



**The Washington Lawyers' Committee for Civil Rights and Urban Affairs
Testimony Before the District of Columbia Committee on Government Operations and
Facilities Regarding B24-0229, the "Human Rights Enhancement Amendment Act of 2021"
Submitted October 20, 2021**

The Washington Lawyers' Committee for Civil Rights and Urban Affairs (the "Committee"), writes in strong support of B24-0229, the Human Rights Enhancement Amendment Act of 2021 (the "Human Rights Enhancement Act"). The Human Rights Enhancement Act will further racial justice by protecting unhoused individuals in the District of Columbia, the majority of whom are Black residents, from discrimination in housing, employment, public accommodations, and educational institutions and cover individuals with disabilities and families who additionally comprise a considerable portion of the homeless population. This bill will also extend critical employment rights to independent contractors, a growing workforce currently excluded from all anti-discrimination protections. Further, by amending the D.C. Human Rights Act of 1977 ("Human Rights Act") to add "homeless status" as a protected category and expand the definition of "employee" to include independent contractors, the Human Rights Enhancement Act guarantees unhoused D.C. residents and independent contractors a private right of action and meaningful opportunity for relief.

I. Passing the Human Rights Enhancement Act furthers racial justice and protects vulnerable populations.

Passing the Human Rights Enhancement Act is a matter of racial justice. As this Council is well aware, there is an ongoing crisis in safe, decent, and affordable housing in the District that primarily impacts communities of color.¹ As a result of rising rent prices, rapid gentrification,² housing discrimination, and systemic inequality, low-income individuals are being displaced from their communities and are experiencing homelessness in the District at a per capita rate higher than any other state.³ People of color are disproportionately affected by the housing crisis

¹ See Ally Schweitzer, *For Many Black Washingtonians, Home Ownership Remains Out of Reach*, WAMU (Feb. 11, 2020) <https://wamu.org/story/20/02/11/for-many-black-washingtonians-homeownership-remains-out-of-reach/>; DeNeen L. Brown, *Pushed Out*, Washington Post (Sept. 21, 2019) <https://www.washingtonpost.com/dc-md-va/2019/09/21/shed-lived-this-historically-black-dc-block-years-now-she-was-being-pushed-out/>.

² A study released in 2019 by the National Community Reinvestment Coalition found that, between 2000 and 2013, the District had the greatest intensity of gentrification of any U.S. city. More than 20,000 Black residents were displaced from their neighborhoods during that time, largely by white, affluent new residents. Katherine Shaver, *D.C. has the highest 'intensity' of gentrification of any U.S. city, study says*, Washington Post (Mar. 19, 2019), <https://www.washingtonpost.com/transportation/2019/03/19/study-dc-has-highest-intensity-gentrification-any-us-city/>. While a study released in 2020 by the same group found that the District ranked 13th on the list of "most intensely gentrified" cities between 2013 to 2017, the study cautioned that "[g]entrification continued [in D.C.], but it surged elsewhere." Martin Austermuhle, *D.C. No Longer The 'Most Intensely Gentrified City' in U.S., Ranking 13th in New Study*, NPR (June 19, 2020) <https://www.npr.org/local/305/2020/06/19/880558714/d-c-no-longer-the-most-intensely-gentrified-city-in-u-s-ranking-13th-in-new-study>.

³ National Alliance to End Homelessness, *State of Homelessness: 2021 Edition*, <https://endhomelessness.org/homelessness-in-america/homelessness-statistics/state-of-homelessness-2021/> (last visited Oct. 18, 2021).

and by homelessness due to this country's long history of *de jure* and *de facto* racist housing policies.

In the District, Black residents comprise 86% of adults experiencing homelessness, even though Black residents make up only about 46% of the total population.⁴ The job instability caused by the Covid-19 pandemic, which has disproportionately affected people of color⁵ and resulted in so many residents falling behind on their rent, will surely compound this crisis. Now that the eviction moratorium is being phased out, this means that a staggering number of low-income, predominantly Black, residents face the possibility of displacement or homelessness. Furthermore, roughly one third of the District's single adult homeless population attributes their homeless status to a prior incarceration,⁶ yet another system which disproportionately affects people of color as a result of over-policing and higher incarceration rates of, and the harsher punishments levied against, people of color. The links between homelessness, systemic racism, and the systems that fail our most vulnerable are hard to ignore. Accordingly, passing the Human Rights Enhancement Act is a step toward further protecting the rights of low-income Black residents who comprise the majority of unhoused persons in D.C.

