



February 26, 2021

The Honorable Nancy Pelosi
Speaker
U.S House of Representatives
H-232, The Capitol
Washington, DC 20515

The Honorable Kevin McCarthy
House Minority Leader
U.S. House of Representatives
H-204, The Capitol
Washington, DC 20515

The Honorable Chuck Schumer
Senate Majority Leader
U.S. Senate
S-230, The Capitol
Washington, DC 20510

The Honorable Mitch McConnell
Senate Minority Leader
U.S. Senate
S-221, The Capitol
Washington, DC 20510

Dear Speaker Pelosi, Minority Leader McCarthy, Majority Leader Schumer, and Minority Leader McConnell:

On behalf of the Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee"), a nonprofit civil rights organization founded in 1963 by leaders of the American bar at the request of President John F. Kennedy to help defend civil rights and secure equal justice for African Americans and other people of color, we write to urge Congress to pass the American Rescue Plan as soon as possible, prioritizing the health and economic well-being of African Americans and other people of color, as well as low-income people, who have been disproportionately harmed by COVID-19.

Throughout the previous year, the spread and impact of COVID-19 in the United States has exacerbated existing racial inequities. As Congress considers legislation to mitigate the pandemic's reach across the nation, the health and economic needs of African Americans and other people of color disproportionately impacted by the virus must be prioritized. Local and national data on the mortality rate of people infected with COVID-19 paint a devastating picture: African Americans are dying from the virus at 1.4 times the rate of white Americans.¹ Data released by the Centers for Disease Control and Prevention on COVID-19 infections has shown that African Americans are 2.9 times more likely to be hospitalized than white people.² Moreover, Black Americans at high risk of severe illness were 1.6 times more likely than white people to live in households with essential healthcare workers.³ As the unemployment number

¹ Jùlia Ledur, *The COVID Racial Data Tracker*, ATLANTIC, <https://covidtracking.com/race> (last visited Feb. 23, 2021).

² *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> (last visited Feb. 23, 2021).

³ Thomas M. Selden & Terceira A. Berdahl, *COVID-19 and Racial/Ethnic Disparities in Health Risk, Employment, and Household Composition*, HEALTH AFFS. (July 14, 2020), <https://www.healthaffairs.org/doi/10.1377/hlthaff.2020.00897>.



surged to 10.1 million people this year,⁴ Black people, who face unemployment rates twice as high as rates faced by white people, are acutely vulnerable.⁵ Because half of the U.S. population receives health insurance through their employer, this increase in unemployment has impacted access to medical care for those infected and exposed to the virus.⁶

While previous COVID-19 response bills appropriated emergency funds, offered some paid leave for workers and provided some additional economic relief, they did not do enough to stem the tide of the devastating impact of the virus on African Americans. The Coronavirus Aid, Relief and Economic Security Act (CARES Act) allocated a historic \$2 trillion, but it predominantly provided funds to businesses and state and local governments—only 30 percent of the funds went to individual people and families.⁷ In December, the COVID stimulus bill extended Pandemic Unemployment Assistance (PUA) benefits and provided direct cash payments into the hands of many families, but it only provided temporary relief which expires next month. Any additional funds for the Paycheck Protection Program and other aid to businesses should be targeted to truly small businesses, especially minority and women-owned businesses. Further, aid for state and local governments should disproportionately be steered to communities with the highest poverty rates and communities of color, which have been disproportionately harmed by the health and economic impact of COVID-19.

It is important that all COVID-19 response legislation include language: 1) requiring federal contractors responding to COVID-19 to undertake affirmative action to employ African Americans and members of other underrepresented groups; and 2) prohibiting discrimination by recipients of federal funds on any basis, including race, color, national origin, age, disability, religion, sex, sexual orientation, and gender identity. In addition, the following civil rights policies must be incorporated to fill the gaps left by past COVID-19 response legislation and expired protections:

Economic Relief:

- ***Allocate funding for direct cash assistance to low-income Americans and expanded access to TANF and unemployment insurance:*** COVID-19 has ravaged financial stability for many Americans, particularly retail, restaurant, gig economy, and service industry workers, who are disproportionately people of color.⁸ It is imperative that direct cash assistance be provided to low-income Americans monthly during the pandemic, and that access to TANF and unemployment insurance be expanded. In the December

⁴ BUREAU OF LAB. STAT., THE EMPLOYMENT SITUATION - JAN. 2021 (U.S. Dep't of Labor 2021), <https://www.bls.gov/news.release/pdf/empsit.pdf>.

