

20-4238-cv

United States Court of Appeals
for the
Second Circuit

MARCIA MELENDEZ, JARICAN REALTY INC., 1025 PACIFIC
LLC, LING YANG, TOP EAST REALTY LLC, HAIGHT TRADE LLC,
EL IAS BOCHNER, 287 7TH AVENUE REALTY LLC,

Plaintiffs-Appellants,

– v. –

CITY OF NEW YORK, a municipal entity, MAYOR BILL DE BLASIO,
as Mayor of the City of New York, COMMISSIONER LOUISE
CARROLL, Commissioner of New York City Department of Housing
Preservation & Development, COMMISSIONER JONNEL DORIS,
Commissioner of New York City Department of Small Business
Services,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

**AMICUS CURIAE BRIEF OF THE CITIES OF
CHICAGO, SANTA MONICA, AND 17 ADDITIONAL
LOCAL GOVERNMENTS IN SUPPORT OF
DEFENDANTS-APPELLEES**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	3
INTERESTS OF <i>AMICI CURIAE</i>	10
SUMMARY OF ARGUMENT.....	12
ARGUMENT.....	14
I. LOCAL AND STATE TENANT PROTECTIONS PROMOTE THE PUBLIC HEALTH AND ECONOMIC WELFARE	14
A. Tenant Protections Promote Public Health and Safety by Reducing Overcrowding and Ensuring that Residents Have Stable Housing in which to Social Distance	15
B. Tenant Protections Promote Public Health and Safety by Maintaining Economic Welfare.....	19
II. THE RESIDENTIAL ANTI-HARASSMENT LAW DIRECTLY ADVANCES THE SUBSTANTIAL GOVERNMENT INTEREST IN PRESERVING HOUSING STABILITY DURING THE PANDEMIC	24
A. Pre-Pandemic Experiences of Tenant Harassment Demonstrated the Need for the Residential Anti-Harassment Law	26
1. Tenant Harassment Is Frequently Used to Circumvent Rent Regulations that Preserve Housing Stability.....	27
2. Tenant Harassment Disproportionately Affects Vulnerable Communities.....	29
B. The City Correctly Determined that the Residential Anti-Harassment Law Was Needed to Protect Tenants During the Pandemic.....	33
1. Tenant Harassment Has Been Pervasive During the Pandemic, Undermining Housing Stability	33
2. Harassment, in Conjunction with COVID-19, Has Exacerbated Conditions for Vulnerable Tenants in Particular	37
CONCLUSION	42

TABLE OF AUTHORITIES

CASES

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<i>Melendez v. City of New York</i> , No. 20-CV-5301 (RA), 2020 WL 7705633 (S.D.N.Y. Nov. 25, 2020)....	24

STATUTES

City of Los Angeles Municipal Code § 151.02	27
City of Oakland Municipal Code § 8.22.....	27
City of Santa Monica, 1st. Supp. to the Executive Order Declaring a Local Emergency, as revised (initially issued Mar. 14, 2020)	15
City of Santa Monica Municipal Code § 4.56	14
City of Santa Monica Rent Control Law § 1806	27
New York City Administrative Code § 27-2004(a)(48)(f-7)	13
New York Unconsolidated Law § 8621 et seq.....	29
Oregon Revised Statute § 90.323.....	28

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Ally Schweitzer, <i>Eviction Bans Haven't Stopped Landlords From Threatening To Boot Residents</i> , WAMU (June 15, 2020)	37
Allyson E. Gold, <i>No Home for Justice: How Eviction Perpetuates Health Inequity among Low-Income and Minority Tenants</i> , 24 GEO. J. POVERTY L. & POL'Y 70-73 (2016).....	24
Amber Jamieson, <i>Her Landlord Asked To Spend The Night With</i>	

<i>Her After She Lost Her Job And Couldn't Afford Rent</i> , BUZZFEED NEWS (May 14, 2020)	41
Amber Jamieson, <i>Landlords Are Allegedly Asking For Sex From Tenants Who Can't Afford To Pay Rent Right Now</i> , BUZZFEED NEWS (Apr. 15, 2020)	41
Amy Philips, <i>Chicopee Landlord Charged With Sexual Harassment Against Women Tenants</i> , WWLP (Dec. 7, 2020)	32
Amy Schoenfeld Walker, et al., <i>Pandemic's Racial Disparities Persist in Vaccine Rollout</i> , N.Y. TIMES (Mar. 5, 2021)	38
Annie Nova, <i>Millions of Americans May Not be Able to Pay Their Rent in October</i> , CNBC (Oct. 2, 2020).....	21
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Brennon Dixson, <i>City Sues Santa Monica Landlords For Allegedly Fraudulent Behaviors During Pandemic</i> , SANTA MONICA DAILY PRESS (Feb. 5, 2021).....	37
Carlos Ballesteros, <i>Working from Home not an Option for Most Black, Latino Workers During Coronavirus Crisis</i> , CHI. SUN TIMES (Apr. 9, 2020).....	38
Chester Hartman & David Robinson, <i>Evictions: The Hidden Housing Problem</i> , 14 HOUSING POL'Y DEBATE 461, (2003)	30
<i>Coronavirus in the U.S.: Latest Map and Case Count</i> , N.Y. TIMES (Mar. 25, 2021).....	12
<i>COVID-19 Cases in New York City, a Neighborhood-Level Analysis</i> , N.Y.U FURMAN CTR. (Apr. 10, 2020)	18
COVID-19 Hospitalization and Death by Race/Ethnicity, U.S. CTRS. FOR DISEASE CONTROL & PREVENTION (Nov. 30, 2020).....	15
Cynthia Cheng-Wun Weaver & Donna Chiu, <i>43 Essex Street:</i>	

<i>A Case Study in Shutting Down Tenant Harassment and Displacement with Community Organizing and Lawyering</i> , 21 CUNY L. REV. 326 (2018)	29
Dan Krauth, <i>\$1 Billion in Unpaid NYC Rent Due to COVID Pandemic</i> , ABC7 N.Y. (Feb. 22, 2021)	22
Dottie Rosenbaum, <i>Boost SNAP to Capitalize on Program’s Effectiveness and Ability to Respond to Need</i> , CTR. ON BUDGET & POL’Y PRIORITIES (July 18, 2020)	20
Emily Benfer, et al., <i>The Covid-19 Eviction Crisis: An Estimated 30-40 Million People In America Are At Risk</i> , NAT’L LOW INCOME HOUSING COALITION (Aug. 7, 2020)	21
Emma Ockman, <i>Landlords Can’t Evict Their Tenants, So They’re Shutting Off Utilities and Threatening Them Instead</i> , VICE NEWS (May 21, 2020)	35, 39
Eric Coulehan, <i>FBI Warns Against Landlord Sexual Harassment</i> , KTSM (May 27, 2020).....	40
<i>Fair Housing in Jeopardy</i> , National Fair Housing Alliance (2020)	32
<i>Hearing on Intro No. 167-A, Before the Committee on Housing and Building</i> (2008)	28
<i>How to Protect Yourself & Others</i> , CTRS. FOR DISEASE CONTROL AND PREVENTION (2020).....	17
Hua Qian, et al., <i>Indoor Transmission of SARS-CoV2</i> , INDOOR AIR (2020).....	16
Jackie Botts & Lo Bénichou, <i>The Neighborhoods Where COVID Collides with Overcrowded Homes</i> , CALMATTERS (June 26, 2020)	18
Jenna King, <i>Medford Woman Claims Landlord Evicting Her, Violating State Moratorium</i> , KOBI-TV NBC5 (Jan. 1, 2021).....	36
Jennifer Tolbert, <i>What Issues Will Uninsured People Face with Testing and Treatment for COVID-19?</i> , KAISER FAM. FDN. (Mar. 16, 2020).....	21
Joe Atmonavage, <i>N.J. landlord has been accused of sexual harassment by the feds and 4 tenants. He has not been criminally charged</i> , NJ.COM (Nov. 8, 2020)	32

