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May 6, 2020

Via Electronic Mail

The Honorable Asa Hutchinson
Governor, State of Arkansas
c/o Alison Williams
Chief of Staff
Office of the Governor
State Capitol Room 250
500 Woodlane Avenue
Little Rock, Arkansas 72201
alison.williams@governor.arkansas.gov

Re: Statewide Moratorium on Evictions and Foreclosures

Dear Governor Hutchinson:

The NAACP Legal Defense and Educational Fund, Inc. (LDF) writes to urge you to take immediate action to protect Arkansas's most vulnerable households that are facing extreme economic distress as a result of the COVID-19 pandemic. Housing, along with food and water, is a fundamental human need. Housing is especially important to mitigate community spread of COVID-19. Without measures in place to protect vulnerable households, the pandemic will create a crisis within a crisis for Arkansans, with many forced into homelessness or temporary housing with other families. As a result, these families will live in conditions that make it nearly impossible to practice social distancing and face a heightened risk of contracting and spreading the novel coronavirus. Accordingly, we ask that you immediately issue an executive order halting eviction proceedings for at least the full duration of the State of Emergency.

LDF was founded in 1940 by Thurgood Marshall.¹ Our mission includes a commitment to ensuring that all communities have equitable access to safe and affordable housing. LDF and its Thurgood Marshall Institute recently released a report titled *Foreclosures, Evictions & Utility Cutoffs: The Fair Housing Impact of COVID-19 on Black Communities*.² Our report explains that the economic downturn induced by the COVID-19 pandemic is likely to have a disproportionate impact on Black renters and homeowners across the nation. In addition, LDF has a long history of pursuing litigation

¹ LDF has been an entirely separate organization from the NAACP since 1957.

² Jason Bailey & Coty Montag, NAACP Legal Def. & Educ. Fund, Inc., *Foreclosures, Evictions & Utility Cutoffs: The Fair Housing Impact of COVID-19 on Black Communities* (2020), <https://tminstituteldf.org/wp-content/uploads/2020/05/COVID-19-Foreclosures-Evictions-Report-TMI-5-20.pdf>.

challenging housing practices that disproportionately impact Black people and other vulnerable communities throughout the country.

Given our commitment to fighting for access to housing for all communities, LDF has called on federal and state officials across the nation to take immediate steps to ensure that Americans do not experience further hardship as a result of the COVID-19 pandemic. LDF recently sent letters to multiple governors, including you³, as well as the National Governors Association, urging the issuance of statewide moratoriums on evictions and utility shutoffs during the pandemic.⁴ The COVID-19 outbreak is an unprecedented public health crisis, and housing—while always crucial for our survival—is especially necessary to prevent the virus from spreading further. As Sherrilyn Ifill, LDF’s President and Director-Counsel, recently noted, every governor “must show leadership to protect the health [and] safety of Americans” by ensuring that people can stay in their homes during the pandemic.⁵

The pandemic has inflicted a tremendous economic toll on the nation as more than 30 million people applied for unemployment benefits in the last six weeks, and the current unemployment rate (estimated to range between 15 and 20%) is the worst the nation has seen since the Great Depression.⁶ According to Arkansas Secretary of Commerce Mike Preston, over 170,000 Arkansans have filed jobless claims as of April 24.⁷ As a result, many Arkansans are suffering significant economic hardship because of the pandemic and falling behind on their rent.

To that end, we request that you impose a statewide moratorium on evictions to prevent the ouster of tenants who have experienced economic hardship induced by the COVID-19 pandemic. Arkansas remains one of only a handful of states that has yet to implement some form of a statewide eviction moratorium.⁸ Although you have stated that the Arkansas Supreme Court has effectively imposed a “practical moratorium”⁹ on

³ We have yet to receive a response to our letter.

⁴ See, e.g., NAACP Legal Def. & Educ. Fund, Inc., *Letters to Governors Urging Moratoriums on Utility Shut-offs During the COVID-19 Pandemic* (Apr. 13, 2020), <https://www.naacpldf.org/news/letters-to-governors-urging-moratoriums-on-utility-shut-offs-during-the-covid-19-pandemic/>; NAACP Legal Def. & Educ. Fund, Inc., *LDF Sends Letter to National Governors Association Requesting a Moratorium on Foreclosures, Evictions, and Water and Utility Shut Offs* (Apr. 3, 2020), <https://www.naacpldf.org/press-release/ldf-sends-letter-to-national-governors-association-requesting-a-moratorium-on-foreclosures-evictions-and-water-and-utility-shut-offs/>.

⁵ @Sifill_LDF, Twitter (Apr. 3, 2020, 8:03 PM), https://twitter.com/sifill_ldf/status/1246226922704719875.

⁶ Rachel Siegel & Andrew Van Dam, *3.8 million Americans sought jobless benefits last week, extending the pandemic’s grip on the national workforce*, Wash. Post (Apr. 30, 2020), <https://www.washingtonpost.com/business/2020/04/30/weekly-jobless-claims-unemployment/>.

