D.C. Open Government Coalition

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Testimony of
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Revised

On behalf of the D.C. Open Government Coalition
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Before the Committee on the Judiciary and Public Safety
Council of the District of Columbia

Bill 24-63 — the "Second Chance Amendment Act of 2021" and
Bill 24-110 — the "Criminal Record Expungement Amendment Act of 2021"

I am Robert Becker, a member of the D.C. Open Government Coalition's board of directors, and I want to thank you for inviting us to testify today regarding these bills. In my day job for the past 30 years, I have been a criminal defense lawyer representing indigent defendants under the Criminal Justice Act in the D.C. Court of Appeals, the Superior Court of the District of Columbia, the U.S. Court of Appeals for the D.C. Circuit and the U.S. District Court for the District of Columbia.

In 2017, the Coalition went on record supporting the underlying goal of similar bills introduced in Council Period 22. Today, we reiterate that D.C. residents should be able to move on with their lives without fear that public or private entities will deny them jobs, housing, credit or other benefits due to past arrests, charges terminated short of conviction, and in some cases that end with convictions. We recognize as well that there may be cases where sealing records would be appropriate after case-by-case consideration of competing interests.

As we said in 2017, the approach bills 24-63 and 24-110 take to achieve that goal overlook the collateral consequences for the public and future criminal defendants of sealing large volumes of criminal case records. For the public, access to court records is crucial to holding governmental leaders, including law enforcement, prosecutors and the courts, accountable for arrests, prosecutions, and case outcomes. For future criminal defendants, pleadings and orders from past cases are invaluable resources in presenting arguments to trial and appellate judges.

We encourage all involved to engage in an open process to determine how we can help D.C. residents improve their lives without infringing the public's constitutional right to access

information and without impairing the ability of D.C. residents to defend themselves in the future from criminal charges. We believe a balance is possible and appreciate the opportunity to work together to identify and achieve a balance.

Our comments today focus on Bill 24-63, which appears to subsume the relatively minor definitional amendments in Bill 24-110. But our greater concern, prompted by Councilmember Henderson's introduction April 1 of Bill 24-180, "The Record Expungement Simplification To Offer Relief and Equity (RESTORE) Amendment Act of 2021," is that these bills presage an escalating effort to deny the public access to criminal case records, regardless of whether defendants were convicted of misdemeanors or violent felonies, and regardless of defendants' criminal conduct.[1]

Our concerns about the proposed amendments fall into three categories. The first is that the First Amendment guarantees transparency of criminal case records because police, prosecutors and the courts wield enormous power over District residents and visitors. The public and news media must have access to effectively fulfill their duty as a watchdog over the criminal justice system to ensure that they mete out justice evenhandedly.

The second concern under the First Amendment is that transparency of police and court records, even in cases that do not produce convictions, inspires public confidence in the criminal justice system. The U.S. Supreme Court has recognized that "[s]ecrecy is profoundly inimical to this demonstrative purpose…. Open[ness] … assure[s] the public that procedural rights are respected, and that justice is afforded equally." *Richmond Newspapers v. Virginia*, 448 U.S. 555, 595 (1980). It elaborated that secrecy "breed[s] suspicion of prejudice and arbitrariness, which in turn spawns disrespect for law. Public access is essential … to achieve the objective of maintaining public confidence in the administration of justice." *Id.*

The third is that transparency is key to protecting the individual rights of D.C. residents who come into contact with police and the courts, and by sealing records Bill 24-63 would deprive residents of that protection. Strictly speaking this legislation applies to criminal judicial cases, not law enforcement records. But we believe the Metropolitan Police will view the proposed amendments as creating a broad Freedom of Information Act exemption that would cover records documenting interactions between officers and civilians. Community and public interest groups, and the media frequently use such records, as well as criminal case records, to document discriminatory enforcement practices, systemic corruption and officer misconduct.