Jonathan Martinez, <i>Humble Woman Claims Landlord Cut off Utilities to Harass Her after She Fell Behind on Rent</i> , CLICK 2 HOUSTON (June 11, 2020)	36
Joseph Llobrera, et al., <i>New Data: Millions Struggling to Eat and Pay Rent</i> , CTR. ON BUDGET & POL’Y PRIORITIES (Sept. 23, 2020)	38
Journal of Proceedings of Chicago City Counsel (June 17, 2020)	14
Justin Sheen, et al., <i>The Effect of Eviction Moratoriums on the Transmission of SARS-CoV-2</i> , medRxiv (Nov. 1 2020)	17
Kate Sablosky Elengold, <i>Structural Subjugation: Theorizing Racialized Sexual Harassment in Housing</i> , 27 YALE J.L. & FEMINISM 227 (2016)	32
Katherine Lucas McKay, et al., <i>20 Million Renters Are at Risk of Eviction; Policymakers Must Act Now to Mitigate Widespread Hardship</i> , ASPEN INST. (June 19, 2020)	22
Kathryn M. Leifheit, et al., <i>Expiring Eviction Moratoriums and COVID-19 Incidence and Mortality</i> (Nov. 30, 2020)	16
Kaya Lurie, et al., <i>Discrimination at the Margins: The Intersectionality of Homelessness & Other Marginalized Groups</i> , HOMELESS RTS. ADV’C PROJECT 8 (2015)	29
<i>Landlords Are Sexually Harassing Tenants By Using Housing Insecurity Fears Created By The Coronavirus Pandemic, According To Reports</i> , INSIDER (Apr. 18, 2020)	40
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Lisa K. Bates, <i>Stability, Equity, and Dignity: Reporting and Reflecting on Oregon Tenant Experiences During the Covid-19</i>	

<i>Pandemic</i> , PORTLAND ST. U. (Sept. 2020)	39
Marisol Cuellar Mejia & Paulette Cha, <i>Overcrowded Housing and COVID-19 Risk Among Essential Workers</i> , PUB. POL'Y INST. OF CAL. (May 12, 2020)	18
Matt Howerton, <i>Fort Worth landlord jailed and sued after cutting grandmother's utilities when she was short on rent</i> , WFAA (May 7, 2020).....	36
Matthew Desmond & Carl Gershenson, <i>Housing and Employment Insecurity Among the Working Poor</i> , 63 SOC. PROBS. 54, 59 (2016)	22
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<i>People Experiencing Homelessness</i> , CTRS. FOR DISEASE CONTROL & PREVENTION (2020).....	19

Prasanna Rajasekaran, et al., <i>Rent Control: What Does the Research Tell Us about the Effectiveness of Local Action?</i> , URBAN INST. (Jan. 2019)	27
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Regina Garcia Cano & Michael Casey, <i>Tenants Behind On Rent In Pandemic Face Harassment, Eviction</i> , AP NEWS (June 14, 2020).....	39
<i>Rent Control Laws by State</i> , NAT'L MULTIFAMILY HOUSING COUNCIL (Sept. 2, 2020)	27
Richard A. Oppel, et al., <i>The Fullest Look Yet at the Racial Inequity of Coronavirus</i> , N.Y. TIMES (July 5, 2020)	15
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Sam Catanzaro, <i>Santa Monica Sues Landlords for Fraud, Intimidation and More</i> , Santa Monica Mirror (Feb. 8, 2021)	37
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Stan Dorn, <i>The COVID-19 Pandemic and Resulting Economic Crash Have Caused the Greatest Health Insurance Losses in American History</i> , FAMILIES USA (July 17, 2020).....	21

Sydney Ember, <i>Unemployment Claims Fall, Fueling Economic Hope</i> , N.Y. TIMES (Mar. 11, 2021)	20
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Tom Waters & Victor Bach, <i>Housing the City of Immigrants</i> , COMMUNITY SERV. SOC'Y (Mar. 2011)	30
<i>Tracking the COVID-19 Recession's Effects on Food, Housing, and Employment Hardships</i> , CTR. ON BUDGET & POL'Y PRIORITIES (Jan. 15, 2021).....	15
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Vicki Been, et al., <i>Laboratories of Regulation: Understanding the Diversity of Rent Regulation Laws</i> , 46 FORDHAM URB. L.J. 1041, 1061 (2019).....	28
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<i>Year of COVID for Renters</i> , METROPOLIS TENANTS ORG. (Feb. 1, 2021).....	35

INTERESTS OF *AMICI CURIAE*

Amici are local governments across the United States that are responsible for the health and well-being of their communities and have been on the frontlines of fighting and mitigating the COVID-19 pandemic.¹ Combined, *amici* comprise over 15.7 million people in 13 states.² *Amici* vary in size and are situated in regions across the country with different political realities. To ensure an effective public health and economic response in support of our residents, local and state governments must be able to adopt and flexibly tailor policies such as tenant anti-harassment laws, eviction moratoriums, and other housing stabilization measures. Accordingly, *amici* have a substantial interest in

¹ Pursuant to Rule 29(a)(4)(E) of the Federal Rules of Appellate Procedure, undersigned *amici curiae* hereby certify that no party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund the preparation or submittal of this brief; and no person—other than *amici curiae*, its members, or its counsel—contributed money that was intended to fund the preparation or submittal of this brief. Pursuant to Federal Rule of Appellate Procedure 29(a) and Circuit Rule 29-1(b), *amici curiae* attest that all parties to this appeal have consented to the filing of this brief.

² *Amici* are the cities of Chicago, Santa Monica, Albuquerque, Austin, Cambridge, Columbus, Dallas, Dayton, Gary, Los Angeles, Oakland, Portland, Sacramento, St. Paul, Seattle, and Somerville, and Milwaukee County, Shelby County, and the Washtenaw County Prosecutor's Office.

the outcome of this litigation.

Many of the *amici* local governments operate hospitals and clinics, run emergency response systems (including EMT departments and ambulance transport), and/or administer public health departments. Local governments engage in COVID-19 testing, contact tracing, vaccination, and public education. Cities and counties regulate the scope and capacity of business operations, social distancing, mask requirements, and other aspects of health and safety. Through these efforts, local governments seek to limit the spread of COVID-19, deliver healthcare to those who need it, and strike a sensible balance between public health precautions and economic activity. Because of these functions, *amici* have a distinct understanding of the crucial importance of housing stabilization provisions, such as the anti-harassment protection at issue here.

Amici also have an important fiscal stake in protecting public health and maintaining tenant protections. Increased incidence of COVID-19 and the short- and long-term downstream effects of eviction, which include homelessness, contact with the criminal justice system,

and employment instability, result in significant costs to local governments that provide services to the most vulnerable. Without eviction moratoriums and other housing stabilization efforts, the need for funding and services will overwhelm *amici*'s budgets, at a time when they are, at best, frozen at prior levels, but more likely shrinking.

Finally, many *amici* are responsible for enforcing local housing codes and ordinances that are designed to ensure that residents live in safe and sanitary conditions, that their civil and human rights are not violated, and that they are protected from unlawful evictions.

