

Maine Equal Justice

People Policy Solutions

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**Testimony of Frank D'Alessandro,
Maine Equal Justice
In support of LD 330 "An Act to Ensure Legal
Representation for Residents Facing Eviction"
February 16, 2023**

Good morning, Senator Carney, Representative Moonen, and distinguished members of the Committee on Judiciary. My name is Frank D'Alessandro, and I am the Legal Services Director of Maine Equal Justice. We are a civil legal services organization, and we work with and for people with low income seeking solutions to poverty through policy, education, and legal representation. Thank you for the opportunity to offer written testimony in support of LD 330.

Maine Equal Justice supports LD 330 because evictions have enormous negative primary and secondary effects on those evicted and on the surrounding community. Furthermore, as numerous reports and sets of data unanimously endorse the right to counsel for those facing eviction, it is imperative that Mainers have a right to counsel for evictions. Mainers should not face the prospect of being thrown out from their homes without counsel to help them through the process, especially when landlords are represented by attorneys over 80% of the time.¹ Our state is in a serious housing crisis, rents continue to increase, and the infrastructure and money that has been supporting many of our state's most vulnerable is coming to an end. All of this indicates that a mass eviction crisis is at our doorstep.² This bill would help mitigate that crisis and would ensure that all Mainers have a chance to meaningfully defend themselves against homelessness. "Eviction is a gender justice issue. It is a racial justice issue. It is an economic justice issue. It is a

¹ ACLU, NO EVICTION WITHOUT REPRESENTATION 3 (2022) (Hereinafter ACLU, NO EVICTION).

² This crisis may already be happening as the mass layoffs at Abbott are likely to lead to numerous evictions. See Edward D. Murphy, *Abbott Labs Laying Off Most Temporary Workers in Westbrook*, THE PORTLAND PRESS HERALD (Feb. 2, 2023), <https://www.pressherald.com/2023/02/02/abbott-labs-laying-off-most-temporary-workers-in-westbrook/>.

children's rights issue. And it is a civil liberties issue."³

What This Bill Does

As amended this bill does three things that will assist tenants in to be able to access legal representation when facing eviction:

1. It requires that a form notice be attached to a notice to quit to advise the tenant on how to access legal representation.
2. It provides that a summons and complaint needs to be served at least 14 days before the court return date to allow tenants greater time to obtain legal representation.
3. It requires judges to announce the availability of legal representation on the eviction return date.

Why Maine Equal Justice Supports LD

The current state of eviction proceedings.

Nationally, only 3% of renters are represented in eviction proceedings while landlords are represented 81%, and when a renter does not have representation they are often unable to “make legal arguments, raise applicable defenses, respond to or raise objections, introduce evidence, preserve issues for appeal, or navigate the procedural obstacles of litigation.”⁴ When renter's have no representation and so are unable to properly defend themselves, they become more likely to default. Landlords are aware of this “imbalance” and for that reason they are more likely to “file meritless eviction cases” against tenants who do not have representation than those that do have representation.⁵ When a renter defaults in an eviction case, an eviction judgment is entered which then puts them on a tenant blacklist. This can cause problems from homelessness to death.⁶ As Supreme Court Justice William Douglass wrote, “Default judgments in eviction proceedings are obtained in machinegun rapidity, since the indigent cannot afford counsel to defend.”⁷

In addition to the issues in court that arise from not having representation, not having representation also supports the “eviction machine” that suppresses and destroys tenant's fundamental rights.⁸ A fundamental right in any court hearing is that anyone being brought to court must be properly notified that they must go to court. However, in 2018, a study in New York City found that every year thousands of tenants were not served or were improperly served

³ Liel Sterling & Maria Roumiantseva, *New Report Illustrates How Right to Counsel Prevents Evictions and their Discriminatory Impacts on Communities*, ACLU (May 11, 2022), <https://www.aclu.org/news/womens-rights/new-report-illustrates-how-right-to-counsel-prevents-evictions-and-their-discriminatory-impacts-on-communities>.

⁴ ACLU, *NO EVICTION*, *supra* note 1, at 3.

⁵ Sandra Park & John Polluck, *Tenants' Right to Counsel is Critical to Fight Mass Evictions and Advance Race Equity During the Pandemic and Beyond*, ACLU (Jan. 12, 2021), <https://www.aclu.org/news/racial-justice/tenants-right-to-counsel-is-critical-to-fight-mass-evictions-and-advance-race-equity-during-the-pandemic-and-beyond>.

