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Council of the District of Columbia
Committee on Housing and Executive Administration

Hearing on B24-96, Eviction Record Sealing Authority Amendment Act of 2021
May 20, 2021

Dear Chairperson Bonds and members of the Committee on Housing and Executive Administration,

Thank you for the opportunity to testify on the Eviction Record Sealing Authority Amendment Act of 2021, B24-96. We are providing testimony on behalf of Upturn, a research and advocacy nonprofit based in D.C. that works to advance justice in the design, use, and governance of technology. This testimony is based on what we and other researchers have learned about eviction records and how tenant screening companies collect and disseminate these records.

We write to express support for the Eviction Record Sealing Authority Amendment Act and to urge you to make one important change: to require eviction records to be automatically sealed *at the point of filing*. This change is needed to fully realize the Council's goal of protecting residents from unproven allegations by landlords.

This testimony has three parts. First, we explain why sealing is the best way to prevent tenant screening companies from circulating obsolete or misleading eviction records. Second, we explain why sealing eviction records at the point of filing is necessary to fully realize the Council's objectives and will not prevent housing providers from evaluating applicants' ability to fulfill their lease obligations. And third, we offer examples from jurisdictions that have passed or are seeking to pass similar legislation, including how they have addressed important questions of access to records for parties, legal service providers, and researchers.

I. Sealing eviction records at the point of filing is the simplest and most effective way to prevent tenant screening companies from circulating obsolete or misleading records.

Once an eviction record has been made public, it is impossible to fully control how that record will be disseminated and used to make housing decisions. Tenant screening companies regularly scrape eviction records directly from court websites, including the D.C. Superior Court's public e-access database. Next, they sell these records to landlords, sometimes with a risk score or recommendation about whether to accept or reject an applicant.¹ Some screening companies do

¹ See, e.g., Kaveh Waddell, How Tenant Screening Reports Make it Hard for People to Bounce Back From Tough Times, Consumer Reports, Mar. 11, 2021,

nothing to check the accuracy of the records they report to landlords, leading to reporting mismatched records, inaccurate case dispositions, and sealed records.² For example, Legal Aid attorneys have found D.C. residents' sealed records in Bloomberg Law's research database, accessible to all subscribers. These practices continue despite decades of federal enforcement efforts³ and litigation,⁴ including under the Fair Credit Report Act.⁵

Tenant screening reports entrench the false idea that any eviction record is a major red flag for a potential tenant. Recent research shows that housing providers often apply an unspoken blanket policy of rejecting all tenants who have eviction records in their names, and do not change their decisions based on the details of the records, such as the fact that a case was dismissed or is still pending. The simplest and surest way to interrupt this cycle is to seal eviction records at the point of filing, making them unavailable to screening companies and other data brokers.

II. The Council must require sealing at the point of filing to fully realize the objectives of this bill.

The stated objective of this bill — to prevent filed evictions from becoming a “permanent mark” limiting D.C. residents' housing opportunities — cannot be fully realized without sealing evictions at the point of filing. If eviction records are not sealed at filing, then residents may struggle to find housing while their eviction cases are pending. They might be forced to choose between staying with a landlord who is trying to evict them or becoming homeless.

Pending eviction filings have no legitimate value in the tenant screening process. The Council has acknowledged that eviction records are not reliable indicators of tenants' behavior or ability to pay.⁶ This is especially true of pending eviction filings. It costs next to nothing to file an eviction in

<https://www.consumerreports.org/algorithmic-bias/tenant-screening-reports-make-it-hard-to-bounce-back-from-tough-times/>.

² See, e.g., Lesley Fair, FTC's AppFolio Case: The Fair Credit Reporting Act Does More Than Just Abide, Dec. 8, 2020, <https://www.ftc.gov/news-events/blogs/business-blog/2020/12/ftcs-appfolio-case-fair-credit-reporting-act-does-more-just> (“[A]ccording to the FTC, before including criminal records, evictions, etc., in its background reports, AppFolio didn't have procedures in place to adequately review the accuracy of the information it received from vendors.”); Complaint, U.S. Dep't of Justice v. AppFolio, 1:20-cv-03563, Dec. 8, 2020, https://www.ftc.gov/system/files/documents/cases/ecf_1_-_us_v_appfolio_complaint.pdf (alleging that AppFolio received court records from CoreLogic and failed to check those records for basic inaccuracies before including them in tenant screening reports); Lauren Kirchner & Matthew Goldstein, Access Denied: Faulty Automated Background Checks Freeze Out Renters, *The Markup* & N.Y. Times, May 28, 2020, <https://themarkup.org/locked-out/2020/05/28/access-denied-faulty-automated-background-checks-freeze-out-renters>.

