁵ *Ibid.*

evictions to sustain rental income and low-income tenants who need eviction proceedings to preserve safe and sanitary housing.⁶²⁶

Ms. Collins noted that stabilizing small landlords is beneficial to the housing ecosystem.⁶²⁷ Ms. Collins highlighted a recent Harvard study that pointed to the severe stress small-building landlords are experiencing and how their responses, including evictions, may reinforce housing instability for already vulnerable tenants.⁶²⁸ Small buildings are more likely to house low-income renters and people of color, and Ms. Collins suggested implementing initiatives, like the Landlord Ambassador Program, aimed at helping small building landlords to improve and stabilize their properties through flex funds, eviction prevention services, and tenant-mediation.⁶²⁹

Mr. Husock highlighted that in a recent report for the American Enterprise Institute, he found that evictions due to the pandemic were not as great as initially expected.⁶³⁰ In 12 states, eviction filings fell by 60% from 2019 and 2020, and nationally, he shared that “only 12% of those facing eviction cited the CDC moratorium in their effort to avoid it.”⁶³¹

Mr. Husock reminded the Committee that the CDC eviction moratorium only restricted eviction for nonpayment of rent, and not other reasons that include threatening the health or safety of other residents or damaging property.⁶³² He noted that only 10.5% of those facing evictions are eventually physically removed from the premises, as most stay, work out a rent agreement, or leave on their own.⁶³³ Mr. Husock noted the impact of the eviction moratoriums are disproportionately impacting mom-and-pop small property owners.

It's clear that eviction moratoriums have disproportionately affected so-called mom-and-pop property owners, with the gap still growing as the moratorium has been extended. According to [Bob Pinnegar, President and CEO of] the National Property Owners Association, the gap between rent and rental income has reached \$10 billion and is growing by about \$5 billion every month. Typically overlooked in the discussion of the plight of tenants facing eviction is the understanding that

⁶²⁶ Ibid., 10.

⁶²⁷ Collins Statement, at 5.

⁶²⁸ Collins Statement, at 5, citing Elijah De La Campa, *The Impact of COVID-19 on Small Landlords: Survey Evidence from Albany and Rochester, New York*, JOINT CTR. FOR HOUSING STUD. OF HARV. U. (Mar. 2021), https://www.jchs.harvard.edu/sites/default/files/research/files/harvard_jchs_small_landlord_survey_de_la_campa_2021.pdf.

⁶²⁹ Collins, Written Testimony, at 5, citing N.Y.C. DEP'T OF HOUSING PRESERVATION & DEV., *Landlord Ambassador Program*, <https://www1.nyc.gov/site/hpd/services-and-information/landlord-ambassador-program.page> (last visited Jan. 12, 2021).

⁶³⁰ Husock Testimony, *June 4, 2021, Web Hearing*, p. 9, citing Howard Husock, “Understanding the Eviction Crisis: Preserving the Housing Ecosystem,” American Enterprise Institute, May 27, 2021, <https://www.aei.org/research-products/report/understanding-the-eviction-crisis-preserving-the-housing-ecosystem/>.

⁶³¹ Husock Testimony, *June 4, 2021, Web Hearing*, p. 9.

⁶³² Ibid.

⁶³³ Husock Testimony, *June 4, 2021, Web Hearing*, p. 10.

housing markets are not characterized by landlords who exercise monopoly power.⁶³⁴

Rental income is the primary source of income for many mom-and-pop landlords, who are disproportionately people of color.⁶³⁵

Multiple landlords shared their experiences. Mr. Jiang, a longtime landlord with about 15 units, shared his concern that he hears comments demonizing landlords while landlords are just trying to live, and also need help.⁶³⁶

I'm coming from [an] association with a lot of Asian landlords — many are Chinese who barely speak English. Their income depends on the rental income. Their life depends on the rental income. . . . I depend on the rental income. But when they're facing a bad tenant, they have no way to evict them. And those tenants, just like the last one testified, refuse to cooperate with landlords, refuse to apply, refuse to do the obligation. They even destroyed property. I mean, most of my tenants are good, but with [a] one-or two-unit landlord, when they face [that] kind of abuse from the tenant, we need a law that works for both tenants and the landlords.⁶³⁷

Mr. Jiang had joined the briefing to listen to earlier comments by speakers and noted that while he heard discussions about deteriorating housing stock in New York, with many houses over a hundred years old, the focus has been on landlords to pay for these issues created by larger environmental forces, versus asking government to address issues around better, affordable housing.⁶³⁸ He asked the Committee, “[p]lease, everybody, landlord[s] and tenant[s], in this kind of environment, we are on the same boat. Let’s work together to get [the] government to distribut[e] the money right away.”⁶³⁹

Landlords shared that some tenants are exploiting the eviction moratorium by not paying rent even when they are able to, often damaging units at the same time.⁶⁴⁰

⁶³⁴ Ibid.

⁶³⁵ Landlord Speaker 1 Testimony, *June 25, 2021, Web Hearing*, p. 39; Husock Testimony, *June 4, 2021, Web Hearing*, p. 9; Shitao Testimony, *June 25, 2021, Web Hearing*, p. 43; Jiang Testimony, *June 25, 2021, Web Hearing*, p. 44.

⁶³⁶ Jiang Testimony, *June 25, 2021, Web Hearing*, p. 44.

⁶³⁷ Ibid.

⁶³⁸ Ibid., 45.

⁶³⁹ Ibid., 46.

⁶⁴⁰ Oh Testimony, *June 25, 2021, Web Hearing*, p. 35-37; Melinda Testimony, *June 25, 2021, Web Hearing*, p. 46; Shitao Testimony, *June 25, 2021, Web Hearing*, p. 43; Landlord Speaker 1 Testimony, *June 25, 2021, Web Hearing*, p. 39; Landlord Speaker 2 Testimony, *June 25, 2021, Web Hearing*, p. 48; Han Testimony, *June 25, 2021, Web Hearing*, p. 49; Translated Mandarin Emailed Testimony, at 2.

Multiple landlords testified that they have tenants who they believe can pay but are refusing to do so,⁶⁴¹ even adding racial epithets in their refusal to do so.⁶⁴² Landlords expressed their concerns regarding tenant damage to property during the pandemic:

First, they broke the power (electric) switch, then they pried open the faucet and allowed the water to continually drain. They then actually sued me claiming the heater and hot water were not hot, while in fact, we kept the temperature at a constant 70 degrees because there was a senior over 80 years old living downstairs.... We are pleading with the government to stop postponing Eviction Orders, which only allow these rental tyrants to take advantage of the opportunity to not pay rent while damaging the property. Six-months of lost rent is close to \$12,000, and our legal fees are close to \$5,000, and this has caused so much emotional pain and suffering and economic loss for us, a small property owner.⁶⁴³

Referring to a study conducted in Philadelphia, Mr. Husock shared, “[l]andlords reported in interviews that a small minority of tenants seem to be exploiting the moratorium by not paying rent, even if they were employed and not necessarily experiencing hardship.”⁶⁴⁴

Mr. Oh, a landlord living in Albany, shared the challenges of facing an eviction moratorium with no end in sight.⁶⁴⁵ Mr. Oh has over 30 rental properties with over 120 rental units that are primarily residential and worked with tenants—through reduced rental payments, using security deposits, and deferred payments—to help address nonpayment issues during the pandemic.⁶⁴⁶ He shared that the moratoria on eviction orders were intended to help people but have resulted in challenging consequences for landlords.

Some people are just going to take advantage. And then I think, in this situation, we had quite a bit more people who were either taking advantage of the situation or misconstruing what the eviction moratorium was. Specifically, . . . we’ve had everything from, “I don’t have to pay rent, there’s a new order or a new law that we don’t have to pay rent.” . . . And the ones that were taking advantage, those were the hardest because it’s a little bit worse when you know that somebody can pay and then they choose not to.

⁶⁴¹ Oh Testimony, *June 25, 2021, Web Hearing*, p. 35-37; Melinda Testimony, *June 25, 2021, Web Hearing*, p. 46; Shitao Testimony, *June 25, 2021, Web Hearing*, p. 43; Landlord Speaker 1 Testimony, *June 25, 2021, Web Hearing*, p. 39; Landlord Speaker 2 Testimony, *June 25, 2021, Web Hearing*, p. 48; Han Testimony, *June 25, 2021, Web Hearing*, p. 49; Translated Mandarin Emailed Testimony, at 2.

⁶⁴² Landlord Speaker 1 Testimony, *June 25, 2021, Web Hearing*, p. 39.

⁶⁴³ Translated Mandarin Emailed Testimony, at 2.

⁶⁴⁴ Husock Testimony, *June 4, 2021, Web Hearing*, p. 11, citing Vincent Reina et al, *Residential Rental Property Owner Perspectives and Practice in Philadelphia: Evaluating Challenges during the COVID-19 Pandemic*, THE HOUSING INITIATIVE AT PENN (Dec. 2020), https://www.housinginitiative.org/uploads/1/3/2/9/132946414/hip_rf_brief_final.pdf.

⁶⁴⁵ Oh Testimony, *June 25, 2021, Web Hearing*, p. 35, 37.

⁶⁴⁶ *Ibid.*, 37.

And on top of that, that was for a long period of time. And in some of these situations, I've had units that were occupied, and then when they did finally leave, it was after a year of zero rent collection, and then the place was destroyed and some of these units have cost me in the tens of thousands of dollars. So even though it's a low percentage, if it's a couple of percent, those couple of percent, and those units, cost cumulatively tens and tens of thousands of dollars, which . . . was very difficult, and it made it very tough for us.⁶⁴⁷

Mr. Oh shared that there have been other reforms, prior to the COVID-19 pandemic, that the Committee should also consider when thinking of potential unintended consequences of recommendations to address evictions.⁶⁴⁸ For example, in 2019, New York limited security deposits to one month rent maximum to increase rental unit affordability.⁶⁴⁹ However, some tenants right out of college, without good credit or established income, might not meet criteria for renting a unit,⁶⁵⁰ but in the past, a landlord or property management company might offer an alternative of paying two months security deposit in the absence of established credit or income.⁶⁵¹ A result of New York's 2019 limited security deposit reform and the COVID-19 eviction moratorium is stricter requirements that are decreasing rental properties availability.⁶⁵²

Mr. Oh continued, noting property owners are now more reluctant "to take a risk on somebody if they're not extremely qualified and, in some cases, just leaving a unit entirely vacant because it's not even worth that risk. So I've seen that happen time and time again. So there definitely are some bad consequences of these orders intended to help people."⁶⁵³

Professor Epstein noted that the COVID-19 eviction moratorium would create reluctance towards investing in real estate.

The resale market for existing buildings will be hammered because few individuals wish to invest in real estate where they face the risk (as successors in title) of major antidiscrimination lawsuits.... New investment into New York will slow down, not only in the housing market, but all over. For sitting landlords, inability to collect rents through no fault of their own will not release them from their obligations to pay their mortgage, their electric bill, their employee wages. Services in question will either deteriorate or the building will over time become uninhabitable. The conscious decision to deprive landlords of their necessary revenue streams, will trigger a host of applications for [a] reduction in real estate taxes based on the loss of income production from the properties.⁶⁵⁴

⁶⁴⁷ Ibid.

⁶⁴⁸ Oh Testimony, *June 25, 2021, Web Hearing*, p. 38.

⁶⁴⁹ Oh Testimony, *June 25, 2021, Web Hearing*, p. 38; N.Y. UNCONSOL. LAW § 8626(f) (McKinney 2022).

⁶⁵⁰ Oh Testimony, *June 25, 2021, Web Hearing*, p. 38.

⁶⁵¹ Ibid.

⁶⁵² Ibid.

⁶⁵³ Ibid.

⁶⁵⁴ Epstein Statement, at 2.

E. Eviction Enforcement

Dr. Lin shared a preliminary scan of information about tenant eviction protection policies across the jurisdictions at issue.⁶⁵⁵

PRELIMINARY Scan of Tenant Eviction Protection Policies, Including Race Forward

Policy	Albany	Buffalo	NYC	NY State
Good/Just Cause Eviction	Considering	No	Yes	Considering
Fair Housing Audits & Enforcement	Unsure	Unsure	Yes	Unsure
Fair Chance Housing	No	No	Considering	No
Mediation Services	Unsure	Unsure	Unsure	Unsure
Proactive Rental Inspection (w/ Anti-Displacement terms)	No	Yes	No	No
Rental Assistance	limited	limited	limited	limited
Rent Control	Very limited	No	Yes (1%)	Sets standards
Rent Stabilization	No	No	Yes (~34%)	Sets standards
Right to Counsel	No	No	Yes (phasing)	No
Security Deposit Limits	Yes	Yes	Yes	Yes
Source of Income Anti-Discrimination	Yes	Yes	Yes	Yes
Vacancy Control	No	No	Yes	Sets standards

*Information has not yet been verified by local housing officials and housing justice organizations.

Lin Testimony, June 4 Web Hearing Slides, at 75

It is challenging to determine the percentage of racial discrimination complaints where landlords prevailed, as interventions are prioritized, including education⁶⁵⁶ and settlement,⁶⁵⁷ to avoid full litigation.

Tenants have filed cases alleging racial discrimination where no probable cause is found or that proceed to a public hearing followed by a determination of insufficient evidence of discrimination.⁶⁵⁸ However, tenants have filed a significant number of cases in which either the settlement or final determination found racial discrimination in the eviction context.⁶⁵⁹

⁶⁵⁵ Lin Testimony, June 4 Web Hearing Slides, at 75.

⁶⁵⁶ Malalis Testimony, June 23, 2021, Web Hearing, p. 24.

⁶⁵⁷ Smith Testimony, June 23, 2021, Web Hearing, p. 24.

⁶⁵⁸ Ibid.

⁶⁵⁹ Ibid.

The eviction process itself is dehumanizing and rife with the potential for racial bias and discrimination.⁶⁶⁰

Tamicka Hall lived in federally subsidized housing in upstate New York much of her life and was a member of the housing residence council.⁶⁶¹ After experiencing domestic abuse and seeking assistance, she was wrongfully arrested and evicted in a process that HUD later pursued, finding the HUD grantee racially discriminated against her.⁶⁶² This resulted in a voluntary compliance agreement with corrective actions including monetary compensation and modification of housing policies.⁶⁶³

At the time of the events in her complaint, Ms. Hall, who had three adult children and seven minor children living with her, alleged that the Greenburgh Housing Authority in Greenburgh, NY, discriminated against her on the basis of race, in violation of Title VI of the Civil Rights Act of 1964.⁶⁶⁴ Ms. Hall, a recipient of a Section 8 voucher, was evicted in 2015 and filed her complaint in 2016 under both Title VI and section 804 of the Fair Housing Act.⁶⁶⁵

The Greenburgh Housing Authority had in place a “One Strike” policy which gave it cause to evict tenants from its public housing units when a resident or a resident’s family member was involved in “any gang, violent, gun, drug-related[,] or general criminal activity whether in the dwelling unit or elsewhere.”⁶⁶⁶ The remainder of the policy contained certain curative options: if the involved person was a minor, the head of household could place the minor into a treatment or a rehabilitation program, but if the minor failed to complete it, then eviction proceedings could take place. Similarly, if the involved person was an adult, the head of household had the obligation to remove the person from the home; failure to do so would lead to eviction proceedings.⁶⁶⁷ Neither a conviction nor an arrest was necessary to justify eviction proceedings.⁶⁶⁸

In this case, Ms. Hall and her husband were charged and arrested for criminal possession of a controlled substance after a local SWAT team conducted a raid on their home in May 2014.⁶⁶⁹ In June 2014, Hall received a notice to vacate pursuant to the One Strike policy; she did not do so.⁶⁷⁰ Instead, she embarked on a series of attempts to use the legal system to remain in her home. She

⁶⁶⁰ Hall Testimony, *July 16, 2021, Web Hearing*, pp. 27-28; Andino-Caballero Testimony, *July 16, 2021, Web Hearing*, p. 15; Thomas Testimony, *June 25, 2021, Web Hearing*, p. 11-12; Park Testimony, *June 23, 2021, Web Hearing*, p. 3; Keshner Testimony, *June 25, 2021, Web Hearing*, p. 62; Felts Testimony, *July 16, 2021, Web Hearing*, pp. 23-24.

⁶⁶¹ Hall Testimony, *July 16, 2021, Web Hearing*, pp. 27-28.

⁶⁶² Hall Letter of Findings and Voluntary Compliance Agreement.

⁶⁶³ Hall Testimony, *July 16, 2021, Web Hearing*, pp. 27-28.

⁶⁶⁴ Hall Letter of Findings and Voluntary Compliance Agreement, at 1; 42 U.S.C. § 2000d.

⁶⁶⁵ Hall Letter of Findings and Voluntary Compliance Agreement, at 1; 42 U.S.C. § 2000d; 42 U.S.C. § 3604.

⁶⁶⁶ Hall Letter of Findings and Voluntary Compliance Agreement, at 2.

⁶⁶⁷ *Ibid.*

⁶⁶⁸ *Ibid.*

⁶⁶⁹ *Ibid.*

⁶⁷⁰ *Ibid.*

was not successful.⁶⁷¹ In January 2015, the Greenburgh Justice Court found that Hall had violated the terms of her lease by engaging in drug-related criminal activity, and in May 2015, issued a Notice of Eviction.⁶⁷² Ms. Hall and her family subsequently lived in a homeless shelter for four months before moving to emergency shelter for approximately a year and a half.⁶⁷³ Thereafter, the family experienced homelessness again, but Hall's husband was no longer present.⁶⁷⁴ (N.B. Ms. Hall paid rent during her final period of living in the homeless shelter because she was employed.)⁶⁷⁵ In June 2015, the charges against Ms. Hall were dismissed.⁶⁷⁶

HUD concluded that there was reasonable cause to conclude that Greenburgh Housing Authority discriminated against Hall based on race and color in violation of Title VI of the Civil Rights Act of 1964,⁶⁷⁷ as well as several other federal regulations.⁶⁷⁸ Relying on the disparate impact theory of liability, HUD found that the "One Strike" criminal records policy had a disparate impact on Black renters.⁶⁷⁹ HUD reached this conclusion by evaluating the demographic data defining rental populations as well as the demographic data describing individuals who had been arrested in particular locations.⁶⁸⁰

Renter households in the United States were 18.76% Black, compared to 23.56% in New York State, 24.64% in Westchester County (where Greenburgh is located), and 16.38% in the Town of Greenburgh.⁶⁸¹ These statistics notwithstanding, 100% of the rental applicants who were denied housing (3/3) and 100% of the families who had to remove a family member from their homes (3/3) due to the criminal records policy were Black.⁶⁸²

The investigation also revealed data that shows that Black individuals are disproportionately arrested for crimes, both in New York State and in the nation.⁶⁸³ The effect of disproportionately arresting Black individuals means that it is disproportionately likely that Black individuals will be harmed by the impact of criminal records policies used by housing authorities (and the impact is especially pernicious for people like Ms. Hall, whose charges are dropped).⁶⁸⁴ This pattern of seeing larger arrest shares for Black individuals continued to persist when looking at arrests in towns and cities that were near Greenburgh.⁶⁸⁵ Specifically, local data showed that Black

⁶⁷¹ Ibid.

⁶⁷² Ibid.

⁶⁷³ Ibid.

⁶⁷⁴ Ibid.

⁶⁷⁵ Ibid., 3-5.

⁶⁷⁶ Ibid., 4.

⁶⁷⁷ 42 U.S.C. § 2000d

⁶⁷⁸ Ibid., 6; see 42 U.S.C. §§ 2000d et seq.; 24 C.F.R. § 1.4(b)(1)(i) to (ii), and 1.4(b)(2)(i).

⁶⁷⁹ Ibid.

⁶⁸⁰ Ibid.

⁶⁸¹ Ibid., 7.

⁶⁸² Ibid.

⁶⁸³ Ibid.

⁶⁸⁴ Ibid.

⁶⁸⁵ Ibid.

individuals were arrested at a rate that was more than 3-4 times higher than their numbers in the local population.⁶⁸⁶

Greenburgh Housing Authority claimed that its criminal records policy was necessary to ensure that no criminal activity was happening on its public assistance properties, but the investigation disputed this assertion, finding that Greenburgh Housing Authority failed to demonstrate that the criminal records policy was necessary to achieve a substantial, legitimate, nondiscriminatory interest.⁶⁸⁷ For one thing, they had to go out of their way to find tenants who had been arrested by locating records of the arrests in the local newspapers.⁶⁸⁸ In addition, the desire to prevent crime on site was inconsistent with the decision to evict based on arrests rather than convictions, especially given the frequency with which people were arrested in error and charges were dropped.⁶⁸⁹ HUD concluded that this policy was being used to evict non-problematic tenants.⁶⁹⁰ Less discriminatory alternatives could have been employed which would have better served the interest of safety.⁶⁹¹

In light of the statutory and regulatory violations, HUD and Greenburgh Housing Authority entered into a Voluntary Compliance Agreement.⁶⁹² The key terms of the agreement included the following: Ms. Hall's Section 8 voucher for a 5-bedroom unit was reinstated; Greenburgh Housing Authority agreed that the voucher could not be withdrawn without substantial cause, notice to Ms. Hall, and notice to HUD; Greenburgh Housing Authority agreed to compensate Ms. Hall in the amount of \$55,000 for her damages; Greenburgh Housing Authority agreed to provide her with a neutral landlord reference letter if she requested one; and Greenburgh Housing Authority agreed to stop enforcing its current criminal records policy against both current and prospective tenants and voucher holders, and instead, would narrow its policy and submit it to HUD for review and approval, among other provisions.⁶⁹³

Through HUD, Ms. Hall made available the Voluntary Compliance Agreement reached in her case referenced above, which is available in the Appendix.⁶⁹⁴ Ms. Hall is one of the few renters who agreed to share her story.

I'm the nuisance woman that Leah [Goodridge] was talking about. I'm that stereotype of person. What was done to me, I hope doesn't happen to anyone else....

⁶⁸⁶ Ibid., 8-9.

⁶⁸⁷ Ibid., 8-10.

⁶⁸⁸ Ibid.

⁶⁸⁹ Ibid.

⁶⁹⁰ Ibid.

⁶⁹¹ Ibid., 11-12.

⁶⁹² Ibid., 19-25.

⁶⁹³ Ibid.

⁶⁹⁴ Hall Testimony, *July 16, 2021, Web Hearing*, p. 29.

I remember the night that I was wrongfully arrested. I was in my bed and so were my kids. I'll never forget the banging on our door. Next thing, the door was kicked in. I had just had a baby. I can't really recall. I think I was pregnant. My kids' screaming, guns to our heads, infrareds. We were embarrassed. The police screaming, yelling at me and my kids. We're never ever going to forget those red dots. I'm never going to forget it.

They walked me out in the middle of the projects where I lived, in the dark in front of everybody, embarrassed. I'm never going to live that down. I'm always going to have that stigma. Everybody saw me being pulled out on the lawn. People were wondering why I was arrested, because I'm just normally always with my kids or working. Everybody still talks about this arrest to this day. If you put my name in, you could pull it up on the internet. It still hasn't been taken down [even though] the arrest resulted in nothing, all my charges were dropped and sealed. To go to the police station, they didn't help me, the whole arrest, mugshot, pulled down my pants, brought in CPS [Child Protective Services]. I had CPS for a long time because of this. I was shocked when I read the report that said I was a drug addict because I never used drugs....

My kids' mental health to this day, irreversible.... To have 10 people in a homeless shelter live in one room, number one, as a woman, I can't have feelings. I can't cry. I couldn't do anything. No one knows how that feels. I'm the mother and I can't do anything. I was kicked out for nothing....

I was a domestic violence victim, and I went to them for help. And they didn't help me. My safety was in jeopardy. I went to them, and they didn't help me. What they did was kick me out, after almost 30 days later, for a judge to tell me I did nothing wrong. They could have waited. I begged the housing authority not to put me out. So I hope this doesn't happen to anyone else. They put me out, not even two weeks later, like I said, they dropped all my charges.⁶⁹⁵

Tenant protection laws are under-enforced.⁶⁹⁶ Lack of enforcement of existing laws is exacerbating racial disparities.⁶⁹⁷

Multiple panelists noted insufficient enforcement undermining the intent of the fair housing laws.⁶⁹⁸ According to Mr. Freiberg, the federal Fair Housing Act, passed in 1968, always lacked enforcement, offering, as an example, that immediately after the Act was passed, HUD was allocated only 200 out of 900 staff needed for national implementation.⁶⁹⁹ He continued, “[t]he resources have just never been devoted to take this problem seriously. If one of the most intractable

⁶⁹⁵ *Ibid.*, 28.

⁶⁹⁶ Freiberg Testimony, *July 16, 2021, Web Hearing*, p. 21, 23.

⁶⁹⁷ Freiberg Testimony, *July 16, 2021, Web Hearing*, pp. 3, 23.

⁶⁹⁸ Freiberg Testimony, *July 16, 2021, Web Briefing*, p. 3; Kavanagh Testimony, *July 16, 2021, Web Hearing*, p. 18; Thrope Testimony, *June 23, 2021, Web Hearing*, p. 7; Smith Testimony, *June 23, 2021, Web Hearing*, pp. 9-10; Malalis Testimony, *June 23, 2021, Web Hearing*, p. 13; Robinson Testimony, *June 4, 2021, Web Hearing*, p. 71.

⁶⁹⁹ Freiberg Testimony, *July 16, 2021, Web Hearing*, p. 3; Freiberg Testimony, *July 16, 2021, Web Hearing*, p. 23.

problems in American society is race discrimination, why are we devoting so little resources to try and address this issue?”⁷⁰⁰

In agreement, Ms. Thrope offered a community level example, citing a local survey where 91% of respondents reported illegal evictions in their service area.⁷⁰¹ Mr. Robinson noted, “[w]hat we need is enforcement, enforcement, enforcement. There are laws on the books in New York City and New York State against source of income discrimination, but we need enforcement mechanisms to ensure that people who are attempting to rent rental housing from landlords with a voucher are not discriminated against.”⁷⁰²

Enforcement of housing laws meant to prevent discrimination is primarily reactive, necessitating a complaint before enforcement takes place.⁷⁰³

Professor Benfer discussed the ineffectiveness of reactive enforcement in Black and Latinx communities where long-standing distrust of law enforcement leads to under-reporting of housing violations.⁷⁰⁴ Professor Benfer noted the need to re-build trust to increase proactive enforcement and effectiveness of reactive enforcement.⁷⁰⁵ Commissioner Malalis offered an example of proactive enforcement where the New York City Commission on Human Rights Law Enforcement Bureau investigates discriminatory activity based on tips from the public, media, or other sources.⁷⁰⁶ Multiple panelists agreed that housing law enforcement needs to have a strong proactive component to change segregation and discrimination patterns.⁷⁰⁷

Building on the topic of proactive enforcement, State Senator Kavanagh pointed out that discrimination based on source of income is an area ripe for proactive enforcement.⁷⁰⁸ He provided an example of an investigation that demonstrated a direct link between Section 8 voucher-holders and denial of housing.⁷⁰⁹ Multiple panelists noted that source of income discrimination predominantly affects Black and Latinx households.⁷¹⁰ Many speakers suggested strengthening housing laws to address source of income discrimination.⁷¹¹ Professor Abraham suggested adding

⁷⁰⁰ Freiberg Testimony, *July 16, 2021, Web Hearing*, p. 23.

⁷⁰¹ Thrope Testimony, *June 23, 2021, Web Hearing*, p. 7.

⁷⁰² Robinson Testimony, *June 4, 2021, Web Hearing*, p. 71.

⁷⁰³ Smith Testimony, *June 23, 2021, Web Hearing*, pp. 9-10; Freiberg Testimony, *July 16, 2021, Web Hearing*, p. 3; Kavanagh Testimony, *July 16, 2021, Web Hearing*, p. 12.

⁷⁰⁴ Benfer Testimony, *June 4, 2021, Web Hearing*, p. 58.

⁷⁰⁵ *Ibid.*, 38.

⁷⁰⁶ Smith Testimony, *June 23, 2021, Web Hearing*, pp. 9-10; Malalis Testimony, *June 23, 2021, Web Hearing*, p. 13.

⁷⁰⁷ Freiberg Testimony, *July 16, 2021, Web Hearing*, p. 4; Corbitt Testimony, *June 25, 2021, Web Hearing Slides*, at 41; Abraham Testimony, *June 4, 2021, Web Hearing*, p. 49; Abraham Testimony, *June 4, 2021, Web Hearing*, p. 50.

⁷⁰⁸ Kavanagh Testimony, *July 16, 2021*, p. 12.