SUMMARY OF ARGUMENT

Over 545,305 Americans already have died of COVID-19 and over 30 million have become infected with the virus.³ During this unprecedented and ongoing crisis, local and state governments have been on the frontlines responding to the grave public health and economic impacts of COVID-19 pandemic. Housing security stands at a crucial intersection of health and welfare, and has been integral to the overall

³ *Coronavirus in the U.S.: Latest Map and Case Count*, N.Y. TIMES (Mar. 25, 2021), <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>.

response. More than a year into the pandemic, medical and public health experts now have robust research demonstrating that the emergency measures to preserve housing stability have effectively reduced the spread of COVID-19.

Across America, local and state governments—through a variety of means, including legislative actions, executive orders, and judicial rules—have implemented emergency measures to preserve housing security during some or all of the current pandemic. Restrictions or moratoriums on eviction proceedings have been a crucial policy tool. Tenant harassment protections, such as New York City Administrative Code § 27-2004(a)(48)(f-7) (hereafter, the “Residential Anti-Harassment Law”), serve as another essential measure to ensure that tenants, particularly low-income tenants of color, remain in safe and stable housing during the pandemic, as landlords have repeatedly relied on aggressive and extra-judicial means to pressure tenants to leave.

The Residential Anti-Harassment Law should be upheld by this Court. It does not implicate the First Amendment and, nevertheless, advances substantial governmental interests in housing stability, economic security, and public health. New York City had reason to

believe, based on prior experience with landlords seeking to pressure vulnerable tenants, that pandemic-related restrictions would cause landlords to resort to hostile tactics. Not only was this a reasonable assumption, it has proved to be true in New York City and across the country. *Amici* Local Governments urge this Court to uphold the judgment of the District Court.

ARGUMENT

I. LOCAL AND STATE TENANT PROTECTIONS PROMOTE THE PUBLIC HEALTH AND ECONOMIC WELFARE

New York City’s Residential Anti-Harassment Law, alongside eviction moratoriums and other housing security measures adopted by localities and states across the country,⁴ protects public health and

⁴ For example, Chicago’s eviction moratorium prohibits landlords from issuing a notice of termination of tenancy for failure to pay rent due to a “COVID-19 Impact,” except in conformity with specific procedures for negotiating payment of rent by affected tenants. *Journal of Proceedings of Chicago City Counsel*, pp. 17879-17884 (June 17, 2020). Santa Monica’s eviction moratorium prohibited landlords from, among other things, endeavoring to evict a tenant for nonpayment of rent due to financial impacts related to COVID-19 during specific periods of time. *City of Santa Monica, 1st. Supp. to the Executive Order Declaring a Local Emergency*, as revised (initially issued Mar. 14, 2020). A landlord who in bad faith violates this provision of the eviction moratorium may also be liable under Santa Monica’s Tenant Harassment Ordinance, *City of Santa Monica Mun. Code § 4.56*.

economic security in the face of the COVID-19 pandemic and the subsequent economic downturn. These tenant protections are crucial tools to reduce and mitigate the spread of COVID-19, a virus that has affected all of our communities, and has disproportionately harmed communities of color.⁵

A. Tenant Protections Promote Public Health and Safety by Reducing Overcrowding and Ensuring that Residents Have Stable Housing in which to Social Distance

Due to the nature of the virus, the method of transmission, and the best strategies for mitigation, tenant protections are one of the most effective policies to combat COVID-19.⁶ This highly transmissible virus

⁵ See, e.g., Richard A. Oppel, et al., *The Fullest Look Yet at the Racial Inequity of Coronavirus*, N.Y. TIMES (July 5, 2020), <https://www.nytimes.com/interactive/2020/07/05/us/coronavirus-latinos-african-americans-cdc-data.html>; COVID-19 Hospitalization and Death by Race/Ethnicity, CTRS. FOR DISEASE CONTROL & PREVENTION <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html#footnote01> (last updated Mar. 12, 2021); *Tracking the COVID-19 Recession's Effects on Food, Housing, and Employment Hardships*, CTR. ON BUDGET & POL'Y PRIORITIES (Jan. 15, 2021), <https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-food-housing-and>.

⁶ In one study from November 2020, researchers used the eviction moratoriums instituted between March 13 and April 30 by 43 states and the District of Columbia as a natural experiment. Researchers compared public health outcomes in states where the government lifted moratoriums to those that left them in place. Using regression analysis

spreads through direct person-to-person contact, indirect surface contact, and exposure to infectious droplets and aerosols.⁷ COVID-19 is most commonly transmitted through breathing, coughing, and talking; infected persons emit respiratory plumes that extend approximately five feet.⁸ Indoor environments without sufficient ventilation can further extend this distance.⁹ Consequently, the most effective pandemic mitigation strategies include social distancing, self-quarantining, hand-

to control for other differences among the states, including mask orders, stay at home orders, school closures, and testing rates, the research showed that states that lifted their eviction moratoriums saw 1.6 times as many deaths as ones that left their eviction moratoriums in place seven weeks after lifting their moratoriums. Sixteen weeks after lifting their moratoriums, states saw 2.1 times as many cases and 5.4 times as many deaths. Lifting the eviction moratoriums translated to a total of 433,700 excess cases of COVID-19 and 10,700 excess deaths between March 1 and September 3. Kathryn M. Leifheit, et al., *Expiring Eviction Moratoriums and COVID-19 Incidence and Mortality* (Nov. 30, 2020), <https://ssrn.com/abstract=3739576>.

⁷ National Academies of Sciences, Engineering, & Medicine, AIRBORNE TRANSMISSION OF SARS-CoV-2: PROCEEDINGS OF A WORKSHOP—IN BRIEF, (DC: The National Academic Press) (2020), <https://www.nap.edu/read/25958/chapter/1>.

⁸ Li Liu, et al., *Short-range Airborne Transmission of Expiratory Droplets Between Two People*, 27 INDOOR AIR: INT’L J. OF INDOOR ENV’T & HEALTH 452–462 (2017), <https://onlinelibrary.wiley.com/doi/abs/10.1111/ina.12314>.

⁹ Hua Qian, et al., *Indoor Transmission of SARS-CoV2*, INDOOR AIR (2020) at 1, <https://onlinelibrary.wiley.com/doi/epdf/10.1111/ina.12766>.

washing and other hygiene practices, masking, and limiting or restricting indoor gatherings.¹⁰ Eviction and housing displacement force families into crowded residential environments and homelessness, which increases new contact with others and makes compliance with pandemic health guidelines difficult if not impossible.

Doubling up and residential crowding drive the spread of COVID-19.¹¹ Multiple studies have found that neighborhoods with a higher proportion of overcrowded homes have higher rates of infection, with greater risks especially for the elderly living in close quarters with

¹⁰ *How to Protect Yourself & Others*, CTNS. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html> (last updated Dec. 31, 2020); *Social Distancing Keep a Safe Distance to Slow the Spread*, CTNS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html> (last updated Mar. 8, 2021).