Before we testified about this issue in 2017, we enlisted Ropes & Gray, LLC, our outside counsel, to research the state of the law nationwide regarding sealing and expungement of court and law enforcement records in criminal cases. They identified 11 states that have sealing and/or expungement laws, and in which legislators had recently debated the issues that are before you today. What we learned is that statutes in each of those states requires defendants to petition the court to initiate the process. This ensures that the process satisfies the U.S. Supreme Court's

[1] Several witnesses at the hearing testified about the RESTORE Act, even though it was not on the agenda. We have submitted supplemental testimony presenting our concerns about it.

procedural requirements.[2]

There is considerable variation among states, and within states among categories of offenses, in the amount of time defendants must wait before filing petitions. In cases that end without convictions, Illinois, Massachusetts and under certain circumstances Nevada, permit defendants, when the case is closed, to request sealing; other states impose a waiting period. In some states, defendants may petition to seal non-violent misdemeanor convictions a year after completing their sentences; and in some they must wait up to 15 years before petitioning to seal felony convictions.

All of the states restrict the types of offenses that may be sealed, and appear to exclude violent felonies. Maine permits only youthful offenders, those under age 21, to petition where the maximum penalty is 6 months in prison and a $1,000 fine. In Wisconsin, defendants must be under age 25, and the maximum penalty must be less than six years in prison. In New York, a defendant may request that no more than two offenses be sealed, including one felony. In Colorado, Massachusetts, Maine, New York, Pennsylvania and under certain circumstances in Wisconsin, a defendant who commits another crime becomes ineligible for sealing and previously sealed cases must be unsealed.

In 2017, bills were introduced in Pennsylvania and Maine that would have automatically sealed some criminal cases after dismissal or final disposition. In 2018, the Maine legislature rejected a bill that would have automatically seal convictions after 7 years if the maximum penalty for the offense was no more than six years in prison and a $5,000 fine, and the defendant had no subsequent convictions. L.D. #1202, AN ACT TO CLEAR A PATH TO EMPLOYMENT, Me. 128th Leg., March 27, 2018. In 2019, Pennsylvania became the only state to implement automatic sealing of non-violent misdemeanor convictions and cases that do not end with conviction.[3]

The amendments before you would provide D.C. residents no greater protection than residents of other jurisdictions have, but the District would become a national outlier in revoking the public's right of access to court records in such a short time and without regard to subsequent criminal justice contacts.

BILL 24-63 WOULD DEPRIVE THE PUBLIC OF IMPORTANT INFORMATION BY AUTOMATICALLY SEALING CRIMINAL CASES

Bill 24-63 includes amendments to D.C. Code § 16-803 that would reduce the time a defendant would have to wait before petitioning the Superior Court to seal criminal case records following convictions. The Coalition takes no position regarding the merits of those amendments.

The bill's major proposal is new D.C. Code § 16-803.01a that would automatically seal all court

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[2] Our 2017 report is attached. We request the opportunity to submit an updated version reflecting legislative developments in the past three years.

[3] Misdemeanors would be sealed 10 years after sentence completion if the defendant has had no subsequent charges.

and related police records 90 days after the case ends in many, if not most, misdemeanor and many felony cases that do not result in conviction.[4] Defendants charged with dangerous crimes, as defined in D.C. Code § 23-1331(3), would have to petition the court to seal their cases.[5] Whether the government dropped the charges, the defendant was acquitted after a lengthy trial, or the D.C. Court of Appeals vacated a guilty verdict due to a procedural trial error, all records would be hidden from public view unless prosecutors object.

Under Bill 24-63, defendants who have prior serious misdemeanor convictions would have to wait three years after completing their sentences before their non-conviction cases are sealed automatically. But Bill 24-110(2)(c)(1) would eliminate that requirement. Under Bill 24-63(d), defendants who have prior felony convictions would have to wait five years after completing their sentences before petitioning to have their non-conviction cases sealed, but Bill 24-110(2)(c)(2) would reduce the waiting period to two years. It is significant that prior convictions are not an impediment to sealing. According to proposed § 16-803.01a, "(f) The Superior Court shall grant a motion to seal pursuant to subsections (a) and (b), or shall seal *sua sponte* pursuant to subsection (4), if it is in the interests of justice to do so…."

Proposed § 16-803.01a(f) places on the government the burden of proving by a preponderance of the evidence that sealing is not "in the interests of justice." In doing so, it markedly undermining the analytical framework established in D.C. Code § 22-4135 that judges now employ in ruling on sealing motions.

To the extent that a judge deciding whether to seal a case "in the interests of justice" must take into account "community interest" under proposed § 16-803.01a(f), the focus is on "(2) The

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[4] In 2017, the mayor proposed this amendment in Bill 22-560.