⁷⁰⁹ *Ibid.*

⁷¹⁰ Freiberg Testimony, *July 16, 2021, Web Hearing*, p. 4; Abraham Testimony, *June 4, 2021, Web Hearing*, p. 49.

⁷¹¹ Robinson Testimony, *June 4, 2021, Web Hearing*, p. 71; Abraham Testimony, *June 4, 2021, Web Hearing*, p. 51; Freiberg Testimony, *July 16, 2021, Web Hearing*, pp. 4-5; Kavanagh Testimony, *July 16, 2021*, p. 12.

source of income as a protected class category at the federal level as it is sometimes used as a proxy for racial discrimination.⁷¹²

Senator Kavanagh noted that policies surrounding housing conditions are often enforced at local levels of government that lack proper resources,⁷¹³ citing communities with a small tax base, where failures to remedy uninhabitable public housing often leads to eviction and perpetuate discrimination.⁷¹⁴ Multiple panelists suggested increasing collaboration across all levels of government—federal, state, and local—to support effective housing law enforcement at a local level.⁷¹⁵

Ms. Felts shared that the housing system is set up to uphold discrimination and does not adequately protect Black and Latinx communities, but instead offers loopholes to landlords.⁷¹⁶ Mr. Freiberg cited use of LLCs by landlords to evade detection and liability for discriminatory practices as an example of systematic imbalance and strongly suggested revision of laws to increase ownership transparency.⁷¹⁷ Professor Benfer suggested limiting the creation and availability of eviction records to strengthen tenant protection.⁷¹⁸ Ms. Park offered additional recommendations to protect tenants, including the adoption of policies around sexual harassment in housing and proactive enforcement of state law protecting tenants from nuisance ordinances.⁷¹⁹ To protect tenants, Mr. Corbitt suggested passing of legislation to prevent no-fault evictions.⁷²⁰

Effective enforcement of fair housing laws requires coordination and resources across all levels of government.⁷²¹

Code enforcement is lacking in much of New York and leads to uninhabitable housing and a cycle of evictions where tenants are evicted for requesting repairs.⁷²² Senator Kavanagh noted that local communities need additional resources to adequately enforce local codes, saying, “[t]he state has very substantial resources that it ought to be using to strengthen those local protections, but it hasn’t been so far.”⁷²³ Ms. Collins shared that code enforcement polices can improve housing

⁷¹² Abraham Testimony, *June 4, 2021, Web Hearing*, p. 49; Abraham Statement, at 10, citing Martha Galvez, et al., *Protecting Housing Choice Vouchers from Discrimination*, THE URBAN INSTITUTE (Oct. 2020), at 5, www.urban.org/sites/default/files/publication/103088/protecting-housing-choice-voucher-holders-from-discrimination.pdf).

⁷¹³ Kavanagh Testimony, *July 16, 2021, Web Hearing*, p. 18.

⁷¹⁴ *Ibid.*, 14.

⁷¹⁵ Benfer Testimony, *June 4, 2021, Web Hearing*, p. 39; Kavanagh Testimony, *July 16, 2021, Web Hearing*, pp. 14, 18; Freiberg Testimony, *July 16, 2021, Web Hearing*, p. 21.

⁷¹⁶ Felts Testimony, *July 16, 2021, Web Hearing*, p. 23.

⁷¹⁷ Abraham Testimony, *June 4, 2021, Web Hearing*, p. 51.

⁷¹⁸ Benfer Testimony, *June 4, 2021, Web Hearing*, p. 38.

⁷¹⁹ Park Testimony, *June 23, 2021, Web Hearing*, p. 3.

⁷²⁰ Corbitt Testimony, *June 25, 2021, Web Hearing Slides*, at 41; Corbitt Testimony, *June 25, 2021, Web Hearing*, p. 28.

⁷²¹ Freiberg Testimony, *July 16, 2021, Web Hearing*, p. 21.

⁷²² Kavanagh Testimony, *July 16, 2021, Web Hearing*, p. 14.

⁷²³ Kavanagh Testimony, *July 16, 2021, Web Hearing*, p. 14.

conditions for residents when performed in an equitable and collaborative way, with safeguards to prevent evictions and displacements in low-income communities and communities of color.⁷²⁴

Mr. Freiberg stressed the need for improved coordination:

The coordination issue is a huge one. It's not just about paucity of resources. It's about federal, state, and local governments working together to make a change. On the enforcement side of things, unfortunately, the common denominator between all three levels of government is largely inaction. [Fair housing enforcement has] been passive and uneven over the years . . . and it has been uncoordinated. And we've worked with all levels of government on enforcement. I can tell you that there's very little interest in working collectively and in a coordinated manner to try and eliminate the scourge of discrimination in the housing market.⁷²⁵

a) Eviction Prevention

Evictions could be reduced if better education was offered to both tenants and landlords on resources available to prevent evictions in the first place, including efforts such as emergency rental assistance and eviction diversion programs that include access to counsel, supports, and an alternative to court.⁷²⁶

Possible under-reporting of racially motivated evictions due to challenges with collecting evictions data was noted by multiple panelists.⁷²⁷ As an example of such challenges, Commissioner Malalis described proxy issues, where race is not explicitly identified as a cause of eviction but underpins it, evidenced by observed disparities impacting Black and Latinx communities.⁷²⁸ Ms. Thrope offered the lack of eviction data from federally assisted housing as another example of data collection problems contributing to the underreporting of illegal evictions.⁷²⁹

Multiple panelists noted that reducing evictions would benefit both tenants, many of whom are persons of color living in very marginal housing, and their landlords.⁷³⁰ Ms. Thrope cited failure to pay rent as the most common reason for evictions and suggested eviction diversion programs, like emergency rental assistance, to help tenants stay secure in their homes while addressing the needs of landlords.⁷³¹ Mr. Dressler offered an example of a successful rental assistance program that helps both tenants and landlords where financial support is paid directly to the landlord if a

⁷²⁴ Collins, Written Testimony, at 6.

⁷²⁵ Freiberg Testimony, *July 16, 2021, Web Hearing*, p. 21.

⁷²⁶ House Testimony, *June 4, 2021, Web Hearing*, p. 30; Hepburn Testimony, *June 4, 2021, Web Hearing*, p. 30; Husock Testimony, *June 4, 2021, Web Hearing*, p. 30.

⁷²⁷ Thrope Testimony, *June 23, 2021, Web Hearing*, pp. 25-26; Malalis Testimony, *June 23, 2021, Web Hearing*, p. 24.

⁷²⁸ Malalis Testimony, *June 23, 2021, Web Hearing*, pp. 22-23.

⁷²⁹ Thrope Testimony, *June 23, 2021, Web Hearing*, pp. 25-26.

⁷³⁰ House Testimony, *June 4, 2021, Web Hearing*, p. 29; Hepburn Testimony, *June 4, 2021, Web Hearing*, p. 30.

⁷³¹ Thrope Testimony, *June 23, 2021, Web Hearing*, pp. 7-8.

tenant is in rent arrears.⁷³² He explained that—through streamlining and consolidation of rental assistance into a single program and taking active steps to promote participation—the program expanded the accessibility of emergency rent arrears grants and led to a substantial increase of households benefiting from them.⁷³³ Multiple panelists agreed with the approach.⁷³⁴ Professor Benfer expanded on the suggestion, recommending making such participation a mandatory step prior to eviction filing.⁷³⁵

However, Mr. Husock suggested mediation as an eviction-reducing tool be used when lease violations are the concern, rather than nonpayment of rent.⁷³⁶ Commissioner Malalis offered an example of the NYC Commission on Human Rights' Community Relations Bureau using mediation and education techniques to alleviate bias-related issues and prevent eviction litigation—where out of approximately 1,500 complaints in 2020, less than 70 cases proceeded to litigation.⁷³⁷ Professor Benfer recommended right to counsel and eviction diversion models that include access to an advocate, adequate resources, and an alternative to court as evidence-based interventions proven to increase housing stability and prevent eviction.⁷³⁸ She also recommended policy interventions such as good cause eviction laws, prohibitions against serial eviction filings that use the courts as a rent collection tool, stricter penalties for violations, and record sealing.⁷³⁹

b) Housing Court Practices

Summary eviction proceedings in housing court are extremely troubling, routinely denying participants dignity and access to fair legal processes.⁷⁴⁰

Scholars argue that Jim Crow racism was essentially written into courtroom procedure, lasting in some form to this day, such as when the Supreme Court of the United States drafted novel rules of Criminal Procedure in the 1940s.⁷⁴¹ Speaking to the current racial makeup in today's courts, Professor Benfer noted that courtroom observation studies indicate that judges, property owners,

⁷³² Dressler Statement, at 2.

⁷³³ *Ibid.*

⁷³⁴ House Testimony, *June 4, 2021, Web Hearing*, p. 29; Maldonado Testimony, *June 25, 2021, Web Hearing*, p. 15; Thrope Testimony, *June 23, 2021, Web Hearing*, pp. 7-8.

⁷³⁵ Benfer Testimony, *June 4, 2021, Web Hearing*, p. 39.

⁷³⁶ Husock Testimony, *June 4, 2021, Web Hearing*, p. 30.

⁷³⁷ Malalis Testimony, *June 23, 2021, Web Hearing*, p.24.

⁷³⁸ Benfer Testimony, *June 4, 2021, Web Hearing*, p. 39.

⁷³⁹ *Ibid.*

⁷⁴⁰ Hall Testimony, *July 16, 2021, Web Hearing*, pp. 27-28; Boston Testimony, *June 25, 2021, Web Hearing*, p. 3; House Testimony, *June 4, 2021, Web Hearing*, p. 7; Dressler Testimony, *June 23, 2021, Web Hearing*, p. 17; Malalis Testimony, *June 23, 2021, Web Hearing*, p. 13; Block Testimony, *June 25, 2021, Web Hearing*, p. 68; Felts Testimony, *July 16, 2021, Web Hearing*, pp. 23-24.

⁷⁴¹ Scherer at 24, citing Ion Meyn, *Constructing Separate and Unequal Courtrooms*, 63 *Ariz. L. Rev.* 1 (2021).

and property-owner attorneys are predominately White, while the tenants are predominantly Black or Latinx.⁷⁴²

Commenters have described Bronx Housing Court as a “revolving door” process where “churning out eviction cases” is the primary business.⁷⁴³ Eviction cases are routinely settled quickly, often on the first court date, and it is common for tenants to sign stipulations containing terms they cannot meet during unmonitored hallway negotiations.⁷⁴⁴ In Bronx Housing Court, 58% of the tenants who appear are Black and 29% Latinx.⁷⁴⁵

Scholars argue that the large amount of discretion given to housing court judges in summary proceedings in New York inhibits fair results.⁷⁴⁶ Multiple members of the public shared their distressing experiences about potential bias and conflicts of interest by judges and tenant advisors in Housing Court.⁷⁴⁷ Ms. White noted how long and expensive the process was when she and her family faced eviction.

Our case went on for three and a half years, and we were having to pay lawyers \$375 an hour. Most of the time, most of that money was being spent sitting in court, waiting for our case to be canceled and continued to another date in the future. We had a total of three judges. The first judge was fired from housing court for conflicts of interest because she owned property and was a landlord and was expressing, I guess, too openly her pro-landlord views. Our judge who oversaw the settlement of our case, she was also very much pro-landlord to the point where she had actually worked for previous owners of our building, and we thought that was a conflict of interest that she had worked for the owners of our building while we were occupying it prior to being appointed as a housing court judge. We asked our attorneys to request the recusal, which they refused to do. And I think that we suffered a lot as a result of that because . . . [we] paid \$60,000 for about six hours in court.⁷⁴⁸

Ms. Felts explained that many tenants in New York, outside of New York City, do not have the right to file their own case in a separate right of action relating to fair housing concerns or housing conditions, instead needing to wait until the landlord files for eviction.⁷⁴⁹ Professor Benfer noted

⁷⁴² Benfer Testimony, *June 4, 2021, Web Briefing*, p. 62.

⁷⁴³ Scherer Statement, at 23, citing *Tipping the Scales: A Report of Tenant Experiences in Bronx Housing Court*, NEW SETTLEMENT’S COMMUNITY ACTION FOR SAFE APARTMENTS & THE COMMUNITY DEV. PROJECT AT THE URB. JUST. CTR. (Mar. 2013), http://cdp.urbanjustice.org/sites/default/files/CDP.WEB.doc_Report_CASA-TippingScales-full_201303.pdf.

⁷⁴⁴ Ibid.

⁷⁴⁵ Ibid.

⁷⁴⁶ Scherer at 7, citing Moshe B. Machum, *The Landlord Blues: Inequity, Inefficiency, and Untimeliness of Summary Proceedings in New York City*, 61 N.Y.L. SCH. L. REV. 509 (2017).

⁷⁴⁷ White Testimony, *June 25, 2021, Web Hearing*, p. 53, 60-61; Gullas Testimony, *June 25, 2021, Web Hearing*, p. 70.

⁷⁴⁸ White Testimony, *June 25, 2021, Web Hearing*, pp. 52-53.

⁷⁴⁹ Felts Testimony, *July 16, 2021, Web Hearing*, pp. 23-24.

that tenants often lack access to counsel, as well as access to information and trusted pathways to report issues so they can advocate for themselves.⁷⁵⁰

Some positive changes to housing court practices made due to the pandemic, such as scheduled hearings with legal representation, should be continued.⁷⁵¹

Prior to the pandemic, housing court processes were described as chaotic and “fraught negotiations”⁷⁵² in which proceedings, if they happened at all, were conducted too quickly.⁷⁵³ Mr. Maldonado explained that moving to remote proceedings during the pandemic established necessary structure and supports for individual proceedings, as a legal services provider was offered to unrepresented persons during remote proceedings.⁷⁵⁴ This, according to Mr. Maldonado, allowed for judges to “actually hear the parties as they are presenting and [allowed them to] deal with the issues one by one.”⁷⁵⁵

There is undoubtedly disparate treatment of people of color in housing court.⁷⁵⁶

In 2020, Jeh Johnson, former U.S. Secretary of Homeland Security, drafted a research report on racial disparities and bias in New York Courts.⁷⁵⁷ The report describes instances of overtly racist comments from judges and discriminatory and disrespectful treatment of minority court users and attorneys.⁷⁵⁸ The court officers’ locker rooms were segregated and contained racist graffiti.⁷⁵⁹ The report also notes that court facilities themselves are crowded, poorly ventilated, and poorly suited for the volume of cases they deal with.⁷⁶⁰

In one illustrative incident, a male attorney repeatedly called opposing counsel, who was a Black woman, a “bitch.”⁷⁶¹ Upon formal review, the attorney denied the scope of his wrongdoing, attempted to justify his actions, and failed to apologize to the complainant.⁷⁶² On another occasion, a court officer assumed a Black attorney was a defendant and placed the attorney in a chokehold.⁷⁶³

⁷⁵⁰ Benfer Testimony, *June 4, 2021, Web Hearing*, p. 38.

⁷⁵¹ Maldonado Testimony, *June 25, 2021, Web Hearing*, p. 5.

⁷⁵² *Ibid.*

⁷⁵³ Boston Testimony, *June 25, 2021, Web Hearing*, p. 4.

⁷⁵⁴ Maldonado Testimony, *June 25, 2021, Web Hearing*, p. 5.

⁷⁵⁵ *Ibid.*

⁷⁵⁶ Benfer Testimony, *June 4, 2021, Web Hearing*, p. 62; Scherer Statement at 16-17, citing *Report from the Special Advisor on Equal Justice in the New York State Courts*, Jeh Johnson, 2020.

⁷⁵⁷ Scherer Statement, at 16-17, citing *Report from the Special Advisor on Equal Justice in the New York State Courts*, Jeh Johnson, 2020.

⁷⁵⁸ *Ibid.*

⁷⁵⁹ *Ibid.*

⁷⁶⁰ *Ibid.*

⁷⁶¹ Scherer Statement, at 15-17, citing *Matter of Denenberg*, 137 N.Y.S.3d 363 (N.Y. App. Div. 2020).

⁷⁶² *Ibid.*

⁷⁶³ Scherer Statement, at 16-17, citing *Report from the Special Advisor on Equal Justice in the New York State Courts*, Jeh Johnson, 2020.

Professor Benfer shared preliminary observations of eviction proceedings that she and other researchers are observing across the country.⁷⁶⁴

When there are people of color in the room, court observers noted that the bailiffs had their hands on their tasers more often. They observed that unrepresented tenants were frequently dismissed when they attempted to raise defenses. They observed small talk between landlord attorneys and the magistrates and little to no engagement with tenants. This preliminary evidence is demonstrating bias within the system, and whether it's implicit or overt, it is having an impact on the housing stability, health, livelihood, and wellbeing of renters in these communities.⁷⁶⁵

Ms. Goodridge noted the persistent racism in the system towards Black women in particular: “[t]hey are literally seen, we were literally seen as nuisances. When I come to speak about racial justice, and I even mentioned slavery, I get rolled eyes. I get people who say, ‘Let’s move on. Let’s talk about today.’ People do not want to do the hard work to look at why we are where we are today.”⁷⁶⁶

Language access during eviction proceedings in housing court is routinely challenging and disproportionately impacts those who cannot speak English.⁷⁶⁷

People of color, immigrants, and undocumented individuals who do not speak English do not have adequate knowledge of their rights.⁷⁶⁸ Studies by the NYU Furman Center from 2017-2019 highlight a persistent lack of access to interpreters and other language services for tenants.⁷⁶⁹ The New York City Commission on Human Rights’ Community Relations Bureau provides free know-your-rights workshops in over 30 languages to tenants, along with workshops that help landlords understand their obligations,⁷⁷⁰ but similar reliable language access and interpretation services are a persistent barrier for tenants in housing courts.⁷⁷¹

Housing court staff do not track or routinely provide data that would help monitor for racial discrimination.⁷⁷²

⁷⁶⁴ Benfer Testimony, *June 4, 2021, Web Briefing*, p. 62.

⁷⁶⁵ *Ibid.*

⁷⁶⁶ Goodridge Testimony, *July 16, 2021, Web Hearing*, p. 24.

⁷⁶⁷ Benfer Testimony, *June 4, 2021, Web Hearing*, p. 5; Block Testimony, *June 25, 2021, Web Hearing*, p. 68; House Testimony, *June 4, 2021, Web Hearing*, p. 7.

⁷⁶⁸ Block Testimony, *June 25, 2021, Web Hearing*, p. 68.

⁷⁶⁹ House Testimony, *June 4, 2021, Web Hearing*, p. 7.

⁷⁷⁰ Malalis Testimony, *June 23, 2021, Web Hearing*, p. 13.

⁷⁷¹ House Testimony, *June 4, 2021, Web Hearing*, p. 7.

⁷⁷² Kavanagh Testimony, *July 16, 2021, Web Hearing*, p. 23; Felts Testimony, *July 16, 2021, Web Hearing*, p. 24.

Senator Kavanagh noted that local courts do not have appropriate systems for tracking why evictions are taking place, alongside the racial and ethnic demographics of those who are affected by evictions.⁷⁷³

Ms. Felts shared her challenges and frustrations gathering relevant data.

The other thing that I would offer with regard to data is that, in my personal experience, attempting to obtain eviction data from the Office of Court Administration in my capacity previously as an executive director of a tenants' rights organization nonprofit . . . was nearly impossible. We had to retain our law school. We had to retain a university and all of their . . . resources to be able to obtain this data. We've never actually been able to have a copy of it and house it ourselves to be able to look at it from the perspective of tenants. Where, at the same time, that data was sold to landlords to be able to create blacklists up until 2019.⁷⁷⁴

Providing legal representation to tenants in housing courts through “Right to Counsel” legislation would address many current imbalances in unfair and unjust evictions proceedings, by enabling tenants to assert their legal rights.⁷⁷⁵

Some scholars have noted an insufficiency of legal representation of litigants in summary proceedings and inadequate training of justices in New York Town and Village courts.⁷⁷⁶ Mr. Dressler shared that NYC was the first city to enact a “Right to Counsel” law, driving a number of positive changes in eviction-related outcomes since 2017 when the law was first implemented.⁷⁷⁷ Ms. White also noted that right to counsel and strengthening rules relating to conflicts of interest were both important.⁷⁷⁸

New York City's passage of the Right to Counsel law in 2017 has already demonstrated that default judgments against tenants have dropped, tenants with counsel are far more likely to retain their homes, and evictions are going down.⁷⁷⁹ For example, since Right to Counsel passed in 2017, there has been a 41% decrease in default judgments of eviction, and 84% of those with legal representation were able to stay in their homes.⁷⁸⁰ For FY 2018, 246,369 New Yorkers received free legal services in eviction and other housing-related matters, which increased to 350,000 in 2019 and 450,000 in 2020.⁷⁸¹ Of those New Yorkers assisted under Right to Counsel⁷⁸² in 2020,

⁷⁷³ Kavanagh Testimony, July 16, 2021, Web Hearing, p. 23.

⁷⁷⁴ Felts Testimony, July 16, 2021, Web Hearing, p. 24.

⁷⁷⁵ Boston Testimony, June 25, 2021, Web Hearing, p. 3; Maldonado Testimony, June 25, 2021, Web Hearing, p. 4; White Testimony, June 25, 2021, Web Hearing, p. 60.

⁷⁷⁶ Scherer Statement, at 8, citing *Summary Proceedings In New York's Town and Village Courts: Ideas for Improvements The Fund for Modern Courts* (2012).

⁷⁷⁷ Dressler Statement, at 1; see 2017 NYC Local Law No. 136.

⁷⁷⁸ White Testimony, June 25, 2021, Web Hearing, pp. 60-61.

⁷⁷⁹ Boston Testimony, June 25, 2021, Web Hearing, p. 3; see 2017 NYC Local Law No. 136.

⁷⁸⁰ Scherer Testimony, February 19, 2021, p. 8; Dressler Statement, at 2; Boston and Maldonado Statement, at 14.

⁷⁸¹ Boston and Maldonado, Written Testimony, at 13.

⁷⁸² 2017 NYC Local Law No. 136.

86% were able to remain in their homes and 41% had lived in their homes for ten or more years.⁷⁸³ In 2020, the New York City Housing Court issued 52% fewer warrants of eviction than the previous year.⁷⁸⁴ Professor Benfer noted,

[Right to Counsel has] demonstrated across numerous studies to increase housing instability, reduce eviction, and remove eviction filings from a renter’s record. At the same time, the extreme variations in outcomes based exclusively on the availability of legal counsel point to significant rights violations and a system bereft of equity and balance. The need to close the eviction justice gap is extraordinary, and delay [is] ripe with negative consequences for tenants.⁷⁸⁵

Panelists testified that, in the three years since New York became the first city in the country to create a right to counsel in eviction and foreclosure cases, the effort has had an undeniably positive impact on low-income and racially diverse New Yorkers.⁷⁸⁶ In 2020, an estimated 92% of households served by housing court were “income-eligible” for assistance under the Right to Counsel law.⁷⁸⁷

Landlords consistently possess disproportionate bargaining power throughout the eviction process.⁷⁸⁸ Ms. Felts noted that many of the enforcement systems designed to address eviction were created to uphold practices rooted in racism, making it extremely challenging to attempt to flip a process designed to evict people very quickly into a process that could help protect an individual’s rights.⁷⁸⁹

Sheila Boston, President of New York City Bar and Partner at Arnold & Porter, noted that providing right to counsel has the potential to reduce the incidence of homelessness and its related human and governmental costs by preserving low-income housing, assisting the court, and stabilizing the displacement of individuals and families who are largely unrepresented litigants of color.⁷⁹⁰ She shared that the New York City Bar has long supported expanding the right to counsel as a powerful way to combat racial, gender, and economic discrimination in eviction proceedings.⁷⁹¹ Since the passage of the 2017 New York City Right to Counsel law,⁷⁹² tenant representation is going up, evictions are going down, default judgements against tenants have dropped, and tenants have been more successful in retaining their homes.⁷⁹³

⁷⁸³ Boston and Maldonado Statement, at 12-13.

⁷⁸⁴ *Ibid.*, 12.

⁷⁸⁵ Benfer Testimony, *June 4, 2021, Web Hearing*, p. 69.

⁷⁸⁶ Boston and Maldonado Statement, at 11.

⁷⁸⁷ *Ibid.*

⁷⁸⁸ Scherer Statement at 24, citing McCarthy, Nora, *Housed in Housing Court*, City Limits, March 1, 2002.

⁷⁸⁹ Felts Testimony, *July 16, 2021, Web Hearing*, p. 23.

⁷⁹⁰ Boston Testimony, *June 25, 2021, Web Hearing*, pp. 3, 5.

⁷⁹¹ Boston and Maldonado, Written Testimony at 3, *see* 2017 NYC Local Law No. 136.

⁷⁹² 2017 NYC Local Law No. 136.

⁷⁹³ Boston and Maldonado, Written Testimony, at 3.

Following New York's model, at least nine additional cities have passed right to counsel legislation, including Newark, San Francisco, Santa Monica, Cleveland, Philadelphia, Boulder, Baltimore, and Seattle, and Washington State became the first state to enact right to counsel for tenants in April 2021.⁷⁹⁴ In light of this success, the New York City Bar will continue to advocate for right to counsel in New York City and on a state and federal level.⁷⁹⁵

The New York City Bar first began to advocate for right to counsel in housing court in recognition of many pressing concerns including: the complexity of New York's landlord-tenant and housing laws; the short amount of time allotted to cases; the overwhelming caseload of housing court judges; a summary eviction process that prevents issues from being fully litigated; the many pro se tenants who are unable to adequately represent themselves; the poor physical conditions in housing court; the vast majority of housing court litigants being people of color; and the frequency of racial and gender bias.⁷⁹⁶ After extensive research and deliberations among a wide range of stakeholders, the New York City Bar concluded that free legal services would not only provide profound humanitarian benefits, but also cost less than the expenses associated with eviction and homelessness.⁷⁹⁷

Now that free legal representation is guaranteed for housing court in New York City, the New York City Bar's Taskforce on the Civil Right to Counsel and other stakeholders need to move to address several key issues.⁷⁹⁸ First, Ms. Boston and Mr. Maldonado, former president of New York City Bar and Partner at Smith, Gambrell & Russell, noted that the deplorable and inaccessible physical conditions of housing courts should be improved.⁷⁹⁹ Second, they shared that the "hallway justice" model in housing court should be put to an end by using remote proceedings strategically and connecting tenants with counsel as early as possible.⁸⁰⁰ Third, stakeholders should make sure that federal emergency rental assistance funds are used as intended, and New York should explore creating a permanent federal funding stream for any municipality that wants to create right to counsel or emergency rental assistance programs.⁸⁰¹ Finally, the courts should create more efficient and effective data collection to assist the right to counsel efforts and better ascertain racial, gender, or economic disparities.⁸⁰² In addition, the New York City Bar noted the need for better communication systems at all levels of litigation, more robust technology that can streamline the flow of information, and increased staff and resources in housing court.⁸⁰³

⁷⁹⁴ Boston and Maldonado Statement, at 8; *see* WASH. REV. CODE ANN. § 59.18.640 (LexisNexis 2021).

⁷⁹⁵ Boston and Maldonado Statement, at 8.

⁷⁹⁶ *Ibid.*, 5.

⁷⁹⁷ *Ibid.*, 6.

⁷⁹⁸ *Ibid.*, 7.

⁷⁹⁹ *Ibid.*

⁸⁰⁰ *Ibid.*

⁸⁰¹ *Ibid.*

⁸⁰² *Ibid.*

⁸⁰³ *Ibid.*, 9.

Right to counsel in housing court eviction proceedings is necessary for tenants from communities of color to affirmatively raise and address alleged civil rights' violations.⁸⁰⁴

Enacting Right to Counsel legislation was among the top panelists' recommendations to reduce evictions and racial disparities.⁸⁰⁵ Ms. Thrope noted that nationwide, 3% of tenants are represented by an attorney in eviction cases, compared to 81% of landlords.⁸⁰⁶

Mr. Dressler spoke about what legal services staff provide. They work to ensure that the rights of tenants, who are disproportionately Black and Brown and low-income, are not violated.⁸⁰⁷ They connect tenants with rental assistance and other public assistance programs that help to ensure their economic stability.⁸⁰⁸ They make innovative legal arguments that pro se tenants would be hard-pressed to make themselves and that help shape the jurisprudence of the housing legal system.⁸⁰⁹ They often appear in their client's stead, allowing their clients to avoid missing work or the challenges of childcare.⁸¹⁰

F. Major Recommendations from Speakers

Invited panelists and members of the public shared their recommendations with the Committee. Assemblymember Epstein noted the importance of sharing priorities with government entities.