⁶ *Id.*, see also Ericka Petersen, *Building a House for Gideon: The Right to Counsel in Evictions*, 16 STAN. J. C.R. & C.L. 63, 68-69 (2020) (“Inadequate housing can touch every facet of life. It can increase the risk of chronic illness, infectious disease, physical and sexual assaults, and even death.”).

⁷ *Williams v. Shaffer*, 385 U.S. 1037, 1040 (1967) (Douglas, J., dissenting), *denying cert. to* 149 S.E.2d 668 (1966).

⁸ Kim Barker et al., *The Eviction Machine Churning Through New York City*, N.Y. TIMES (May 20, 2018), <https://www.nytimes.com/interactive/2018/05/20/nyregion/nyc-affordable-housing.html>.

with notice of eviction hearings.⁹ Furthermore, courts are required to make appropriate accommodations so that individuals can be present for their hearings. Eviction proceedings in Maine are all done on specific days of the month, and so many times tenants without representation are “forced to choose between going to housing court and going to work—a decision with negative ramifications no matter the choice.”¹⁰ Compare this to landlords who in the vast majority of cases do not have to be present at the court hearings because they are represented. The current “eviction machine” is fundamentally unjust.

Evictions are on an unprecedented rise in Maine.

When the COVID-19 pandemic began in 2020, in Maine, the number of evictions actions filed decreased dramatically. But by the end of 2021 and 2022 the number of filed evictions increased at an unprecedented rate and that trend has no end in sight. According to public data from the Maine Judicial Branch, from 2008 to 2019 the average number of evictions filed across the state was around 5,552 per year. In that time the greatest increase or decrease from year to year was from 2018 to 2019—a 12.1% decrease—and from 2010 to 2011—a 8.4% increase. By the end of 2022, Maine had nearly met its pre-pandemic levels of eviction filings with 4,965 evictions filed. More worrying, the last two years have seen the greatest increases in filed evictions ever seen in the state’s history. In 2021, filed evictions rose 21% and in 2022 it rose another 27%. In other words, after 2020, when a moratorium on evictions was struck down by the Supreme Court, the number of yearly evictions filed has increased by 1,762 or 55%.¹¹

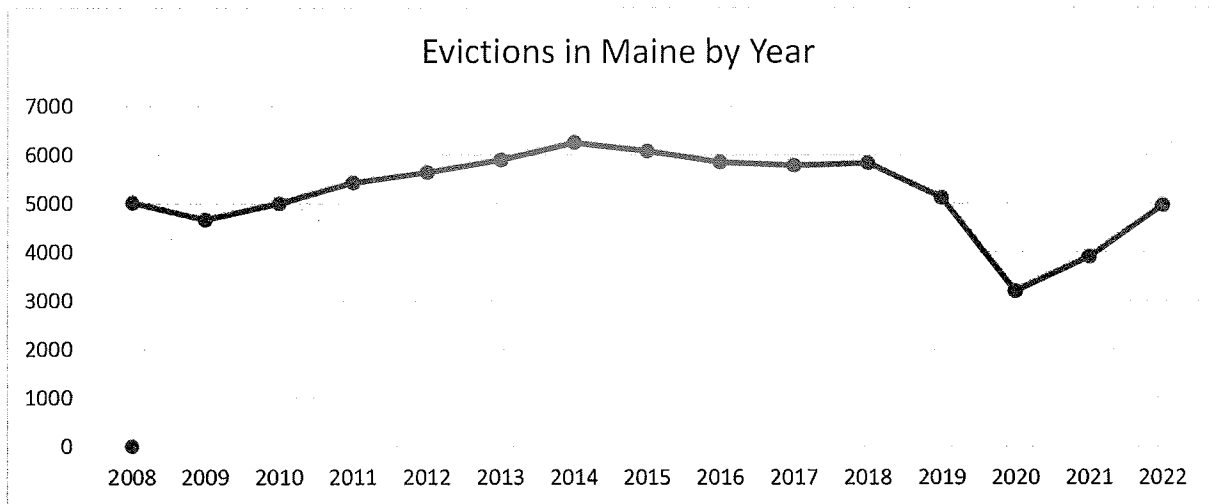


Figure 1

With the end of rental assistance, with average rents increasing more than 14% year to year,¹² with housing prices soaring, and with the seventh highest in-migration in the country between

⁹ *Id.*

¹⁰ Vamsi A. Damerla, *The Right to Counsel in Eviction Proceedings: A Fundamental Rights Approach*, 6 Colum. Hum. Rts. L. Rev. Online 355, 384 (2022) <https://hrlr.law.columbia.edu/hrlr-online/the-right-to-counsel-in-eviction-proceedings-a-fundamental-rights-approach/>.