³ See, e.g., U.S. Dep't of Justice v. AppFolio, *supra* note 2; Complaint, Fed. Trade Comm'n v. RealPage, 3:18-cv-02737-N, Oct. 16, 2018, https://www.ftc.gov/system/files/documents/cases/152_3059_realpage_inc_complaint_10-16-18.pdf.

⁴ See Kirchner & Goldstein, *supra* note 2.

⁵ 15 U.S.C. § 1681.

⁶ Councilmembers have repeatedly cited research showing, for example, that only 5% of evictions filed in D.C. are executed, that 20% of landlords in the District file about half of all evictions, that about 70% of evictions are dismissed, and that 12% of evicted tenants owe less than \$600. Brian J. McCabe & Eva Rosen, *Eviction in Washington DC: Racial and Geographic Disparities in Housing Instability*, 2020, <https://georgetown.app.box.com/s/8cq4p8ap4nq5xm75b5mct0nz5002z3ap>.

D.C.,⁷ and some landlords do it as a matter of course, sometimes filing serial evictions against the same tenants.⁸ Many tenants never receive their legally required eviction notices⁹ and some owe less than \$600.¹⁰ Eviction filings reflect landlord behavior, not tenant behavior. Yet, as Wonyoung So testified before the Committee on May 20, research shows landlords often reject tenants with eviction records regardless of their disposition. Sealing eviction filings will immediately limit landlords' misplaced reliance on them, and will not prevent landlords from evaluating tenants' ability to fulfill their lease obligations.

Councilmember Silverman said during her opening statement that using unproven allegations to deny someone housing “fails the racial equity test.” Pending evictions are unproven allegations. The concentration of eviction filings in D.C.'s majority-Black neighborhoods means they are a much better proxy for race — as well as for source-of-income and familial status — than for any real indicator of tenant behavior or ability to pay. Given the racist distribution of eviction filings, their use in tenant screening is unjustifiable and can only deepen racial injustice in access to housing.

Sealing eviction filings is even more urgent given the avalanche of filings tenants will face once the public health emergency expires. The Council has the opportunity now to protect residents from the collateral consequences of those filings.

III. Other jurisdictions have passed, or are seeking to pass, laws to seal eviction records at the point of filing.

D.C. would not be the only jurisdiction to seal eviction records at the point of filing. The California¹¹ and Nevada¹² legislatures have required that evictions be automatically sealed at the point of filing and unsealed if a judgement is entered against the tenant. The Connecticut legislature recently passed a similar bill out of committee.¹³

Importantly, these laws allow some access to sealed records by parties to a case, journalists, and researchers for appropriate purposes. For example, under California law¹⁴ and the proposed bill in Connecticut,¹⁵ courts can issue orders providing access to sealed eviction records for “good cause,” including for journalism and scholarly research. As researcher Brian McCabe testified, the

⁷ The eviction filing fee in D.C. is \$15, the lowest of any jurisdiction in the country. McCabe & Rosen, *supra* note 6, at 28.

⁸ *Id.* at 12–13.

⁹ Josh Kaplan, Thousands of D.C. Renters Are Evicted Every Year. Do They All Know to Show Up to Court?, *dcist*, Oct. 5, 2020, <https://dcist.com/story/20/10/05/thousands-of-d-c-renters-are-evicted-every-year-do-they-all-know-to-show-up-to-court/>.

¹⁰ McCabe & Rosen, *supra* note 6, at 23.

¹¹ Cal. Civ. Proc. Code § 1161.2.

¹² Nev. Rev. Stat. 40.2545.

¹³ H.B. 6528.1,

<https://trackbill.com/bill/connecticut-house-bill-6528-an-act-concerning-the-sealing-of-eviction-records/2049122/>.

¹⁴ Cal. Civ. Proc. Code § 1161.2(a)(1).

¹⁵ H.B. 6528.1 Sec. 1(b).