The Human Rights Enhancement Act will also extend protections to individuals with disabilities and families, who make up a sizeable portion of the unhoused D.C. population.⁷ These populations are particularly vulnerable, and it is critical that unhoused individuals with disabilities and unhoused families are able to access housing, as well as medical and other supportive services without facing discrimination.

Finally, the Human Rights Enhancement Act's extension of employment protections to independent contractors is also crucial to protecting workers of color in the District. Many independent contractors are workers in low-wage jobs, including construction workers, cleaners,

⁴ The Community Partnership for the Prevention of Homelessness, *2021 Point-in-Time Count*, <https://community-partnership.org/wp-content/uploads/2021/06/2021-PIT-Count-Presentation.pdf>, slide 17.

⁵ Robert McCartney, *Homelessness crisis is expected in D.C. when coronavirus emergency ends and evictions begin*, Washington Post (June 15, 2020) https://www.washingtonpost.com/local/homelessness-crisis-is-expected-in-dc-when-coronavirus-emergency-ends-and-evictions-begin/2020/06/14/df52344a-acc0-11ea-9063-e69bd6520940_story.html; Bracey Harris, *The nation's economic recovery is still unequal for Black workers*, NBC News (Oct. 4, 2021) https://www.nbcnews.com/news/us-news/black-workers-unemployment-unequal-pandemic-recovery-rcna2506?cid=sm_npd_nn_tw_blk&emci=59bc1dde-7d2b-ec11-981f-c896653b9208&emdi=5a7915c8-072d-ec11-981f-c896653b9208&ceid=2068045.

⁶ Natalie Delgadillo, *Almost One Third of People Experiencing Homelessness in D.C. Say Incarceration Plays a Role in Housing Struggles*, DCist (Mar. 3, 2020) <https://dcist.com/story/20/03/03/almost-one-third-of-people-experiencing-homelessness-in-d-c-say-incarceration-played-a-role-in-housing-struggles/>.

⁷ In the U.S. as a whole, “[p]eople experiencing homelessness are significantly more likely to have disabilities compared to either the U.S. population or individuals living in poverty. 1 in 85 adults with disabilities experienced sheltered homelessness compared to 1 in 344 adults without disabilities.” See National Law Center on Homelessness & Poverty, *Housing Not Handcuffs 2019: Ending the Criminalization of Homelessness in U.S. Cities* (Dec. 2019) <https://homelesslaw.org/wp-content/uploads/2019/12/HOUSING-NOT-HANDCUFFS-2019-FINAL.pdf> at 33. Further, in D.C., it is believed that families are underrepresented in the homelessness count. See The Washington Legal Clinic for the Homeless, *Fact Sheet on Homelessness and Housing Instability in DC*, <https://www.legalclinic.org/wp-content/uploads/2019/04/Fact-Sheet-on-Homelessness-and-Housing-Instability-in-DC.pdf>.

homecare workers, delivery drivers, and hair stylists.⁸ D.C. workers of color are more likely to hold traditional jobs that pay lower wages than white workers,⁹ and emerging data also suggests that these same trends hold true within the labor market of nontraditional employment.¹⁰ The U.S. Bureau of Labor Statistics has found, for example, that Black and Latinx workers are overrepresented in electronically-mediated work, such as ride-share driving jobs and other nontraditional employment.¹¹ Although many workers depend on some form of ad-hoc employment, women and workers of color are most likely to do the lowest-paid and most exploitative types of work.¹²

The pandemic has further enlarged the gig-worker labor force, increasing the importance and urgency of extending anti-discrimination protections to this population of workers. As the economy went into a tailspin and workers faced job loss and economic insecurity, many were forced into the gig economy out of necessity.¹³ By some estimates, gig work could reach almost half of the pandemic labor market as this employment model expands into new industries.¹⁴ Some major companies are already rushing to replace salaried employees with independent contractors in an explicit move to undermine employment protections.¹⁵

The confluence of long-lasting racial employment disparities caused by institutional racism at every stage of employment, increased economic insecurity due to the pandemic, and labor market changes brought about by the rise in gig work and the independent contractor workforce, demands an immediate solution to protect vulnerable workers. The Human Rights Enhancement Act will bring independent contractors into the fold of anti-discrimination protections afforded to traditional employees, ensuring that economic change does not circumvent basic civil rights protections.

⁸ Gig Economy Data Hub, *What kinds of work are done through gigs?*, <https://www.gigeconomydata.org/basics/what-kinds-work-are-done-through-gigs>.