¹¹ See Figure 1. Data from Maine Judicial Branch, <https://www.courts.maine.gov/help/eviction/index.html>.

¹² Lily Katz & Tim Ellis, *Rental Market Tracker: Rents Rise 14% in December—Biggest Jump in Over Two Years*, REDFIN NEWS (Jan 21, 2022), <https://www.redfin.com/news/redfin-rental-report-december-2021/>.

April 2020 and July 2022,¹³ the eviction crisis we are in is only going to get worse. From 2001 to 2018, “renter incomes grew by 0.5 percent” while “rents increased by 13 percent.”¹⁴ The end of rental assistance and the unbridled rises in rental costs has led to at least 41% of tenants in Maine being “cost-burdened” (spending more than one-third of their gross income on rent) and 20% being “severely” cost-burdened (spending more than half of their income on rent).¹⁵ As of 2022, nationwide, at least 20% of renters are currently behind on payments.¹⁶ Add to this that Maine is somewhere between 20,000 and 25,000 housing units short,¹⁷ and that nationally there is “less housing available for rent and sale than at any time in 30 years,”¹⁸ and what we are left with is a recipe for disaster. The unprecedented rise in eviction filings are only likely to increase, and so it is the perfect time to ensure all Mainer’s receive representation in such a crisis.

Evictions trap people in poverty

Evictions are undisputedly a key contributor to trapping individuals and families in poverty. First, evictions make it remarkably difficult to maintain steady employment because evictions tend to be followed by a lack of stable housing. In Wisconsin, evictions led to a 20% increase in job loss, and in a 2-year period 42% of those laid off had been evicted.¹⁹ Second, because of tenant blacklists and because evictions can disqualify an individual from a variety of subsidized options, having just one eviction can lead an individual or family to remain unhoused. This is particularly of concern for renters with disabilities because of “a lack of accessible shelter options.”²⁰ A New York City study found that someone who is evicted is 16% more likely to apply for shelter the following two years, compared to just 3.4% for non-evicted individuals. Once unhoused, individuals experience significantly higher rates of poor physical, poor mental health, and mortality,²¹ unhoused people are twice as likely to visit the ER,²² and student attendance and learning are extremely hindered.²³

¹³ Jenna Russell, *In Maine, a Rare Influx of New Residents, and a Housing Crunch*, N.Y. TIMES (Feb. 3, 2023), <https://www.nytimes.com/2023/02/03/us/maine-population-housing.html>.

¹⁴ SAMMI AIBINDER & LINDSAY OWENS, THE ROOSEVELT INSTITUTE, NO ROOM FOR RENT: ADDRESSING RISING RENT PRICES THROUGH PUBLIC INVESTMENT AND PUBLIC POWER 3 (2021), <https://rooseveltinstitute.org/publications/no-room-for-rent-addressing-rising-rent-prices-through-public-investment-and-public-power/>.

¹⁵ Lucas Dufalia, *Nearly half of all Maine tenants cannot afford rent, new study says*, THE PORTLAND PRESS HERALD (June 24, 2022), <https://www.pressherald.com/2022/06/23/nearly-half-of-all-mainers-cannot-afford-rent-new-study-says/> (citing JOINT CENTER FOR HOUSING STUDIES OF HARVARD, THE STATE OF THE NATION’S HOUSING (2022)).

¹⁶ ACLU, NO EVICTION, *supra* note 1, at 1 (citing U.S. Census Bureau, Source: U.S. Census Bureau Household Pulse Survey, Week 42 (2022), https://www2.census.gov/programs-surveys/demo/tables/hhp/2022/wk42/housing1b_week42.xlsx).

¹⁷ *Id.*

¹⁸ JIM PARROT & MARK ZANDI, URBAN INSTITUTE & MOODY’S ANALYTICS, OVERCOMING THE NATION’S DAUNTING HOUSING SUPPLY SHORTAGE 1 (March 2021), <https://www.moodyanalytics.com/-/media/article/2021/Overcoming-the-Nations-Housing-Supply-Shortage.pdf>

¹⁹ ACLU, NO EVICTION, *supra* note 1, at 3.

