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

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

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

History of Landlord Self-Help and the Summary Eviction Process

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

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

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

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

³ See *id.* at 946–47.

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

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

Evictions and the Affordable Housing Crisis

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

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

⁶ Spector, *supra* note 4, at 137.

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

⁸ Spector, *supra* note 4, at 155–56.

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

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

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

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

¹³ *Id.*

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

¹⁵ *Id.*

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

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

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

Illegal Self-Help Evictions and the Pandemic

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

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

¹⁸ *Id.* at 299.

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

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

²¹ *Id.* at 345.

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

²³ *Id.* at 491.

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

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

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

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

Existing Illegal Self-Help Eviction Protections

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

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

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

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

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

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

³¹ *Id.*

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

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

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

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

³³ CDC Order.

³⁴ *Id.*

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

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

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

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

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

H.R. 1451 and Congressional Action

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

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

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

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

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

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

⁴³ Mason, *supra* note 40, at 143.

⁴⁴ CDC Order.

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

⁴⁶ Mason, *supra* note 40, at 155–56.

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

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

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