I think it's important to tell us all on the city, state, and federal level what we need to do... [F]or the state we have a \$213 billion budget, and we have a capital budget; it's multi-billion dollars. . . . [W]e need to hear that to deal with the underlying . . . racism, we need to invest deeply in affordable housing. We spent \$9 billion on economic development projects, like in airports, but we spend only \$2.5 billion on housing. So budgets are priorities, and if you were telling us our priorities are wrong, that's really helpful for people like me to have those recommendations. . . . Public housing is a great example that. . . . I focus a lot on [it] in New York City.

⁸⁰⁴ De Barbieri Testimony, *June 4, 2021, Web Hearing*, p. 47; Benfer Testimony, *June 4, 2021, Web Hearing*, p. 69; Thrope Testimony, *June 23, 2021, Web Hearing*, p. 7; Dressler Testimony, *June 23, 2021, Web Hearing*, p. 16; Boston Testimony, *June 25, 2021, Web Hearing*, p. 5; Thomas Testimony, *June 25, 2021, Web Hearing*, p. 14; Maldonado Testimony, *June 25, 2021, Web Hearing*, p. 16; H. Epstein Testimony, *June 25, 2021, Web Hearing*, p. 21; Levine Testimony, *June 25, 2021, Web Hearing*, p.24; Felts Statement, at 9.

⁸⁰⁵ De Barbieri Testimony, *June 4, 2021, Web Hearing*, p. 47; Benfer Testimony, *June 4, 2021, Web Hearing*, p. 69; Thrope Testimony, *June 23, 2021, Web Hearing*, p. 7; Dressler Testimony, *June 23, 2021, Web Hearing*, p. 16; Boston Testimony, *June 25, 2021, Web Hearing*, p. 5; Thomas Testimony, *June 25, 2021, Web Hearing*, p. 14; Maldonado Testimony, *June 25, 2021, Web Hearing*, p. 16; H. Epstein Testimony, *June 25, 2021, Web Hearing*, p. 21; Levine Testimony, *June 25, 2021, Web Hearing*, p.24; Felts Statement, at 9.

⁸⁰⁶ Thrope Testimony, *June 23, 2021, Web Hearing*, p. 7.

⁸⁰⁷ Dressler Testimony, *June 23, 2021, Web Hearing*, p. 18.

⁸⁰⁸ Ibid.

⁸⁰⁹ Ibid.

⁸¹⁰ Ibid.

We have a lot of public housing, but there's federal disinvestment. We need to talk about that as a race and racism issue. We need to then, on the state and the city level, ensure we have a plan that doesn't privatize our public housing but supports it, and anything that really advances those goals and tells us that, "[h]ey, we had these experiences, and we think that you or the city or the state are not doing well," helps us. Then [it] allows us to put pressure on the federal government, like we're doing now to, in this infrastructure package, put real investment into housing. So all that really matters. And I think you should talk directly to each of these government bodies.⁸¹¹

1. *Federal*

a) *Affordable Housing Availability*

1. Develop additional grants to supplement existing programs that preserve and create long-term affordable housing.⁸¹²
2. Increase public housing stock,⁸¹³ as New York City Housing Authority's waiting list is six figures long.⁸¹⁴
3. Increase affordable housing through universal vouchers.⁸¹⁵
4. Permit accessory dwelling units (ADUs) to increase housing stock.⁸¹⁶
5. Revise rent in publicly funded affordable housing to meet what low-income tenants can afford, using neighborhood area median income levels⁸¹⁷ or zip code⁸¹⁸ to assess appropriate housing affordability standards.
6. "Federally, please repeal the Faircloth Amendment and invest in the construction of truly affordable community and government-controlled housing as a mandatory budget spending item. This isn't low-income housing tax credit, housing, or other tax credits for private developments, which are not deeply or permanently affordable."⁸¹⁹

⁸¹¹ H. Epstein Testimony, *June 25, 2021, Web Hearing*, p. 34.

⁸¹² De Barbieri Testimony, *June 4, 2021, Web Hearing*, p. 47.

⁸¹³ Bunkeddeko Testimony, *June 25, 2021, Web Hearing*, p. 16; Corbitt Testimony, *June 25, 2021, Web Hearing*, p. 33.

⁸¹⁴ Bunkeddeko Testimony, *June 25, 2021, Web Hearing*, p. 16

⁸¹⁵ Benfer Testimony, *June 4, 2021, Web Hearing*, p. 39; Emily Benfer, *June 4, 2021, Web Hearing Slides*, at 60.

⁸¹⁶ H. Epstein Testimony, *June 25, 2021, Web Briefing*, p. 30.

⁸¹⁷ Lin Testimony, *June 4, 2021, Web Hearing*, p. 42; Lin Testimony, *June 4, 2021, Web Hearing Slides*, at 79, citing *Interview with Assemblyman Charles Barron, Part Two*, OUR TIME PRESS (Feb. 29, 2020), <https://ourtimepress.com/interview-with-assemblyman-charles-barron-part-two/>.

⁸¹⁸ Robinson Testimony, *June 25, 2021, Web Hearing*, p. 74.

⁸¹⁹ Felts Testimony, *July 16, 2021, Web Hearing*, p. 10; Felts Statement, at 7-8; see 42 U.S.C. 1437g(g).

7. “Affordable housing is a price control system which simply retards new investments. It creates [a] capricious redistribution of wealth element.... You need to reduce the restrictions to entry in the market... [P]rice will go down, affordability will increase.”⁸²⁰

b) Collaboration and Coordination

1. Listen to communities impacted by eviction to try to reorient the housing system to meet the basic human need for a home.⁸²¹
2. State officials, municipal governments, and enforcement agencies at all levels of government must collaborate with at-risk communities to inform them of their rights and develop trusted pathways to reporting concerns so tenants can advocate for themselves.⁸²²
3. Outreach and collaboration should include state courts, community-based organizations, legal services organizations, and private bar associations and their pro bono programs.⁸²³
4. Collaboration must ensure monies be made available to both tenants and landlords to ensure repairs are made in apartments that will protect tenants from eviction proceedings where the landlord has already received funds.⁸²⁴
5. Landlords, tenants, the local court system, and the government must all work together to ensure housing stability.⁸²⁵
6. Ensure sufficient outreach, language access and general accessibility, including in digital-only application programs like the Emergency Rental Assistance Program, to ensure that those who need assistance can access it.⁸²⁶
7. Ensure tenants can access rental assistance before a formal eviction filing occurs, including eviction diversion programs, mediation programs, financial and social service programs. Pair these programs with outreach to landlords so they understand what resources are available to avoid taking tenants to court but still address their concerns.⁸²⁷

⁸²⁰ Epstein Testimony, *February 19, 2021, Web Hearing*, p. 15.

⁸²¹ Madden Testimony, *June 4, 2021, Web Hearing*, p. 45.

⁸²² Benfer Testimony, *June 4, 2021, Web Hearing*, p. 38-39; Thomas Testimony, *June 25, 2021, Web Hearing*, p. 14.

⁸²³ Boston Testimony, *June 25, 2021, Web Hearing*, p. 5.

⁸²⁴ Maldonado Testimony, *June 25, 2021, Web Hearing*, p. 5.

⁸²⁵ *Ibid.*, 15.

⁸²⁶ Block Testimony, *June 25, 2021, Web Hearing*, p. 68, referring to COVID-19 Emergency Rental Assistance Program of 2021, N.Y. CLS UNCONSOL. LAWS ch. 249-F (LexisNexis 2021).

⁸²⁷ House Testimony, *June 4, 2021, Web Hearing*, p. 29.

c) COVID-19 Evictions

1. The eviction moratorium should not be open-ended.⁸²⁸
2. Halt evictions until the public health emergency has ended and rental assistance funds have been distributed fairly.⁸²⁹
3. Efficiently distribute \$50 billion in rental assistance that has been appropriated through stimulus bills.⁸³⁰
4. Expand emergency assistance to mitigate the impact of temporary income loss situations, as incomes have become more volatile in recent decades, and lost hours at a job, unexpected medical bills, or unexpected funerals may only temporarily impact a tenant's ability to pay for housing.⁸³¹
5. COVID-19 pandemic responses should not lead to permanent changes in eviction law.⁸³²
6. Establish stronger emergency legal and financial supports for renters, especially renters with significant rent arrears due to the pandemic.⁸³³
7. Open the courts and stop the eviction moratorium.⁸³⁴

d) Data

1. More research on disparities in evictions is needed.⁸³⁵
2. Consider requiring landlords to report demographic information when filing for eviction, although there may be accuracy or other limitations to consider. More discussion is needed.⁸³⁶
3. Require housing court judges and their staff to collect demographic data on landlords and renters through the Office of Court Administration.⁸³⁷

⁸²⁸ Husock Testimony, *June 4, 2021, Web Hearing*, p. 11.

⁸²⁹ Park Testimony, *June 23, 2021, Web Hearing*, p. 5.

⁸³⁰ Husock Testimony, *June 4, 2021, Web Hearing*, p. 8.

⁸³¹ Magavern Testimony, *June 4, 2021, Web Hearing*, p. 29.

⁸³² Husock Testimony, *June 4, 2021, Web Hearing*, p. 11.

⁸³³ Madden Testimony, *June 4, 2021, Web Hearing*, pp. 44-45.

⁸³⁴ Landlord Speaker 9 Testimony, *June 25, 2021, Web Hearing*, p. 72.

⁸³⁵ Scherer Testimony, *February 19, 2021, Web Hearing*, p. 8; Abraham at 10; Thrope Testimony, *June 23, 2021, Web Hearing*, pp. 25-26; Brenner Testimony, *June 4, 2021, Web Hearing*, p. 6.

⁸³⁶ Hepburn Testimony, *June 4, 2021, Web Hearing*, p. 19.

⁸³⁷ Kavanagh Testimony, *July 16, 2021 Web Hearing*, p. 23; Felts Testimony, *July 16, 2021 Web Hearing*, p. 24; Benfer Testimony, *June 4, 2021 Web Briefing*, p. 62.

4. Conduct additional research around race and evictions.⁸³⁸
 - a. Including thematic mapping.⁸³⁹
 - b. Including data on illegal evictions.⁸⁴⁰
5. Consider having HUD collect data regarding legal and non-legal evictions among their own tenants as a sample to start understanding illegal evictions better.⁸⁴¹
6. Local government could also potentially conduct surveys of tenants, but it is very time-consuming and potentially a challenge to scale nationally.⁸⁴²
7. Conduct research on landlord behavior and maltreatment.⁸⁴³

e) Eviction Enforcement

1. Repeal summary eviction proceedings.⁸⁴⁴
2. Strengthen non-discrimination fair housing laws alongside better enforcement of those laws to reduce segregation, including a focus on protected classes like source of income, where applicable, as it is often a proxy for race.⁸⁴⁵
3. Fund local enforcement mechanisms to provide accessible officers to communities who need them.⁸⁴⁶
4. Prohibit serial eviction filing.⁸⁴⁷
5. Prohibit filings against children and non-leaseholders.⁸⁴⁸
6. Strengthen enforcement of existing fair housing laws and anti-harassment laws, including source of income protections, where applicable.⁸⁴⁹

⁸³⁸ Lin Testimony, *June 4, 2021, Web Hearing*, p. 42, 53; Madden Testimony, *June 4, 2021, Web Hearing*, p. 45; Benfer Testimony, *June 4, 2021, Web Hearing*, p. 55; Abraham Statement, at 10.

⁸³⁹ De Barbieri Testimony, *June 4, 2021, Web Hearing*, p. 47.

⁸⁴⁰ Thrope Testimony, *June 23, 2021, Web Hearing*, p. 7; Keshner Testimony, *June 25, 2021, Web Hearing*, p. 62.

⁸⁴¹ Thrope Testimony, *June 23, 2021, Web Hearing*, pp. 25-26.

⁸⁴² Ibid.

⁸⁴³ Thomas Testimony, *June 25, 2021, Web Hearing*, p. 17.

⁸⁴⁴ Scherer Testimony, *February 19, 2021, Web Hearing*, p 6; Scherer Statement at 3, citing Spector, Mary B., *Tenants' Rights, Procedural Wrongs: The Summary Eviction and the Need for Reform*, 46 Wayne L. Rev. 135, Spring 2000; Boston and Maldonado Statement, at 5.

⁸⁴⁵ Abraham Testimony, *June 4, 2021, Web Hearing*, p. 49.

⁸⁴⁶ Felts Testimony, *July 16, 2021, Web Hearing*, p. 11.

⁸⁴⁷ Benfer Testimony, *June 4, 2021, Web Hearing*, p. 39.

⁸⁴⁸ Ibid.

⁸⁴⁹ Abraham Testimony, *June 4, 2021, Web Hearing*, p. 51; Abraham Statement, at 10; Robinson Testimony, *June 4, 2021, Web Hearing*, p. 71; Block Testimony, *June 25, 2021, Web Hearing*, p. 68.

7. Because fair-housing agencies that can address suspected housing discrimination are small, institute nationwide random audit-style testing for housing discrimination to expose discrimination and bias.⁸⁵⁰
8. Provide a right to counsel for all tenants in housing court facing eviction.⁸⁵¹

f) Eviction Prevention

1. Ensure tenants can access rental assistance before a formal eviction filing occurs, including eviction diversion programs, mediation programs, financial and social service programs. Pair these programs with outreach to landlords so they understand what resources are available to avoid taking tenants to court but still address their concerns.⁸⁵²
2. Strengthen non-discrimination fair housing laws alongside better enforcement of those laws to reduce segregation, including a focus on source of income, as it is often a proxy for race.⁸⁵³
3. Fund outreach efforts around existing laws to ensure landlords are aware of protected classes, including New York's recent addition of source of income discrimination.⁸⁵⁴
4. Fund local code enforcement to help prevent evictions.⁸⁵⁵
5. Create eviction diversion programs and require participation prior to eviction filing.⁸⁵⁶
6. Address zoning and crime free rental ordinances that lead to and perpetuate discrimination, residential segregation, and exclusion.⁸⁵⁷
7. Provide a right to counsel for all tenants in housing court facing evictions.⁸⁵⁸

⁸⁵⁰ Magavern Testimony, *June 4, 2021, Web Hearing*, p. 25; Freiberg Testimony, *July 16, 2021, Web Hearing*, p. 4.

⁸⁵¹ Park Testimony, *June 23, 2021, Web Hearing*, p. 5; Thrope Testimony, *June 23, 2021, Web Hearing*, p. 7; Dressler Testimony, *June 23, 2021, Web Hearing*, p. 16; Boston Testimony, *June 25, 2021, Web Hearing*, p. 5; Thomas Testimony, *June 25, 2021, Web Hearing*, p. 14; Maldonado Testimony, *June 25, 2021, Web Hearing*, p. 16; H. Epstein Testimony, *June 25, 2021, Web Hearing*, p. 21; Levine Testimony, *June 25, 2021, Web Hearing*, p. 24; Felts Statement, at 9.

⁸⁵² House Testimony, *June 4, 2021, Web Hearing*, p. 29; Thomas Testimony, *June 25, 2021, Web Hearing*, p. 14.

⁸⁵³ Abraham Testimony, *June 4, 2021, Web Hearing*, p. 49; Abraham Written Testimony, at 10; Corbitt Testimony, *June 25, 2021, Web Hearing Slides*, at 41; Corbitt Testimony, *June 25, 2021, Web Hearing*, p. 28.

⁸⁵⁴ Abraham Testimony, *June 4, 2021, Web Hearing*, p. 57; Abraham Statement, at 10.

⁸⁵⁵ Felts Testimony, *July 16, 2021, Web Hearing*, p. 11; Felts Statement, at 7-9.

⁸⁵⁶ Benfer Testimony, *June 4, 2021, Web Hearing*, p. 39.

⁸⁵⁷ Emily Benfer, *June 4, 2021, Web Hearing Slides*, at 60; Abraham Testimony, *June 4, 2021, Web Hearing*, p. 49; H. Epstein Testimony, *June 25, 2021, Web Hearing*, p. 30; Felts Statement, at 7-9.

⁸⁵⁸ Park Testimony, *June 23, 2021, Web Hearing*, p. 5; Thrope Testimony, *June 23, 2021, Web Hearing*, p. 7; Dressler Testimony, *June 23, 2021, Web Hearing*, p. 16; Boston Testimony, *June 25, 2021, Web Hearing*, p. 5;

g) Funding Rental Assistance

1. Reconsider rental subsidies that penalize individuals for attempting to house second earners whose income might raise the household income above the subsidy level.⁸⁵⁹
2. Consider converting categorical assistance programs like housing assistance into a general income support system so the funds are not required to be used for housing, and individuals can choose how to spend the assistance.⁸⁶⁰
3. Ensure tenants can access rental assistance before a formal eviction filing occurs, including eviction diversion programs, mediation programs, financial and social service programs. Pair these programs with outreach to landlords so they understand what resources are available to avoid taking tenants to court but still address their concerns.⁸⁶¹
4. Revise rent in publicly funded affordable housing to meet what low-income tenants can afford.⁸⁶²
5. Extend the availability of housing vouchers to address the history of segregation.⁸⁶³
6. Fund long-term support for severely rent-burdened families—who are disproportionately Black and Latinx and simply cannot afford rental housing on their own anymore—in order to provide long term housing stability and ward off homelessness.⁸⁶⁴
7. Allow related funds, such as healthcare funds, to pay for affordable housing.⁸⁶⁵
8. Increase direct housing payment assistance.⁸⁶⁶
9. Increase the disbursement of emergency rental assistance and target rental assistance to highest risk communities.⁸⁶⁷ Continue the emergency rental assistance program with state funds after federal emergency rental assistance funds are depleted.⁸⁶⁸

Thomas Testimony, *June 25, 2021, Web Hearing*, p. 14; Maldonado Testimony, *June 25, 2021, Web Hearing*, p. 16; H. Epstein Testimony, *June 25, 2021, Web Hearing*, p. 21; Levine Testimony, *June 25, 2021, Web Hearing*, p. 24; Felts Statement, at 9; Benfer Testimony, *June 4, 2021 Web Hearing*, p. 39.

⁸⁵⁹ Husock Testimony, *June 4, 2021, Web Hearing*, p. 24.

⁸⁶⁰ *Ibid.*, 32.

⁸⁶¹ House Testimony, *June 4, 2021, Web Hearing*, p. 29.

⁸⁶² Lin Testimony, *June 4, 2021, Web Hearing*, p. 42.

⁸⁶³ Thrope Testimony, *June 23, 2021, Web Hearing*, p. 9; Choi Testimony, *June 23, 2021, Web Hearing*, p. 32.

⁸⁶⁴ Thrope Testimony, *June 23, 2021, Web Hearing*, p. 8.

⁸⁶⁵ Lin Testimony, *June 4, 2021, Web Hearing*, p. 42; Lin Testimony, *June 4, 2021, Web Hearing Slides*, at 79 citing Peggy Bailey, *Housing and Health Partners Can Work Together to Close the Housing Affordability Gap*, CTR. ON BUDGET & POL'Y PRIORITIES (Jan. 17, 2020), <https://www.cbpp.org/research/housing/housing-and-health-partners-can-work-together-to-close-the-housing-affordability>.

⁸⁶⁶ De Barbieri Testimony, *June 4, 2021, Web Hearing*, p. 47.

⁸⁶⁷ Benfer Testimony, *June 4, 2021, Web Hearing*, p. 39.

⁸⁶⁸ Felts Testimony, *July 16, 2021, Web Hearing*, p. 10; Felts Statement, at 7.

h) Good Cause Eviction

1. Adopt just or good cause eviction laws and prohibit the use of court systems to control behavior and assess fees.⁸⁶⁹ Replace no cause eviction with good cause eviction.⁸⁷⁰
2. “Just cause laws prevent people from being unfairly evicted by limiting the grounds that a landlord can evict to nonpayment of rent or other lease noncompliance.”⁸⁷¹
3. Consider enacting good cause eviction at the state level.⁸⁷²

i) Racial Equity Analysis

1. Affirmatively advance fair housing by conducting a racial equity analysis of different plans and programs at all levels of government.⁸⁷³
2. Encourage policies designed to reduce levels of segregation specifically, like the Affirmatively Furthering Fair Housing (“AFFH”) provision, at the federal and state levels.⁸⁷⁴
3. Consider a paradigm shift to allow for viewing housing as a public good and human right like public education and health, looking at existing models in London, France, Scotland, and South Africa.⁸⁷⁵
4. Consider buying out public housing tenancies to allow individuals to accumulate wealth and to compensate for the years lived in public housing where they and their extended families have not been able to accumulate wealth.⁸⁷⁶
5. Develop policies that view the impact of decades of housing segregation through a reparations model.⁸⁷⁷

⁸⁶⁹ Benfer Testimony, *June 4, 2021, Web Hearing*, p. 39; Thrope Testimony, *June 23, 2021, Web Hearing*, p. 7; Thomas Testimony, *June 25, 2021, Web Hearing*, p. 14.

⁸⁷⁰ Emily Benfer, *June 4, 2021, Web Hearing Slides*, at 60; Madden Testimony, *June 4, 2021, Web Hearing*, pp. 44-45; Corbitt Testimony, *June 25, 2021, Web Hearing Slides*, at 41; Corbitt Testimony, *June 25, 2021, Web Hearing*, p. 28; Felts Testimony, *July 16, 2021, Web Hearing*, p. 10; Kavanagh Testimony, *July 16, 2021, Web Hearing*, pp. 30-31.

⁸⁷¹ Thrope Testimony, *June 23, 2021, Web Hearing*, p. 7.

⁸⁷² Kavanagh Testimony, *July 16 Web Hearing*, p. 19.

⁸⁷³ Lin Testimony, *June 4, 2021, Web Hearing*, p. 42, *see e.g.* the State of California adoption in 2018 of California Affirmatively Furthering Fair Housing Act, CAL. GOV'T CODE § 8899.50 (Deering 2021) and Renee M. Williams, *Affirmatively Further Fair Housing: California's Response to a Changing Federal Landscape*, 28 J. OF AFF. HOUS. & CMTY. DEV. L. 387 (2019); CAL. GOV'T CODE § 8899.50(a)(1) (2020).

⁸⁷⁴ Abraham Testimony, *June 4, 2021, Web Hearing*, p. 51.

⁸⁷⁵ Lin Testimony, *June 4, 2021, Web Hearing*, p. 42, 53; Madden Testimony, *June 4, 2021, Web Hearing*, p. 45; Benfer Testimony, *June 4, 2021, Web Hearing*, p. 55.

⁸⁷⁶ Husock Testimony, *June 4, 2021, Web Hearing*, p. 17.

⁸⁷⁷ Thomas Testimony, *June 25, 2021, Web Hearing*, p. 14.

8. Source of income discrimination is not universally banned and needs to be, as it is sometimes a proxy for race.⁸⁷⁸ Expand source of income protections.⁸⁷⁹

j) Reforms for the U.S. Department of Housing and Urban Development (HUD)

1. “HUD should adopt regulations, interpreting and affirmatively furthering fair housing obligation[s] and disparate impact liability under the Fair Housing Act that can be used to challenge discriminatory eviction related policies and practices.”⁸⁸⁰
2. “HUD can also take action to directly address eviction record screening policies. HUD should adopt a regulation or guidance stating that blanket screening policies for tenants with eviction history violate and raise other civil rights concerns under the Fair Housing Act.”⁸⁸¹
3. “HUD should also take action focused on preventing sexual harassment, including the use of eviction as a tool to commit sexual harassment. HUD has taken commendable enforcement actions, but there’s a lot more that can be done on the prevention side, including requiring housing providers that receive federal funds to adopt policies around sexual harassment in housing and providing trainings for housing providers on these issues.”⁸⁸²

k) Rent Control

1. Renter protections should be increased to shield New Yorkers of color from housing instability and the negative consequences.⁸⁸³
2. Rent control should be eliminated. Getting rid of rent controls will create an expansion of available housing.⁸⁸⁴ “Racial minorities will benefit along with everybody else to the same extent perhaps even more because low-income people who are not in the rent control system are hurting more than high income people who are not in the rent control system.”⁸⁸⁵
3. The Committee should seriously consider emergency federal rent controls.⁸⁸⁶

⁸⁷⁸ Abraham Testimony, *June 4, 2021, Web Hearing*, p. 51; Abraham Statement, at 3.

⁸⁷⁹ Abraham Statement, at 10.

⁸⁸⁰ Park Testimony, *June 23, 2021, Web Hearing*, p. 5; Park Statement, at 11.

⁸⁸¹ Park Testimony, *June 23, 2021, Web Hearing*, p. 5; Park Statement, at 11.

⁸⁸² Park Testimony, *June 23, 2021, Web Hearing*, p. 5; Park Statement, at 11.

⁸⁸³ Benfer Testimony, *June 4, 2021, Web Hearing*, p. 60; Felts Statement, at 7-9.

⁸⁸⁴ Epstein Testimony, *February 19, 2021, Web Hearing*, p. 14.

⁸⁸⁵ Ibid.

⁸⁸⁶ Felts Testimony, *July 16, 2021, Web Hearing*, p. 10.

l) Right to Counsel

1. Provide a right to counsel for low-income tenants. Right to counsel in eviction proceedings is crucial for addressing racial disparities in evictions.⁸⁸⁷
2. Develop funding for legal services at the municipal level, potentially through a federal funding stream.⁸⁸⁸
3. The federal government should encourage states to use federal relief funds to establish right to counsel in eviction proceedings.⁸⁸⁹
4. Enact a nationwide Right to Counsel law.⁸⁹⁰
5. Ensure all tenants have legal representation.⁸⁹¹
6. Develop funding for awareness of Right to Counsel protections in New York City.⁸⁹²
7. Adopt Right to Counsel at the state level.⁸⁹³

m) Tenant Harassment

1. Enact the Violence Against Women Reauthorization Act of 2021, as it includes a section that protects landlords and tenants from penalties such as eviction based on requests for assistance for help addressing criminal activity they are the victim of.⁸⁹⁴
2. Enforce policies that make landlord harassment and self-help evictions illegal.⁸⁹⁵
3. Ensure illegal evictions aren't unfairly targeting immigrant communities.⁸⁹⁶
4. Increase monitoring and enforcement of tenant protections.⁸⁹⁷

⁸⁸⁷ De Barbieri Testimony, *June 4, 2021, Web Hearing*, p. 47; Benfer Testimony, *June 4, 2021, Web Hearing*, p. 69; Thrope Testimony, *June 23, 2021, Web Hearing*, p. 7; Dressler Testimony, *June 23, 2021, Web Hearing*, p. 16; Boston Testimony, *June 25, 2021, Web Hearing*, p. 5; Thomas Testimony, *June 25, 2021, Web Hearing*, p. 14; Maldonado Testimony, *June 25, 2021, Web Hearing*, p. 16; H. Epstein Testimony, *June 25, 2021, Web Hearing*, p. 21; Levine Testimony, *June 25, 2021, Web Hearing*, p.24; Felts Statement, at 9.

⁸⁸⁸ Boston Testimony, *June 25, 2021, Web Hearing*, p. 5.

⁸⁸⁹ Park Testimony, *June 23, 2021, Web Hearing*, p. 5.

⁸⁹⁰ Boston Testimony, *June 25, 2021, Web Hearing*, p. 16.

⁸⁹¹ Scherer Testimony, *February 19, 2021, Web Hearing*, p. 8; Boston and Maldonado Statement, at 6.

⁸⁹² Levine Testimony, *June 25, 2021, Web Hearing*, p. 24.

⁸⁹³ Benfer Testimony, *June 4, 2021, Web Hearing*, p. 39.

⁸⁹⁴ Park Testimony, *June 23, 2021, Web Hearing*, p. 5; H.R. 1620, 117th Cong. (2021).

⁸⁹⁵ Thrope Testimony, *June 23, 2021, Web Hearing*, p. 7.

⁸⁹⁶ Keshner Testimony, *June 25, 2021, Web Hearing*, p. 62.