Superior Court already has a process in place for granting requests from researchers and journalists.

The Connecticut bill would provide access without a court order to licensed attorneys for representing clients or prospective clients.¹⁶ As Nathan Leys of New Haven Legal Assistance Association testified, this provision is “intended to protect legal aid organizations’ ability to do outreach and consultations to tenants who may be in need of legal advice or representation.”¹⁷ Attorneys licensed to practice in Connecticut would be able to use their existing E-Services accounts to access case dockets. The California law requires the court to mail notices to evicted tenants providing contact information for legal services organizations,¹⁸ and the Connecticut bill requires the court to notify parties to a case about how to access the docket.¹⁹

The following appendix includes legislative language from other jurisdictions to help guide the Council in amending the Eviction Record Sealing Authority Amendment Act of 2021 to seal eviction records at the point of filing and preserve appropriate access to records. We look forward to working together to advance this legislation.

Thank you for the opportunity to submit this testimony. Please contact Natasha Duarte at natasha@upturn.org with any questions.

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Appendix

Connecticut H.B. 6528

Sec. 1

(b) All records of cases of summary process matters pursuant to chapter 832 of the general statutes, including access to the online docket, and all records of appeal under chapter 832 of the general statutes, shall be sealed and confidential and for the use of the court in housing matters, and open to inspection or disclosure to any third party, including bona fide researchers

¹⁶ *Id.* at Sec.1(c)(3).

¹⁷ Nathan Leys, testimony in support of H.B. 6528 at 5, <https://www.cga.ct.gov/2021/hsgdata/tmy/2021HB-06528-R000304-Leys,%20Nathan-Sealing%20Eviction%20Records-TMY.PDF>.

¹⁸ Cal. Civ. Proc. Code § 1161.2(c).

¹⁹ H.B. 6528.1 Sec. 1(c)(1).

commissioned by a state agency, only upon order of the Superior Court, except as provided in subsections (c) and (d) of this section. Such order may be granted ex parte upon the third party's motion and showing of good cause. For purposes of this subsection, "good cause" includes, but is not limited to, the gathering of newsworthy facts or information or for scholarly, educational, journalistic or governmental purposes, but does not include the collection of information to be provided or used by a consumer reporting agency or by a landlord in making decisions regarding whether and on what terms to lease a dwelling unit to a prospective tenant. If the Superior Court determines that good cause exists to provide such records pursuant to this subsection, the Superior Court shall redact or alter all defendants' names to appellations such as "Jane Doe" or "John Doe" and shall redact any personally identifiable information of a defendant unless doing so is necessary to fulfill the purposes of the request for access. A decision by the Superior Court denying access pursuant to this subsection shall be considered a final order for purposes of appeal.

(c) The records described in subsection (b) of this section shall be available without a court order to:

- (1) A party to the action, including a party's attorney or any designee acting on a summary process defendant's behalf for the sole purpose of providing assistance to such party. A party may request online access to the court docket by contacting the clerk's office. Upon the filing of the writ, summons and complaint in the Superior Court, the clerk of the court shall mail a notice to each defendant informing the defendant how to obtain access to the online docket. Such notice shall be written simply and understandably in both English and Spanish;
- (2) An occupant of the premises who is the subject of the action, who provides the clerk with the name of one of the parties or the case number and shows proof of occupancy. Such proof of occupancy may consist of one or more of the following: (A) A piece of mail addressed to the occupant at the premises; (B) a utility bill or similar documentation in the occupant's name; (C) a government provided identification listing the premises as an address; or (D) other means that reasonably identifies the individual to the clerk as an occupant of the premises;
- (3) An attorney licensed to practice law in the state who has an active account in the electronic system of filing documents with the Judicial Branch, provided no attorney shall access the online docket of a residential summary process matter in which the attorney is not representing a party unless the attorney first certifies that such attorney (A) is accessing such docket for the purpose of advising or representing a client or prospective client in such case or a materially related case, and (B) will not, without permission from the tenant to which the information relates, disclose or share outside such attorney's firm any information gathered from the online docket to any person or entity who is not a party, or such party's attorney, to the case in question or a materially related case. A

knowingly false certification pursuant to this subsection shall subject an attorney to discipline pursuant to section 51-90e of the general statutes; and

- (4) Employees of the Judicial Branch who, in the performance of their duties, require access to such records.