⁵ Janelle Jones, *Black Unemployment Is At Least Twice as High as White Unemployment at the National Level and in 12 States and D.C.*, ECON. POL'Y INST. (Oct. 30, 2018), https://www.epi.org/publication/2018q3_unemployment_state_race_ethnicity/.

⁶ *Health Insurance Coverage of the Total Population*, KAISER FAMILY FOUND., <https://www.kff.org/other/state-indicator/total-population/> (last visited Aug. 6, 2020).

⁷ Kelsey Snell, *What's Inside the Senate's \$2 Trillion Coronavirus Aid Package*, NAT'L PUB. RADIO (Mar. 26, 2020), <https://www.npr.org/2020/03/26/821457551/whats-inside-the-senate-s-2-trillion-coronavirus-aid-package>.

⁸ Connor Maxwell & Danyelle Solomon, *The Economic Fallout of the Coronavirus for People of Color*, Ctr. for Am. Progress (Apr. 14, 2020), <https://www.americanprogress.org/issues/race/news/2020/04/14/483125/economic-fallout-coronavirus-people-color/>.



COVID bill, Congress passed legislation to provide direct economic relief via stimulus checks of \$600 and an extension of PUA benefits to March 14, 2021. However, this is a temporary solution to a deeply rooted problem. Americans need longer term solutions and more monetary assistance to survive during this pandemic.

- ***Retain the expansion of Supplemental Nutrition Assistance Program (SNAP) benefits:*** In the December relief bill, the monthly SNAP benefit level was increased through June 30, 2021 and \$5 million was provided to expand the SNAP online purchasing program and mobile payment technologies. While the SNAP benefit level was increased, the need for assistance is far greater, and many families still face the risk of food insecurity. SNAP benefits reduce poverty and increase food security during economic recessions, especially among children.⁹ This is critical in light of COVID-19, as research shows that food insecure children are twice as likely to report being in fair or poor health and 1.4 times as likely to have asthma.¹⁰ Expanding SNAP benefits is crucial to helping vulnerable families weather the detrimental effects of COVID-19.¹¹

Health Equity:

- ***Mandate the collection and release of race-based health data:*** Black communities, and other communities of color, have historically suffered from systemic discrimination and bias in the healthcare system, resulting in lower rates of insurance coverage, insufficient care, and poorer health outcomes,¹² including higher rates of diabetes, heart conditions, and asthma—underlying health conditions that increase the risk of complications from COVID-19.¹³ The CDC's limited data indicate that Black Americans comprise over 14% of cases and nearly 18.5% of COVID-19 deaths, even though they are only 13.4% of the U.S. population.¹⁴ The CDC has not released *any* race or ethnic demographic data related to COVID-19 testing. The agency's incomplete data for tests, cases, and outcomes makes it impossible to accurately gauge the health impact of COVID-19 on African American communities and other communities of color, and it hinders the development of meaningful health policies. The HEROES Act provides concrete protocols and guidance necessary for consistent collection and reporting of race and ethnic demographic data for tests, cases, and outcomes, which the Lawyers' Committee supports. Specifically, we support the following provisions from the HEROES Act, and urge their inclusion in the American Rescue Plan and final COVID relief package:

⁹ Sepideh Modrek et al., *A Review of Health Consequences of Recessions Internationally and a Synthesis of the US Response during the Great Recession*, 35 PUB. HEALTH REV. 1, 17, 20 (2013).

¹⁰ Craig Gundersen & James P. Ziliak, *Food Insecurity and Health Outcomes*, 34 HEALTH AFFS. 1830, 1830 (2015).

¹¹ Modrek, *supra* note 9.

¹² Colleen Walsh, *COVID-19 Targets Communities of Color*, HARV. GAZETTE, (Apr. 14, 2020), <https://news.harvard.edu/gazette/story/2020/04/health-care-disparities-in-the-age-of-coronavirus/>.

¹³ Lisa Fitzpatrick, *Coronavirus Has Exposed the World to Health Disparities in Black America: So What Now?*, FORBES (Apr. 8, 2020), <https://www.forbes.com/sites/lisafitzpatrick/2020/04/08/coronavirus-has-exposed-the-world-to-health-disparities-in-black-america-so-what-now/#6ebe633821ca>.