⁸⁹⁷ Benfer Testimony, *June 4, 2021, Web Hearing*, p. 38.

n) Tenant Screening

1. Extend the Housing Stability and Tenant Protection Act of 2019 to make it illegal to screen for past evictions to the national level.⁸⁹⁸
2. Housing reform efforts should account for housing policies that discriminate based on a tenant's use of a housing assistance voucher, immigration status, disability, credit history, or criminal history which may disproportionately impact Black and Latinx individuals.⁸⁹⁹
3. Adopt Fair Chance Housing laws that would remove barriers to accessing housing for formerly incarcerated individuals and their family members.⁹⁰⁰
4. Limit the creation and availability of eviction records by restricting named defendants to individuals who entered into the lease agreement, rather than all individuals, including children, who live in the household.⁹⁰¹
5. Automatically seal or expunge eviction records so they do not impact future housing opportunities.⁹⁰²

2. New York State

a) Affordable Housing

1. Develop major employer mandates to build housing for the new workforce instead of allowing new locations to contribute to the displacement of current communities.⁹⁰³
2. "Particular support needs to be given to households and communities of color, which, as we've said, have been facing disproportionate harm as a result of the contemporary housing system. More broadly, the problem of eviction reflects the lack of housing alternatives and the lack of tenant power, so the housing system needs to change its current trajectory and reorient itself towards meeting the social need for housing. New York is actually a good place to think about de-financialization, decommodification, and democratization of housing."⁹⁰⁴

⁸⁹⁸ Thrope Testimony, *June 23, 2021, Web Hearing*, p. 8; 2019 N.Y. Sess. Laws Ch. 36 (McKinney) (codified in scattered sections of N.Y. UNCONSOL. LAW Title 23).

⁸⁹⁹ Malalis Testimony, *June 23, 2021, Web Hearing*, p. 15.

⁹⁰⁰ Lin Testimony, *June 4, 2021, Web Hearing*, p. 42, referring to recent legislation passed in Seattle (Seattle, Wash. Mun. Code ch. 14.09), Oakland (Oakland, Cal. Code of Ordinances ch. 8.25), and Berkeley (Berkeley, Cal. Mun. Code § 13.106.30(k)); Thrope Testimony, *June 23, 2021, Web Hearing*, p. 8.

⁹⁰¹ Benfer Testimony, *June 4, 2021, Web Hearing*, p. 38.

⁹⁰² *Ibid.*

⁹⁰³ Lin Testimony, *June 4, 2021, Web Hearing*, p. 54.

⁹⁰⁴ Madden Testimony, *June 4, 2021, Web Hearing*, pp. 44-45.

3. Regulate multi-family lenders to ensure they are not financing displacement and discrimination in renting.⁹⁰⁵
4. Increase affordable housing.⁹⁰⁶
5. “At the state level, stop subsidizing private luxury housing development, which is overwhelmingly exclusive of low-income people of color and repeal 485-a tax incentives entirely. [I would] love to see a re-investment in existing public housing and making that spending mandatory rather than discretionary. The rental assistance demonstration programs that communities have been subjected to, also known as RAD, are an irresponsible solution to the historic and ongoing fiscal starvation of our nation’s affordable housing, and they actually erase what little permanent affordable affordability we have left.”⁹⁰⁷
6. Revise state law governing LLCs to make ownership more transparent.⁹⁰⁸
7. “Repeal entirely the 485-a tax break for luxury development.”⁹⁰⁹

b) COVID-19 Evictions

1. At the time of the Committee’s briefing in June 2021, Ms. Park noted, “We also urge New York to ensure the speedy and equitable distribution of rental assistance and to ensure that the exploration of any state moratorium currently set for the end of August is tied to the effective distribution of funds.”⁹¹⁰

c) Eviction Enforcement

1. “The New York Attorney General should investigate and enforce a 2019 state law protecting tenants from nuisance and crime-free ordinances. New York Civil Rights Law protects the right to seek emergency assistance and bans localities from penalizing those who exercise this right or their landlords.⁹¹¹ This law has the potential to eliminate evictions that target domestic violence survivors and communities of color. It can only do so if it is enforced; yet, many ordinances remain on the books.⁹¹² Since its enactment, there has been

⁹⁰⁵ Block Testimony, *June 25, 2021, Web Hearing*, p. 68.

⁹⁰⁶ Benfer Testimony, *June 4, 2021, Web Hearing*, p. 39; Emily Benfer, June 4, 2021, Web Hearing Slides, at 60.

⁹⁰⁷ Felts Testimony, *July 16, 2021, Web Hearing*, p. 10; see N.Y. REAL PROP. TAX LAW § 485-a (McKinney 2022).

⁹⁰⁸ Abraham Testimony, *June 4, 2021, Web Hearing*, p. 51; Abraham Statement, at 10.

⁹⁰⁹ Felts at 8; N.Y. REAL PROP. TAX LAW § 485-a (McKinney 2022).

⁹¹⁰ Park Testimony, *June 23, 2021, Web Hearing*, p. 5.

⁹¹¹ Park Testimony, *June 23, 2021, Web Hearing*, p. 5, Park Statement, at 13, citing N.Y. Civ. Rights Law §§ 90-98 (McKinney 2019). Municipalities can no longer impose nuisance ordinances that limit a person’s “right” to seek emergency assistance. *Id.* § 94. Landlords can no longer evict a victim or refuse to renew her lease on the grounds of “regulating nuisances,” *id.* §§ 91, 94, and they cannot be penalized by their municipality for failing to remove a victim from their property. *Id.* § 93.

⁹¹² Park Testimony, *June 23, 2021, Web Hearing*, p. 5, see, e.g., Albany, N.Y., Code §§ 255-43 to -56.

little action to ensure the implementation of the law. The New York Attorney General's office should undertake a review of municipal laws and take appropriate enforcement actions where municipalities and landlords move to evict families under these ordinances."⁹¹³ Remove financial incentives to evict tenants by enacting and enforcing vacancy control laws, with a focus on neighborhoods with high risk of displacement and homelessness.⁹¹⁴

2. State officials, municipal governments, and enforcement agencies at all levels of government must collaborate with at-risk communities to inform them of their rights and develop trusted pathways to reporting concerns so tenants can advocate for themselves and agencies can provide monitoring and enforcement of laws meant to protect tenants.⁹¹⁵
3. Strengthen enforcement of existing fair housing laws and anti-harassment laws, including source of income protections, where applicable.⁹¹⁶
4. "Make fair housing violations a defense to eviction and part of the adjudication process in local housing courts."⁹¹⁷
5. Adopt court-based eviction diversion programs that occur pre-filing and offer an alternative to court, access to counsel, and financial supports in order to prevent eviction.⁹¹⁸

d) Racial Equity Analysis

1. Affirmatively advance fair housing by conducting a racial equity analysis of different plans and programs at all levels of government.⁹¹⁹

e) Right to Counsel

1. "New York should adopt and fund the right to counsel for tenants in eviction proceedings in housing court throughout the state."⁹²⁰

⁹¹³ Park Testimony, *June 23, 2021, Web Hearing*, p. 5

⁹¹⁴ Lin Testimony, *June 4, 2021, Web Hearing*, p. 42, 53; Felts Statement, at 8.

⁹¹⁵ Benfer Testimony, *June 4, 2021, Web Hearing*, p. 38.

⁹¹⁶ Abraham Testimony, *June 4, 2021, Web Hearing*, p. 51; Robinson Testimony, *June 4, 2021, Web Hearing*, p. 71; Block Testimony, *June 25, 2021, Web Hearing*, p. 68.

⁹¹⁷ Felts Statement, at 8.

⁹¹⁸ Benfer Testimony, *June 4, 2021 Web Hearing*, p. 39.

⁹¹⁹ Lin Testimony, *June 4, 2021, Web Hearing*, p. 42, *see e.g.* the State of California adoption in 2018 of California Affirmatively Furthering Fair Housing Act, Cal. Gov't Code § 8899.50 (Deering 2021) and Renee M. Williams, *Affirmatively Further Fair Housing: California's Response to a Changing Federal Landscape*, 28 J. of Aff. Hous. & Cmty. Dev. L. 387 (2019); CAL. GOV'T CODE § 8899.50(a)(1) (2020).

⁹²⁰ Park Testimony, *June 23, 2021, Web Hearing*, p. 5; Thrope Testimony, *June 23, 2021, Web Hearing*, p. 7; Dressler Testimony, *June 23, 2021, Web Hearing*, p. 16; Boston Testimony, *June 25, 2021, Web Hearing*, p. 5;

f) Tenant Screening

1. “New York should take action to fully implement the state prohibition on using eviction records to screen prospective tenants and to strengthen the law.”⁹²¹
2. Affirmatively advance fair housing by conducting a racial equity analysis of different plans and programs at all levels of government.⁹²²
3. Adopt Fair Chance Housing laws that would remove barriers to accessing housing for formerly incarcerated individuals and their family members.⁹²³

3. Albany

a) Affordable Housing

1. Address zoning and crime free rental ordinances that lead to and perpetuate discrimination, residential segregation, and exclusion.⁹²⁴

Thomas Testimony, *June 25, 2021, Web Hearing*, p. 14; Maldonado Testimony, *June 25, 2021, Web Hearing*, p. 16; H. Epstein Testimony, *June 25, 2021, Web Hearing*, p. 21; Levine Testimony, *June 25, 2021, Web Hearing*, p. 24; Felts Statement at 9; Benfer Testimony, *June 4, 2021 Web Hearing*, p. 39.

⁹²¹ Park Testimony, *June 23, 2021, Web Hearing*, pp. 5-6; Park Written Testimony at 13, *See* “New York’s legislature has banned the practice of using court history to screen tenants (*See* N.Y. Real Prop. Law § 227-f (McKinney 2019) but this law also needs to be properly enforced. As part of the major tenant reform legislation passed in 2019, the provision outlawed so-called tenant blacklists, but there is little awareness about this legal protection throughout the state. Notably, the law specifically targeted the purchase of court history reports from private tenant screening bureaus by creating the presumption that a landlord rejected tenants on this basis and in violation of the law if the landlord requested or consulted court records (Id. § 227-f.1 (“There shall be a rebuttable presumption that a person is in violation of this section if it is established that the person requested information from a tenant screening bureau relating to a potential tenant or otherwise inspected court records relating to a potential tenant and the person subsequently refuses to rent or offer a lease to the potential tenant”). The law also banned on the New York Office of Court Administration’s sale of tenant information from court records, (*See* N.Y. Jud. Law § 212.1(x) (McKinney 2021) which had previously enabled the private tenant screening industry (An earlier 2012 reform established a more limited prohibition on the Office of Court Administration’s sale of the names and addresses of tenants party to eviction proceedings in N.Y.C. housing court. Hon. Gerald Lebovits & Jennifer A. Rozen, N.Y. State Bar Ass’n, *The Use of Tenant Screening Reports and Tenant Blacklisting 3* (2020), <https://nysba.org/products/tenant-screening-reports-and-tenant-blacklisting-legalease-pamphlets/> [https://perma.cc/NS4E-EJ2Y]. The measure was inadequate because tenant screening bureaus could still gather information by matching public records with data that the OCA did sell. Hon. Gerald Lebovits & Jennifer A. Rozen, N.Y. State Bar Ass’n, *The Use of Tenant Screening Reports and Tenant Blacklisting 3-4* (2019), https://works.bepress.com/gerald_lebovits/345/ [https://perma.cc/TPZ2-9QP8]).

⁹²² Lin Testimony, *June 4, 2021, Web Hearing*, p. 42, *see e.g.* the State of California adoption in 2018 of California Affirmatively Furthering Fair Housing Act, CAL. GOV’T CODE § 8899.50 (Deering 2021) and Renee M. Williams, *Affirmatively Further Fair Housing: California’s Response to a Changing Federal Landscape*, 28 J. OF AFF. HOUS. & CMTY. DEV. L. 387 (2019); CAL. GOV’T CODE § 8899.50(a)(1) (2020).

⁹²³ Lin Testimony, *June 4, 2021, Web Hearing*, p. 42 referring to examples of recent legislation passed in Seattle (Seattle, Wash. Mun. Code ch. 14.09), Oakland (Oakland, Cal. Code of Ordinances ch. 8.25), and Berkeley (Berkeley, Cal. Mun. Code § 13.106.30(k)).

⁹²⁴ Emily Benfer, June 4, 2021, Web Hearing Slides, at 60; Abraham Testimony, *June 4, 2021, Web Hearing*, p. 49.

2. Develop speculator watch lists to advance public accountability and transparency based on New York City’s model.⁹²⁵
3. Fully staff Albany’s local Fair Housing Enforcement Office according to current regulations.⁹²⁶
4. “Stop the Rental Assistance Demonstration (RAD) conversions taking place at Albany Housing Authority properties.”⁹²⁷

b) Eviction Enforcement

1. Remove financial incentives to evict tenants by enacting and enforcing vacancy control laws, with a focus on neighborhoods with high risk of displacement and homelessness.⁹²⁸
2. “Conduct a vacancy survey with best practices and opt-into the Emergency Tenant Protection Act of 1974 (ETPA).”⁹²⁹
3. State officials, municipal governments, and enforcement agencies at all levels of government must collaborate with at-risk communities to inform them of their rights and develop trusted pathways to reporting concerns so tenants can advocate for themselves, and agencies can provide monitoring and enforcement of laws meant to protect tenants.⁹³⁰
4. Strengthen enforcement of existing fair housing laws and anti-harassment laws, including source of income protections, where applicable.⁹³¹

c) Housing Court

1. Improve housing court buildings and spaces.⁹³²
2. Develop mechanisms for ensuring against conflicts of interest in housing courts.⁹³³

⁹²⁵ Lin Testimony, *June 4, 2021, Web Hearing*, p. 53; N.Y.C. ADMIN. CODE 27-2109.52.

⁹²⁶ Felts Statement, at 8; ALBANY, N.Y., CODE § 187-8.

⁹²⁷ Felts Statement, at 8.

⁹²⁸ Lin Testimony, *June 4, 2021, Web Hearing*, p. 42.

⁹²⁹ Felts Statement, at 8; N.Y. UNCONSOL. LAW §§ 8621—34 (McKinney 2022); *see generally* DIV. OF HOUS. & CMTY. RENEWAL OFFICE OF RENT ADMIN., *Emergency Tenant Protection Act (EPTA) of 1974 Chapter 576 Laws of 1974 as Last Amended* (Aug. 9, 2019), <https://hcr.ny.gov/system/files/documents/2020/11/fact-sheet-08-09-2019.pdf> (describing EPTA).

⁹³⁰ Benfer Testimony, *June 4, 2021, Web Hearing*, p. 38.

⁹³¹ Abraham Testimony, *June 4, 2021, Web Hearing*, p. 51; Robinson Testimony, *June 4, 2021, Web Hearing*, p. 71; Block Testimony, *June 25, 2021, Web Hearing*, p. 68.

⁹³² Scherer Testimony, *February 19, 2021, Web Hearing*, p. 8.

⁹³³ White Testimony, *June 25, 2021, Web Hearing*, p. 53; Gullas Testimony, *June 25, 2021, Web Hearing* p. 70.

3. Ensure sufficient outreach, language access, and general accessibility, including in digital-only application programs like the Emergency Rental Assistance Program, to ensure that those who need assistance can access it.⁹³⁴
4. Adopt court-based eviction diversion programs that occur pre-filing and offer an alternative to court, access to counsel, and financial supports in order to prevent eviction.⁹³⁵
5. Monitor for discriminatory practices and overt racial bias.⁹³⁶

d) Racial Equity Analysis

1. Affirmatively advance fair housing through conducting a racial equity analysis of different plans and programs at all levels of government.⁹³⁷
2. “Tools already exist to address segregation at a systemic level. One tool...laws that require the government and its grant recipients to affirmatively further fair housing, which is commonly known as AFFH obligations...”⁹³⁸

e) Tenant Screening

1. Adopt Fair Chance Housing laws to remove barriers to accessing housing for formerly incarcerated individuals and their family members.⁹³⁹

⁹³⁴ Block Testimony, *June 25, 2021, Web Hearing*, p. 68; COVID-19 Emergency Rental Assistance Program of 2021, N.Y. CLS UNCONSOL. LAWS ch. 249-F (LexisNexis 2021).

⁹³⁵ Benfer Testimony, *June 4, 2021, Web Hearing*, p. 39.

⁹³⁶ Scherer Testimony, *February 19, 2021, Web Hearing*, p. 5; House Testimony, *June 4, 2021, Web Hearing*, p. 7; Boston Testimony, *June 25, 2021, Web Hearing*, p. 3.

⁹³⁷ Lin Testimony, *June 4, 2021, Web Hearing*, p. 42, *see e.g.* the State of California adoption in 2018 of California Affirmatively Furthering Fair Housing Act, CAL. GOV'T CODE § 8899.50 (Deering 2021) and Renee M. Williams, Affirmatively Further Fair Housing: California's Response to a Changing Federal Landscape, 28 J. OF AFF. HOUS. & CMTY. DEV. L. 387 (2019); CAL. GOV'T CODE § 8899.50(a)(1) (2020).

⁹³⁸ Abraham Testimony, *June 4, 2021, Web Hearing*, p. 50; Lin Testimony, *June 4, 2021, Web Hearing*, p. 42, *see e.g.* the State of California adoption in 2018 of California Affirmatively Furthering Fair Housing Act, CAL. GOV'T CODE § 8899.50 (Deering 2021) and Renee M. Williams, Affirmatively Further Fair Housing: California's Response to a Changing Federal Landscape, 28 J. OF AFF. HOUS. & CMTY. DEV. L. 387 (2019); CAL. GOV'T CODE § 8899.50(a)(1) (2020).

⁹³⁹ Lin Testimony, *June 4, 2021, Web Hearing*, p. 42, referring to recent legislation passed in Seattle (Seattle, Wash. Mun. Code ch. 14.09), Oakland (Oakland, Cal. Code of Ordinances ch. 8.25), and Berkeley (Berkeley, Cal. Mun. Code § 13.106.30(k)).

4. Buffalo

a) Affordable Housing

1. Address zoning and crime free rental ordinances that lead to and perpetuate discrimination, residential segregation, and exclusion.⁹⁴⁰
2. Develop speculator watch lists to advance public accountability and transparency based on New York City's model.⁹⁴¹

b) Eviction Enforcement

1. Remove financial incentives to evict tenants by enacting and enforcing vacancy control laws, with a focus on neighborhoods with high risk of displacement and homelessness.⁹⁴²
2. State officials, municipal governments, and enforcement agencies at all levels of government must collaborate with at-risk communities to inform them of their rights and develop trusted pathways to reporting concerns so tenants can advocate for themselves, and agencies can provide monitoring and enforcement of laws meant to protect tenants.⁹⁴³
3. Strengthen enforcement of existing fair housing laws and anti-harassment laws, including source of income protections, where applicable.⁹⁴⁴

c) Housing Court

1. Improve housing court buildings and spaces.⁹⁴⁵
2. Develop mechanisms for ensuring against conflict of interest in the Housing Court.⁹⁴⁶
3. Ensure sufficient outreach, language access and general accessibility, including in digital-only application programs like the Emergency Rental Assistance Program, to ensure that those who need assistance can access it.⁹⁴⁷
4. Monitor for discriminatory practices and overt racial bias.⁹⁴⁸

⁹⁴⁰ Emily Benfer, June 4, 2021, Web Hearing Slides, at 60; Abraham Testimony, *June 4, 2021, Web Hearing*, p. 49.

⁹⁴¹ Lin Testimony, *June 4, 2021, Web Hearing*, p. 53; N.Y.C. ADMIN. CODE 27-2109.52.

⁹⁴² Lin Testimony, *June 4, 2021, Web Hearing*, p. 42.

⁹⁴³ Benfer Testimony, *June 4, 2021, Web Hearing*, p. 38.

⁹⁴⁴ Abraham Testimony, June 4, 2021, Web Hearing, p. 51; Block Testimony, *June 25, 2021, Web Hearing*, p. 68.

⁹⁴⁵ Scherer Testimony, *February 19, 2021, Web Hearing*, p. 8.

⁹⁴⁶ White Testimony, *June 25, 2021, Web Hearing*, p. 53; Gullas Testimony, *June 25, 2021, Web Hearing*, p. 70.

⁹⁴⁷ Block Testimony, *June 25, 2021, Web Hearing*, p. 68; COVID-19 Emergency Rental Assistance Program of 2021, N.Y. CLS UNCONSOL. LAWS ch. 249-F (LexisNexis 2021).

⁹⁴⁸ Scherer Testimony, *February 19, 2021, Web Hearing*, p. 5; House Testimony, *June 4, 2021, Web Hearing*, p. 7; Boston Testimony, *June 25, 2021, Web Hearing*, p. 3.

5. Adopt court-based eviction diversion programs that occur pre-filing and offer an alternative to court, access to counsel, and financial supports in order to prevent eviction.⁹⁴⁹

d) Racial Equity Analysis

1. Affirmatively advance fair housing by conducting a racial equity analysis of different plans and programs at all levels of government.⁹⁵⁰
2. “Tools already exist to address segregation at a systemic level. One tool...laws that require the government and its grant recipients to affirmatively further fair housing, which is commonly known as AFFH obligations...”⁹⁵¹

e) Tenant Screening

1. Adopt Fair Chance Housing laws that would remove barriers to accessing housing for formerly incarcerated individuals and their family members.⁹⁵²

5. New York City

a) Affordable Housing

1. Address zoning and crime free rental ordinances that lead to and perpetuate discrimination, residential segregation, and exclusion.⁹⁵³
2. Monitor speculator watch lists to advance public accountability and transparency.⁹⁵⁴

b) Eviction Enforcement

1. Remove financial incentives to evict tenants by enacting and enforcing vacancy control laws, with a focus on neighborhoods with high risk of displacement and homelessness.⁹⁵⁵

⁹⁴⁹ Benfer Testimony, *June 4, 2021, Web Hearing*, p. 39.

⁹⁵⁰ Lin Testimony, *June 4, 2021, Web Hearing*, p. 42, *see e.g.* the State of California adoption in 2018 of California Affirmatively Furthering Fair Housing Act, CAL. GOV'T CODE § 8899.50 (Deering 2021) and Renee M. Williams, Affirmatively Further Fair Housing: California's Response to a Changing Federal Landscape, 28 J. OF AFF. HOUS. & CMTY. DEV. L. 387 (2019); CAL. GOV'T CODE § 8899.50(a)(1) (2020).

⁹⁵¹ Abraham Testimony, *June 4, 2021, Web Hearing*, p. 50; Lin Testimony, *June 4, 2021, Web Hearing*, p. 42, *see e.g.* the State of California adoption in 2018 of California Affirmatively Furthering Fair Housing Act, CAL. GOV'T CODE § 8899.50 (Deering 2021) and Renee M. Williams, Affirmatively Further Fair Housing: California's Response to a Changing Federal Landscape, 28 J. OF AFF. HOUS. & CMTY. DEV. L. 387 (2019); CAL. GOV'T CODE § 8899.50(a)(1) (2020).

⁹⁵² Lin Testimony, *June 4, 2021, Web Hearing*, p. 42 referring to recent legislation passed in Seattle (Seattle, Wash. Mun. Code ch. 14.09), Oakland (Oakland, Cal. Code of Ordinances ch. 8.25), and Berkeley (Berkeley, Cal. Mun. Code § 13.106.30(k))

⁹⁵³ Emily Benfer, June 4, 2021, Web Hearing Slides, at 60; Abraham Testimony, *June 4, 2021, Web Hearing*, p. 49.

⁹⁵⁴ Lin Testimony, *June 4, 2021, Web Hearing*, p. 53; *see* N.Y.C. ADMIN. CODE 27-2109.52.

⁹⁵⁵ Lin Testimony, *June 4, 2021, Web Hearing*, p. 42.

2. State, municipal governments, and enforcement agencies at all levels of government must collaborate with at-risk communities to inform them of their rights and develop trusted pathways to reporting concerns so tenants can advocate for themselves, and agencies can provide monitoring and enforcement of laws meant to protect tenants.⁹⁵⁶
3. Strengthen enforcement of existing fair housing laws and anti-harassment laws, including source of income protections, where applicable.⁹⁵⁷

c) *Housing Court*

1. Improve Housing Court buildings and spaces.⁹⁵⁸
2. Develop mechanisms for ensuring against conflict of interest in the Housing Court.⁹⁵⁹
3. Ensure sufficient outreach, language access, and general accessibility, including in digital-only application programs like the Emergency Rental Assistance Program, to ensure that those who need assistance can access it.⁹⁶⁰
4. Monitor for discriminatory practices and overt racial bias.⁹⁶¹

d) *Racial Equity Analysis*

1. Affirmatively advance fair housing through conducting a racial equity analysis of different plans and programs at all levels of government.⁹⁶²
2. “Tools already exist to address segregation at a systemic level. One tool is...laws that require the government and its grant recipients to affirmatively further fair housing, which is commonly known as AFFH obligations...”⁹⁶³

⁹⁵⁶ Benfer Testimony, *June 4, 2021, Web Hearing*, p. 38.

⁹⁵⁷ Abraham Testimony, *June 4, 2021, Web Hearing*, p. 51; Block Testimony, *June 25, 2021, Web Hearing*, p. 68.

⁹⁵⁸ Scherer Testimony, *February 19, 2021, Web Hearing*, p. 8.

⁹⁵⁹ White Testimony, *June 25, 2021, Web Hearing*, p. 53; Gullas Testimony, *June 25, 2021, Web Hearing*, p. 70.

⁹⁶⁰ Block Testimony, *June 25, 2021, Web Hearing*, p. 68.

⁹⁶¹ Scherer Testimony, *February 19, 2021, Web Hearing*, p. 5; House Testimony, *June 4, 2021, Web Hearing*, p. 7; Boston Testimony, *June 25, 2021, Web Hearing*, p. 3.

⁹⁶² Lin Testimony, *June 4, 2021, Web Hearing*, p. 42, *see e.g.* the State of California adoption in 2018 of California Affirmatively Furthering Fair Housing Act, CAL. GOV'T CODE § 8899.50 (Deering 2021) and Renee M. Williams, Affirmatively Further Fair Housing: California's Response to a Changing Federal Landscape, 28 J. OF AFF. HOUS. & CMTY. DEV. L. 387 (2019); CAL. GOV'T CODE § 8899.50(a)(1) (2020).

⁹⁶³ Abraham Testimony, *June 4, 2021, Web Hearing*, p. 50; Lin Testimony, *June 4, 2021, Web Hearing*, p. 42, *see e.g.* the State of California adoption in 2018 of California Affirmatively Furthering Fair Housing Act, CAL. GOV'T CODE § 8899.50 (Deering 2021) and Renee M. Williams, Affirmatively Further Fair Housing: California's Response to a Changing Federal Landscape, 28 J. OF AFF. HOUS. & CMTY. DEV. L. 387 (2019); CAL. GOV'T CODE § 8899.50(a)(1) (2020).

e) Tenant Screening

1. Adopt Fair Chance Housing laws that would remove barriers to accessing housing for formerly incarcerated individuals and their family members.⁹⁶⁴

IV. COMMITTEE FINDINGS AND RECOMMENDATIONS

A. Findings

In keeping with their duty to inform the Commission of (1) matters related to discrimination or a denial of equal protection of the laws; and (2) matters of mutual concern in the preparation of reports of the Commission to the President and the Congress, the New York Advisory Committee submits the following findings to the Commission regarding eviction policies and enforcement in New York. This report is intended to highlight salient civil rights themes as they emerged in testimony during the Committee's inquiry. The following findings result directly from the testimony received and reflect the views of the cited panelists. While each assertion has not been independently verified by the Committee, panelists were chosen to testify due to their professional experience, academic credentials, subject expertise, and/or firsthand knowledge of the topics at hand. The complete meeting transcripts are included in the Appendix for further reference.

1. Eviction consequences are serious, long-term, and include lifelong impacts on rental records, along with moves to substandard housing or homelessness, and negative health outcomes.⁹⁶⁵
2. Multiple panelists stressed that COVID-19 is shining a spotlight on longstanding issues in the approach to eviction processes and practices.⁹⁶⁶ There is a disparate impact of the COVID-19 pandemic on communities of color.⁹⁶⁷
3. A long history of systemic bias and housing discrimination is impacting the current eviction crisis.⁹⁶⁸ There are multiple factors that impact evictions, including intersections

⁹⁶⁴ Lin Testimony, *June 4, 2021, Web Hearing*, p. 42 referring to recent legislation passed in Seattle (Seattle, Wash. Mun. Code ch. 14.09), Oakland (Oakland, Cal. Code of Ordinances ch. 8.25), and Berkeley (Berkeley, Cal. Mun. Code § 13.106.30(k)).

⁹⁶⁵ Hall Testimony, *July 16, 2021, Web Hearing*, p. 28; Benfer Testimony, *June 4, 2021, Web Hearing*, pp. 68-69; Scherer Statement, at 12, citing Desmond, Matthew and Kimbro, Rachel, *Eviction's Fallout: Housing, Hardship, and Health*, 94 *Social Forces* 295 (2015); Park Testimony, *June 23, 2021, Web Hearing*, p. 3.

⁹⁶⁶ Thrope Testimony, *June 23, 2021, Web Hearing*, p. 6; Soto Testimony, *June 25, 2021, Web Hearing*, p. 59.