(d) All records of cases of summary process matters pursuant to chapter 832 of the general statutes, including access to the online docket, shall be unsealed after five days if a judgment of possession for the plaintiff based upon nonpayment of rent, breach of the lease or nuisance or serious nuisance is entered after trial. If an appeal is taken from such judgment, such unsealing shall be delayed until five days after judgment becomes final and all rights of appeal are exhausted. Upon motion of a party and a showing of good cause, (1) a case otherwise ineligible for sealing may be ordered sealed, and (2) a case eligible for sealing may be ordered unsealed. Nothing in this section shall preclude the parties, by agreement, from maintaining the sealed status of any case.

Cal. Civ. Proc. Code § 1161.2

(a)(1) The clerk shall allow access to limited civil case records filed under this chapter, including the court file, index, and register of actions, only as follows:

- (A) To a party to the action, including a party's attorney.
- (B) To a person who provides the clerk with the names of at least one plaintiff and one defendant and the address of the premises, including the apartment or unit number, if any.
- (C) To a resident of the premises who provides the clerk with the name of one of the parties or the case number and shows proof of residency.
- (D) To a person by order of the court, which may be granted ex parte, on a showing of good cause.
- (E) To any person by order of the court if judgment is entered for the plaintiff after trial more than 60 days since the filing of the complaint. The court shall issue the order upon issuing judgment for the plaintiff.
- (F) Except as provided in subparagraph (G), to any other person 60 days after the complaint has been filed if the plaintiff prevails in the action within 60 days of the filing of the complaint, in which case the clerk shall allow access to any court records in the action. If a default or default judgment is set aside more than 60 days after the complaint has been filed, this section shall apply as if the complaint had been filed on the date the default or default judgment is set aside.

(b)(1) For purposes of this section, “good cause” includes, but is not limited to, both of the following:

- (A) The gathering of newsworthy facts by a person described in Section 1070 of the Evidence Code.
- (B) The gathering of evidence by a party to an unlawful detainer action solely for the purpose of making a request for judicial notice pursuant to subdivision (d) of Section 452 of the Evidence Code.

(2) It is the intent of the Legislature that a simple procedure be established to request the ex parte order described in subparagraph (D) of paragraph (1) of subdivision (a).

(c) Upon the filing of a case so restricted, the court clerk shall mail notice to each defendant named in the action. The notice shall be mailed to the address provided in the complaint. The notice shall contain a statement that an unlawful detainer complaint (eviction action) has been filed naming that party as a defendant, and that access to the court file will be delayed for 60 days except to a party, an attorney for one of the parties, or any other person who (1) provides to the clerk the names of at least one plaintiff and one defendant in the action and provides to the clerk the address, including any applicable apartment, unit, or space number, of the subject premises, or (2) provides to the clerk the name of one of the parties in the action or the case number and can establish through proper identification that he or she lives at the subject premises. The notice shall also contain a statement that access to the court index, register of actions, or other records is not permitted until 60 days after the complaint is filed, except pursuant to an order upon a showing of good cause for access. The notice shall contain on its face the following information:

- (1) The name and telephone number of the county bar association.
- (2) The name and telephone number of any entity that requests inclusion on the notice and demonstrates to the satisfaction of the court that it has been certified by the State Bar of California as a lawyer referral service and maintains a panel of attorneys qualified in the practice of landlord-tenant law pursuant to the minimum standards for a lawyer referral service established by the State Bar of California and Section 6155 of the Business and Professions Code .
- (3) The following statement:

“The State Bar of California certifies lawyer referral services in California and publishes a list of certified lawyer referral services organized by county. To locate a lawyer referral service in your county, go to the State Bar’s Internet Web site at www.calbar.ca.gov or call 1-866-442-2529.”
- (4) The name and telephone number of an office or offices funded by the federal Legal Services Corporation or qualified legal services projects that receive funds distributed pursuant to Section 6216 of the Business and Professions Code that provide legal services to low-income persons in the county in which the action is filed. The notice shall state that these telephone numbers may be called for legal advice regarding the case. The notice shall be issued between 24 and 48 hours of the filing of the complaint, excluding weekends and holidays. One copy of the notice shall be addressed to “all occupants” and mailed separately to the subject premises. The notice shall not constitute service of the summons and complaint.