¹¹ Justin Sheen, et al., *The Effect of Eviction Moratoriums on the Transmission of SARS-CoV-2*, MEDRXIV (Nov. 1 2020), <https://www.medrxiv.org/content/10.1101/2020.10.27.20220897v1.full> (modeling the effect of crowding due to evictions and finding that, as applied to Philadelphia, 7,200 additional individuals would have been infected by December 31, 2020 if eviction rates return to pre-pandemic levels); Qifang Bi, et al., *Epidemiology and Transmission of COVID-19 in 391 Cases and 1286 of Their Close Contacts in Shenzhen, China: A Retrospective Cohort Study*, 20 LANCET INFECTIOUS DISEASES 911-919 (2020), [https://www.thelancet.com/journals/laninf/article/PIIS1473-3099\(20\)30287-5/fulltext](https://www.thelancet.com/journals/laninf/article/PIIS1473-3099(20)30287-5/fulltext) (showing that individuals are at particularly high risk of contracting COVID-19 from others in their household).

younger people.¹² Household members cannot effectively socially distance when they share common areas such as restrooms and may even share sleeping quarters. Essential workers in sectors with exposure to the general public, like food service and healthcare, also face disproportionate overcrowding, heightening the risk of overcrowding-related COVID-19 exposure to themselves, their households, and the community.¹³

Homelessness also increases the spread of COVID-19. Crowded spaces and shared facilities are commonplace in homeless shelters. In many cases, people facing homelessness will sleep in cars or outdoors and be forced to use public facilities. In these environments, it is nearly impossible for people experiencing homelessness to take recommended precautions to avoid contracting COVID-19, such as avoiding public

¹² *COVID-19 Cases in New York City, a Neighborhood-Level Analysis*, N.Y.U FURMAN CTR. (Apr. 10, 2020), <https://furmancenter.org/thestoop/entry/covid-19-cases-in-new-york-city-a-neighborhood-level-analysis>; see also Jackie Botts & Lo Bénichou, *The Neighborhoods Where COVID Collides with Overcrowded Homes*, CALMATTERS (updated June 26, 2020), <https://calmatters.org/projects/california-coronavirus-overcrowded-neighborhoods-homes/>.

¹³ Marisol Cuellar Mejia & Paulette Cha, *Overcrowded Housing and COVID-19 Risk Among Essential Workers*, PUB. POL'Y INST. OF CAL. (May 12, 2020), <https://www.ppic.org/blog/overcrowded-housing-and-covid-19-risk-among-essential-workers/>.

spaces and frequent handwashing.¹⁴ Consequently, as individuals experiencing homelessness crowd into shelters without resources to fully implement safe practices, these shelters have become hotspots for community spread, threatening broader public health.¹⁵

B. Tenant Protections Promote Public Health and Safety by Maintaining Economic Welfare

Tenant protections like the Residential Anti-Harassment Law are also essential to maintaining the economic security of New York City residents. The severe harms caused by the nearly unparalleled national economic crisis instigated by the pandemic imperil the public welfare of our communities.

Our residents continue to struggle economically despite signs of hope ahead with the strong pace of vaccination. The U.S. Department of Labor reports that a total of 709,000 workers filed first-time claims for state unemployment benefits in the week that ended March 6, which still

¹⁴ *People Experiencing Homelessness*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/homelessness.html> (last updated Aug. 10, 2020).

¹⁵ *See, e.g.,* Vianna Davila, *Coronavirus Hot Spots in Texas Homeless Shelters Highlight Challenges Unsheltered Residents Face Social Distancing, Staying Clean*, TEX. TRIB. (May 24, 2020), <https://www.texastribune.org/2020/05/24/texas-homeless-shelters-coronavirus-houston-austin-dallas/>.

remains extraordinarily high by historical standards.¹⁶ There are about 9.5 million fewer jobs than there were a year ago, and more than 4 million people have dropped out of the labor force. The national unemployment rate has changed little since October 2020, and for February 2021 remained at 6.2 percent, well above pre-pandemic levels in February 2020 (3.5 percent).¹⁷

Other indicators, such as rising food insecurity, further illustrate the economic peril that so many families across the country are facing. Nationally, enrollment in the federal Supplemental Nutrition Assistance Program has increased by more than six million Americans since the beginning of the crisis.¹⁸ Residents in our communities have lost their health care coverage, which places them at greater risk of further

¹⁶ Sydney Ember, *Unemployment Claims Fall, Fueling Economic Hope*, N.Y. TIMES (Mar. 11, 2021), <https://www.nytimes.com/2021/03/11/business/economy/unemployment-claims-decline.html>.

¹⁷ News Release, *The Unemployment Situation - February 2021*, U. S. DEP'T OF LAB. (Mar. 5, 2021), <https://www.bls.gov/news.release/pdf/empsit.pdf>.

¹⁸ Dottie Rosenbaum, *Boost SNAP to Capitalize on Program's Effectiveness and Ability to Respond to Need*, CTR. ON BUDGET & POL'Y PRIORITIES (July 18, 2020), <https://cbpp.org/research/food-assistance/boost-snap-to-capitalize-on-programs-effectiveness-and-ability-to-respond>.

economic devastation should they fall ill.¹⁹ Uninsured people may also face barriers in seeking medical care, hampering the broader public health response to the COVID-19 pandemic.²⁰

Finally, due to surging unemployment and other economic factors, nearly 1 in 5 of renters nationally reported that they were not current with their rent payments as of March 1, 2021²¹—up from 1 in 6 that were unable to pay their full September rent on time.²² One study estimates that up to 40 million renters nationwide could be at risk of eviction in the coming months²³—up from estimates of around 20 million at risk last

¹⁹ Stan Dorn, *The COVID-19 Pandemic and Resulting Economic Crash Have Caused the Greatest Health Insurance Losses in American History*, FAMILIES USA (July 17, 2020), <https://www.familiesusa.org/resources/the-covid-19-pandemic-and-resulting-economic-crash-have-caused-the-greatest-health-insurance-losses-in-american-history/>.

²⁰ Jennifer Tolbert, *What Issues Will Uninsured People Face with Testing and Treatment for COVID-19?*, KAISER FAM. FDN. (Mar. 16, 2020), <https://www.kff.org/coronavirus-covid-19/fact-sheet/what-issues-will-uninsured-people-face-with-testing-and-treatment-for-covid-19/>.

²¹ Table 1b, *Week 25 Household Pulse Survey*, U.S. CENSUS BUREAU (Mar. 10, 2021), <https://www.census.gov/data/tables/2021/demo/hhp/hhp25.html>.

²² Annie Nova, *Millions of Americans May Not be Able to Pay Their Rent in October. What to Do If You're One of Them*, CNBC (Oct. 2, 2020), <https://www.cnbc.com/2020/10/02/millions-of-americans-may-not-be-able-to-pay-rent-in-october.html>.

²³ Emily Benfer, et al., *The Covid-19 Eviction Crisis: An Estimated 30-40 Million People In America Are At Risk*, NAT'L LOW INCOME HOUSING

June.²⁴ Tenants in New York City are estimated to owe as much as \$1 billion in unpaid rent.²⁵ These issues compound in a vicious cycle: while unemployment can cause difficulty in paying rent, housing insecurity also leads to job loss among low-income workers.²⁶ If left unaddressed, these intersecting crises will only accelerate the economic downturn.

Amici have particularly strong economic interests in keeping people housed during this crisis. Stable housing is associated with maintaining stable employment, which is especially important during a time when so many people are already at risk of losing their jobs and businesses are struggling. Job loss and evictions compromise family savings, which in turn “put[s] pressure on city budgets” by increasing the likelihood that

COALITION (Aug. 7, 2020), [https://nlihc.org/sites/default/files/The Eviction Crisis 080720.pdf](https://nlihc.org/sites/default/files/The_Eviction_Crisis_080720.pdf).

²⁴ Katherine Lucas McKay, et al., *20 Million Renters Are at Risk of Eviction; Policymakers Must Act Now to Mitigate Widespread Hardship*, ASPEN INST. (June 19, 2020), <https://www.aspeninstitute.org/blog-posts/20-million-renters-are-at-risk-of-eviction/>.

²⁵ Dan Krauth, *\$1 Billion in Unpaid NYC Rent Due to COVID Pandemic*, ABC7 N.Y. (Feb. 22, 2021), <https://abc7ny.com/7-on-your-side-investigates-covid-rent-coronavirus-unpaid/10361904/>.