⁹⁶⁷ Lin Testimony, *June 4, 2021, Web Hearing*, p. 40; Husock Testimony, *June 4, 2021, Web Hearing*, p. 8; H. Epstein Testimony, *June 25, 2021, Web Hearing*, p. 19; Soto Testimony, *June 25, 2021, Web Hearing*, p. 59; Block Testimony, *June 25, 2021, Web Hearing*, p. 67.

⁹⁶⁸ Park Testimony, *June 23, 2021, Web Hearing*, p. 2.

between segregation, redlining and the racial wealth gap, housing conditions, and eviction based on race.⁹⁶⁹

- a. Intentional segregation in government policies for public housing contributed to current residential segregation.⁹⁷⁰ Racial segregation in communities continues today.⁹⁷¹
- b. Redlining practices continue today and there are some housing policies that others liken to redlining or reverse redlining such as the concentration of subprime mortgage lending practices in communities of color. Some practices of “redlining” are often undetected and under-reported.⁹⁷²
- c. Where an individual lives matters,⁹⁷³ “it determines whether or not you have access to high performance schools, fresh foods, access to lending institutions, reliable transportation, jobs that pay a living wage, quality healthcare, green space and other amenities and services... In fact, it's been said that a person's zip code is a greater determining factor of their health than their DNA.”⁹⁷⁴ There is inadequate affordable housing targeted towards the populations who most need it.⁹⁷⁵
- d. Zoning impacts where affordable housing can be built,⁹⁷⁶ perpetuating current patterns of segregation based on race.⁹⁷⁷
- e. Black and Hispanic households are more likely than White households to face eviction filings and executed warrants of eviction, even controlling for income.⁹⁷⁸

⁹⁶⁹ Freiberg Testimony, *July 16, 2021, Web Hearing*, p. 19; Felts Testimony, *July 16, 2021, Web Hearing*, p. 18.

⁹⁷⁰ Kavanagh Testimony, *July 16, 2021, Web Hearing*, p. 18; Scherer Testimony, *February 19, 2021, Web Hearing*, p. 6; Archer Testimony, *February 19, 2021, Web Hearing*, p. 19; Madden Testimony, *June 4, 2021, Web Hearing*, p. 63; Park Testimony, *June 23, 2021, Web Hearing*, p. 2; Thrope Testimony, *June 23, 2021, Web Hearing*, p. 9; Thomas Testimony, *June 25, 2021, Web Hearing*, p. 10; Block Testimony, *June 25, 2021 Web Hearing*, p. 68; Hepburn Testimony, *June 4, 2021, Web Hearing*, p. 16.

⁹⁷¹ Kavanagh Testimony, *July 16, 2021, Web Hearing*, p. 18.

⁹⁷² Corbitt Testimony, *June 25, 2021, Web Hearing*, pp. 26-27.

⁹⁷³ Corbitt Testimony, *June 25, 2021, Web Hearing*, p. 25; Lin Testimony, *June 4, 2021, Web Hearing*, p. 41.

⁹⁷⁴ Corbitt Testimony, *June 25, 2021, Web Hearing*, p. 25.

⁹⁷⁵ H. Epstein Testimony, *June 25, 2021, Web Hearing*, p. 31.

⁹⁷⁶ Bunkeddeko Testimony, *June 25, 2021, Web Hearing*, p. 11; Freiberg Testimony, *July 16, 2021, Web Hearing*, p. 19.

⁹⁷⁷ Block Testimony, *June 25, 2021, Web Hearing*, p. 68; Freiberg Testimony, *July 16, 2021, Web Hearing*, p. 4, 19.

⁹⁷⁸ Brenner Testimony, *June 4, 2021, Web Hearing*, p. 21.

- f. Crime-free and nuisance housing ordinances perpetuate systems of exclusion and segregation by disproportionately impacting communities of color, resulting in unjust and discriminatory evictions.⁹⁷⁹
- g. Having a record of an eviction filing, even if it is dismissed, impacts future housing opportunities.⁹⁸⁰
- h. Cities across the US are increasingly criminalizing life-sustaining behaviors of homeless people, such as camping in public, loitering, begging, and sitting or lying down in particular places.⁹⁸¹
- i. Landlords commonly deny housing to people with a criminal record or history of eviction, policies which disproportionately impact people of color.⁹⁸²
- j. Source of income (i.e. government subsidies such as Section 8 vouchers) is often a proxy for race and otherwise has a disparate impact on Black and Latinx communities in the housing ecosystem, as people of color are disproportionately represented in the population of those who receive Section 8 vouchers and other government subsidies.⁹⁸³
- k. Communities of color face the highest risk of eviction with the lowest ability to weather economic shocks, according to the Housing Precarity Risk Model, which measures the resilience that neighborhood households have to economic shocks, such as the pandemic.⁹⁸⁴ A large majority of these precarious neighborhoods fall within racially segregated spaces, as well as spaces that have been facing gentrification or even spaces to which Black households have been displaced, because of gentrification.⁹⁸⁵
- l. Substandard housing conditions are prevalent in low-income housing and evictions are used to discipline and manage tenants that voice complaints.⁹⁸⁶

⁹⁷⁹ Archer Testimony, *February 19, 2021, Web Hearing*, p. 3; Thrope Testimony, *June 23, 2021, Web Hearing*, p. 8; Emily Benfer, *June 4, 2021, Web Hearing Slides*, at 60; Park Testimony, *June 23, 2021, Web Hearing*, p. 3; Goodridge Testimony, *July 16, 2021, Web Hearing*, pp. 6-7.

⁹⁸⁰ Park Testimony, *June 23, 2021, Web Hearing*, p. 27.

⁹⁸¹ Scherer Statement, at 14, citing National Homelessness Law Center, *No Safe Place: The Criminalization of Homelessness in U.S. Cities* (2019), https://nlchp.org/wpcontent/uploads/2019/02/No_Safe_Place.pdf.

⁹⁸² Scherer Statement, at 14, National Law Center on Homelessness & Poverty, *Protecting Tenants, Prevent Homelessness*, (2018), <https://nlchp.org/wpcontent/uploads/2018/10/ProtectTenants2018.pdf>.

⁹⁸³ Malalis Testimony, *June 23, 2021, Web Hearing*, p.22, Abraham Statement, at 7, Eberhart Statement, at 1.

⁹⁸⁴ Thomas Testimony, *June 25, 2021, Web Hearing*, p.7.

⁹⁸⁵ Thomas Testimony, *June 25, 2021, Web Hearing*, p.7; Block Testimony, *June 25, 2021, Web Hearing*, p. 68.

⁹⁸⁶ Hepburn Testimony, *June 4, 2021, Web Hearing*, p. 30; De Barbieri Testimony, *June 4, 2021, Web Hearing*, p. 47; Benfer Testimony, *June 4, 2021, Web Hearing*, p. 55; White Testimony, *June 25, 2021, Web Hearing*, p. 53.

- m. Housing is a basic human need; government intervention is necessary to reduce segregation and eviction rates.⁹⁸⁷ Several experts asserted that housing is a basic human right.⁹⁸⁸
4. National Data on Renters: Nationally, there is strong evidence of racial disparities in eviction risk and eviction filings.⁹⁸⁹
- a. In a national study by the Eviction Lab, White renters made up 51.5% of all adult renters, but only 42.7% of eviction defendants.⁹⁹⁰ In contrast, Black renters made up 19.9% of all adult renters, but 32.7% of all eviction defendants.⁹⁹¹ Panelists noted the study used “well-validated statistical tools”⁹⁹² that allowed them to impute or to predict the gender and race and ethnicity of defendants in eviction cases. In the case of gender, they used multiple algorithms that allowed them to compute gender on the basis of first names.⁹⁹³ All other racial groups were underrepresented, with the greatest underrepresentation occurring among White renters.⁹⁹⁴
- i. Black renters disproportionately face eviction, particularly in high-population counties like the Bronx and Queens.⁹⁹⁵
- ii. Four-fifths of Black renters lived in counties where evictions are disproportionately filed against Black tenants.⁹⁹⁶
- iii. Black renters were filed against at a rate of 6.2% and received eviction judgments at a rate of 3.4%, while White renters were filed against at a rate of 3.4% and received eviction judgments at a rate of 2%.⁹⁹⁷

⁹⁸⁷ Madden Testimony, *June 4, 2021, Web Hearing*, p. 64; Madden Testimony, *June 4, 2021, Web Hearing*, pp. 52-53; Block Testimony, *June 25, 2021, Web Hearing*, p. 68.

⁹⁸⁸ Madden Testimony, *June 4, 2021, Web Hearing*, p. 53; Lin Testimony, *June 4, 2021, Web Hearing*, p. 42.

⁹⁸⁹ Hepburn Testimony, *June 4, 2021, Web Hearing*, pp. 3, 25; Louis Testimony, *June 4, 2021, Web Hearing*, p. 4; Park Testimony, *June 23, 2021, Web Hearing*, pp. 27-28; Smith Testimony, *June 23, 2021, Web Hearing*, p. 28.

⁹⁹⁰ Louis Testimony, *June 4, 2021, Web Hearing*, p. 4; Scherer Statement, at 21, citing Hepburn, Louis and Desmond, Matthew; *Racial and Gender Disparities among Evicted Americans*: Eviction Lab, 2020.

⁹⁹¹ Louis Testimony, *June 4, 2021, Web Hearing*, p. 4; Scherer Statement, at 21, citing Hepburn, Louis and Desmond, Matthew; *Racial and Gender Disparities among Evicted Americans*: Eviction Lab, 2020.

⁹⁹² Hepburn Testimony, *June 4, 2021, Web Hearing*, p. 3.

⁹⁹³ Hepburn Testimony, *June 4, 2021, Web Hearing*, p. 3.

⁹⁹⁴ Louis Testimony, *June 4, 2021, Web Hearing*, p. 4.

⁹⁹⁵ Louis Testimony, *June 4, 2021, Web Hearing*, p. 5; Scherer Statement, at 21, citing Hepburn, Louis and Desmond, Matthew; *Racial and Gender Disparities among Evicted Americans*: Eviction Lab, 2020.

⁹⁹⁶ Scherer Statement, at 21, citing Hepburn, Louis and Desmond, Matthew; *Racial and Gender Disparities among Evicted Americans*: Eviction Lab, 2020.

⁹⁹⁷ Louis Testimony, *June 4, 2021, Web Hearing*, p. 4.

- iv. Almost 25% of all Black renters in this sample across 36 states live in a county where the Black eviction rate was at least twice that of the White eviction rate.⁹⁹⁸
- b. There are racial disparities in serial eviction filings, in which renters receive eviction filings repeatedly in a short period of time at the same address.⁹⁹⁹ Black renters, followed by Latinx and Asian renters, are at a higher risk of serial eviction filings than White renters.¹⁰⁰⁰ White households are more likely to receive a judgment of eviction when serial filings are accounted for, and Black women-headed households are much more likely to receive an eviction filing, which is later dismissed, but which nonetheless leads to long-term consequences on future housing opportunities.¹⁰⁰¹
- c. Racial disparities in evictions exist independent of income.¹⁰⁰² Controlling for median renter income, there is a significant positive correlation between race and filing rate.¹⁰⁰³ Ongoing research indicates there is a lower threshold for filing to evict Black renters than White renters when controlling for neighborhood income, neighborhood median rent, and other demographic characteristics often associated with eviction rates.¹⁰⁰⁴
- d. Black women are at the highest risk of eviction and are more likely to face eviction filings that are later dismissed.¹⁰⁰⁵ Female renters of all races face 15.9% more evictions than male renters across race;¹⁰⁰⁶ however, 36.2% more Black women are evicted than Black men.¹⁰⁰⁷ Low-income women, especially Black women, are at particularly high risk of eviction.¹⁰⁰⁸ In Queens County, Black and Latinx women were over 3.5 times more likely to be threatened with eviction than White women, reflecting data at the national level.¹⁰⁰⁹

⁹⁹⁸ Ibid.

⁹⁹⁹ Ibid.

¹⁰⁰⁰ Ibid.

¹⁰⁰¹ Park Testimony, *June 23, 2021, Web Hearing*, p. 27.

¹⁰⁰² Brenner Testimony, *June 4, 2021, Web Hearing*, p. 21; Hepburn Testimony, *June 4, 2021 Web Hearing*, p. 27; Park Testimony, *June 23, 2021 Web Hearing*, p. 27.

¹⁰⁰³ Brenner Testimony, *June 4, 2021, Web Hearing*, p. 7.

¹⁰⁰⁴ Hepburn Testimony, *June 4, 2021, Web Hearing*, p. 27.

¹⁰⁰⁵ Park Testimony, *June 23, 2021, Web Hearing*, pp. 2-3, 27; Goodridge Testimony, *July 16, 2021, Web Briefing*, p. 6; Magavern Testimony, *June 4, 2021, Web Hearing*, p. 13; Louis Testimony, *June 4, 2021, Web Hearing*, p. 4; Scherer Statement, at 18, citing Matthew Desmond, *Unaffordable America: Poverty, Housing and Eviction*, 2015.

¹⁰⁰⁶ Louis Testimony, *June 4, 2021, Web Hearing*, p. 4.

¹⁰⁰⁷ Ibid.

¹⁰⁰⁸ Scherer Statement, at 18, citing Matthew Desmond, *Unaffordable America: Poverty, Housing and Eviction*, 2015.

¹⁰⁰⁹ Louis Testimony, *June 4, 2021, Web Hearing*, p. 4.

- e. Family status, in addition to race and gender, impacts eviction risk: Black mothers are at the highest risk of evictions.¹⁰¹⁰ In 17 out of 36 states, including New York State, Black women renters had evictions filed against them twice as often as White renters.¹⁰¹¹ National research suggests that landlords discriminate against families with children in deciding to evict a renter due to non-payment of rent compared to families without children, indicating Black women with children are particularly at risk for eviction.¹⁰¹²
 - f. Researchers recognize there are serious disparities impacting people of color with respect to illegal or informal evictions.¹⁰¹³ Landlord harassment and the threat of eviction cause some tenants to leave before an eviction is filed, but there is very little data that tracks these informal or illegal eviction practices.¹⁰¹⁴ Many tenants do not know their rights, so they leave before an eviction is filed.¹⁰¹⁵
 - g. There has been an increase in illegal evictions during the COVID-19 pandemic.¹⁰¹⁶ Of legal services attorneys surveyed during the pandemic about issues they were seeing in their service areas, 91% reported illegal evictions, including lockouts, landlord harassment, and other illegal evictions despite the COVID-19 eviction moratorium.¹⁰¹⁷
 - h. The practice of not recording demographic data on defendants facing eviction is common across the country.¹⁰¹⁸ HUD does not collect data regarding evictions among their own properties.¹⁰¹⁹
5. New York State Data on Renters: Black and Latinx households in New York are approximately twice as likely to be threatened with eviction as White households.¹⁰²⁰
- a. Evictions and threats of eviction have increased since 2016.¹⁰²¹

¹⁰¹⁰ Park Testimony, *June 23, 2021, Web Hearing*, pp. 2-3; Magavern Testimony, *June 4, 2021, Web Hearing*, p. 13.

¹⁰¹¹ Park Testimony, *June 23, 2021, Web Hearing*, pp. 2-3.

¹⁰¹² Magavern Testimony, *June 4, 2021, Web Hearing*, p. 13.

¹⁰¹³ Thrope Testimony, *June 23, 2021, Web Hearing*, pp. 25-26; Brenner Testimony, *June 4, 2021, Web Hearing*, p. 6.

¹⁰¹⁴ Thrope Testimony, *June 23, 2021, Web Hearing*, p. 7.

¹⁰¹⁵ *Ibid.*, 25-26.

¹⁰¹⁶ *Ibid.*

¹⁰¹⁷ *Ibid.*, 7.

¹⁰¹⁸ Hepburn Testimony, *June 4, 2021, Web Hearing*, p. 19.

¹⁰¹⁹ Thrope Testimony, *June 23, 2021, Web Hearing*, pp. 25-26.

¹⁰²⁰ Louis Testimony, *June 4, 2021, Web Hearing*, p. 5; Madden Testimony, *June 4, 2021, Web Hearing*, p. 43.

¹⁰²¹ Smith Testimony, *June 23, 2021, Web Hearing*, pp. 10-11.

- b. Data from New York State’s Office of Court Administration does not include information on tenant race.¹⁰²²
 - c. Racial disparities in evictions exist independent of income. According to a study by the NYU Furman Center, controlling for median renter income, there is a significant positive correlation between race and filing rate.¹⁰²³ Ongoing research indicates there is a lower threshold for filing to evict Black renters than White renters when controlling for neighborhood income, neighborhood median rent, and other demographic characteristics often associated with eviction rates.¹⁰²⁴
 - d. The NYU Furman Center’s analysis at the neighborhood level reveals the concentration of evictions in certain neighborhoods.¹⁰²⁵ When a fifth of the population in a given neighborhood is receiving an eviction filing each year, that has a broader de-stabilizing effect on the neighborhood in general.¹⁰²⁶
6. According to article by Naik (2019), Bloomberg Harvard Summer Fellowship Capstone: Experiencing the City of Albany’s Rental Housing Market: Insights into the Landlord-Tenant Relationship: Renters of color in Albany face disproportionately high eviction rates.¹⁰²⁷
- a. Zip codes in Albany with the highest population of people of color have the most eviction filings.¹⁰²⁸ Renters of color in the City of Albany had the highest eviction filing rates both pre-pandemic and during the pandemic, as of the June 2021 briefing data available.¹⁰²⁹ During the COVID pandemic, race-based housing discrimination in Albany was greatly exacerbated, following a national trend.¹⁰³⁰ In a typical, pre-COVID year, most respondents to eviction proceedings were people of color, and according to United Tenants of Albany, nearly 80% of people who request rent arrears are people of color.¹⁰³¹

¹⁰²² Brenner Testimony, *June 4, 2021, Web Hearing*, p. 6; Hepburn Testimony, *June 4, 2021, Web Hearing*, p. 19, 25.

¹⁰²³ Brenner Testimony, *June 4, 2021, Web Hearing*, p. 7.

¹⁰²⁴ Hepburn, Testimony, *June 4, 2021, Web Hearing*, p. 27.

¹⁰²⁵ House, Testimony, *June 4, 2021, Web Hearing*, p. 18.

¹⁰²⁶ *Ibid.*

¹⁰²⁷ Felts Statement, at 2.

¹⁰²⁸ Brenner Testimony, *June 4, 2021, Web Hearing*, p. 6.

¹⁰²⁹ Ryan Brenner and Sophie House, *June 4, 2021, Web Hearing Slides*, at 24.

¹⁰³⁰ Felts Statement, at 6.

¹⁰³¹ *Ibid.*, 2-3.

- b. The rental market in Albany’s predominantly Black and Brown neighborhoods exhibits a high rate of profit exploitation,¹⁰³² meaning that rental housing is priced far beyond the actual value of the housing itself.¹⁰³³ Half the landlords in these neighborhoods demand the highest application fees in the City of Albany and conduct more stringent credit checks.¹⁰³⁴
 - c. Albany’s code enforcement adjudication process is ineffective in actually carrying out penalization, enforcing the law, or creating any real change in exploitative landlord behaviors.¹⁰³⁵ When landlords violate the housing code, they are sued by the City of Albany in a quasi-prosecutorial proceeding.¹⁰³⁶ In 2018, the City of Albany won \$364,580 in court judgements for code violations, but only collected roughly \$5,000.¹⁰³⁷ Even while they are being sued for code violations, there is no system to stop exploitative landlords from evicting the tenants who filed the complaint or from re-renting the substandard unit to another low-income family.¹⁰³⁸
 - d. Tenants in Albany have few avenues to protect their right to housing free of discrimination.¹⁰³⁹ The City of Albany’s “Fair Housing Office” is entirely unstaffed, forcing tenants to file their complaints with the New York State Division of Human Rights.¹⁰⁴⁰ Processing a complaint can take years to resolve and is very complicated for unrepresented complainants.¹⁰⁴¹ Meanwhile, thousands of tenants a year face swift displacement through expedited summary eviction proceedings, in which they cannot use discrimination as a defense.¹⁰⁴²
7. Buffalo Data on Renters: Zip codes in Buffalo with the highest population of people of color have the most eviction filings.¹⁰⁴³ The data comes from Partnership for the Public Good, Report 2020: *Evicted in Buffalo: The High Cost of Involuntary Mobility*. “The Report collected data from the region and the nation. And researchers interviewed 100 tenants in housing court, observed 80 cases and worked with local legal services

¹⁰³² See also Felts Statement, at 4 providing that a definition of profit exploitation is “the ratio of annual rents from rental housing units over their combined property value. A 25% exploitation rate would mean, for instance, that 25% of the value of a property is paid off in a single year of rent.”

¹⁰³³ Felts Statement, at 4.

¹⁰³⁴ Ibid.

¹⁰³⁵ Ibid., 5.

¹⁰³⁶ Ibid.

¹⁰³⁷ Ibid.

¹⁰³⁸ Ibid.

¹⁰³⁹ Ibid.

¹⁰⁴⁰ Ibid.

¹⁰⁴¹ Ibid.

¹⁰⁴² Ibid.

¹⁰⁴³ Brenner Testimony, *June 4, 2021, Web Hearing*, p. 6; Magavern Testimony, *June 4, 2021, Web Hearing*, p. 12.

providers to analyze some of their data from the eviction cases that they have defended in recent years.”¹⁰⁴⁴

- a. BIPOC in Buffalo had the highest eviction filing rates pre-pandemic and during the pandemic, as of the June 2021 briefing data available.¹⁰⁴⁵
 - b. Within the city of Buffalo, the poverty rate for Black people is about 37%, and the poverty rate for White people is about 20%, contributing to extreme segregation in Buffalo which mirrors lower housing values and higher rates of housing complaints due to substandard or dangerous housing conditions.¹⁰⁴⁶ Almost 90% of evictions in Buffalo were pursued for non-payment of rent, with the median amount of rent owed at about \$1,200.¹⁰⁴⁷
8. New York City Data on Renters: New York zip codes with the highest population of people of color have the most eviction filings.¹⁰⁴⁸
- a. Black and Latinx renters in New York City have both the highest filing and highest eviction rates compared to White and Asian renters.¹⁰⁴⁹
 - b. In New York City, over 68% of households rent their home, while approximately 36% of households nationally rent their home, and the most severely rent-burdened individuals are people of color.¹⁰⁵⁰
 - c. In 2015 and 2020, approximately 35% of all evictions in New York City were filed in the Bronx, followed by Brooklyn at 30%, Manhattan at 19%, Queens at 17%, and Staten Island at 2%.¹⁰⁵¹ Thus, the borough with the highest proportion of Black and low-income tenants also has the highest number of evictions, even though it does not have the highest number of total residents.¹⁰⁵²
 - d. BIPOC populations in New York City had the highest eviction filing rates pre- and post- pandemic, as of the June 2021 briefing data available.¹⁰⁵³ Before the

¹⁰⁴⁴ Magavern Testimony, *June 4, 2021, Web Hearing*, p. 12.

¹⁰⁴⁵ Ryan Brenner and Sophie House, June 4, 2021, *Web Hearing Slides*, at 24.

¹⁰⁴⁶ Magavern Testimony, *June 4, 2021, Web Hearing*, p. 14.

¹⁰⁴⁷ *Ibid.*, 13.

¹⁰⁴⁸ Brenner Testimony, *June 4, 2021, Web Hearing*, p. 6.

¹⁰⁴⁹ Louis Testimony, *June 4, 2021, Web Hearing*, p. 5.

¹⁰⁵⁰ Dressler Testimony, *June 23, 2021, Web Hearing*, p. 15.

¹⁰⁵¹ Scherer Statement, at 18, citing NYC Human Resources Administration, Department of Social Services: NYC Office of Civil Justice Annual Report, 2019.

¹⁰⁵² Scherer Statement, at 19, citing NYC Human Resources Administration, Department of Social Services: NYC Office of Civil Justice Annual Report, 2019; *see* Greenberg, Gershenson, Desmond, *Discrimination in Evictions: Empirical Evidence and Legal Challenges*, 2016; *see* Census on Demographics in Boroughs of New York City, 2019.

¹⁰⁵³ Ryan Brenner and Sophie House, June 4, 2021, *Web Hearing Slides*, at 24.

pandemic, renters in majority Black zip codes were more than three times as likely to be evicted as renters in majority White zip codes in New York City.¹⁰⁵⁴ Since the pandemic began, Black renters were more than five times as likely than White renters to have fallen behind on rent.¹⁰⁵⁵

9. Data on Landlords: There is a lack of data on landlord demographics, making it challenging to ascertain any discriminatory intent.¹⁰⁵⁶
 - a. Deliberate discriminatory intent based on race is challenging to examine as data on landlord demographics is frequently unavailable in eviction case records.¹⁰⁵⁷
 - b. Landlords often own properties as limited liability corporations (“LLCs”), which makes it difficult to conduct research into intent.¹⁰⁵⁸ Even mom-and-pop landlords often use LLCs.¹⁰⁵⁹ However, corporate residential landlords tend to evict for less money than non-corporate residential landlords, indicating a potentially lower threshold for eviction.¹⁰⁶⁰
 - c. Surveys conducted by the Urban Institute in August 2020 found that the eviction moratorium was disproportionately impacting Black and Latinx landlords who were struggling to pay their mortgages.¹⁰⁶¹ Despite the disproportionate hardship experienced, 42% of Black landlords and 40% of Latinx landlords offered their tenants rent payment plans, while only 36% of White landlords offered their tenants rent payment plans.¹⁰⁶²
 - d. There is evidence of racially biased behavior on the part of landlords and their representatives.¹⁰⁶³ Research has shown landlords choose to use the threat of eviction disproportionately against Black and Latinx renters.¹⁰⁶⁴ Even before the pandemic, 19% of Latinx tenants and 14% of Black tenants in New York City were threatened with eviction, compared to 8% of White and 4% of Asian

¹⁰⁵⁴ Madden Testimony, *June 4, 2021, Web Hearing*, p. 43; Goodridge Testimony, *July 16, 2021, Web Hearing*, p. 6, 26.

¹⁰⁵⁵ Madden Testimony, *June 4, 2021, Web Hearing*, p. 43.

¹⁰⁵⁶ House Testimony, *June 4, 2021, Web Hearing*, p. 19; Hepburn Testimony, *June 4, 2021, Web Hearing*, p. 28; Lin Testimony, *June 4, 2021, Web Briefing*, p. 61.

¹⁰⁵⁷ Hepburn Testimony, *June 4, 2021, Web Hearing*, p. 28.

¹⁰⁵⁸ House Testimony, *June 4, 2021, Web Hearing*, p. 19.

¹⁰⁵⁹ Hepburn Testimony, *June 4, 2021, Web Hearing*, p. 28.

¹⁰⁶⁰ House Testimony, *June 4, 2021, Web Hearing*, p. 19.

¹⁰⁶¹ Husock Testimony, *June 4, 2021, Web Hearing*, p. 11.

¹⁰⁶² *Ibid.*

¹⁰⁶³ Dressler Testimony, *June 23, 2021, Web Hearing*, p. 17; Thomas Testimony, *June 25, 2021, Web Hearing*, p. 17; Boston and Maldonado Statement, at 14.

¹⁰⁶⁴ Boston and Maldonado Statement, at 14.

communities.¹⁰⁶⁵ While data relating to discriminatory intent is lacking in eviction records, there is research on landlord behavior that shows higher rates of mistreatment of Black tenants over White tenants.¹⁰⁶⁶

- e. Small landlords are disproportionately impacted by nonpayment of rent and the COVID-19 eviction moratorium.¹⁰⁶⁷ During the pandemic, over 40% of small mom-and-pop landlords reported difficulty in making mortgage payments, with this percentage increasing when accounting for landlords of color specifically, who are more likely to have a mortgage, a lower average income, and increased challenges in diversifying risk due to owning only one property.¹⁰⁶⁸ Approximately 30% of landlords were also pressured to sell their properties during the pandemic, which could affect the housing supply.¹⁰⁶⁹
- f. The housing ecosystem across the country includes many participants, including “mom-and-pop” landlords who are disproportionately people of color.¹⁰⁷⁰ Rental income is the primary source of income for many mom-and-pop landlords, who are disproportionately people of color.¹⁰⁷¹
- g. Stabilizing small landlords is beneficial to the housing ecosystem.¹⁰⁷² Small-building landlords are experiencing severe stress which may reinforce housing instability for already vulnerable tenants.¹⁰⁷³ Small buildings are more likely to house low-income renters and people of color.¹⁰⁷⁴
- h. Some landlords shared that some tenants are exploiting the eviction moratorium.¹⁰⁷⁵ Multiple landlords testified that they have tenants who they

¹⁰⁶⁵ Boston and Maldonado Statement, at 14.