¹⁴ CDC COVID Data Tracker, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/covid-data-tracker/>.



- Section 572 ensures reporting of demographic data for testing and diagnoses and requires that it be made publicly available, by providing support for State, local, and territorial health departments.
 - Section 576 authorizes further field studies on health inequities.
 - Sections 573 and 574 empower the Secretary of Health and Human Services (HHS) to work with federal agencies, states, and localities, “to support the modernization of data collection methods and infrastructure ... for the purpose of increasing data collection related to health inequities, such as racial, ethnic, socioeconomic, sex, gender, and disability disparities.”
 - Sections 541(a)(1)(B) and (a)(5)(C) critically ensure that strategies for testing immunity and potentially reducing social distancing are “undertaken in a manner that optimizes the health and safety of the people of the United States, and reduces disparities (including disparities related to race, ethnicity, sex, age, disability status, socioeconomic status, and geographic location) in the prevalence of, incidence of, and health outcomes with respect to, COVID-19.”
 - Sections 577 and 617 require that demographic data on testing, hospitalizations, and mortalities be reported to Congress and that longitudinal studies on the impact of COVID-19 include diverse subjects.
- ***Expand Medicaid access:*** Six of the states that were quick to reopen last year—Georgia, Alabama, Florida, Mississippi, South Carolina, and Tennessee—are also states that have refused to expand Medicaid access.¹⁵ In these states, and the other states that have refused Medicaid expansion, people of color are much less likely to have insurance.¹⁶ Congress must push states to expand access to Medicaid to ensure that low-income Americans are able to receive the necessary medical testing and treatment for COVID-19. We urge Congress to include section 104 of the HEROES Act in the American Rescue Plan and final package, as it will protect uninsured individuals by ensuring that those whom states opt to cover through the new Medicaid eligibility pathway will be able to receive treatment for COVID-19 without cost sharing.
 - ***Increase funding for hospitals and care centers providing COVID-19 treatment to communities of color:*** While states and localities must continue to receive emergency aid to address needs like medical equipment and hospital staff support, the federal government must ensure that aid is equitably distributed to marginalized communities, many of which lack access to hospitals. We urge Congress to include these provisions from the HEROES Act in the American Rescue Plan and final COVID relief package to ensure communities of color receive targeted funding and culturally competent care:
 - Section 571 requires the Secretary of HHS to establish and maintain an online portal for tracking the inventory and capacity of health entities. This portal will enable hospitals and long-term care facilities to report their inventory related to personal protective equipment, medical supplies, and facility capacity, allowing for identification of understaffed facilities and interventions.

¹⁵ *Id.*

¹⁶ *Id.*



- Section 562(c) requires priority be given to grant applicants proposing to serve areas with a high number of COVID-19 cases, areas which anticipate a surge in COVID-19 cases, and areas with high numbers of low-income and uninsured populations, including medically underserved populations.
- Sections 565 and 562(d)(2)(f) promote multilingual and culturally appropriate awareness campaigns and culturally competent workforces.

Housing:

- ***Include a 12-month national moratorium on evictions and foreclosures and allocate \$100 billion in rental assistance:*** The 100 billion dollars in rental assistance and 12-month nationwide moratorium on evictions and foreclosures included in the original HEROES act must be in the final COVID-19 package to prevent a surge in homelessness, overcrowding, and substandard housing conditions. This is critical for Black families, as 58 percent of Black heads-of-household rent, rather than own, their homes.¹⁷ The Rent and Mortgage Cancellation Act of 2020, H.R. 6515, must be included to ensure that tenants are not evicted for nonpayment of rent during the pandemic at the expiration of the eviction moratoria and prevent, rather than merely delay, an eviction and foreclosure crisis. The next relief bill should also specifically allocate funds for local governments, Public Housing Authorities (PHAs), and nonprofit affordable housing development organizations to acquire existing rental units from owners facing liquidity or financial challenges and convert them into affordable housing. This will address the short-term need to prevent homelessness and housing insecurity, while expanding the limited supply of affordable housing nationally. While the additional \$25 billion in rental assistance and halt in residential evictions allocated in the December COVID relief bill is enabling more families to stay in their homes, the need for assistance is far greater, and many people are still at risk of eviction.