²⁶ Matthew Desmond & Carl Gershenson, *Housing and Employment Insecurity Among the Working Poor*, 63 SOC. PROBS. 54, 59 (2016) (finding that forced moves, including evictions, increase the likelihood of job loss among low-income workers by 15 to 22%).

people turn to public benefits.²⁷ Employers are harmed when workers can no longer continue at a job because of a change in their housing.

Even before the pandemic, studies have found that evictions cause severe and negative health and safety impacts on affected households and their communities, with particularly pernicious effects on low-income communities and communities of color.²⁸ Evictions increase the likelihood of contact with the criminal justice system,²⁹ employment instability,³⁰ maternal hardship and depression,³¹ relocation to higher-

²⁷ See, e.g., Signe-Mary McKernan, et al., *Thriving Residents, Thriving Cities: Family Financial Security Matters for Cities*, URBAN INST. (Apr. 21, 2016), <https://www.urban.org/research/publication/thriving-residents-thriving-cities-family-financial-security-matters-cities>.

²⁸ Matthew Desmond, *Poor Black Women Are Evicted at Alarming Rates, Setting Off a Chain of Hardship*, MACARTHUR FOUND. (Mar. 2014), https://www.macfound.org/media/files/hhm_research_brief_-_poor_black_women_are_evicted_at_alarming_rates.pdf

²⁹ Aaron Gottlieb & Jessica W. Moose, *The Effect of Eviction on Maternal Criminal Justice Involvement*, 4 SOCIUS: SOCIO. RES. DYNAMIC WORLD 6-10 (2018).

³⁰ Matthew Desmond & Rachel T. Kimbro, *Eviction's Fallout: Housing, Hardship, and Health*, 94 SOC. FORCES 310-19 (2015).

³¹ *Id.* at 54-61.

poverty and higher-crime neighborhoods,³² drug use,³³ and poor health, particularly for children exposed to toxins, stress, and other dangerous conditions resulting from homelessness or substandard, overcrowded housing.³⁴

II. THE RESIDENTIAL ANTI-HARASSMENT LAW DIRECTLY ADVANCES THE SUBSTANTIAL GOVERNMENT INTEREST IN PRESERVING HOUSING STABILITY DURING THE PANDEMIC

The Residential Anti-Harassment Law does not violate the First Amendment. As an initial matter, the law simply does not restrict plaintiffs' protected speech. *See Melendez v. City of New York*, No. 20-CV-5301 (RA), 2020 WL 7705633, at *9 (S.D.N.Y. Nov. 25, 2020). Even if the Residential Anti-Harassment Law incidentally implicates speech

³² Matthew Desmond & Tracey Shollenberger, *Forced Displacement from Rental Housing: Prevalence and Neighborhood Consequences*, 52 DEMOGRAPHY 1760-69 (2015).

³³ William Damon, et al., *Residential Eviction Predicts Initiation of or Relapse into Crystal Methamphetamine Use Among People Who Inject Drugs*, 41 J. PUB. HEALTH 38-43 (2018); *see also* Ashley C. Bradford & W. David Bradford, *The Effect of Evictions on Accidental Drug and Alcohol Mortality*, 55 HEALTH SERV. RES. 15-16 (2020).

³⁴ Allyson E. Gold, *No Home for Justice: How Eviction Perpetuates Health Inequity among Low-Income and Minority Tenants*, 24 GEO. J. POVERTY L. & POL'Y 70-73 (2016).

protected by the First Amendment, it should be upheld because the governmental interest in regulating the speech is substantial, the regulation directly advances the governmental interest asserted, and the regulation is not more extensive than is necessary to serve the substantial government interest *See Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York*, 447 U.S. 557, 566 (1980).

New York City has a substantial interest in keeping tenants housed during the pandemic, and the Residential Anti-Harassment Law directly advances that interest by prohibiting landlords from using harassment based on a tenant's actual or perceived status as a person impacted by COVID-19 as a tactic to pressure tenants to move out. Pre-pandemic experience in New York City and cities across the country demonstrate that tenant harassment is common and frequently used to undermine rent regulation and other housing stabilization regimes. In passing the Residential Anti-Harassment Law, New York City grounded its policymaking in this evidence, an understanding of the dynamics and drivers of tenant harassment, and the lived experiences of its residents. The City reasonably expected (and accurately predicted) that tenant harassment would increase during the pandemic as a way to circumvent

eviction moratoriums and other tenant protections that might curtail a landlord's ability to terminate a tenancy.

A. Pre-Pandemic Experiences of Tenant Harassment Demonstrated the Need for the Residential Anti-Harassment Law

Harassment has long been a problem facing tenants, particularly in cities struggling with housing scarcity and affordability. By generating confusion and stress about whether tenants will be required to defend baseless demands and litigation, creating uncomfortable or unsafe living conditions, and making tenants believe that they need to vacate, tenant harassment regularly leads to housing instability as tenants are effectively forced to move from homes they are legally entitled to occupy. Once displaced, low-income tenants often wind up in one of three situations: moving in with friends and family, often in crowded living conditions; bouncing between temporary accommodations or shelters; or houseless on the streets—precisely the outcomes state and local governments are seeking to avoid, especially during the pandemic. Tenant harassment is particularly pernicious because it typically affects the most vulnerable: seniors, the disabled, low-income tenants, and immigrant and low-income families of color.

1. Tenant Harassment Is Frequently Used to Circumvent Rent Regulations that Preserve Housing Stability

Many cities have rent regulation policies designed to keep tenants in their homes and to promote long-term housing stability, particularly for low income tenants.³⁵ These policies typically place limitations on rental increases for certain residential units within a city to maintain existing affordable housing and to limit disruptions, like illegal evictions and displacement, caused by rapid rent increases.³⁶ Rent regulation policies are often paired with just cause policies that limit owners' ability to evict tenants solely for the purposes of rental increases.³⁷ Under many such rent regulation regimes, owners profit from turnover, either because they are then entitled to a rental increase under the rental regulation regime or they can then return regulated units to market rate.³⁸ Because

³⁵ Prasanna Rajasekaran, et al., *Rent Control: What Does the Research Tell Us about the Effectiveness of Local Action?*, URBAN INST. (Jan. 2019), https://www.urban.org/sites/default/files/publication/99646/rent_control_what_does_the_research_tell_us_about_the_effectiveness_of_local_action_1.pdf; *Rent Control Laws by State*, NAT'L MULTIFAMILY HOUSING COUNCIL (Sept. 2, 2020) <https://www.nmhc.org/research-insight/analysis-and-guidance/rent-control-laws-by-state/> (providing state-by-state overview of rent control laws).

³⁶ See, e.g., City of Los Angeles Mun. Code. § 151.02; City of Oakland Mun. Code § 8.22.

³⁷ See, e.g., City of Santa Monica Rent Control Law § 1806.

³⁸ Vicki Been, et al., *Laboratories of Regulation: Understanding the*

of these strong economic pressures, some rent regulation policies limit landlords' ability to increase the rent, even after a tenant leaves.³⁹

Harassment has frequently been used to intimidate or pressure tenants to vacate rent-controlled units.⁴⁰ In New York City, more than 43% of low-income tenants residing in rent-regulated units have reported experiencing one or more types of harassment.⁴¹ Tenants and housing advocates have noted actions such as: badgering tenants at all hours with buy-out offers; initiating unnecessary and disruptive repairs and

Diversity of Rent Regulation Laws, 46 FORDHAM URB. L.J. 1041, 1061 (2019) (“[V]acancy bonuses may encourage landlords to push out existing tenants, so they can replace them and charge higher rents”) (citing two studies of the San Francisco housing market that found higher rates of eviction and turnover in regulated units in areas with unusually high price appreciation).