⁹ Doni Crawford and Kamolika Das, *Black Workers Matter: How the District's History of Exploitation & Discrimination Continues to Harm Black Workers*, DC Fiscal Policy Institute (Jan. 28, 2020), <https://www.dcfpi.org/all/black-workers-matter>.

¹⁰ Gig Economy Data Hub, *Who participates in the gig economy?*, <https://www.gigeconomydata.org/basics/who-participates-gig-economy>.

¹¹ See Bureau of Labor Statistics, *Monthly Labor Review: Electronically Mediated Work New Questions in the Contingent Worker Supplement* (Sept. 2018), <https://www.bls.gov/opub/mlr/2018/article/electronically-mediated-work-new-questions-in-the-contingent-worker-supplement.htm>.

¹² Brookings Institute, *Wanted: A Public Option for Finding Work in the Gig Economy* (Mar. 19, 2021), <https://www.brookings.edu/blog/the-avenue/2021/03/19/wanted-a-public-option-for-finding-work-in-the-gig-economy/>.

¹³ Rebecca Henderson, *Forbes*, *How Covid-19 Has Transformed the Gig Economy* (Dec. 10, 2020), <https://www.forbes.com/sites/rebeccahenderson/2020/12/10/how-covid-19-has-transformed-the-gig-economy/?sh=5f06d0816c99>.

¹⁴ Brookings Institute, *supra* note 12.

¹⁵ Bloomberg Businessweek, *The Gig Economy is Coming for Millions of American Jobs* (Feb. 17, 2021), <https://www.bloomberg.com/news/features/2021-02-17/gig-economy-coming-for-millions-of-u-s-jobs-after-california-s-uber-lyft-vote>.

II. The Human Rights Enhancement Act will extend anti-discrimination protections, including meaningful remedies, to unhoused persons.

Despite current legal protections, such as those contained in the Homeless Services Reform Act of 2005, unhoused individuals continue to experience discrimination on the basis of their homeless status. They report experiencing discrimination in their encounters with private businesses, medical services and social services agencies, and law enforcement.¹⁶ Unhoused individuals are also likely to face discrimination during the hiring process, for example when they are unable to provide a home address on an employment application or have gaps in prior work history.¹⁷ The compounding barriers based on race and unhoused status further exacerbate this type of discrimination.

Without the protections in this bill, unhoused individuals, the majority of whom are people of color, will continue to face discrimination in their search for housing and employment, as well as in their access to public spaces and services. This discrimination only increases the likelihood that they will remain unhoused: someone who is unable to obtain employment due to discrimination on the basis of their homeless status will likely continue to face obstacles obtaining housing, where minimum income requirements and credit scores are often barriers to low-income tenants. Along the same lines, someone who cannot access medical or social services due to discrimination on the basis of their homeless status may not receive the treatment or care they may need to enable them to secure stable employment.¹⁸ Given that people who experience chronic homelessness often die from diseases or illnesses that would be largely preventable if they were housed,¹⁹ passing this bill could be a matter of life or death for some of the District's most vulnerable populations. This has never been truer than now, when we are still in the midst of a global pandemic and countless tenants are once again facing eviction.

Furthermore, this bill ensures access to remedies. Currently, unhoused individuals have no recourse under the Human Rights Act when they experience discrimination on the basis of their homeless status, something the Human Rights Enhancement Act would address by allowing individuals to file a complaint at the D.C. Office of Human Rights ("OHR") or in court. Through both the administrative and judicial avenues, an individual could be eligible for robust remedies

¹⁶ National Coalition for the Homeless, *Discrimination and Economic Profiling among the Homeless of Washington, DC* (Apr. 2014) https://playtimeproject.org/file_download/inline/f513fae4-a62a-429c-ad99-76957481826c.

¹⁷ Homelessness Policy Research Institute, *Homelessness and Employment* (Aug. 24, 2020), <https://socialinnovation.usc.edu/wp-content/uploads/2020/08/Homelessness-and-Employment.pdf>.

¹⁸ See also Sarah Gillespie, et al., *Addressing Chronic Homelessness through Policing Isn't Working. Housing First Strategies Are a Better Way*, Urban Institute (June 29, 2020) <https://www.urban.org/urban-wire/addressing-chronic-homelessness-through-policing-isnt-working-housing-first-strategies-are-better-way> (describing the homelessness-jail cycle, in which "[p]eople forced to endure chronic homelessness . . . are more likely to interact with the police and face citations, arrests, and incarceration. . .").