²⁰ SAMMI AIBINDER, *supra* note 14, at 3.

²¹ Lauren A. Taylor, *Housing and Health: An Overview of the Literature*, HEALTHAFFAIRS (June 7, 2018), <https://www.healthaffairs.org/doi/10.1377/hpb20180313.396577/> (There are numerous reports regarding health effects of evictions and homelessness in this article).

²² ACLU, NO EVICTION, *supra* note 1, at 4.

²³ *Id.*

Evictions themselves have also been linked directly to a number of health and social effects. When a pregnant woman is evicted, there is an increase in adverse birth outcomes and a reduction in infant weight and gestational age at birth.²⁴ When mothers are evicted with children, they are more likely to suffer material hardship, depression, and parenting stress.²⁵ Even years after eviction “mothers are more likely to be depressed, and report feeling less happy, energetic, and optimistic than their peers.”²⁶ Evictions increase family violence.²⁷ There is a significant association between county level eviction rates and rates of sexually transmitted infections like Chlamydia and Gonorrhea.²⁸ Evictions have been linked to psychological trauma and have been identified “as a risk factor for suicide.”²⁹ Those evicted have 63% higher odds of losing Medicaid coverage, and getting prescriptions filled or storing prescriptions becomes extremely difficult.³⁰ Furthermore, for eviction filings that do not lead to evictions, it is estimated that it cost renters \$180 in fines and fees.³¹ This effectively raises the cost of the rent by 20% in most places.

Evictions effect Communities of Color and Women disproportionality

Evictions are a racial justice and gender issue because evictions disproportionately effect people of color, women, and women of color. Black and Latino/a people “are more likely to be renters across income levels and are disproportionately represented in jobs with low wages, compounding the damage of these rental unaffordability trends.”³² For example, in 2019, while white households were renters 28% of the time, Black households were renters 58% and Latino/a were 54%.³³ Black and Latino/a families are twice as likely as their white counterparts to have little to no ability to make rent each month.³⁴ Nationally, Black individuals constituted almost 20% of all adult renters but were nearly 33% of all eviction filings,³⁵ and four out of every five black renter lives in a county where landlords disproportionality file evictions against Blacks.³⁶ Black renters face serial eviction filings (eviction filed repeatedly against the renter at the same address) at a rate of 14.9% , Latino/a have a rate of 13.2%, and Asians have a rate of 11.8%. All the while whites only have a rate of 9.8% rate.³⁷ In general, women are nearly 16% more likely to be evicted than men.³⁸ But, in particular, Black women are twice as likely then white women to have an eviction filed against them,³⁹ they are more likely to have an eviction filed against them

²⁴ *Id.* at 6.

²⁵ *Id.*

²⁶ Ericka Petersen, *Building a House for Gideon: The Right to Counsel in Evictions*, 16 STAN. J. C.R. & C.L. 63, 69 (2020).

²⁷ ACLU, NO EVICTION, *supra* note 1, at 6.

²⁸ *Id.*

²⁹ Matthew Desmond et al., *Evicting Children*, 92 SOCIAL FORCES 303, 303 (2013).

³⁰ ACLU, NO EVICTION, *supra* note 1, at 6; THE NETWORK FOR PUBLIC HEALTH LAW, THE PUBLIC HEALTH IMPLICATIONS OF HOUSING INSTABILITY, EVICTION, AND HOMELESSNESS (2021), <https://www.networkforphl.org/wp-content/uploads/2021/04/Fact-Sheet-Public-Health-Implications-of-Housing-Instability-Eviction-and-Homelessness.pdf>.

³¹ Peter Hepburn et al., *Racial and Gender Disparities Among Evicted Americans*, 7 SOCIAL SCIENCE 649, 659 (Dec. 16, 2020), <https://sociologicalscience.com/articles-v7-27-649/>.

³² SAMMI AIBINDER, *supra* note 14, at 3.

³³ *Id.*

³⁴ Sandra Park, *supra* note 5.

³⁵ Peter Hepburn et al., *supra* note 31, at 653.

³⁶ ACLU, NO EVICTION, *supra* note 1, at 7.

³⁷ Peter Hepburn et al., *supra* note 31, at 657-58

³⁸ *Id.* at 655.