³⁹ Or. Rev. Stat. § 90.323; N.Y. Unconsol. Law § 8621 *et seq.*

⁴⁰ *See, e.g.,* Been, et al., *supra* note 38 at 1073 (“Harassment aimed at pushing tenants to vacate their units is a risk when market conditions and vacancy bonuses allow regulated landlords to collect higher rents through turnover.”); *Hearing on Intro No. 167-A, Before the Committee on Housing and Building* (2008), <https://legistar.council.nyc.gov/View.ashx?M=F&ID=673077&GUID=658392B2-757D-47B8-AEBB-7808BC06EDB0> (including testimony from numerous tenants, tenant associations, and housing advocates describing the rise in tenant harassment, specifically for the purpose of to deregulating apartments).

⁴¹ Oksana Mironova, *Addressing the Eviction Epidemic - Analysis of 2017 Data*, COMMUNITY SERV. SOC’Y (Sept. 12, 2018), <https://www.cssny.org/news/entry/addressing-the-eviction-epidemic-2017-analysis>.

renovations; repeatedly interrupting or discontinuing essential utilities such as heat, air conditioning, hot water, gas, and electricity; threatening to file or filing frivolous lawsuits; removing tenants' possessions; and taking self-help eviction actions such as obstructing or rekeying doors.⁴² In one example, after ownership of a rent-controlled apartment changed hands, the new landlord brought in “nuisance tenants” who openly smoked in the hallway, blasted music late at night, and allowed their pit bulls to menacingly roam about the property.⁴³

2. Tenant Harassment Disproportionately Affects Vulnerable Communities

Harassment disproportionately affects vulnerable tenants, who are oftentimes at the greatest risk of displacement and homelessness.⁴⁴ As

⁴² Adam Shrier, *No Place Like Home: Tenant Harassment and the Frailty of Housing Court*, CUNY ACAD. WORKS (2016), https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1203&context=gj_etds; Cynthia Cheng-Wun Weaver & Donna Chiu, *43 Essex Street: A Case Study in Shutting Down Tenant Harassment and Displacement with Community Organizing and Lawyering*, 21 CUNY L. REV. 326 (2018).

⁴³ Shrier, *supra* note 42.

⁴⁴ Kaya Lurie, et al., *Discrimination at the Margins: The Intersectionality of Homelessness & Other Marginalized Groups*, HOMELESS RTS. ADV’C PROJECT 8 (2015), <https://digitalcommons.law.seattleu.edu/cgi/viewcontent.cgi?article=1002&context=hrap> (collection of national and jurisdiction specific data showing people of color, women, LGBTQ, veterans, and formerly incarcerated individuals are

an initial matter, Black and Latinx residents are more likely to live in rent-regulated units, which makes them more likely to be affected by targeted harassment to circumvent rental regulations.⁴⁵ Immigrants are also more likely to live in rent-stabilized housing than non-immigrants.⁴⁶ Additionally, harassment often compounds existing biases and prejudices

disproportionately represented in the homeless population); Chester Hartman & David Robinson, *Evictions: The Hidden Housing Problem*, 14 HOUSING POL'Y DEBATE 461, (2003), https://prrac.org/pdf/evictions_the_hidden_housing_problem.pdf (discussing the effects of displacement and the disproportionate impact on the “poor, women, and minorities”); Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 AM. J. SOC. 88 (2012) (finding that people of color, in particular women of color, and households with children have higher rates of eviction).

⁴⁵ For example, 32 percent of New York City tenants in rent-stabilized units were Latinx, compared to 23 percent in market-rate units. *Profile of Rent-Stabilized Units and Tenants in New York City*, N.Y.U. FURMAN CTR. (June 2014), <https://furmancenter.org/files/FurmanCenterFactBriefRentStabilizationJune2014.pdf>. In Berkeley, a 2009 survey found that Black long-term households benefited the most from rent control, compared to the city’s overall population. Berkeley Rent Stabilization Board, *Report on the April-May 2009 Survey of Tenants of Registered Rental Units* (Mar. 15, 2010), [https://www.cityofberkeley.info/uploadedFiles/Rent Stabilization Board /Level 3 - General/Item%206%20-%20Tenant%20Survey%20Report%20-%20FINAL.pdf](https://www.cityofberkeley.info/uploadedFiles/Rent%20Stabilization%20Board/Level%203%20-%20General/Item%206%20-%20Tenant%20Survey%20Report%20-%20FINAL.pdf)

⁴⁶ Tom Waters & Victor Bach, *Housing the City of Immigrants*, COMMUNITY SERV. SOC’Y (Mar. 2011), <https://smhttp-ssl-58547.nexcesscdn.net/nycss/images/uploads/pubs/HousingCityofImmigrantsPolicyBriefMarch2011.pdf.pdf>.

demonstrated against people of color, people with disabilities, LGBTQ people, people receiving housing assistance, and other protected groups.⁴⁷ The City of Oakland, for example, has taken action to protect a 64-year-old disabled senior citizen and monolingual Chinese immigrants from tenant harassment. The city's investigations revealed conduct such as making abusive threats, interrupting utility and mail services, entering units without notice, illegal construction and demolition, filing a series of retaliatory lawsuits, impersonating officials working for the city, and refusing to timely abate unsafe conditions.⁴⁸ The City of Santa Monica

⁴⁷ See, e.g., *Annual Report on Fair Housing*, U.S. DEP'T OF HOUSING & URB. DEV. (Nov. 7, 2014), <https://www.hud.gov/sites/documents/2012-13ANNREPORT.PDF> (finding that the vast majority of all Fair Housing Act complaints filed between 2010-2013 were filed on the basis of race and/or disability, and that 15-23% of all complaints during that time frame were the result of landlord harassment).

⁴⁸ Oakland City Attorney's Office, *Oakland City Attorney Sues Abusive Landlords to Uphold Tenant Rights* (June 30, 2016), <https://www.oaklandcityattorney.org/News/Press%20releases/TPO%20Cases%20June%202016.html> (referencing case of *City of Oakland v. Kilpatrick*, Case No. RG16820040 (Alameda Sup. Ct. June 17, 2016)); Oakland City Attorney's Office, *City Attorney's Neighborhood Law Corps Files Lawsuit Against Landlords Who Illegally Demolished Tenant's Home* (May 9, 2017) <https://www.oaklandcityattorney.org/News/Press%20releases/NLC%20lawsuit%20369%20MacArthur.html> (referencing case of *People of California and City of Oakland v. Oakland Redevelopment Grp.*, Case No. RG17858121 (Alameda Sup. Ct. Apr. 26, 2017)).

filed a lawsuit against a landlord who harassed a mother and her disabled daughter by obstructing wheelchair accessibility and causing their hot water to be shut off in an attempt to force them out of their longtime rent-controlled home.

Women are also particularly vulnerable to harassment in connection with their housing, and evidence shows that sexual harassment of female tenants is a pervasive problem.⁴⁹ Low-income women and women of color are particularly vulnerable.⁵⁰ When faced with the prospect of homelessness, some women feel forced to comply with a landlord's unwanted and illegal sexual demands.⁵¹ Sexual

⁴⁹ Kate Sablosky Elengold, *Structural Subjugation: Theorizing Racialized Sexual Harassment in Housing*, 27 YALE J.L. & FEMINISM 227 (2016).