¹⁹ Deirdre Bannon, *Broken systems created homelessness – and only multifaceted solutions can end it, advocates say*, The DC Line (Dec. 19, 2019) <https://thedcline.org/2019/12/19/broken-systems-created-homelessness-and-only-multifaceted-solutions-can-end-it-advocates-say/>.

such as compensatory damages, injunctive relief (such as being reinstated at work or being allowed to move into a housing unit), and attorneys' fees and costs.²⁰

III. The Human Rights Enhancement Act will protect independent contractors who are not currently covered under federal and District anti-discrimination laws.

The independent contractor workforce is not protected by employment discrimination provisions in either Title VII of the Civil Rights Act of 1964²¹ or the Human Rights Act. As a result, independent contractors who face discrimination on the job – whether it be sexual harassment, lack of reasonable accommodation, or retaliation for protesting discrimination – are left entirely without recourse. These workers also fall outside the umbrella of protections the Human Rights Act extends beyond those found in federal law, including protections from discrimination on the basis of marital status, personal appearance, family responsibilities, and political affiliation. This untenable gap in bedrock civil rights employment protections will be remedied by the Human Rights Enhancement Act, which would allow independent contractors to file a complaint at OHR or in court in the same way that it would provide this legal recourse to unhoused individuals.

Without the protections in this bill, the growing and vulnerable independent contractor workforce will continue to face discrimination – a key driver of income inequality – without any avenues for redress. Persistent discrimination in hiring, compensation, promotions, and termination forces workers of color into fewer and less advantageous job opportunities, decreasing access to stable jobs, good wages, and retirement benefits, and increasing wealth inequality.²²

The Washington Lawyers' Committee's work assisting District workers through our Workers' Rights Clinic informs our understanding of the effects of such a gap in protections; when workers who are accurately classified as independent contractors²³ seek the Committee's advice, often our only option is to inform them that the majority of employment protections, including prohibitions on discrimination in the workplace, do not apply to them, and there exists no administrative or court system that will accept their complaint. Also concerning is that because of this gap in protections, the experiences of discrimination faced by independent contractors are not, to our knowledge, tracked or addressed in any systematic manner, nor do there exist any mechanisms for stopping the practices of bad actor employers. The result is a growing shadow economy that has circumvented the accountability the civil rights movement brought to the sphere of employment.

²⁰ See D.C. Code § 2-1403.13.

²¹ U.S. Equal Employment Opportunity Commission, *Coverage*, <https://www.eeoc.gov/employers/coverage-0> (last visited Oct. 13, 2021) (“People who are not employed by the employer, such as independent contractors, are not covered by the anti-discrimination laws.”).

²² Angela Hanks, Danyelle Solomon, and Christian E. Weller, Center for American Progress, *Systematic Inequality: How America's Structural Racism Helped Create the Black-White Wealth Gap* (Feb. 21, 2018), <https://www.americanprogress.org/issues/race/reports/2018/02/21/447051/systematic-inequality/>.

²³ While worker misclassification is a widespread problem that also undermines worker protections, we do not address it here.

In recognition of this drastic gap in protection, a few states and localities have begun to increase legal protections for independent contractors. California,²⁴ Illinois,²⁵ New Jersey,²⁶ New York City,²⁷ New York state,²⁸ and Maryland all have some form of legislation aimed at this goal. Maryland’s Fair Employment Practices Act, in particular, is similar to the Human Rights Enhancement Act in that it includes an “individual working as independent contractor for an employer” in its definition of an “employee,” thereby bringing independent contractors within the protections of Maryland’s anti-discrimination provisions.²⁹ Through the passage of this bill, the District of Columbia would join these other states in recognition that protecting independent contractors from discrimination is paramount not only to the wellbeing of District workers, in particular workers of color, but also as a tool to address systematic economic inequality.

IV. Conclusion

The Washington Lawyers’ Committee urges this Council to pass the Human Rights Enhancement Amendment Act of 2021, which will expand critical protections to unhoused individuals and independent contractors and increase access to justice for those facing discrimination. Thank you for the opportunity to provide testimony on this important issue.

²⁴ Cal. Gov’t Code §§ 12940 (j)(1), (j)(4)(C).

²⁵ 775 ILCS 5/2-102.

²⁶ *J.T.’s Tire Serv., Inc. v. United Rentals N. Am., Inc.*, 411 N.J. Super. 236, 242 (App. Div. 2010).

²⁷ Int. No. 136-A ; N.Y.C. Admin. Code 8-107 (2019).

²⁸ N.Y. Exec. L. § 296-d (2019).

²⁹ MD State Govt §§ 20-601(c), 601(d), 20-606. Maryland’s law went into effect October 1, 2019.