Criminal Justice Reform:

- ***Allocate funding to state and federal prisons, jails, and detention centers to adequately test and treat staff and inmates for COVID-19, waive cash bail for individuals awaiting trial for misdemeanors and non-violent felony charges, allocate funding to local courts for the suspension of fines and fees, and take necessary precaution to minimize the virus' spread in correctional facilities:*** Funds must be allocated to federal and state prisons, jails, and detention centers to adequately test and treat staff and inmates for COVID-19, and precautions should be taken to minimize the virus' spread. New infections in prisons the week of November 24, 2020 reached the highest level since the start of the pandemic.¹⁸ There have been at least 2,419 deaths from COVID-19 reported among prisoners and at least 381,462 cases.¹⁹ Cash bail must be waived for individuals awaiting trial for misdemeanors and non-violent felony charges, similar to the state of

¹⁷ Anthony Cilluffo et al., *More U.S Households Are Renting Than at Any Point in 50 Years*, PEW RSCH. CTR.: FACT TANK (July 19, 2017), <https://www.pewresearch.org/fact-tank/2017/07/19/more-u-s-households-are-renting-than-at-any-point-in-50-years/>.

¹⁸ *A State-by-State Look at Coronavirus in Prisons*, THE MARSHALL PROJECT, <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons> (last visited Feb. 23, 2021).

¹⁹ *Id.*



New Jersey's model.²⁰ Funding must also be allocated to local courts so that they can place a moratorium on court-imposed fees and fines from 30 days before the emergency period began through 90 days after it ends. Last, to minimize the virus's spread, the number of people confined should be reduced and members of vulnerable populations—including the elderly, pregnant, and immunocompromised—who do not pose a safety or flight risk should be prioritized for release and home confinement.

Education:

- ***Allocate funding to ensure K-12 students have adequate technology to access distance-learning curricula and extend federal student borrower relief under the CARES Act to all federal student loan borrowers:*** As school districts continue with distance-learning, funding must be allocated to ensure that low-income, African-American and other students of color have adequate technology and access to high-speed internet to ensure they can access distance-learning curricula.

Employment and Small Business Protections:

- ***Ensure that essential and frontline workers have access to safe workplaces and personal protective equipment, and that employers are mandated to comply with emergency temporary standards:*** Black and Hispanic workers are facing significant and distinct harms during this pandemic. They are more vulnerable to unsafe work environments, as well as discriminatory discipline and discharges, as they are the least likely to be able to work from home and most likely to be in high-risk-of-exposure but low-paying occupations.²¹ Congress must ensure that essential and frontline workers have access to safe workplaces and personal protective equipment, and that employers are mandated to comply with temporary emergency standards, including by increasing funding to the Occupational Safety and Health Administration. We strongly support the workplace protections established by sections 202 and 203 of the HEROES Act. Section 120302 requires the Secretary of Labor to establish an emergency temporary standard, protecting against occupational exposure to COVID-19, and to maintain these protections until a permanent standard is established within 24 months of enactment. These standards are reinforced by anti-retaliation measures in section 120302(d), which protects whistleblowers. Section 120303 further requires the CDC, along with the National Institute for Occupational Safety and Health, to collect and, as appropriate, investigate reports of work-related COVID-19 transmissions in certain industries, and to make recommendations based on this information. Congress must also ensure that all workers

²⁰ Lea Hunter, *What You Need to Know About Ending Cash Bail*, CTR. FOR AM. PROGRESS (Mar. 16, 2020, 9:05 AM), <https://www.americanprogress.org/issues/criminal-justice/reports/2020/03/16/481543/ending-cash-bail/>.

²¹ Latinx workers across the economy have suffered enormous job losses since February 2020. As a group, they are the least likely to be able to work from home and the most likely to have lost their job during the COVID-19 recession. Elise Gould, Daniel Perez, and Valerie Wilson, *Latinx Workers - Particularly Women - Face Devastating Job Losses in the COVID-19 Recession*, ECON. POL'Y INST. (Aug. 20, 2020) <https://www.epi.org/publication/latinx-workers-covid/>. Black workers are more likely to be in front-line jobs than their white counterparts, forcing them to risk their own and their families' health to earn a living. Elise Gould & Valerie Wilson, *Black Workers Face Two of the Most Lethal Preexisting Conditions for Coronavirus - Racism and Economic Inequality*, ECON. POL'Y INST. (June 1, 2020) <https://www.epi.org/publication/black-workers-covid/>.



have access to EEOC protections by automatically tolling the deadline to file a charge of discrimination with the agency.