⁵⁰ Rigel C. Oliveri, *Sexual Harassment of Low-Income Women in Housing: Pilot Study Results*, 83 MO. L. REV. 597 (2018).

⁵¹ *Fair Housing in Jeopardy*, NAT'L FAIR HOUSING ALLIANCE (2020), <https://nationalfairhousing.org/wp-content/uploads/2020/09/NFHA-2020-Fair-Housing-Trends-Report.pdf>; Joe Atmonavage, *N.J. landlord has been accused of sexual harassment by the feds and 4 tenants. He has not been criminally charged*, NJ.COM (Nov. 8, 2020), <https://www.nj.com/news/2020/11/nj-landlord-has-been-accused-of-sexual-harassment-by-the-feds-and-4-tenants-he-has-not-been-criminally-charged.html> (reporting landlord who allegedly coerced sexual favors from tenants in exchange for rent); Amy Philips, *Chicopee Landlord Charged With Sexual Harassment Against Women Tenants*, WWLP (Dec. 7, 2020), <https://www.wwlp.com/news/chicopee-landlord->

harassment by landlords can result in displacement as tenants vacate their rental units to avoid this hostile and unwanted behavior.⁵²

B. The City Correctly Determined that the Residential Anti-Harassment Law Was Needed to Protect Tenants During the Pandemic

Steeped with the understanding of how tenant harassment often works to undermine regulations that are intended to preserve housing stability, the City Council correctly anticipated that the pandemic would exacerbate tenant harassment and lead to more tenant displacement. The City Council enacted the Residential Anti-Harassment Law to protect against this pandemic-induced displacement by barring landlord actions that would reasonably cause the tenant to vacate the property or waive their legitimate tenant rights. Appellees' Br. at 40. Indeed, across the nation, the evidence is overwhelming that tenant harassment has grown during the pandemic and that it has particularly affected tenants vulnerable to displacement.

1. Tenant Harassment Has Been Pervasive During the Pandemic, Undermining Housing Stability

[charged-with-sexual-harassment-against-women-tenants/](#) (describing U.S. Attorney's office lawsuit against landlord who coerced sexual favors from tenants in exchange for rent, and threatened tenants who resisted his unwelcome sexual harassment).

⁵² Oliveri, *supra* note 50, at 616.

The City Council’s concerns about tenant harassment in response to the restrictions imposed by eviction moratoriums have been borne out throughout the past year. To oust tenants protected under eviction moratoriums, landlords have, among other things, filed frivolous lawsuits, discontinued utilities, and changed locks in efforts to effectively force tenants to vacate across the country.

The evidence indicates a widespread pattern. A survey of 460 renters in Oregon conducted in July 2020 revealed that 22% of tenants had experienced hostile, harassing, or threatening behavior from landlords or property managers during the pandemic.⁵³ During the past year, the Santa Monica City Attorney’s Office has received 84 tenant harassment complaints and an additional 63 complaints related to the eviction moratorium. In a number of states, legal aid attorneys have noted a rise in so-called “self-help” evictions since the beginning of the pandemic.⁵⁴ The Metropolis Tenants Organization in Chicago reported

⁵³ Lisa K. Bates, *Stability, Equity and Dignity: Reporting and Reflecting on Oregon Tenant Experiences During the Covid-19 Pandemic*, PORTLAND ST. HOMELESSNESS RES. & ACTION COLLABORATIVE (Sept. 2020), <https://www.pdx.edu/homelessness/sites/g/files/znldhr1791/files/2020-09/Renters%20in%20Covid-Oregon%20summer%202020.pdf>.

⁵⁴ See Emma Ockman, *Landlords Can’t Evict Their Tenants, So They’re*

that the number of calls they received from tenants about lockouts more than doubled since the pandemic began.⁵⁵

There are also countless examples of this unlawful and abusive conduct by landlords. In Los Angeles, when one tenant tested positive for COVID-19, he received a letter from his landlord saying that he was being evicted for being a “nuisance” as other tenants in the complex did not feel safe living around a COVID-19 positive person.⁵⁶ In Virginia, a tenant was forced to vacate after their electricity was discontinued, which prevented use of their breathing machine.⁵⁷ In Cincinnati, one landlord pestered city officials on a near daily basis to cut off utilities to a home with a special needs child dependent on consistent water access. Landlords have also threatened to file, or filed, complaints with child

Shutting Off Utilities and Threatening Them Instead, VICE NEWS (May 21, 2020), <https://www.vice.com/en/article/889akg/landlords-cant-evict-their-tenants-so-theyre-shutting-off-utilities-and-threatening-them-instead>.

⁵⁵ *Year of COVID for Renters*, METROPOLIS TENANTS ORG. (Feb. 1, 2021), <https://www.tenants-rights.org/year-of-covid-for-renters/>.

⁵⁶ Leticia Miranda, *Landlords Could Exploit COVID-19 Victims To Fast-track Evictions, Housing Advocates Say*, NBC NEWS (Aug. 13, 2020), <https://www.nbcnews.com/business/business-news/landlords-could-exploit-covid-19-victims-fast-track-evictions-housing-n1234220>.

⁵⁷ Ockman, *supra* note 54.

protective services just because tenants were behind on rent.⁵⁸ Tenant harassment has been observed in states and cities across the country.⁵⁹

In many instances, landlords have made patently false claims to pressure tenants into leaving. Despite policies protecting tenants from

⁵⁸ 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> (describing landlord filing complaint with child protective services alleging that the home was unsafe for the four children); Matt Howerton, *Fort Worth landlord jailed and sued after cutting grandmother's utilities when she was short on rent*, WFAA (May 7, 2020), <https://www.wfaa.com/article/news/landlord-jailed-and-sued-after-cutting-grandmothers-utilities-when-she-was-short-on-rent/287-368ddc5e-f070-4343-bda3-295f8b238a41> (describing landlord threatening to call child protective services to take away tenant's grandchildren after the tenant was unable to pay rent).

⁵⁹ See, e.g., *State of Minnesota v. Greg Taylor*, No. 42-CV-20-540 (Minn. Lyon Dist. Ct. Jul. 6, 2020) (alleging landlord cut off tenant's electricity and locked the apartment doors due to tenant's inability to pay rent, forcing tenant to shelter elsewhere); Jenna King, *Medford Woman Claims Landlord Evicting Her, Violating State Moratorium*, KOBI-TV NBC5 (Jan. 1, 2021), <https://kobi5.com/news/medford-woman-claims-landlord-evicting-her-violating-state-moratorium-143204/> (reporting that a Medford, Oregon landlord began cutting a hole in tenant's wall and cutting turning off power after tenant did not pay rent due to pandemic-related job loss); Jonathan Martinez, *Humble Woman Claims Landlord Cut off Utilities to Harass Her after She Fell Behind on Rent*, CLICK 2 HOUSTON (June 11, 2020), <https://www.click2houston.com/news/local/2020/06/12/humble-woman-claims-landlord-cut-off-utilities-to-harass-her-after-she-fell-behind-on-rent/> (reporting that a Houston area tenant had her water and other utilities cut off for two weeks after she began falling behind on rent).

eviction for nonpayment of rent, landlords have sent letters threatening tenants with eviction if they fail to pay rent.⁶⁰ The City of Santa Monica sued a landlord under the city's tenant protection laws for falsely informing tenants that the city had approved a construction plan that required them to relocate.⁶¹ The landlord also baselessly represented that the tenants' refusal to temporarily relocate would constitute a nuisance.⁶²

2. Harassment, in Conjunction with COVID-19, Has Exacerbated Conditions for Vulnerable Tenants in Particular

The disparate impact of the pandemic on Black, Latinx, and indigenous communities cannot be overstated. From the number of cases,

⁶⁰ Ally Schweitzer, *Eviction Bans Haven't Stopped Landlords From Threatening To Boot Residents*, WAMU (June 15, 2020), <https://wamu.org/story/20/06/15/eviction-bans-havent-stopped-landlords-from-threatening-to-boot-residents/> (reporting that landlords across the Washington, D.C.-area have sent pay or quit notices, or letters that mislead tenants into believing eviction is imminent despite the nationwide moratorium).