⁷ Max Bryan, *State, U.S. unemployment claims climb*, Sw. Times Record (May 1, 2020), <https://www.swtimes.com/news/20200501/state-us-unemployment-claims-climb>.

⁸ *COVID-19 Housing Policy Scorecard*, <https://evictionlab.org/covid-policy-scorecard/> (last visited May 2, 2020).

⁹ Ron Wood, *Renters, Landlords Face Crunch Time as Rent, Mortgages Come Due*, Ark. Democrat-Gazette (Apr. 7, 2020), <https://www.arkansasonline.com/news/2020/apr/07/renters-landlords-face-crunch-time-as-r/>.

evictions and no further action is needed, we are convinced that the relief provided by the court's orders falls far short of what is necessary to protect Arkansas's most vulnerable renters from eviction at this time.

For starters, the court's per curiam order issued on March 17 merely implements precautionary measures to prevent further spread of COVID-19 by limiting in-person judicial proceedings, with the exception of certain identified proceedings.¹⁰ Notably, the court's order does not include civil eviction proceedings (including those filed under the state's unlawful detainer law), and courts across Arkansas are still accepting eviction filings daily despite this order.

The *Arkansas Democrat-Gazette* recently reported that at least 300 evictions were filed pursuant to the state's unlawful detainer law since the state reported its first case of COVID-19 on March 11.¹¹ A separate analysis from a professor at the William H. Bowen School of Law in Little Rock revealed that at least 100 unlawful detainer actions were filed for nonpayment of rent across the state in April. Most alarmingly, Legal Aid of Arkansas reports that one of its clients, who was diagnosed with COVID-19 in early April, suffered an eviction for nonpayment of rent despite asking her landlord to work with her on rent.¹² The urgent implementation of a robust eviction moratorium is necessary to prevent such evictions from occurring notwithstanding the March 17 order of the Arkansas Supreme Court.

Last week, the court issued another per curiam order providing that landlords seeking an eviction for nonpayment of rent must affirmatively plead that the subject property is not a "covered dwelling" under the federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act).¹³ However, the CARES Act only applies to federally financed properties and many renters live in privately financed properties not covered by the Act's eviction restrictions.¹⁴ In other words, landlords generally do not have to comply with the CARES Act's eviction restrictions unless they have a mortgage financed through Freddie Mac, Fannie Mae, or another federal mortgage lender; participate in the Low-Income Housing Tax Credit program; or participate in federally-assisted rental housing or voucher programs.¹⁵ The CARES Act is estimated to only cover approximately 28% of

¹⁰ Supreme Court of Arkansas, Per Curiam Order In Re Response to the COVID-19 Pandemic (2020), <https://www.arcourts.gov/sites/default/files/articles/COVID-19-PC.pdf>.

¹¹ Ginny Monk, *Evictions in State Not on Pause, Analysis Shows; Amid Pandemic, Courtroom Closures, at Least 300 Filed Since March 11*, Ark. Democrat-Gazette (Apr. 19, 2020), <https://www.arkansasonline.com/news/2020/apr/19/evictions-not-pause-analysis-shows/>.

¹² Legal Aid of Arkansas, *Landlords Must Take Extra Step to Evict Tenants in Arkansas* (Apr. 30, 2020), <https://arlegalaid.org/news-events/newsroom.html/article/2020/04/30/landlords-must-take-extra-step-to-evict-tenants-in-arkansas>.

¹³ Supreme Court of Arkansas, Per Curiam Order In Re Response to the COVID-19 Pandemic—Eviction Filings (2020), <https://www.arcourts.gov/sites/default/files/articles/in-re-response-to-COVID-19-eviction-filings-PC.pdf>.

¹⁴ Laurie Goodman, et al., *The CARES Act Eviction Moratorium Covers All Federally Financed Rentals—That's One in Four US Rental Unit*, Urb. Inst.: Urb. Wire (Apr. 2, 2020), <https://www.urban.org/urban-wire/cares-act-eviction-moratorium-covers-all-federally-financed-rentals-thats-one-four-us-rental-units>.

¹⁵ *Id.*

rental properties nationwide.¹⁶ Thus, a statewide eviction moratorium would protect those renters who are not currently protected by the CARES Act's provisions.

As the COVID-19 pandemic spreads in severity nationwide, state officials must create a unified and concerted response to ensure the continued health, economic stability, and wellbeing of all Americans. State governors have particular authority to mitigate the spread of COVID-19 and thwart potential catastrophes stemming from the national crisis. We urge you to use the full extent of your authority to ensure that families can stay in their homes throughout this unprecedented public health crisis. In addition, we reiterate our request that you impose a statewide moratorium on utility service disconnections—including water and broadband services—and restore service to previously disconnected customers for the duration of the State of Emergency.

We request an opportunity to speak with you further about this critical issue as soon as possible. You can reach Special Economic Justice Counsel Jason Bailey at jbailey@naacpldf.org or (202) 216-5566.

Very truly yours,

A handwritten signature in black ink, appearing to read 'J. Bailey', with a stylized flourish extending to the right.

Coty Montag

Jason Bailey

NAACP Legal Defense and Educational Fund, Inc.

¹⁶ *Id.*