¹⁰⁶⁶ Thomas Testimony, *June 25, 2021, Web Hearing*, p. 17.

¹⁰⁶⁷ Collins Statement, p. 2; Husock Testimony, *June 4, 2021, Web Hearing*, p. 11.

¹⁰⁶⁸ Choi Testimony, *June 23, 2021, Web Hearing*, p. 31.

¹⁰⁶⁹ *Ibid.*

¹⁰⁷⁰ Husock Testimony, *June 4, 2021, Web Hearing*, p. 9.

¹⁰⁷¹ Landlord Speaker 1 Testimony, *June 25, 2021, Web Hearing*, p. 39; Husock Testimony, *June 4, 2021, Web Hearing*, p. 9; Shitao Testimony, *June 25, 2021, Web Hearing*, p. 43; Jiang Testimony, *June 25, 2021, Web Hearing*, p. 44.

¹⁰⁷² Collins Statement, at 5.

¹⁰⁷³ *Ibid.*

¹⁰⁷⁴ *Ibid.*

¹⁰⁷⁵ Oh Testimony, *June 25, 2021, Web Hearing*, pp. 35-37; Melinda Testimony, *June 25, 2021, Web Hearing*, p. 46; Shitao Testimony, *June 25, 2021, Web Hearing*, p. 43; Landlord Speaker 1 Testimony, *June 25, 2021, Web Hearing*, p. 39; Landlord Speaker 2 Testimony, *June 25, 2021, Web Hearing*, p. 48; Han Testimony, *June 25, 2021, Web Hearing*, p. 49; Translated Mandarin Emailed Testimony, at 2.

believe can pay, but are refusing to do so,¹⁰⁷⁶ sometimes reportedly damaging units or adding racial epithets in their refusal.¹⁰⁷⁷ Some landlords have stated that they prefer to leave units vacant than rent to low-income tenants in light of the eviction moratorium.¹⁰⁷⁸

10. Eviction Enforcement

- a. The eviction process itself is dehumanizing and rife with the potential for racial bias and discrimination.¹⁰⁷⁹
- b. It is challenging to determine the percentage of racial discrimination complaints where landlords prevailed because interventions are prioritized, including education¹⁰⁸⁰ and settlement,¹⁰⁸¹ to avoid full litigation.
- c. Enforcement of housing laws meant to prevent discrimination is primarily reactive, necessitating a complaint before enforcement takes place.¹⁰⁸² Reactive enforcement is ineffective in Black and Latinx communities where long-standing distrust of law enforcement leads to under-reporting of housing violations.¹⁰⁸³ Housing law enforcement needs to have a strong proactive component to change segregation and discrimination patterns.¹⁰⁸⁴
- d. Tenant protection laws including source of income and code enforcement are under-enforced.¹⁰⁸⁵ Lack of enforcement of existing laws is exacerbating racial

¹⁰⁷⁶ Oh Testimony, *June 25, 2021, Web Hearing*, p. 35-37; Melinda Testimony, *June 25, 2021, Web Hearing*, p. 46; Shitao Testimony, *June 25, 2021, Web Hearing*, p. 43; Landlord Speaker 1 Testimony, *June 25, 2021, Web Hearing*, p. 39; Landlord Speaker 2 Testimony, *June 25, 2021, Web Hearing*, p. 48; Han Testimony, *June 25, 2021, Web Hearing*, p. 49; Translated Mandarin Emailed Testimony, at 2.

¹⁰⁷⁷ Landlord Speaker 1 Testimony, *June 25, 2021, Web Hearing*, p. 39; Melinda Testimony, *June 25, 2021, Web Hearing*, p. 46; Shitao Testimony, *June 25, 2021, Web Hearing*, p. 43; Landlord Speaker 1 Testimony, *June 25, 2021, Web Hearing*, p. 39; Landlord Speaker 2 Testimony, *June 25, 2021, Web Hearing*, p. 48; Han Testimony, *June 25, 2021, Web Hearing*, p. 49; Translated Mandarin Emailed Testimony, at 2.

¹⁰⁷⁸ Oh Testimony, *June 25, 2021, Web Hearing*, p. 38.

¹⁰⁷⁹ Hall Testimony, *July 16, 2021, Web Hearing*, pp. 27-28; Andino-Caballero Testimony, *July 16, 2021, Web Hearing*, p. 15; Thomas Testimony, *June 25, 2021, Web Hearing*, p. 11-12; Park Testimony, *June 23, 2021, Web Hearing*, p. 3; Keshner Testimony, *June 25, 2021, Web Hearing*, p. 62; Felts Testimony, *July 16, 2021, Web Hearing*, pp. 23-24.

¹⁰⁸⁰ Malalis Testimony, *June 23, 2021, Web Hearing*, p. 24.

¹⁰⁸¹ Smith Testimony, *June 23, 2021, Web Hearing*, p. 24

¹⁰⁸² Smith Testimony, *June 23, 2021, Web Hearing*, pp. 9-10; Freiberg Testimony, *July 16, 2021, Web Hearing*, p. 3; Kavanagh Testimony, *July 16, 2021, Web Hearing*, p. 12.

¹⁰⁸³ Benfer Testimony, *June 4, 2021, Web Hearing*, p. 58.

¹⁰⁸⁴ Freiberg Testimony, *July 16, 2021, Web Hearing*, p. 4; Corbitt Testimony, *June 25, 2021, Web Hearing Slides*, at 41; Abraham Testimony, *June 4, 2021, Web Hearing*, p. 49; Abraham Testimony, *June 4, 2021, Web Hearing*, p. 50.

¹⁰⁸⁵ Freiberg Testimony, *July 16, 2021, Web Hearing*, p. 21, 23.

disparities.¹⁰⁸⁶ Source of income discrimination predominantly affects Black and Latinx households.¹⁰⁸⁷ Current laws in New York City and New York State protect against source of income discrimination but lack enforcement.¹⁰⁸⁸ Code enforcement is lacking in much of New York and leads to uninhabitable housing and a cycle of evictions where tenants are evicted for requesting repairs.¹⁰⁸⁹

- e. Effective enforcement of fair housing laws requires coordination and resources across all levels of government.¹⁰⁹⁰ Policies surrounding housing conditions are often enforced at local levels of government that lack proper resources,¹⁰⁹¹ citing communities with a small tax base, where failures to remedy uninhabitable public housing often leads to eviction, perpetuating discrimination.¹⁰⁹²

11. Eviction Prevention

- a. Evictions could be reduced if better education was offered to both tenants and landlords on resources available to prevent evictions in the first place, including efforts such as eviction diversion programs and mediation¹⁰⁹³ and prohibitions against serial eviction filings.¹⁰⁹⁴ Multiple panelists noted that reducing evictions would benefit both tenants, many of whom are persons of color living in very marginal housing, and their landlords.¹⁰⁹⁵
- b. Failure to pay rent is the most common reason for evictions; eviction diversion programs and emergency rental assistance can help tenants stay secure in their homes while addressing needs of landlords.¹⁰⁹⁶ Mediation could be an eviction-reducing tool to be used when lease violations are the concern, rather than

¹⁰⁸⁵ Freiberg Testimony, *July 16, 2021, Web Briefing*, 3; Kavanagh Testimony, *July 16, 2021, Web Hearing*, p. 18; Thrope Testimony, *June 23, 2021, Web Hearing*, p. 7; Smith Testimony, *June 23, 2021, Web Hearing*, pp. 9-10; Malalis Testimony, *June 23, 2021, Web Hearing*, p. 13; Robinson Testimony, *June 4, 2021, Web Hearing*, p. 71.

¹⁰⁸⁵ Freiberg Testimony, *July 16, 2021, Web Hearing*, p. 3; Freiberg Testimony, *July 16, 2021, Web Hearing*, p. 23.

¹⁰⁸⁵ Robinson Testimony, *June 4, 2021, Web Hearing*, p. 71.

¹⁰⁸⁶ Freiberg Testimony, *July 16, 2021, Web Hearing*, p. 3; Freiberg Testimony, *July 16, 2021, Web Hearing*, p. 23.

¹⁰⁸⁷ Freiberg Testimony, *July 16, 2021, Web Hearing*, p. 4; Abraham Testimony, *June 4, 2021, Web Hearing*, p. 49.

¹⁰⁸⁸ Robinson Testimony, *June 4, 2021, Web Hearing*, p. 71; Robinson Testimony, *June 4, 2021, Web Hearing*, p. 71; Abraham Testimony, *June 4, 2021, Web Hearing*, p. 51; Freiberg Testimony, *July 16, 2021, Web Hearing*, pp. 4-5; Kavanagh Testimony, *July 16, 2021, Web Hearing*, p. 12.

¹⁰⁸⁹ Kavanagh Testimony, *July 16, 2021, Web Hearing*, p. 14.

¹⁰⁹⁰ Freiberg Testimony, *July 16, 2021, Web Hearing*, p. 21; Benfer Testimony, *June 4, 2021, Web Hearing*, p. 39; Kavanagh Testimony, *July 16, 2021, Web Hearing*, pp. 14,18; Freiberg Testimony, *July 16, 2021, Web Hearing*, p. 21.

¹⁰⁹¹ Kavanagh Testimony, *July 16, 2021, Web Hearing*, p. 18.

¹⁰⁹² *Ibid.*, 14.

¹⁰⁹³ House Testimony, *June 4, 2021, Web Hearing*, p. 29; Hepburn Testimony, *June 4, 2021, Web Hearing*, p. 30; Husock Testimony, *June 4, 2021, Web Hearing*, p. 30.

¹⁰⁹⁴ Benfer Testimony, *June 4, 2021, Web Hearing*, p. 39.

¹⁰⁹⁵ House Testimony, *June 4, 2021, Web Hearing*, p. 29; Hepburn Testimony, *June 4, 2021, Web Hearing*, p. 30.

¹⁰⁹⁶ Thrope Testimony, *June 23, 2021, Web Hearing*, pp. 7-8.

nonpayment of rent.¹⁰⁹⁷ The NYC Human Rights Commission’s Community Relations Bureau used mediation and education techniques to alleviate bias-related issues and prevent eviction litigation, where out of approximately 1,500 complaints in 2020 only 60 plus cases proceeded to litigation.¹⁰⁹⁸

- c. Statewide good cause eviction legislation that includes prohibitions against unconscionable rent increases would reduce illegal evictions.¹²⁴

12. Housing Court Practices

- a. There is undoubtedly disparate treatment of people of color in Housing Court.¹⁰⁹⁹ Summary eviction proceedings in Housing Court are extremely troubling, routinely denying participants, including lawyers of color, their dignity and litigants access to fair legal processes.¹¹⁰⁰ Courtroom observations indicate that judges, property owners, and property owner attorneys are White while the tenants are predominantly Black or Latinx.¹¹⁰¹ Landlords consistently possess the disproportionate bargaining power throughout the eviction process.¹¹⁰² In Bronx Housing Court, 58% of the tenants who appear are Black and 28% Latinx.¹¹⁰³
- b. Eviction cases are routinely settled quickly, often on the first court date, and it is common for tenants to sign stipulations containing terms they cannot meet during unmonitored hallway negotiations.¹¹⁰⁴
- c. Scholars noted that the large amount of discretion given to Housing Court judges in summary proceedings in New York inhibits fair results.¹¹⁰⁵ Many tenants in New York, outside of New York City, do not have the right to file their own case

¹⁰⁹⁷ Husock Testimony, *June 4, 2021, Web Hearing*, p. 30.

¹⁰⁹⁸ Malalis Testimony, *June 23, 2021, Web Hearing*, p.24.

¹²⁴ Felts Statement, at 8.

¹⁰⁹⁹ Scherer Statement, at 16-17, citing *Report from the Special Advisor on Equal Justice in the New York State Courts*, Jeh Johnson, 2020; Benfer Testimony, *June 4, 2021, Web Hearing*, p. 62.

¹¹⁰⁰ Hall Testimony, *July 16, 2021, Web Hearing*, pp. 27-28; Boston Testimony, *June 25, 2021, Web Hearing*, p. 3; House Testimony, *June 4, 2021, Web Hearing*, p. 7; Dressler Testimony, *June 23, 2021, Web Hearing*, p. 17; Malalis Testimony, *June 23, 2021, Web Hearing*, p. 13; Block Testimony, *June 25, 2021, Web Hearing*, p. 68; Felts Testimony, *July 16, 2021, Web Hearing*, pp. 23-24.

¹¹⁰¹ Benfer Testimony, *June 4, 2021, Web Briefing*, p. 62.

¹¹⁰² Scherer Statement, at 24, citing McCarthy, Nora, *Housed in Housing Court*, City Limits, March 1, 2002.

¹¹⁰³ Scherer Statement, at 23, citing *Tipping the Scales: A Report of Tenant Experiences in Bronx Housing Court*, New Settlement’s Community Action for Safe Apartments (CASA).

¹¹⁰⁴ Scherer Statement, at 23, citing *Tipping the Scales: A Report of Tenant Experiences in Bronx Housing Court*, New Settlement’s Community Action for Safe Apartments (CASA).

¹¹⁰⁵ Scherer Statement, at 7, citing Moshe B. Machum, *Summary of The Landlord Blues: Inequity, Inefficiency, and Untimeliness of Summary Proceedings In New York City*, 61 N.Y.L. Sch. L. Rev. 509 (2016-2017).

in a separate right of action relating to fair housing concerns or housing conditions, instead needing to wait until the landlord files for eviction.¹¹⁰⁶

- d. Some positive changes to Housing Court practices made in response to the pandemic, such as scheduled hearings with legal representation that prevent hallway negotiations, should be continued.¹¹⁰⁷
- e. Language access during eviction proceedings in Housing Court is routinely challenging and disproportionately impacts those who cannot speak English.¹¹⁰⁸ People of color, immigrants, and undocumented individuals who do not speak English do not have adequate knowledge of their rights.¹¹⁰⁹ Studies by the NYU Furman Center from 2017-2019 highlight a persistent lack of access to interpreters and other language services for tenants.¹¹¹⁰
- f. Housing Court staff do not track or routinely provide data that would help monitor racial discrimination.¹¹¹¹
- g. Right to Counsel in Housing Court eviction proceedings is necessary for tenants from communities of color to affirmatively raise and address alleged civil rights violations.¹¹¹² Enacting Right to Counsel legislation was among the top panelists' recommendations to reduce evictions and racial disparities. Ms. Thrope noted that nationwide, 3% of tenants are represented by an attorney in eviction cases, compared to 81% of landlords.¹¹¹³
- h. Providing legal representation to tenants in Housing Courts through "Right to Counsel" legislation would address many current imbalances in unfair and unjust evictions proceedings, by enabling tenants to assert their legal rights.¹¹¹⁴ Since Right to Counsel passed in New York City 2017,¹¹¹⁵ there has been a 41%

¹¹⁰⁶ Felts Testimony, *July 16, 2021, Web Hearing*, pp. 23-24.

¹¹⁰⁷ Maldonado Testimony, *June 25, 2021, Web Hearing*, p. 5.

¹¹⁰⁸ Benfer Testimony, *June 4, 2021, Web Hearing*, p. 5; Block Testimony, *June 25, 2021, Web Hearing*, p. 68; House Testimony, *June 4, 2021, Web Hearing*, p. 7.

¹¹⁰⁹ Block Testimony, *June 25, 2021, Web Hearing*, p. 68.

¹¹¹⁰ House Testimony, *June 4, 2021, Web Hearing*, p. 7.

¹¹¹¹ Kavanagh Testimony, *July 16, 2021, Web Hearing*, p. 23; Felts Testimony, *July 16, 2021, Web Hearing*, p. 24.

¹¹¹² De Barbieri Testimony, *June 4, 2021, Web Hearing*, p. 47; Benfer Testimony, *June 4, 2021, Web Hearing*, p. 69; Thrope Testimony, *June 23, 2021, Web Hearing*, p. 7; Dressler Testimony, *June 23, 2021, Web Hearing*, p. 16; Boston Testimony, *June 25, 2021, Web Hearing*, p. 5; Thomas Testimony, *June 25, 2021, Web Hearing*, p. 14; Maldonado Testimony, *June 25, 2021, Web Hearing*, p. 16; H. Epstein Testimony, *June 25, 2021, Web Hearing*, p. 21; Levine Testimony, *June 25, 2021, Web Hearing*, p.24; Felts Statement, at 9.

¹¹¹³ Thrope Testimony, *June 23, 2021, Web Hearing*, p. 7.

¹¹¹⁴ Boston Testimony, *June 25, 2021, Web Hearing*, p. 3; Maldonado Testimony, *June 25, 2021, Web Hearing*, p. 4; White Testimony, *June 25, 2021, Web Hearing*, p. 60.

¹¹¹⁵ 2017 NYC Local Law No. 136.

decrease in default judgments of eviction, and 84% of those with legal representation were able to stay in their homes.¹¹¹⁶

B. Recommendations

Among their duties, advisory committees of the Commission are authorized to advise the Agency (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws, and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.¹¹¹⁷ In keeping with these responsibilities, and in light of the testimony heard on this topic, the New York Advisory Committee submits the following recommendations to the Commission.

The U.S. Commission on Civil Rights should send this report to the U.S. Congress and the President and issue recommendations to:

1. Fund research and develop policies that promote racial equity in housing and residential evictions.
 - a. Conduct a racial equity analysis of plans, policies, and programs at the federal level to reduce levels of residential segregation, including under Title VI of the Civil Rights Act of 1964.
 - b. Remove barriers to securing income support and wealth accumulation by individuals who live in public housing, as discriminatory and constituting barriers to subsequent homeownership.
 - c. Shift the paradigm around housing to view it as a public good and basic human need and recognize housing as a human right.
2. Fund and require data collection to monitor for racial discrimination.
 - a. Conduct more research and thematic mapping on racial disparities in evictions, including data on illegal evictions and threats of eviction, and landlord behavior and maltreatment of tenants.
 - b. Possible methods include requiring landlords to report demographic information on themselves and tenants when filing for eviction, requiring HUD to collect data regarding all evictions among their own tenants as a sample to start understanding illegal evictions better, requiring housing courts to systematically track

¹¹¹⁶ Scherer Testimony, *February 19, 2021*, p. 8; Dressler Statement, at 2; Boston and Maldonado Statement, at 3, 14; Boston Testimony, *June 25, 2021, Web Hearing*, p. 3.

¹¹¹⁷ 45 C.F.R. § 703.2 (2018).

demographics of parties to eviction cases, and providing funding to local governments to conduct surveys of tenants.

3. Amend the Fair Housing Act¹¹¹⁸ to strengthen the Affirmative Further Fair Housing Mandate (AFFH).
 - a. Add a purpose statement to the AFFH mandate section acknowledging the government role in creating segregation and its responsibility to take affirmative steps to dismantle segregation.
 - b. Explicitly state that the AFFH mandate obligates all federal agencies and funding recipients to affirmatively further fair housing and to dismantle segregation, consistent with the judicial consensus in interpreting the mandate.
 - c. Define key terms generally and define the phrase “affirmatively further fair housing,” by in part incorporating the definition of the 2015 AFFH Rule.
 - d. Incorporate reference to the accountability framework that mimics the approach taken in the 2015 AFFH Rule.
 - e. Consider adding a private cause of action to compliment HUD’s public enforcement against recipients of housing funds.
 - f. Include evictions as a housing policy and practice in which discrimination and segregative effects are prohibited.
4. Enact the Eviction Crisis Act with two modifications.
 - a. Seal all eviction records after gleaning important non-personal information including information related to traits of protected classes.
 - b. Prohibit Tenant Screening Reports.
5. Enact and fund universal Right to Counsel legislation.
 - a. Appropriate, in legislation, adequate funding for legal service provision and sufficient outreach at the state and municipal levels to ensure tenants are fully aware of this right and how to access.
 - b. Encourage states to use federal relief funds to establish a Right to Counsel in eviction proceedings.
6. Strengthen eviction prevention efforts.

¹¹¹⁸ FHA, 42 U.S.C. §§3601 et seq.

- a. Require completion of eviction diversion or mediation programs prior to an eviction filing. Pair these programs with outreach to landlords so they understand what resources are available to avoid taking tenants to court while still addressing their concerns.
 - b. Strengthen non-discrimination fair housing laws alongside better enforcement of those laws to reduce segregation, including a focus on Source of Income as it is often a proxy for race.
 - c. Fund outreach efforts around existing laws to ensure landlords are aware of protected classes and anti-discrimination regulations, including New York's recent addition of Source of Income discrimination legislation.
 - d. Fund local code enforcement to help prevent evictions based on retaliation for seeking repairs, and to inspect for health hazards, mold, and other code violations.
 - e. Pair code enforcement with support for housing repairs for small landlord - owners of no more than 1-to-4 units and who occupy a unit or otherwise live in the neighborhood.
 - f. Prohibit crime-free ordinances as discriminatory.
 - g. Prohibit discrimination in housing based on past criminal history and records.
 - h. Deny HUD funding to, or otherwise penalize through fees, neighborhoods with zoning laws that inhibit establishment of multi-family, public housing, or low-income housing.
7. Strengthen fair housing, human rights, and eviction laws' enforcement, policies and practices and enforce currently unenforced and under-enforced laws to prevent discrimination.
- a. Enforce Affirmatively Furthering Fair Housing (AFFH) obligations.
 - b. Encourage New York State to repeal its summary eviction law.
 - c. Enforce current non-discrimination fair housing laws.
 - d. Fund local enforcement mechanisms to provide accessible officers to communities who need them; and provide support for repairs to owners of no more than 1-to-4 units and who occupy a unit or otherwise live in the neighborhood.
 - e. Raise eviction filing fees and institute a sliding fee scale for small landlords, medium landlords, large landlords, and institutional investor landlords.

- f. Institute nationwide random audit-style testing for housing discrimination to expose discrimination and bias.
8. Fund research to examine how to increase affordable housing, as current housing shortages impact severely rent-burdened individuals who are disproportionately people of color, and at the highest risk of eviction.
 - a. Research should consider increasing affordable housing stock, potentially through universal vouchers, revised zoning that allows for accessory dwelling units, and using neighborhood area median income levels or zip code to assess housing affordability. Consider also improving existing and expanding public housing, consider land trusts - particularly for gentrifying neighborhoods that displace current residents, develop vacant land, and use publicly owned lands all for new affordable housing.
 - b. Repeal the Faircloth Amendment and invest in the construction of truly affordable community and government-controlled housing as a mandatory budget spending item.
9. Increase rental assistance options and funding, with a priority on tenant agency and flexibility.
 - a. Target rental assistance to communities at highest risk of eviction.
 - b. Adjust rental rates in publicly funded affordable housing to better align with what low-income tenants can afford and recalibrate as needed.
 - c. Increase the number of people who are eligible for housing vouchers to address the history of segregation.
 - d. Repeal penalties in rental subsidies that inhibit individuals from attempting to house second earners whose income might raise the household income above the subsidy level.
 - e. Consider universal vouchers to counteract an underfunded Capital Fund which supports public housing that is deteriorating and located on environmentally damaged Superfund sites, and which contribute to segregation and the physical harm of public housing residents.
 - f. Consider implementing a universal voucher program that provides vouchers for all those eligible (50% of AMI), targeting first and foremost high-risk communities and those communities subject to underdevelopment due to segregation.
 - g. Ensure tenants can access rental assistance and other less extreme measures before a formal eviction filing occurs, in the form of eviction diversion programs,

mediation programs, and/or financial and social service programs. Pair these programs with outreach to landlords so they understand what resources are available to avoid taking tenants to court while addressing their concerns.

- h. Fund long-term support for severely rent-burdened families, who are disproportionately Black and Hispanic/Latino, to provide long term housing stability and ward off homelessness.
- i. Allow related funds, such as healthcare funds, to pay for affordable housing.
- j. Increase direct housing payment assistance.

10. Pass universal Good Cause eviction legislation.

- a. Include in Good Cause legislation a “Clean Hands” provision to allow for withholding rent for lack of needed housing repairs and prevent eviction in retaliation.

11. Monitor and enforce existing tenant harassment legislation.

- a. Enact the Violence Against Women Reauthorization Act, which includes a section that protects tenants from penalties such as eviction, based on requests for assistance for help.
- b. Enforce policies that make landlord harassment and self-help evictions illegal.
- c. Ensure evictions are not unfairly targeting immigrant communities.

12. Prohibit tenant screening nationally.

- a. Adopt measures to prohibit screening for past evictions at the national level.
- b. Adopt housing reform efforts with a focus on reforming or eliminating housing policies that discriminate based on a tenant’s use of a housing assistance voucher, immigration status, disability, credit history, or criminal history which disproportionately impact Black and Hispanic/Latino individuals.
- c. Limit the creation and availability of eviction records by restricting named defendants to individuals who entered into the lease agreement, rather than all individuals, including children, who live in the household.
- d. Automatically seal or expunge eviction records so they do not impact future housing opportunities.

13. Ensure collaboration and coordination across all levels of government, community-based organizations, and individuals to monitor for racial discrimination.

- a. Hold listening sessions with communities impacted by eviction to reorient the housing system to meet the basic human right to housing.
 - b. Support outreach and collaboration to include State and local courts, community-based organizations, legal services organizations, and private Bar Associations and their pro bono programs.
 - c. Protect tenants from eviction proceedings while landlords make repairs.
 - d. Ensure sufficient outreach, language access, and general accessibility, including in digital-only application programs like the Emergency Rental Assistance Program, to ensure that those who need assistance can access it.
 - e. Ensure tenants can access rental assistance before a formal eviction filing occurs, including eviction diversion programs, mediation programs, and financial and social service programs. Pair these programs with outreach to landlords so they understand what resources are available to avoid taking tenants to court but still address their concerns.
14. Develop comprehensive solutions, informed by the experience of programs and policies introduced since the start of COVID, to better address COVID-19 related evictions and their continued aftermath, and to include consideration of both renters and small landlords.
- a. Consider adopting pandemic related processes and practices that could effectively address the needs of landlords and their tenants in avoiding eviction post-pandemic.
 - b. Ascertain how to best support small landlords financially to keep their rental units on the market.
 - c. Ensure the complete and efficient distribution of \$50 billion in rental assistance that has been appropriated through stimulus bills. Target and develop streamlined measures for small landlords.
 - d. Expand emergency assistance to mitigate impact of temporary income loss situations, as incomes have become more volatile in recent decades, and lost hours at a job, unexpected medical bills, or unexpected funerals may only temporarily impact ability to pay for housing.
15. Determine which anti-eviction policies and practices adopted during the pandemic at the federal, state, and local levels to address COVID-related evictions should be continued as permanent reforms to prevent discrimination in evictions.
16. Fund and disseminate research on the continued commodification and financialization of housing and its impact on housing eviction disparities and discrimination and consider adopting regulations and strengthening oversight of the growing for-profit housing market

to prevent both intentional discrimination (disparate treatment) and discriminatory effects (disparate impact).

- a. Effect and promote the paradigm shift recommended above to approach housing as a public good and basic need, and develop a framework, guidelines, and policies to operationalize and ensure every individual has ‘housing security’ and access to affordable and reliable housing.
- b. Hold listening sessions with communities impacted by eviction to reorient the housing system to this new paradigm and meet the basic human need for a home.
- c. Fund and promote research on market share trends of housing held by institutional investors and other profit-driven entities (e.g., Airbnb commercial ‘hosts’) and the impact on affordable housing stock, housing security, and evictions to inform any new regulations and oversight necessary to prevent disparate treatment and/or effects in housing access and evictions.
- d. Ensure that regulations and incentives for developers and landlords to provide affordable housing as part of any new development require rental rates that are aligned with what low-income tenants can afford and have built-in mechanisms to recalibrate as needed and provide for long-term stable tenancy.
- e. Ensure any conversion of underutilized commercial buildings, including those that are expected to remain under-utilized post-pandemic, prioritize affordable housing with a preference given to nonprofit and public developers.
- f. Develop, monitor, and publicize ‘speculator watch lists’ based on New York City’s model, which identify recently sold rent-regulated buildings where potentially predatory investment might put tenants at risk, to advance public accountability and transparency.

The U.S. Commission on Civil Rights should send this report to the U.S. Department of Housing and Urban Development and issue recommendations to:

17. Enforce Affirmatively Furthering Fair Housing (AFFH) obligations.
18. Adopt regulations under the Fair Housing Act to further fair housing obligations and disparate impact liability to challenge racial discrimination in evictions.
19. Adopt regulations and provide guidance to clarify that the practice of screening prospective tenants for eviction history raises civil rights concerns and violates the Fair Housing Act.