⁶¹ Brennon Dixon, *City Sues Santa Monica Landlords For Allegedly Fraudulent Behaviors During Pandemic*, SANTA MONICA DAILY PRESS (Feb. 5, 2021), <https://www.smdp.com/city-sues-santa-monica-landlords-fraudulent-behaviors-during-pandemic/201644>.

⁶² Sam Catanzaro, *Santa Monica Sues Landlords for Fraud, Intimidation and More*, SANTA MONICA MIRROR (Feb. 8, 2021), <https://smmirror.com/2021/02/santa-monica-sues-landlords-for-fraud-intimidation-and-more/>.

to deaths, to vaccinations, all of the available data show that these communities have been disproportionately harmed by COVID-19.⁶³ Black and Latinx families have also been disproportionately harmed by the economic downturn.⁶⁴ Many Black and Latinx individuals work in jobs deemed essential without adequate safety precautions, which has placed them at greater risk of exposure to the virus. Compared to white renters, twice the number of adult Black and Latinx renters express doubts about their ability to pay rent on time.⁶⁵

In light of these economic realities, Black and Latinx families are

⁶³ See, e.g., Samantha Artiga, et al., *Racial Disparities in COVID-19: Key Findings from Available Data and Analysis*, KAISER FAM. FOUND. (Aug. 17, 2020), <https://www.kff.org/racial-equity-and-health-policy/issue-brief/racial-disparities-covid-19-key-findings-available-data-analysis/>; Amy Schoenfeld Walker, et al., *Pandemic's Racial Disparities Persist in Vaccine Rollout*, N.Y. TIMES (Mar. 5, 2021), <https://www.nytimes.com/interactive/2021/03/05/us/vaccine-racial-disparities.html>.

⁶⁴ See, e.g., Carlos Ballesteros, *Working from Home not an Option for Most Black, Latino Workers During Coronavirus Crisis*, CHI. SUN TIMES (Apr. 9, 2020), <https://chicago.suntimes.com/coronavirus/2020/4/9/21212043/coronavirus-covid-19-racial-disparity-black-latino-workers-work-from-home>.

⁶⁵ Joseph Llobrera, et al., *New Data: Millions Struggling to Eat and Pay Rent*, CTR. ON BUDGET & POL'Y PRIORITIES (Sept. 23, 2020), <https://www.cbpp.org/research/poverty-and-inequality/new-data-millions-struggling-to-eat-and-pay-rent>.

particularly vulnerable to harassment from landlords for non- or incomplete payment of rent. In a Portland State University study, 22% of Oregon renters reported “hostile, harassing, or threatening behavior from landlords,” with the number increasing to 32% for tenants who identified as Black or Indigenous.⁶⁶ This data is supported by reports of landlords using harassment to target vulnerable tenants during the pandemic. In Aurora, Colorado, a landlord threatened to send a tenant with a prior criminal record back to jail because of past-due rent.⁶⁷ The tenant subsequently moved into a motel to avoid future court proceedings and an eviction record. In other cases, owners have threatened to involve immigration enforcement.⁶⁸ For example, the Massachusetts Attorney General filed suit against a landlord who allegedly threatened to report

⁶⁶ Lisa K. Bates, *Stability, Equity, and Dignity: Reporting and Reflecting on Oregon Tenant Experiences During the Covid-19 Pandemic*, PORTLAND ST. U. (Sept. 2020), <https://www.pdx.edu/homelessness/sites/g/files/znldhr1791/files/2020-09/Renters%20in%20Covid-Oregon%20summer%202020.pdf>.

⁶⁷ Public Rights Project learned of this example through outreach to Carey DeGenaro of COVID-19 Eviction Defense Project, a housing advocate partner.

⁶⁸ Regina Garcia Cano & Michael Casey, *Tenants Behind On Rent In Pandemic Face Harassment, Eviction*, AP NEWS (June 14, 2020), <https://apnews.com/article/c6750e33fe7c51f6994eb305acd90409;> Ockman, *supra* note 46.

tenants to Immigration and Customs Enforcement after they complained about unsafe living conditions such as pest infestations and broken windows.⁶⁹

The pandemic has also exacerbated the problem of sexual harassment as the power gap between landlords and tenants widens due to challenging economic conditions. Open Communities, a Chicago-based housing advocacy nonprofit, saw a 300% increase in the number reported cases of sexual harassment complaints in housing over the course of March 2020.⁷⁰ According to federal enforcers, landlords have been emboldened to engage in such behavior because of their tenants' perilous (actual or believed) financial situation.⁷¹ Indeed, reports have shown that

⁶⁹ See Complaint, *Commonwealth of Massachusetts v. She Ling Wang*, No. 2177CV00309 (Mass. Super. Ct., Essex Cnty. Mar. 16, 2021).

⁷⁰ Conner Perrett, *Landlords Are Sexually Harassing Tenants By Using Housing Insecurity Fears Created By The Coronavirus Pandemic, According To Reports*, INSIDER (Apr. 18, 2020), <https://www.insider.com/landlords-are-using-covid-19-fear-to-sexually-harass-tenants-2020-4>.

⁷¹ See e.g., *U.S. Attorney Increases Efforts to Combat Sexual Harassment in Housing During the COVID-19 Pandemic*, U.S. ATTORNEY'S OFF., D.C. (May 5, 2020), <https://www.justice.gov/usao-dc/pr/us-attorney-increases-efforts-combat-sexual-harassment-housing-during-covid-19-pandemic>; Eric Coulehan, *FBI Warns Against Landlord Sexual Harassment*, KTSM (May 27, 2020), <https://www.ktsm.com/crime/fbi-warns-against-landlord-sexual-harassment/>.

some landlords have exploited their tenant's economic vulnerability by pressuring tenants for sex when they can no longer afford to pay rent.⁷² The scale is unprecedented. Khara Jabola-Carolus, Executive Director of Hawaii's State Commission on the Status of Women, stated that she saw more cases alleging that landlords sexually harassed tenants filed in two days early in the pandemic than in the prior two years.⁷³

* * * *

The pattern is clear. In New York City and jurisdictions throughout the country, tenants are struggling to pay rent and stay housed during the pandemic. Anti-harassment protections are essential to addressing these challenges by protecting both tenants and the public health and by ensuring the efficacy of ongoing housing stabilization measures such as eviction moratoriums.

⁷² Amber Jamieson, *Her Landlord Asked To Spend The Night With Her After She Lost Her Job And Couldn't Afford Rent*, BUZZFEED NEWS (May 14, 2020), <https://www.buzzfeednews.com/article/amberjamieson/renter-sexually-harassed-by-landlord-during-coronavirus>.

⁷³ Amber Jamieson, *Landlords Are Allegedly Asking For Sex From Tenants Who Can't Afford To Pay Rent Right Now*, BUZZFEED NEWS (Apr. 15, 2020), <https://www.buzzfeednews.com/article/amberjamieson/landlords-sexual-harassment-coronavirus?bfsource=relatedmanual>.

CONCLUSION

For all of the foregoing reasons, the judgment of the District Court should be affirmed.

Respectfully submitted,

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