³⁹ Sandra Park, *supra* note 5.

that is dismissed, and they are the group most harmed by the current tenant screening policies that blacklist an individual with even a single eviction.⁴⁰ It is clear that that the “threshold for filing against white renters is higher than the threshold for filing against black and Latin[o/a] renters.”⁴¹ There can be no question that evictions are a racial and gender issue.

Evictions effect children disproportionality

Evictions are a children’s rights issue. Renters with children are 17% more likely to be evicted than those without children.⁴² Additionally, renters without children who fall behind on rent have an eviction rate of 8%, but those in the same position with children have an eviction rate of 20%. This means that for eviction rates, having children is “equivalent to falling 4 months behind in rent.”⁴³ Additionally, the increase in children correlates to an increase in evictions. A one percent increase in children in a neighborhood increases the neighborhood eviction rate by 6.5%.⁴⁴ In neighborhoods where children made up 25% of the population 1 in 18 renters was evicted. In neighborhoods with 35% children, 1 in 14 renters were evicted, and where children are 40% of the population, 1 in 12 renters is evicted.⁴⁵ Children as young as 4 months old have been evicted.⁴⁶

Landlords often view children as problems. Young children can test positive for lead poisoning, which can cost the landlord thousands.⁴⁷ In disadvantaged neighborhoods, parents often require their children to stay indoors, and this can lead to noise issues and property damage.⁴⁸ Young Black and Latino boys attract the attention of police, which can lead to violations against the landlord.⁴⁹ In larger cities, 15% of children have been evicted once by fifteen years old. For Black children that number goes up to 19% and for Latinos that goes up to 17%, as compared to 11% for white children.⁵⁰ For children living in “deep poverty” (living below 50% of the poverty line), 29% have been evicted by age fifteen.⁵¹ More and more children are being listed on rental leases, and when they are evicted that will stay on their record (blacklisted) for their lifetime.⁵² This puts them at huge disadvantage for future housing.

Children that live with housing insecurity deal with enormous ramifications for their education and their future potential. Childhood evictions in urban areas is a powerful predictor of lead poisoning.⁵³

A housing change during childhood can lead to half a year of loss in school.⁵⁴ Children that are

⁴⁰ ACLU, *NO EVICTION*, *supra* note 1, at 7.

⁴¹ Peter Hepburn et al., *supra* note 31, at 659.

⁴² Matthew Desmond et al, *supra* note 29, at 304.

⁴³ *Id.* at 317.

⁴⁴ *Id.* at 304.

⁴⁵ *Id.* at 312.

⁴⁶ *Id.* at 314.

⁴⁷ *Id.* at 306.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ ACLU, *NO EVICTION*, *supra* note 1, at 7

⁵¹ *Id.*

⁵² *Id.* at 5.

⁵³ *Id.*

⁵⁴ *Id.*

forced to move three or more times generally have lower earnings, fewer work hours, and less educational attainment.⁵⁵ Children with unstable housing “are more likely to be truant, and are more likely to drop out”⁵⁶ and they “are at higher risk for developmental delay, decreased academic achievement, anxiety, depression, behavioral disturbances, and even death.”⁵⁷ Representation is need to protect these children.

Legal Representation in Eviction Cases Provides Enormous Benefit to Individuals and Communities and are Cost Effective

Currently, there are fifteen cities⁵⁸ and three states⁵⁹ that have started a right to counsel program for evictions, and the data from those programs show enormous benefits to the tenants, the landlords, the courts, and the communities. In Cleveland, 93% of represented tenants avoid and eviction judgment or involuntary move, and the city saved nearly \$5 million in 2021 as a result of the representation.⁶⁰ In Columbus, landlords won 1% of cases with represented tenants (compared to 54% win rate against non-represented tenants), and even limited representation increased “agreed entries” to 40% from 15%.⁶¹ In Minnesota, 96% of fully represented tenants won or settled their cases and 80 % left the court without an eviction on their record. Comparatively, only 62% on unrepresented tenants won or settled their case, and only 6% left the court without an eviction record.⁶² Additionally, while unrepresented tenants were four to five times more likely to face eviction by sheriffs, fully represented tenants were twice as likely to keep possession of their home and four times less likely to use homeless shelters.⁶³ In San Francisco, represented tenants were three times less likely to default, they were half as likely to pay damages or attorney fees, 24% more likely to raise a defense than those without representation, and the number of eviction filings dropped 10%.⁶⁴ For those that had to move, one year later, represented clients had found a new rental 74% of the time while unrepresented tenants found new rentals only 43% of the time.⁶⁵ In New York City, 84% of represented renters remained in their homes.⁶⁶ In Massachusetts, the cost of evictions (including the costs that increase with healthcare, emergency shelters, education etc.) is estimated to be \$63.03 million while the cost to represent tenants was \$26.29 million.⁶⁷ This meant that right to counsel in Massachusetts saved the state \$36.73 million (this is conservative estimate) and every dollar spent