20. Require housing providers that receive federal funds to adopt policies and provide trainings on sexual harassment to reduce the use of eviction as a tool to commit sexual harassment.

The U.S. Commission on Civil Rights should send this report to the New York State Governor, Legislature, and the Office of Court Administration and issue recommendations to:

21. Fund research and develop policies to promote racial equity in housing and residential evictions.
22. Repeal New York State summary eviction law and replace by enacting legislation that provides procedural reforms in eviction proceedings, including discovery, right to counsel, a fully contested hearing, right to appeal, and subsequent sealing of evictions records thereafter.
23. Provide court-based eviction mediation and diversion programs.
24. Enact, fund, and implement statewide Right to Counsel legislation.
25. Fund research to examine how to increase affordable housing as current housing shortages impact severely rent-burdened individuals who are disproportionately people of color, and at the highest risk of eviction. Investigate expanding public housing, land trusts - particularly for gentrifying neighborhoods that displace current residents and using publicly owned lands for new affordable housing.
 - a. Develop large employer mandates and/or incentives to build housing for their new local workforce rather than expand to new locations that contribute to the displacement of current communities.
 - b. Regulate multi-family lenders to ensure they are not financing displacement and discrimination in renting practices.
 - c. Increase affordable housing through universal vouchers and statewide rent stabilization.
 - d. Mandate re-investment in existing public housing.
 - e. Repeal entirely New York's 485-a Tax Break for Luxury Development, which disproportionately excludes low-income people of color.
26. Develop comprehensive solutions to address COVID-19 related evictions and assistance to renters and small landlords.
27. Strengthen fair housing, human rights, and eviction laws' enforcement, policies, and practices.

- a. Investigate potential violations of and enforce a 2019 New York state law¹¹¹⁹ protecting tenants from nuisance ordinances that continue to be included in municipal ordinances.
 - b. Remove financial incentives to evict tenants by enacting and enforcing vacancy control laws, with a focus on neighborhoods with high risk of displacement and homelessness.
 - c. State and municipal governments, and enforcement agencies at all levels of government must collaborate with at-risk communities to inform them of their rights and develop trusted pathways to report concerns so tenants can advocate for themselves.
 - d. Strengthen enforcement of existing fair housing laws, human rights, and anti-harassment laws, including Source of Income protections, where applicable.
 - e. Fund local code enforcement to help prevent evictions based on retaliation for seeking repairs, and to inspect for health hazards, mold, and other code violations.
 - f. Pair code enforcement with support for housing repairs for small landlord - owners of no more than 1-to-4 units and who occupy a unit or otherwise live in the neighborhood.
28. Enact Good Cause and Clean Hands eviction at the state level.
 29. Fully implement a 2019 New York State Law¹¹²⁰ to make it illegal to screen tenants for past evictions.
 30. Amend the New York State Constitution to recognize and protect the right to housing as a constitutional right and implement it in line with international human rights norms and U.S. treaty obligations, including in the context of evictions.
 31. Strengthen enforcement of existing laws, including code enforcement, to ensure safe and decent rental housing.
 32. Prohibit discrimination in housing based on past criminal history and records.
 33. Prohibit or penalize serial filing through escalating fees for each filing against the same person.
 34. Revise state law governing LLCs to make ownership more transparent.

¹¹¹⁹ N.Y. Civ. Rights Law §§ 90-98 (McKinney 2019).

¹¹²⁰ N.Y. Real Prop. Law § 227-f (McKinney 2019).

The U.S. Commission on Civil Rights should send this report to Albany’s Mayor and City Council and issue recommendations to:

35. Fund research, develop policies and programs that promote racial equity in housing and residential evictions.
36. Fund research to examine how to increase affordable housing, as current housing shortages impact severely rent-burdened individuals who are disproportionately people of color, and at the highest risk of eviction. Consider also improving existing and expanding public housing, consider land trusts - particularly for gentrifying neighborhoods that displace current residents, develop vacant land, and use publicly owned lands for new affordable housing.
 - a. Deny HUD funding to, or otherwise penalize through fees, neighborhoods with zoning laws that inhibit establishment of multi-family, public housing, or low-income housing.
 - b. Develop, monitor, and publicize “speculator watch lists” based on New York City’s model, which identify recently sold rent-regulated buildings where potentially predatory investment might put tenants at risk, to advance public accountability and transparency.
37. Adopt an AFFH Mandate for the City of Albany, all municipal agencies, and establish routine assessments and development of plans to dismantle segregation and its relationship to eviction.
38. Strengthen eviction law’s enforcement, policies, and practices to prevent discrimination.
 - a. Fully staff Albany’s Local Fair Housing Enforcement Office according to current regulations.¹¹²¹
 - b. Prohibit crime-free ordinances as discriminatory.
 - c. Prohibit discrimination in housing based on past criminal history and records.
 - d. Legislate that Fair Housing Violations can be a defense to eviction and heard as part of the adjudication process in local Housing Courts.
 - e. Remove financial incentives to evict tenants by enacting and enforcing vacancy control laws, with a focus on neighborhoods with high risk of displacement and homelessness.

¹¹²¹ Albany, N.Y., Code § 187-8.

- f. Opt-in to the Emergency Tenant Protection Act of 1974 (“ETPA”)¹¹²² and conduct vacancy surveys.
 - g. Ensure state and municipal governments and their enforcement agencies at all levels of government must collaborate with at-risk communities to inform them of their rights and develop trusted pathways to reporting concerns so tenants can advocate for themselves.
 - h. Collaborate with landlords, tenants, and at-risk communities to develop early-warning systems and practices within community-based organizations that can access resources and work with and facilitate mediation between tenants and landlords to avoid eviction.
 - i. Strengthen enforcement of existing fair housing, human rights, and anti-harassment laws, including Source of Income protections, where applicable.
39. Fund and mandate updates to policies and practices in Housing Court.
- a. Systematically collect demographic data on tenants and landlords in eviction proceedings to monitor for discriminatory practices and racial bias.
 - b. Improve Housing Court buildings and spaces to afford litigants and all participants the dignity deserved.
 - c. Develop mechanisms for ensuring against conflict of interest in the Housing Courts.
 - d. Ensure sufficient outreach, language access and general accessibility, including in digital-only application programs like the Emergency Rental Assistance Program, to ensure that those who need assistance can access it.
40. Strengthen enforcement of existing laws, including code enforcement, to ensure safe and decent rental housing.
- a. Fund local code enforcement to help prevent evictions based on retaliation for seeking repairs, and to inspect for health hazards, mold, and other code violations.
 - b. Pair code enforcement with support for housing repairs for small landlord - owners of no more than 1-to-4 units and who occupy a unit or otherwise live in the neighborhood.
41. Enact and fund Right to Counsel legislation.

¹¹²² N.Y. Unconsol. Law §§ 8621—34 (McKinney 2022); *see generally* Div. of Hous. & Cmty. Renewal Office of Rent Admin., *Emergency Tenant Protection Act (EPTA) of 1974 Chapter 576 Laws of 1974 as Last Amended* (Aug. 9, 2019), <https://hcr.ny.gov/system/files/documents/2020/11/fact-sheet-08-09-2019.pdf> (describing EPTA).

The U.S. Commission on Civil Rights should send this report to Buffalo’s Mayor and City Council and issue recommendations to:

40. Fund research, develop policies and programs that promote racial equity in housing and residential evictions.
41. Fund research to examine how to increase affordable housing, as current housing shortages impact severely rent-burdened individuals who are disproportionately people of color, and at the highest risk of eviction. Consider also improving existing and expanding public housing, land trusts- particularly for gentrifying neighborhoods that displace current residents, development of vacant land, and using publicly owned lands for new affordable housing.
 - a. Deny HUD funding to, or otherwise penalize through fees, neighborhoods with zoning laws that inhibit establishment of multi-family, public housing, or low-income housing.
 - b. Develop “speculator watch lists” to advance public accountability and transparency based on New York City’s model.
42. Adopt an AFFH Mandate for the City of Buffalo, all municipal agencies, and establish routine assessments and development of plans to dismantle segregation and its relationship to eviction.
43. Enact and fund Right to Counsel legislation.
44. Strengthen eviction laws’ enforcement, policies, and practices to prevent discrimination.
 - a. Prohibit crime-free ordinances as discriminatory.
 - b. Prohibit discrimination in housing based on past criminal history and records.
 - c. Legislate that Fair Housing Violations can be a defense to eviction and heard as a part of the adjudication process in local Housing Courts.
 - d. Remove financial incentives to evict tenants by enacting and enforcing vacancy control laws, with a focus on neighborhoods with high risk of displacement and homelessness.
 - e. Ensure state and municipal governments and their enforcement agencies at all levels of government must collaborate with at-risk communities to inform them of their rights and develop trusted pathways to reporting concerns so tenants can advocate for themselves.

- f. Collaborate with landlords, tenants, and at-risk communities to develop early-warning systems and practices within community-based organizations that can access resources and work with and facilitate mediation between tenants and landlords to avoid eviction.
 - g. Strengthen enforcement of existing fair housing, human rights, and anti-harassment laws, including Source of Income protections, where applicable.
 - h. Fund local code enforcement to help prevent evictions based on retaliation for seeking repairs, and to inspect for health hazards, mold, and other code violations.
 - i. Pair code enforcement with support for housing repairs for small landlord - owners of no more than 1-to-4 units and who occupy a unit or otherwise live in the neighborhood.
45. Fund and mandate updates to policies and practices in Housing Court.
- a. Improve Housing Court buildings and spaces to afford litigants and all participants the dignity deserved.
 - b. Systematically collect demographic data on tenants and landlords in eviction proceedings to monitor for discriminatory practices and racial bias.
 - c. Develop mechanisms for ensuring against conflict of interest in the Housing Court.
 - d. Ensure sufficient outreach, language access and general accessibility, including in digital-only application programs like the Emergency Rental Assistance Program, to ensure that those who need assistance can access it.

The U.S. Commission on Civil Rights should send this report to New York City’s Mayor and City Council and issue recommendations to:

46. Fund research, develop policies and programs that promote racial equity in housing and residential evictions.
47. Fund research to examine how to increase affordable housing, as current housing shortages impact severely rent-burdened individuals who are disproportionately people of color, and at the highest risk of eviction. Consider also improving existing and expanding public housing, consider land trusts - particularly for gentrifying neighborhoods that displace current residents, develop vacant land, and use publicly owned lands for new affordable housing.
- a. Deny HUD funding to, or otherwise penalize through fees, neighborhoods with zoning laws that inhibit establishment of multi-family, public housing, or low-income housing.

- b. Monitor speculator watch lists to advance public accountability and transparency.
48. Fund awareness and outreach programs regarding Right to Counsel in New York City.
49. Adopt an AFFH Mandate for New York City, all municipal agencies, and establish routine assessments and development of plans to dismantle segregation and its relationship to eviction.
50. Strengthen eviction laws' enforcement, policies, and practices to prevent discrimination.
- a. Prohibit crime-free ordinances as discriminatory.
 - b. Prohibit discrimination in housing based on past criminal history and records.
 - c. Legislate that Fair Housing Violations can be a defense to eviction and heard as part of the adjudication process in local Housing Courts.
 - d. Remove financial incentives to evict tenants by enacting and enforcing vacancy control laws, with a focus on neighborhoods with high risk of displacement and homelessness.
 - e. Ensure state and municipal governments and their enforcement agencies at all levels of government must collaborate with at-risk communities to inform them of their rights and develop trusted pathways to reporting concerns so tenants can advocate for themselves.
 - f. Collaborate with landlords, tenants, and at-risk communities to develop early-warning systems and practices within community-based organizations that can access resources and work with and facilitate mediation between tenants and landlords to avoid eviction.
 - g. Strengthen enforcement of existing fair housing, human rights, and anti-harassment laws, including Source of Income protections, where applicable.
 - h. Fund local code enforcement to help prevent evictions based on retaliation for seeking repairs, and to inspect for health hazards, mold, and other code violations.
 - i. Pair code enforcement with support for housing repairs for small landlord - owners of no more than 1-to-4 units and who occupy a unit or otherwise live in the neighborhood.
51. Fund and mandate updates to policies and practices in Housing Court.
- a. Improve Housing Court buildings and spaces to afford litigants and participants the dignity deserved.

- b. Systematically collect demographic data on tenants and landlords in eviction proceedings to monitor for discriminatory practices and racial bias.
- c. Develop mechanisms for ensuring against conflict of interest in the Housing Court.
- d. Ensure sufficient outreach, language access and general accessibility, including in digital-only application programs like the Emergency Rental Assistance Program, to ensure that those who need assistance can access it.

V. APPENDIX

Committee documents for this report can be found here:

https://securisync.intermedia.net/us2/s/folder?public_share=409J0xbKeIQ2vuMJBvQond0011ef58&id=L05ZL0V2aWN0aW9uIFBvbGljaWVzIDIwMjAtMjE%3D

A. Committee Member Statements of Dissent

Dissent by Committee Member Robert Klump

Dissent by Committee Member Rafael Mangual

Dissent by Committee Member Craig Trainor

B. Project Proposal

C. Briefing Agendas

D. Briefing Minutes

E. Briefing Slides

F. Briefing Transcripts

G. Written Testimony

Dissent by Committee Member Robert Klump

I voted against the adoption of the New York Advisory Committee’s Report “Racial Discrimination and Eviction Policies and Enforcement in New York.” My disagreements with the Findings and Recommendations in the Report are profound and far too numerous to discuss in their entirety, given the time constraints that apply to the preparation of advisory committee dissents. This dissent will, however, highlight several of the more egregious errors in the report—see points A, B and C *infra*. Preliminarily, however, a few general comments are in order:

The scope of the committee’s report and recommendations. To characterize the committee’s investigation and report as a runaway train would be an understatement. The committee’s mandate, as stated in the Introduction to the report, is

to study potential racial discrimination in *eviction policies and enforcement* in New York. The proposed scope of this project was limited to an examination of the federal, state and local policies and enforcement of housing laws meant to prohibit *racial discrimination in rental housing eviction practices* [in Albany, Buffalo and NYC]. The proposed purpose of this project was to allow the New York Advisory Committee to advise the Commission regarding civil rights concern with racial discrimination in *rental housing evictions*.

Report at 3 (emphases added). But the report goes far beyond the stated purpose of studying and making recommendations regarding discrimination in evictions, as the committee majority endorses proposals that would fundamentally reorder housing policy in New York and throughout the United States, *see, e.g.*, Recommendations 1 (“Fund research and develop policies that promote racial equity in housing and residential evictions”); 1(a) (“Conduct a racial equity analysis of plans, policies and programs at the federal level to reduce levels of residential segregation.”); 1(b) (“Remove barriers to securing income support and wealth accumulation by individuals who live in public housing as discriminatory and constituting barriers to subsequent homeownership.”); 3 (“Amend the Fair Housing Act to strengthen the Affirmative Further Fair Housing Mandate.”); 8 (“Fund research to examine how to increase affordable housing”); 16 (“Fund and disseminate research on the continued commodification and financialization of housing and its impact on housing discrimination disparities and discrimination and consider adopting regulations and strengthening oversight of the growing for-profit housing market to prevent both intentional discrimination (disparate treatment) and discriminatory effects (disparate impact).”); 16 (d) (“Ensure that regulations for developers and landlords to provide affordable housing . . . require rental rates that are aligned with what low-income tenants can afford and have built-in mechanisms to recalibrate as needed and provide for long-term stable tenancy.”).

The nature of the Committee’s evidence gathering process

The process by which the committee heard testimony from researchers, academics, advocates etc. was not conducive to the ability of committee members to question the assumptions, methodology and conclusions of the witnesses, as we were typically permitted to ask only one question with no follow-up. This allowed the witnesses to ignore a troublesome question, to give a pat answer or to evade the question altogether. I experienced this frustrating aspect of the process when I asked several of the researchers and academics about the effect that rent control had on the housing market, suggesting that its strong presence in New York City had a negative effect on the ability of low income tenants to move to more commodious apartments. There is substantial scholarly literature regarding the detrimental effects of rent control; indeed one of the scholars who has written extensively on the subject, Prof. Richard Epstein,

addressed the subject at length during his testimony. But the individuals I confronted with evidence of the effects of rent control in an effort to get them to admit that the easing of rent control might have a salutary effect on availability of affordable rental units essentially replied that rent control was good because it made apartments more affordable for poor people, and I had no opportunity to press them on the topic.

A. The Committee Report fails to anticipate and take into account the negative consequences of its recommendations

In its apparent determination to endorse the most progressive proposals advanced by the speakers who appeared before it, the committee failed to consider the potential adverse effects of many of its recommendations for reform, and failed to weigh the merits and costs of alternative approaches of remediating the perceived problem. One striking example of this relates to whether the law should require that tenants be provided with the right to counsel in Housing Court eviction proceedings. The report notes that “[e]nacting Right to Counsel legislation was among the top panelists’ recommendations to reduce evictions and racial disparities.” Report, Finding 12(g). The report then recommends that the U.S. Commission on Civil Rights should send the committee’s report to Congress and the President with the recommendation that “universal” right to counsel legislation be adopted and that such legislation “[a]ppropriate . . . adequate funding for legal service provision and sufficient outreach at the state and municipal levels to insure tenants are fully aware of this right and how to access” and that states be encouraged “to use federal relief funds to establish a Right to Counsel in eviction proceedings.” Report, Recommendation 5. The report further recommends that New York “[e]nact, fund, and implement statewide Right to Counsel legislation.” Report, Recommendation 24.

There are several major problems with the committee’s uncritical endorsement of “universal” right to counsel for tenants in eviction proceedings, the most fundamental of which is that far from helping tenants, it would operate to their detriment because it would *increase* the cost of rent. That is the conclusion of a recent study of eviction and homelessness policies in San Diego by Boaz Abramson, an Economics Ph.D. Candidate at Stanford University, “The Welfare Effects of Eviction and Homelessness Policies,” https://stanford.edu/~boaza/evictions_abramson.pdf. While acknowledging that providing counsel (and certain other policies) make it harder to evict tenants, such policies “lead to higher equilibrium rents and lowering housing supply as they increase the cost of [rent] default for landlords. *Id.* at 1. In other words, the delay in evictions caused by counsel causes landlords to increase rents to cover the income they will lose when non-rent paying tenants remain on the property longer than they would have in the absence of counsel. And this has a ripple effect on homelessness. By comparing baseline and right to counsel rates of eviction filings, evictions and homelessness, *id.* at 39, Figure 8, Abramson concludes that “[t]he main result is that ‘Right-to-Counsel’ increases homelessness by 15 percent” because the increase to landlords in default costs “pushes low-income households into homelessness, as they can no longer afford to move into the minimal level of housing.” This, even though the rate of eviction filings and evictions declines. He explains:

In the baseline economy, default is not particularly costly for investors since renters who default are quickly evicted, and default premia are therefore relatively low. Under “Right-to-Counsel”, default premia are higher, as it becomes harder and more costly to evict delinquent tenants.

As a result, the homelessness rate increases by approximately 15 percent, from 3.29 percent of the population in the baseline economy to 3.76 percent. The eviction filing rate

decreases from 2 percent to 1.7 percent. However, the reason that relatively less renters default and face an eviction filing is that low-income tenants, who are the ones most at risk of default, are priced out of the rental market and cannot rent in the first place. That is, when default costs are higher for investors, rents adjust such that the pool of households that are able to rent is less risky in equilibrium. These results highlight that the evaluation of policies that address eviction must take into account their equilibrium effects on rents and homelessness.

Id. at 39-40 (internal citations omitted). Abramson notes that in contrast to providing counsel, rental assistance lowers tenants' risk of default and resulting homelessness much more effectively. *Id.* at 44-46.

This comment on Abramson's paper by law professor Jonathan Adler is particularly apt in view of the report's strong endorsement of providing tenants with counsel in eviction proceedings:

Although lawyers may not like to hear this, the paper supports the view that policies that affect housing costs are more important than those that enhance the legal protection of tenants or ensure greater legal defense. Abramson focuses on means-tested rental assistance as an alternative policy intervention, but insofar as the effect he finds is a function of housing affordability, it would seem to support other measures designed to make housing more accessible and affordable (e.g., YIMBYism over NIMBYism). This conclusion is further supported by the finding that a measure that reduces housing supply increases homelessness.

The study is also further evidence that the intentions behind a given policy tell us little about its likely effects, and that just because a policy measure is intended to help people does not mean it will, particularly when compared to potential alternatives.

Adler, "When Lawyers Make Things Worse-Housing Edition," *Reason (The Volokh Conspiracy)*, 11/29/21, <https://reason.com/volokh/2021/11/29/when-lawyers-make-things-worse-housing-edition/>

In addition to the perverse consequences that the proposal for eviction counsel would have, there is another objection: the presumably staggering cost of paying for it and who is to bear that cost. Abramson's study reports that the annual cost of providing tenants with legal counsel in San Diego would be 7.3 million dollars. "The Welfare Effects of Eviction and Homelessness Policies," at 5. The cost of providing tenants with counsel in New York City would no doubt be many multiples of that given that the population of New York (8.5 million) is six and a half times that of San Diego (1.4 million) and of course has a higher percentage of its population living in rent.¹ The committee report does not consider what the cost of the counsel proposal would be and how it would be paid for, other than suggesting that states be "encouraged" to use federal relief funds, funds that would then not be available to take care of other Covid-related needs.

The report also fails to consider major predictable downside consequences to affording counsel to all tenants who do not have the resources to pay for representation: a demand for representation in meritless or frivolous eviction proceedings, and a corresponding surge in the need for assigned counsel, the cost of providing such representation, and the detrimental effect this will have on tenants and landlords:

¹ Statistics from the American Community Survey indicate that as of 2017, renters accounted for 64.6% of the population of New York City and 52.0% of the population of San Diego. <https://www.governing.com/archive/city-renter-population-housing-statistics.html>

[m]ost estimates of the expense of government provision of attorneys are huge underestimates because they are based on static statistics of current unmet needs without regard to the change in demand that will result if attorneys are free. Nor do the estimates consider the secondary costs to society.

If a dispute over shelter entitles one to a free attorney on the government's dime, it will be much easier for people to intentionally refuse to pay rent or fight evictions when they violate a lease in ways that threaten other tenants. This will have costs far beyond simply paying for the plaintiffs' attorneys. Landlords and mortgage-holders will have to hire their own attorneys and raise rents and costs for their honest customers. . . .

Meanwhile, as the demand for attorneys on both sides increases, lawyers will benefit, but everyone else will have to pay more to obtain legal counsel. Middle-class people with meritorious cases will find it harder to find legal counsel, reducing their access to justice; at the same time, because their income makes them ineligible for the new government benefit, the result is a substantial increase of the de facto marginal tax-rate for the middle class.

Meanwhile, the honest poor will be worse off as a group: they will trade higher rents and higher taxes for the right to legal services that often will not help them. And, as in the criminal context, parties with meritorious cases will find it harder to signal to overwhelmed judges that their cases are distinguishable from the vast majority of meritless cases with appointed counsel that the courts will see every day.

Ted Frank, "The Trouble with the Civil Gideon Movement," *American Enterprise Institute Report*, August 7, 2008

Along with proposing the right to counsel for tenants in eviction proceedings, the report recommends that legislation replacing the New York summary eviction law also require "discovery . . . a fully contested hearing, right to appeal, and subsequent sealing of eviction records thereafter." Report, Recommendation 22. One can only imagine the time and cost of such a full blown adversary process for all cases of eviction—costs which, like the cost of counsel, will almost certainly be passed along to tenants-poor tenants-in the form of higher rents.

B. Equity and Equality are not the same thing

The term "equity," appears repeatedly in the report, in the context of noting or recommending that the racial impact of government policies be subjected to racial equity analysis or that legal or policy changes that will "promote" equity be adopted. Thus, the U.S. Commission on Civil Rights is urged to send the report to Congress and the President and issue recommendations to fund research and policies that "promote racial equity" in housing and evictions and conduct a "racial equity" analysis of "plans, policies, and programs at the federal level to reduce levels of residential segregation." Report, Recommendation 1 and 1(a); see also Report, Recommendations from speakers at pp. 136, 141, 144, 146, 147 (recommendations to advance fair housing through racial equity analysis; to conduct racial equity analysis of plans and programs at all levels of government).

But as Vice President Harris noted in a tweet issued during the 2020 presidential campaign, "There's a big difference between equality and equity." Kamala Harris (@KamalaHarris), *Equality vs. Equity*,

Twitter (Nov. 1, 2020), <https://twitter.com/kamalaharris/status/1322963321994289154?lang=en> And the two terms cannot be equated for purposes of federal and state law pertaining to housing and evictions. The committee has the duty to inform the Civil Rights Commission of “matters related to discrimination or a denial of *equal protection of the laws*” (Report at IV(A) (emphasis added), not to report on the denial of equity or to recommend measures that will produce equitable results in evictions. And the Fair Housing Act prohibits discrimination in the “terms, conditions, or privileges” of a rental or dwelling based on “race, color, religion, sex, familial status, or national origin.” 42 U.S.C. § 3604(b). It does give the government a license to produce equity in housing or evictions. Nor does the New York State Human Rights Law, which protects people from housing discrimination based on race, creed, color etc.

Steven Malanga of the Manhattan Institute highlighted the difference between “equality” and “equity” in a recent article discussing the equity movement in government including the emergence of what he terms “the hottest new job in municipal government”, “chief equity officer”:

The emergence of the position is part of a broader movement to get local governments to look beyond the fundamental American ideals of equal treatment and opportunity and instead demand equity, which generally means the achievement of similar outcomes for all groups. . . . The equity movement presumes that any unequal results in society reflect structural or institutional racism, even when officials can’t identify any actual discrimination. To redress these purported inequities, the movement demands that every city department’s mission, and every major decision in local government, be looked at from a racial-equity perspective. . . .

The justification for this all-encompassing focus on race is a postmodern view on discrimination and prejudice that has migrated from universities into the public sphere. Its advocates contend that America’s major institutions remain deeply racist and that white privilege is the main driver of discrimination, even where no discriminatory behavior is evident....

Steven Malanga, “Equity Warriors,” *City Journal* (Winter 2020), <https://www.city-journal.org/equity-movement-local-government>. But as Malanga notes “[t]he equity movement dismisses venerable American ideals of equality.”

There is no basis at law for the report’s recommendation that the Civil Rights Commission should develop policies that will promote racial equity in housing and residential evictions.

C. The Report sets forth little evidence of intentional discrimination in evictions

Given the draconian scope of the committee’s findings and recommendations concerning racial discrimination in evictions, one would assume that the committee’s lengthy investigation, which included the testimony of 30 panelists, and the oral or written statements of ninety-three landlords, renters and other members of the public, would have yielded significant evidence of intentional discrimination by landlords against minority group tenants. But such an assumption is unwarranted. The Background section of the report notes a crucial distinction between discrimination in renting (referred to as the “front-end” of the housing market, i.e. the initial securing of an apartment) and discrimination in eviction (referred to as the “back-end” process, i.e., occurring after a tenant has rented an apartment). The report admits that inasmuch as a landlord has already agreed to rent to a minority tenant, it is in effect counterintuitive to think that the landlord’s decision to evict that tenant would stem from racial or ethnic animus:

[I]n the case of evictions, landlords have already leased a home to the renter, and presumably if bias exists, it does not appear to have interfered with the initial rental arrangement.

Report, II (Background), A (Overview) P. 14. But despite the absence of dramatic testimony or other evidence presented to the committee of overt discrimination in evictions, the report claims that “Yet there is *some early evidence* of intentional discrimination” in evictions (Report at 15) (emphasis added). The report then cites a mere two instances of such “early evidence” of discrimination. The first is a lawsuit filed by Hispanic tenants living in rent-stabilized apartments who alleged that their landlord was harassing them in an effort to displace them with whites. *Tejada v. Little City Realty LLC*, 308 F. Supp. 3d 724. The second instance is little more than an anecdote, and hardly “evidence”: “Bronx tenants’ lawyers suggest that a NY landlords’ [sic] attorney’s racist comment about Asian Americans is simply a symptom of a much larger problem.” (Report at 1516).