- ***Provide protections for businesses owned by people of color and people with criminal records:*** As many as one in three adults have criminal records, with Black men being six times as likely as white men to have a criminal record.²² Many people with criminal records are unable to find employment, and often start their own businesses as a result. These small businesses contribute significantly to the economy.²³ For these reasons, we strongly support section 218(a)(ii) of the HEROES Act, which allows businesses that are owned in part by individuals with criminal records to receive PPP funds. We additionally support sections 609 and 611's requirements for mandatory reporting and collection of demographic data with respect to PPP loan distribution. Although the December COVID relief bill expands eligibility to different small businesses who were not previously able to apply for PPP loans, it did not provide extensions for individuals with criminal records to receive PPP funds. It is critical that Congress reaffirms that lending institutions must comply with fair lending laws, and to require demographic reporting during the pandemic.

Privacy:

- ***Enact privacy protections for COVID-19 tracking technologies, such as the Public Health Emergency Privacy Act:*** The COVID-19 pandemic has presented unique challenges as companies and local governments develop surveillance technologies to track the virus's spread.²⁴ It is imperative that Black Americans and other people of color, who have been disproportionately impacted by the virus and its accompanying economic hardship, do not have their privacy rights violated through the use of these technologies.²⁵ Congress must enact legislation, such as the Public Health Emergency Privacy Act,²⁶ regulating such technology by requiring that all COVID-19 tracking technologies: (1) be voluntary; (2) be tested for efficacy and safety before being deployed; (3) not unfairly discriminate; and (4) not allow private health data to be used for secondary purposes or shared with law enforcement.²⁷

²² SENTENCING PROJECT, AMERICANS WITH CRIMINAL RECORDS 1 (2015), <https://www.sentencingproject.org/wp-content/uploads/2015/11/Americans-with-Criminal-Records-Poverty-and-Opportunity-Profile.pdf>.

²³ Khristopher J. Brooks, *A Criminal Past Means No Paycheck Protection Program Loan* (Apr. 21, 2020), CBS NEWS, <https://www.cbsnews.com/news/paycheck-protection-program-loans-small-business-owners-criminal-convictions-excluded-coronavirus/>.

²⁴ Konrad Putzier, *Welcome Back to the Office. Your Every Move Will Be Watched*, WALL STREET J. (May 5, 2020), <https://www.wsj.com/articles/lockdown-reopen-office-coronavirus-privacy-11588689725>.

²⁵ Charmaine Riley, *Civil Rights Groups Call for Protection of Democracy and Privacy as Tech Responds to Pandemic*, LEADERSHIP CONF. ON CIV. & HUM. RTS. (June 11, 2020), <https://civilrights.org/2020/06/11/civil-rights-groups-call-for-protection-of-democracy-and-privacy-as-tech-responds-to-pandemic/> (coalition statement of principles signed by 83 organizations, led by the Lawyers' Committee for Civil Rights Under Law, Leadership Conference on Civil and Human Rights, and New America's Open Technology Institute).

²⁶ Public Health Emergency Privacy Act, S. 3749, 116th Cong. (2020).

²⁷ LEADERSHIP CONF. ON CIV. & HUM. RTS., *Principles for Protecting Civil Rights and Privacy during the COVID-19 Crisis* (June 11, 2020), http://civilrightsdocs.info/pdf/policy/letters/2020/COVID-19_Privacy%2BCivil_Rights_Principles_Coalition_Support.pdf (Lawyers' Committee for Civil Right Under Law listed as a supporting organization).



As we continue to see the devastating impact of the COVID-19 pandemic, Congress must expend sufficient resources to ensure that all Americans, particularly African Americans and other people of color, can continue to weather the storm. Thank you for your leadership, and for your consideration of our priorities. Please feel free to contact Demelza Baer, Director of Public Policy, at dbaer@lawyerscommittee.org; Erinn D. Martin, Policy Counsel, at emartin@lawyerscommittee.org; or Kadeem Cooper, Policy Counsel, at kcooper@lawyerscommittee.org, with any questions.

Sincerely,

Damon T. Hewitt
Acting President & Executive Director
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Demelza Baer
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