⁵⁵ *Id.*

⁵⁶ Matthew Desmond et al, *supra* note 29, at 320.

⁵⁷ Ericka Petersen, *supra* note 26, at 69.

⁵⁸ Liel Sterling & Maria Roumiantseva, *supra* note 3; ACLU, NO EVICTION, *supra* note 1, at 8-12. New York City, San Francisco, Newark, Cleveland, Columbus, Philadelphia, Boulder, Baltimore, Seattle, Louisville, Denver, Toledo, Minneapolis, Kansas City, New Orleans, Richmond and Detroit.

⁵⁹ *Id.* Washington, Maryland, and Connecticut. *Id.*

⁶⁰ ACLU, NO EVICTION, *supra* note 1, at 10.

⁶¹ *Id.* at 11. Agreed entries are beneficial to landlords and tenants because though tenants often move out, both sides agree to agreeable terms and the tenant ends up with no eviction judgment. *Id.*

⁶² *Id.* at 9-10.

⁶³ *Id.* at 10.

⁶⁴ *Id.* at 8; Sandra Park, *supra* note 5.

⁶⁵ ACLU, NO EVICTION, *supra* note 1, at 8.

⁶⁶ Liel Sterling & Maria Roumiantseva, *supra* note 3.

⁶⁷ ACLU, NO EVICTION, *supra* note 1, at 8.

on eviction representation had a return of at least \$2.40.⁶⁸ In Maine, Pine Tree Legal Aid has represented many tenants at the Cumberland County Courthouse, and in 2020 eviction rates for those represented by Pine Tree were 51% versus 72% for those that were not represented.⁶⁹ Generally, tenants are nineteen times more likely to avoid eviction orders and have success when represented, and “eviction orders have declined five times faster” where right to counsel programs exist.⁷⁰

The effects of evictions, some of which are listed above, “can unravel the fabric of a community”⁷¹ and the “financial burden on communities also goes up because the costs of providing shelter and related services, such as medical care, use of public benefits, and police intervention for the homeless, increase.”⁷² However, right to counsel for eviction cases can directly prevent much of the damage and costs associated with evictions.

“Representation does more than just improve the chances of remaining stably housed. It improves outcomes for all tenants because landlords will be less likely to bring meritless cases, knowing that they will face an attorney in the courtroom. That saves communities money by avoiding the costs of shelters, homeless services, and job loss. The presence of lawyers also increases the legitimacy of the adversarial system for tenants, and helps identify and combat systemic inefficiencies and injustices.”⁷³

Conclusion

The simple changes to Maine law recommended in this bill will help insure that tenants have access to legal representation in eviction cases and the benefits that flow from that representation. Maine Equal Justice strongly urges the Committee vote ‘ought to pass’ as amended on LD 330. With an eviction crisis looming, or perhaps already here, and with the costs to individuals and society because of evictions, there is no reason Mainers should not have the dignity of representation in cases that may leave them without a roof over their head.

We thank you for the opportunity to provide testimony and I am happy to answer any questions.

⁶⁸ *Id.*

⁶⁹ MAINE AFFORDABLE HOUSING COALITION, EVICTIONS IN MAINE: AN ANALYSIS OF EVICTION FILINGS AND OUTCOMES AS THE COVID-19 PANDEMIC THREATENS TO INCREASE HOUSING INSTABILITY 12 (Sep. 2020), <https://mainehousingcoalition.org/wp-content/uploads/2020/09/Maine-Eviction-Report-FINAL-September-2020.pdf>.

⁷⁰ Vamsi A. Damerla, *supra* note 10, at 387-88.

⁷¹ Matthew Desmond et al, *supra* note 29, at 320.

⁷² Ericka Petersen, *supra* note 26, at 70.

⁷³ *Id.* at 77-78.