A related problem with the claim of intentional discrimination is that it could presumably only occur when a landlord of one race or ethnicity evicts a tenant of another race or ethnicity. Yet the report is lacking in any meaningful statistical breakdown of the race of landlords. Indeed, the report concedes that “There is a lack of data on landlord demographics, making it challenging to ascertain any discriminatory intent” and that with respect to evictions, “[d]eliberate discriminatory intent based on race is challenging to examine as data on landlord demographics is frequently unavailable in eviction case records.” (Report, Finding 9 and 9 (a)).^{2*} But there is certainly evidence that many of landlords facing delinquent tenants in New York are themselves members of minority groups, many of them immigrants. See, e.g. “A Year Without Rent,” <https://www.pressreader.com/usa/the-week-us/20210611/282411287243961> (profile on a small Schenectady, N.Y. landlord who to the U.S. from Guyana and faces financial ruin from inability to collect rents), <https://reason.com/video/2021/02/23/the-victims-of-the-eviction-moratorium/> (“A coalition of Chinese immigrant landlords in New York say they’re on the verge of losing everything because of tenants who have stopped paying rent”). All of this is not to deny that there are undoubtedly cases in which a landlord’s decision to evict a tenant stems from racial animus. But the very limited evidence of that is adduced by the testimony and reports is hardly sufficient to justify the sweeping changes to eviction law and practice that are recommended.

Faced with the absence of much evidence of overt racial discrimination by landlords (“disparate treatment”), the report instead focuses on allegations of “disparate impact” (discriminatory effects) and “systemic bias.”

² To cure the problem of the lack of data on the racial disparities in evictions, the report proposes adding another require on landlords, a truly Orwellian one: “requiring landlords to report demographic on themselves and tenants when filing for evictions . . . [and] requiring Housing Courts to systematically track demographics of parties to eviction cases, and providing funds to local governments to conduct surveys of tenants.” Report, Recommendation 2(a). The report gives no indication of how landlords are to make such determinations of race and how, in our increasingly multiracial society, to report mixed race tenants and landlords.

Dissent Statement by Committee Member Rafael Mangual

This is going to be a much shorter document than I would have liked to produce. Were I to have my druthers, this would be the second sentence of an extensive rebuttal to the unjustified assumptions, statistical misapprehensions, and evidence-free insinuations that can be found throughout the Committee’s report, which I simply cannot join—in whole or in part. Unfortunately, anyone wishing to compose a dissenting statement in response to a book-length “report” that took over a year to produce would have only two weeks, despite the finalized draft of the report not being completed or shared with the Committee’s members prior to the dissenting statement deadline. As such, this statement will not be the substantive rebuttal the draft report calls out for.

I’ll start with why I used scare quotes around “report.”

In the context of a state advisory committee to the U.S. Commission on Civil Rights, a report is supposed to “assist the Commission with its fact-finding, investigative, and information dissemination functions.”¹ But the Committee’s report is the byproduct of a process that simply cannot be fairly characterized as investigative in nature. What is held up as fact-finding is nothing more than a transcription of the things a handful of people alleged to know something about the topic said to those who invited them to say it—invitations one suspects would not have been so eagerly extended if the invitees were expected to depart from the view a system which allows for the enforcement of a tenant’s freely incurred contractual obligation to pay rent to his/her landlord in exchange for the provision of a place to live is somehow illegitimate. By restricting the content of a Committee report to what those invited to brief it said—i.e., by excluding relevant (and often contradictory) evidence from the report—it seems that the process by which advisory committees currently operate would require them to report as a “findings” anything that two or more individuals stated during briefings, no matter how outrageous or incongruous with the available data. That is not an investigation.

The title of the Committee’s report, *Racial Discrimination and Eviction Policies and Enforcement in New York*, is clearly meant to imply an argument—that racial discrimination permeates eviction policies and enforcement to such a degree as to require a public policy intervention as far reaching as those found among the Committee’s recommendations. Among those recommendations are:

- launching a publicly funded effort to “promote racial equity in housing and residential evictions,”
- prohibiting landlords from considering a potential tenant’s past compliance with rental agreements and criminal history,
- raising the transaction costs of filing for evictions,
- further regulating the for-profit housing market,
- holding “listening sessions,” and

¹ See, e.g., <https://www.usccr.gov/about/advisory-committees>.

- establishing a human right to housing.

One slight problem: Nothing in the report establishes that “racial discrimination”—as that term is and will be understood by the vast majority of those who read it—is even a marginal driver of evictions in New York State.

What you will see peppered throughout the report—the final version of which, I remind the reader, has not been shared with the full Committee at the deadline for dissenting statements—are references to statistical disparities along racial lines showing that Black and Latino residents constitute a greater share of persons evicted than their share of the general population would otherwise predict. Of course, disparities do not a *prima facie* case of discrimination make. While it may be enough for some to insinuate racial discrimination by presenting top-line statistical disparities (i.e., disparities that do not reflect an effort to take account of the relevant factors (particularly those other than racial animus) that may or may not inform them), that is not how public debates about these questions should be conducted.

What one needs to understand before knowing enough to justify the sort of broad policy recommendations advanced by the Committee’s report is whether, and, if so, to what degree, the racial disparities highlighted by the Committee’s report reflect unlawful discrimination on the part of the landlords in question. This principle is evident in federal housing discrimination law, which, one would think, is what would inform how the Committee approaches a question of discrimination in housing. But, as should be evident to those who read the report, this was not the case.

It is true that the U.S. Supreme Court, has recognized that a case of housing discrimination on the basis of race can be established by showing a “disparate impact,” it also recognized:

- that this recognition is accompanied by “[a] robust causality requirement [that] ensures that '[r]acial imbalance . . . does not, without more, establish a prima facie case of disparate impact' and thus protects defendants [in such cases] from being held liable for racial disparities they did not create;”²
- That “a disparate-impact claim that relies on a statistical disparity *must fail* if the plaintiff cannot point to a defendant's policy or policies causing that disparity.”³ (emphasis added); and
- That “disparate-impact liability must be limited so . . . regulated entities are able to make the practical business choices and profit-related decisions that sustain a vibrant and dynamic free-enterprise system. And before rejecting a business justification . . . a court must determine that a plaintiff has shown that there is 'an available alternative . . . practice that has less disparate impact and serves the [entity's] legitimate needs.’”⁴

² See, https://www.supremecourt.gov/opinions/14pdf/13-1371_8m58.pdf

³ *Id.*

⁴ *Id.*

Working within the confines of this definition presents a barrier to the argument implied by the Committee's report. It also presents a challenge that the Majority did not meet: To prove that evictions are largely, or to any significant degree, explained by discrimination. The reason this challenge was not met, is because the data do not seem to support the broader claim of discrimination advanced in the Committee's report.

During each of the briefings I attended, I asked those who were invited to present to the Committee whether the disparities they had highlighted would shrink, grow, or remain the same if they statistically controlled for eviction-warranting behavior, such as non-payment of rent. Not a one gave anything resembling a straight answer. This prompted me to do some digging on my own, and I came across a paper published in 2016, which purported to be "among the first to empirically investigate racial and ethnic discrimination in eviction decisions."⁵ According to its authors, "No study to date... has examined whether groups protected under the [Fair Housing Act]--and racial minorities in particular--are more likely to experience eviction, controlling for eviction-warranting behavior like non-payment of rent."⁶ One of those authors, Matthew Desmond, was cited and quoted from throughout the Committee's report so many times I lost count. This particular paper, however, did not enjoy prominent placement. Perhaps that has something to do with the paper's findings, which include:

- "[R]egularly missing rent payments is among the strongest predictors of eviction rates."⁷
- "African Americans are not evicted at a disproportionate rate *after* controlling for socioeconomic status, household structure, income, criminal records, and so on."⁸ (emphasis in original)

Now, it's worth noting that this particular study did find some evidence suggesting disproportionate representation of Hispanics among those evicted after relevant controls were put in place, but, generally speaking, it seems that once you control for what is among the strongest predictors of eviction rates, the top-line disparities relied on to make out a case of discrimination shrink significantly.

This is a phenomenon seen throughout social science research. Take, for example, racial disparities in the criminal justice space. In an extensive 2018 review of the literature on proactive policing, the *National Academy of Sciences (NAS)* reported that: "regression adjustment that accounts for local measured crime rates or that includes general spatial control variables... frequently generates findings of *substantially reduced, or even eliminated*, evidence of racial bias."⁹ (emphasis added).

⁵ See, https://scholar.harvard.edu/files/mdesmond/files/hlc106_crop.pdf

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ See, <https://www.nap.edu/read/24928/chapter/9>

The NAS, in a separate review of the literature on incarceration, concluded that “racial bias and discrimination are not the primary causes of disparities in sentencing decisions or rates of imprisonment,” going on to say that “Overall, when statistical controls are used to take account of offense characteristics, prior criminal records, and personal characteristics, black defendants are on average sentenced somewhat but not substantially more severely than whites.”¹⁰

None of this is to say that we should not be concerned by top-line racial disparities in social phenomena like eviction filings. But it is important to understand that the Committee’s report does not take account of the relevant factors that may very well be driving such disparities, which is just one of many reasons why (1) I could not, in good conscience, join the report, and why (2) the report should *not* be relied on by policymakers looking for guidance.

There is too often a yawning gap between rhetoric and reality. The Committee’s report was heavy on the former and light on the latter. Relying on reports informed by incomplete ideas, undertested claims, and shoddy assumptions to make policy decisions can be disastrous. A recent Committee report—which recommended restrictions on the use of solitary confinement in New York City jails¹¹—is a cautionary tale of what can go wrong. New York City did just what was recommended, banning the use of solitary confinement or punitive segregation as to inmates 21 years of age and younger. What followed was an explosion in jail violence, which primarily victimized those on whose behalf the recommendations were advanced. As I recently documented in an article on the matter:

At the turn of the millennium, the average daily inmate population in Gotham jails was more than 15,500. In fiscal year 2000, there were 5,722 fight/assault infractions and 70 stabbings or slashings. In 2020, however, there were more than twice as many fight/assault infractions (11,191, to be exact), and 75 percent more stabbings/slashings (123). This, despite a more than 60 percent reduction in the average daily population, down to 5,841... The rise in jail violence wasn’t particularly gradual. Much of it happened under de Blasio, with the monthly rate of violent inmate-on-inmate incidents jumping nearly 70 percent from 2014 to 2020. And much of that spike happened from 2016 on. What happened in 2016? That was the year the Department of Correction ended punitive segregation a/k/a solitary confinement for inmates 18 and under and scaled back use of the practice for those aged 19 to 21. By 2017, the policy would be expanded to all inmates under 22.¹²

¹⁰ See, <https://www.nap.edu/read/18613/chapter/5#98>.

¹¹

<https://www1.nyc.gov/assets/boc/downloads/pdf/NYSAC%20to%20U.S.%20Commission%20on%20Civil%20Rights.pdf>

¹² <https://nypost.com/2021/09/15/liberal-reforms-turned-rikers-island-into-a-violent-hell/>

Public policy is not a game. The levers within the grasp of lawmakers at all levels of government should be pulled deliberately and with care—but only after a serious effort to assess the potential consequences has been undertaken, because getting it wrong will have a real impact on real people.

The process by which this Committee’s report was produced is not one characterized by careful and searching inquiry, by academic rigor, or even a broad survey of the best available evidence. A better process is needed. Informing the work of the U.S. Commission on Civil Rights is an important job, which is why I accepted my appointment to this Committee. But I accepted it expecting to partake in a truly deliberative process that invited serious inquiry and that reflected a commitment to questioning the theories and assumptions underlying the arguments presented to us. But that, unfortunately, has not been my experience for the last year-plus.

With no confidence that the findings and recommendations of the New York State Advisory Committee to the U.S. Commission on Civil Rights—presented in the report to which this statement is attached—can be relied upon by those whose charge it is to make or inform public policy, I must dissent.

/s/ Rafael A. Mangual

Dissent by Committee Member Craig Trainor

Dissenting Opinion of Craig Trainor, New York City

February 4, 2022

“The way to stop discrimination on the basis of race is to stop discriminating on the basis of race.” – Chief Justice John Roberts, *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 748 (2007)

“To pursue the concept of racial entitlement—even for the most admirable and benign of purposes—is to reinforce and preserve for future mischief the way of thinking that produced race slavery, race privilege and race hatred. In the eyes of government, we are just one race here. It is American.” – Justice Antonin Scalia, in dissent, *Adarand Constructors v. Peña*, 515 U.S. 200, 239 (1995).

I dissent from the Committee’s report and recommendations. As a threshold matter, I note that, in a report comprised of 172 pages and 1,117 footnotes, the U.S. Commission on Civil Rights (“USCCR”) thought it advisable to give Committee members who object to the report’s reasoning and recommendations (“the dissenters”) a mere 14 days to author a dissenting opinion. Like most, if not all, of the Committee members, the dissenters work full time while managing family obligations, in addition to the part-time public service we provide to the Committee. I leave to others to conjecture on the purpose of the USCCR’s arbitrary deadline.

Given the severe limitations imposed on the dissenters, I will expound only briefly upon the principles that inform my dissent, rather than examine the report at length. As Justice Antonin Scalia explained in the context of judicial opinions, what is important is “the reasons they give, not the results they announce,” because “[a]n opinion that gets the reasons wrong gets everything wrong, and that is worth a dissent.”¹ In my view, the

¹ Antonin Scalia, *Dissents*, OAH MAGAZINE OF HISTORY (Fall 1998).

Committee's report is premised upon a progressive ideology far removed from the what the architects of the civil rights movement intended and what the Constitution tolerates.²

Briefly, the report begins with a bold attention grabber — "There is an eviction crisis in the United States" — and then gives away the game — "It is a crisis that disproportionately impacts persons of color and is evidenced by wide racial disparities." Thus, [t]his report focuses on the disproportionate impact of evictions on people of color, including in the administration of justice, in three major New York cities: Albany, Buffalo and New York City."³

What follows from this assertion is a treatise-length attempt to racialize, in the state of New York, the quotidian arrangement between landlord and tenant. Indeed, in New York City alone, 65% of its residents "live in rental housing."⁴ It would be news to many of Gotham's extraordinarily racially diverse residents⁵ that systematic racism is afoot, particularly since "the most common reason a landlord seeks a tenant's removal is because the tenant has not paid rent."⁶ Because the landlord usually has his own expenses, such as his mortgage and tax bill, he has a compelling interest in replacing a

² The report's reasoning and recommendations exemplify the concerns observed by famed civil rights activist and attorney Morris Abram—who fought for desegregated schools, helped end Georgia's electoral rule that gave more weight in primary elections to rural white voters over urban black voters, helped get Dr. Martin Luther King, Jr., released from a Fulton County jail, and served as the chairman of the United Negro College Fund and as vice chairman of the U.S. Commission on Civil Rights—when he wrote:

The civil rights movement has turned away from its original principled campaign for equal justice under law to engage in an open contest for social and economic benefits conferred on the basis of race or other classifications previously thought to be invidious. . . . [T]his departure, however desirable to some in the short run, violates the basic principles that hold together our heterogeneous society and secure our civil peace. The civil rights movement, by my lights, should turn its attention back to first principles—the zealous regard for equal opportunity and the promotion of color-blind law and social policy—and away from color-conscious remedies that abandon principle and lead us further from a society free of the bane of racial discrimination.

Morris B. Abram, *Affirmative Action: Fair Shakers and Social Engineers*, 99 HARV. L. REV. 1312 (1986).

³ In a nod to the concept that evictions can be a race-neutral affair, the report notes that the eviction problem "cuts across regions and across race, gender, and other protected classes, increasingly encompassing larger numbers of White Americans." Despite this observation, there is no serious reflection on what this might mean for the structural racism narrative that informs the report.

⁴ NYC MAYOR'S OFFICE TO PROTECT TENANTS, *About Us*, available at <https://www1.nyc.gov/content/tenantprotection/pages/about-us>.

⁵ As of July 1, 2021, New York City is 42.7% white, 24.3% black, 14.1% Asian, 29.1% Hispanic or Latino, and 36.8% foreign born. UNITED STATES CENSUS BUREAU, *Quick Facts, New York City, New York*, available at <https://www.census.gov/quickfacts/newyorkcitynewyork>.

⁶ Randy G. Gerchick, *No Easy Way Out: Making the Summary Eviction Process a Fairer and More Efficient Alternative to Landlord Self-Help*, 41 UCLA L. REV. 759, 767 (1994).

delinquent tenant with a paying one.⁷ Other reasons for eviction include removing antisocial residents who serve as a nuisance to other tenants or who excessively damage the rental unit and common areas.⁸ The Commission has received no evidence of widespread landlord racial animus in the Empire State.

Professor Richard Epstein underscored this point in his testimony: “It is hard to imagine any set of real-world circumstances in which a claim [for explicitly differential treatment on the grounds of race] could be made credibly. In virtually all of these cases the ground for eviction would be nonpayment of rent, and in virtually all of these cases the same policy is enforced in a uniform fashion against persons, so that the same objective and easily verified question can be answered in the same way.”

The report never answers, perhaps because it never asks, this question: How is a landlord a civil rights offender for seeking to evict a non-paying tenant when the same landlord rented to the non-paying tenant in the first instance? To read the report is to recognize this inquiry is of no moment. What matters is statistical disparities and *a priori* assumptions that systemic racism exists in 2021 (despite the lack of credible evidence in the record to support this proposition), which provides a totalizing explanation for why some minority tenants find themselves in receipt of a notice to vacate. This is necessary because, as the report acknowledges, “data relating to discriminatory intent is lacking.”

And this is my principal objection to the narrative and ideologically driven approach of the Committee’s report. It elevates the immutable racial characteristics of favored minority groups as the most important question of inquiry, without regard for individual moral agency or our collective identity as Americans. This is, in essence, identity politics. Professor Philip Carl Salzman explained the destructive nature of this approach:

Identity politics demands the reduction of individual identity to collective census category identities. You are no longer an individual person with hopes and fears, talents and abilities, and motivations and opinions. The most important thing about you is your sex, or your race, or your sexuality,

⁷ *Id.*

⁸ *Id.* This is why crime-free ordinances, which the Committee recommends abolishing, are so important. According to the International Crime Free Association, “[t]he Crime Free Multi-Housing Program started in 1992 in Mesa AZ” because “[p]eople with criminal intent were moving into rental property to ply their trade, and in most cases this resulted in expensive repairs and constant police calls to these properties. . . . No matter where a person traveled, the same problems were consistent from property to property.” INT’L CRIME FREE ASS’N, *Crime Free Programs: A Brief History*, available at <http://www.crime-free-association.org/history.htm>.

or your ethnicity. Each of these collective identities not only defines you, but defines your enemies. . . .

Identity politics celebrates the idea that people should be judged, not as individuals, but on the basis of their sex and race, but also by their claimed identity, whether sexual, ethnic, or religious. What a marvelous formula for dividing people, and setting them at odds and in conflict with one another. This is a strategy by its advocates to gain power for their subgroup at the expense of others.⁹

This is not only a philosophical and moral conflict of visions but a constitutional one. Our Constitution prohibits classifications by race, “whether or not its asserted purpose is ‘remedial’ or ‘benign,’” and our courts subject such classifications to the strictest of judicial scrutiny for good reason—“the Constitution focuses upon the individual, *see* Amdt. 14, § 1 (“[N]or shall any State . . . deny to any person’ the equal protection of the laws) (emphasis added), and its rejection of dispositions based on race, *see* Amdt. 15, § 1 (prohibiting abridgment of the right to vote ‘on account of race’) or based on blood, *see* Art. III, § 3 (“[N]o Attainder of Treason shall work Corruption of Blood’); Art. I, § 9 (“No Title of Nobility shall be granted by the United States’).”¹⁰

In Justice John Marshall Harlan’s famous dissent in *Plessy v. Ferguson*, he announced that “[o]ur Constitution is color-blind, and neither knows nor tolerates classes among citizens.”¹¹ His dissent would later sound in the majority decision in *Brown v. Board of Education*, where the Court deposed *Plessy*’s separate but equal regime and held that segregation of public school children on the basis of race violated the Fourteenth Amendment.¹² Indeed, Thurgood Marshall turned to Justice Harlan’s *Plessy* dissent “during his most depressed moments,” and no judicial opinion “buoyed Marshall more in his pre-*Brown* days.”¹³

Justice Harlan’s dissent expressed the neutral principle of non-discrimination enshrined in our Constitution and all laws that are derived from its authority, including the

⁹ Philip Carl Salzman, *Lies at the Heart of Identity Politics*, DOC EMET PRODUCTIONS, Sept. 30, 2020, available at <https://docemetproductions.com/lies-at-the-heart-of-identity-politics>.

¹⁰ *Adarand Constructors v. Peña*, 515 U.S. 200, 239 (1995) (Scalia, J., concurring).

¹¹ 163 U.S. 537, 559 (1896).

¹² 347 U.S. 483 (1954).

¹³ *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 773 (2007) (Thomas, J., concurring) (internal quotation marks and citation omitted).

enabling legislation that created the U.S. Commission on Civil Rights.¹⁴ From that principle emanates the recognition that government “may not experiment with race-based means to achieve ends they deem socially desirable.”¹⁵ In this instance, the desirable ends may be reducing evictions for “people of color,” and I have no reason to doubt the good intentions of most of the members of this Committee. I also do not doubt their good faith view that racial discrimination many decades in the past somehow reveals itself today in New York’s rental market, though having seen no credible evidence adduced to the Committee to this end, I do not share this view.¹⁶

I object to the report, in total, because I subscribe to the view espoused by Justice Scalia in *Richmond v. J.A. Croson Co.*, which I find applicable and dispositive.¹⁷ Thus, I quote it at length:

The difficulty of overcoming the effects of past discrimination is as nothing compared with the difficulty of eradicating from our society the source of those effects, which is the tendency—fatal to a Nation such as ours—to classify and judge men and women on the basis of their country of origin or the color of their skin. A solution to the first problem that aggravates the second is no solution at all. I share the view expressed by Alexander Bickel that “[t]he lesson of the great decisions of the Supreme Court and the lesson of contemporary history have been the same for at least a generation: discrimination on the basis of race is illegal, immoral, unconstitutional, inherently wrong, and destructive of democratic society.” At least where state or local action is at issue, only a social emergency rising to the level of imminent danger to life and limb—for example, a prison race riot, requiring temporary segregation of inmates—can justify an exception to the principle embodied in the Fourteenth Amendment that “[o]ur Constitution is colorblind, and neither knows nor tolerates classes among citizens.”¹⁸

Despite the clear commands of our Constitution, and the equality principle embedded in the Declaration of Independence, it is true that the Supreme Court has carved out two narrow exceptions that authorize race-based methods for remedial purposes; neither of which is applicable here. It is likewise true that the High Court has sanctioned disparate

¹⁴ U.S. CONST. art. VI, cl. 2 (“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof. . .”). See also *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 324 (2015) (“It is apparent that this Clause creates a rule of decision: Courts ‘shall’ regard the ‘Constitution,’ and all laws ‘made in Pursuance thereof,’ as ‘the supreme Law of the Land.’”).

¹⁵ *Parents Involved*, 551 U.S. at 748 (Thomas, J., concurring).

¹⁶ Cf. *id.* at 756 (Thomas, J., concurring) (“Although racial imbalance can result from *de jure* segregation, it does not necessarily, and the further we get from the era of state-sponsored racial segregation, the less likely it is that racial imbalance has a traceable connection to any prior segregation.”) (internal citations omitted).

¹⁷ 488 U.S. 469 (1989).

¹⁸ *Id.* at 520-21 (Scalia, J., concurring) (internal citations omitted).

impact theory in employment and housing matters, though the continued constitutional viability of this theory remains an open question, given the current composition of the Supreme Court.¹⁹

These heavily litigated and still in contention exceptions notwithstanding, the moral, legal, and political rationale behind the colorblind Constitution remains as relevant and necessary today as when Justice Harlan first promulgated it, particularly as we witness a deeply divided America at war with itself over profoundly divisive and needlessly provocative political experiments, such as the 1619 Project, equity over equality, legitimizing racially fueled rioting, and the toxic pedagogy of critical race theory.²⁰ To double down, as the report does, on the racializing of yet another major facet of American life is at once misguided and reckless and will contribute to the hardening of regressive racial attitudes that were mainstreamed in the aftermath of the tragic death of George Floyd on May 25, 2020.²¹ I cannot be complicit in such an enterprise.

Lastly, I object because the ideologically reasoned report produces policy prescriptions that are, in the main, wrong and evince a Committee less concerned with serving as the USSCCR's "eyes and ears on the ground" and more interested in social engineering. Two

¹⁹ See *Ricci v. DeStefano*, 557 U.S. 557 594 (2009) (Scalia, J., concurring) ("I join the Court's opinion in full, but write separately to observe that its resolution of this dispute merely postpones the evil day on which the Court will have to confront the question: Whether, or to what extent, are the disparate-impact provisions of Title VII of the Civil Rights Act of 1964 consistent with the Constitution's guarantee of equal protection?").

²⁰ See William G. Gale & Darrell M. West, *Is the US headed for another Civil War?*, BROOKINGS INSTITUTE, Sept. 16, 2021, available at <https://www.brookings.edu/blog/fixgov/2021/09/16/is-the-us-headed-for-another-civil-war/> ("A 2021 national survey by pollster John Zogby found a plurality of Americans (46%) believed a future civil war was likely, 43% felt it was unlikely, and 11% were not sure. War seemed more likely for younger people (53%) than older ones (31%), and for those residing in the South (49%) and Central/Great Lakes region (48%) relative to those in the East (39%."); Angelo M. Codevilla, *The Cold Civil War*, CLAREMONT REVIEW OF BOOKS, Spring 2017, available at <https://claremontreviewofbooks.com/the-cold-civil-war/> ("America is in the throes of revolution. The 2016 election and its aftermath reflect the distinction, difference, even enmity that has grown exponentially over the past quarter century between America's ruling class and the rest of the country. During the Civil War, President Lincoln observed that all sides 'pray[ed] to the same God.' They revered, though in clashing ways, the same founders and principles. None doubted that those on the other side were responsible human beings. Today, none of that holds."); Karl Zinsmeister, *The Compound Fractures of Identity Politics*, CITY JOURNAL, Winter 2021, available at <https://www.city-journal.org/fractures-of-identity-politics/> ("What if half the country begins to feel that the other half is eager to deprive them of their rights, has set them beyond the pale?" asks social anthropologist Stanley Kurtz. He notes that liberalism 'arose to prevent murderous civil strife between those who could not agree on ultimate things.' Throw aside those conventions, and 'it won't take long for the social fabric to tear. Once half the country sees itself made out to be bigots without rights . . . civil peace will slip away.' Then we will be 'back to the days before liberty and civil peace, the crowning achievements of our history, the history we've stopped celebrating.'").

²¹ See generally Craig Trainor, *George Floyd and the Rise of Rival Constitution*, QUILLETTE, Sept. 21, 2021, available at <https://quillette.com/2021/09/17/george-floyd-political-violence-and-the-rise-of-the-rival-constitution>.

recommendations illustrate this impulse and the unsettling indifference to the consequences that attend it.

The report recommends that federal policymakers “recognize housing as a human right” and “prohibit crime-free ordinances as discriminatory.” With the former, small landlords would be crushed by an activist legal regime gamed by social justice lawyers who never tire of utilizing courts to expand their conception of rights and entitlements, while larger landlords will simply pass the cost on to market tenants whose tolerance for these forced subsidies will vary with economic conditions. With the latter, law-abiding tenants in high-crime neighborhoods would be victimized by the predations of consequence-free offenders. This calls to mind Justice Clarence Thomas’s observation after the Supreme Court voided a gang loitering ordinance for vagueness in *City of Chicago v. Morales*: “Today, the Court focuses extensively on the ‘rights’ of gang members and their companions. It can safely do so – the people who will have to live with the consequences of today’s opinion do not live in our neighborhoods. Rather, the people who will suffer from our lofty pronouncements are people . . . who have seen their neighborhoods literally destroyed by gangs and violence and drugs. They are good, decent people who must struggle to overcome their desperate situation, against all odds, in order to raise their families, earn a living, and remain good citizens.”²² I cannot endorse these outcomes.

I dissent.

Craig Trainor, New York City

New York Advisory Committee

²² 527 U.S. 41, 114-15 (1999) (Thomas, J., dissenting).

**New York Advisory Committee to the
United States Commission on Civil Rights**



U. S. Commission on Civil Rights

Contact: *Regional Programs Coordination Unit*

U.S. Commission on Civil Rights

230 S. Dearborn, Suite 2120

Chicago, IL 60604

(312) 353-8311

This report is the work of the New York Advisory Committee to the U.S. Commission on Civil Rights. The report, which may rely on studies and data generated by third parties, is not subject to an independent review by Commission staff. State Advisory Committee reports to the Commission are wholly independent and reviewed by Commission staff only for legal and procedural compliance with Commission policies and procedures. State Advisory Committee reports are not subject to Commission approval, fact-checking, or policy changes. The views expressed in this report and the findings and recommendations contained herein are those of a majority of the New York State Advisory Committee members and do not necessarily represent the views of the Commission or its individual members, nor do they represent the policies of the U.S. Government. For more information please contact the Regional Programs Coordination Unit.