[5] D.C. Code § 23-1331 states:

> (3) The term "dangerous crime" means:
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> (A) Any felony offense under Chapter 45 of Title 22 (Weapons) or Unit A of Chapter 25 of Title 7 (Firearms Control);
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> (B) Any felony offense under Chapter 27 of Title 22 (Prostitution, Pandering);
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> (C) Any felony offense under Unit A of Chapter 9 of Title 48 (Controlled Substances);
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> (D) Arson or attempted arson of any premises adaptable for overnight accommodation of persons or for carrying on business;
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> (E) Burglary or attempted burglary;
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> (F) Cruelty to children;
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> (G) Robbery or attempted robbery;
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> (H) Sexual abuse in the first degree, or assault with intent to commit first degree sexual abuse;
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> (I) Any felony offense established by the Prohibition Against Human Trafficking Amendment Act of 2010 [D.C. Law 18-239; § 22-1831 et seq.] or any conspiracy to commit such an offense; or
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> (J) Fleeing from an officer in a motor vehicle (felony).

community's interest in retaining access to the records, including the interest of current or prospective employers in making fully informed hiring or job assignment decisions and the interest in promoting public safety." The bill never acknowledges the public's First Amendment interest in access to criminal case records, much less instructs judges to consider that interest. The only other "community interest" a judge must consider is "(3) The community's interest in furthering the movant's rehabilitation and enhancing the movant's employability."

A statute that would automatically seal criminal judicial records would not comply with First Amendment procedural requirements enunciated by the Supreme Court in at least five opinions.[6] The Court said the public's right of access is not absolute. *Richmond Newspapers, supra*, at 581 n. 18. But before denying access a judge must determine that secrecy would further a compelling interest that overrides the public interest in access, that any restriction imposed be no broader than necessary to protect that interest, and that secrecy will, in fact, protect the competing interest. *Globe, supra*, at 606 – 8. Consistent with the First Amendment, a defendant must assert his or her desire to have records sealed; a judge cannot act on a presumption about the defendant's wishes. *Press-Enterprise I*, at 512. In response to a defendant's request, the court must apply the three-part test to the facts of the case before it, and set out findings on the record supporting a decision to seal court records. *Globe, supra*, at 609. Because the Supreme Court placed such a premium on the benefits of public access, it required a detailed, written record to facilitate appellate review of the judge's factual findings and legal conclusions.

THERE ARE MORE EFFECTIVE, NARROWLY TAILORED WAYS TO PROTECT D.C. RESIDENTS

These bills fail the Supreme Court's test because they do not require judges to determine whether other remedies would protect a defendant's rights, and encourage sealing of records when doing so would provide a defendant no practical benefit.

One of the problems individuals face after they have been arrested or charged with a crime for which they were not convicted is that prospective employers, landlords, lenders or licensing bodies may ask about prior contacts with the criminal justice system, or may conduct background checks that uncover such contacts. D.C. already has legislation prohibiting application questions about prior contacts with the criminal justice system. But this Council has never seriously considered legislation prohibiting use of criminal case records in making employment, housing, credit and licensing decisions, and imposing civil or criminal penalties for such use.

The First Amendment would bar public access restrictions where the narrower remedies above would suffice to protect the criminal defendant's interests. Bill 24-63 presume, without supporting evidence, that enforcing information-use restrictions would be too difficult or too

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[6] *Gannett v. DePasquale*, 443 U.S. 368 (1979); *Richmond Newspapers v. Virginia*, 448 U.S. 555 (1980); *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596 (1982); *Press-Enterprise v. Superior Court (Press-Enterprise I)*, 464 U.S. 501 (1984); and *Press-Enterprise v. Superior Court (Press-Enterprise II)*, 478 U.S. 1 (1986).

costly.

SEALING RECORDS WILL NOT PROTECT D.C. RESIDENTS

The premise underlying Bills 24-63 and 24-110, and to a much greater extent Bill 24-180, is that sealing court and police records will protect D.C. residents against discrimination based on prior contacts with the criminal justice system. For several reasons, these measures will provide only the illusion of protection.

Cases that attracted media attention, provide an obvious illustration of why this legislation will fail. Even if the public cannot access sealed records, news stories about the case will be readily available. In fact, public availability of court and police records might benefit the defendant by providing greater detail and context.

Even in run-of-the-mill cases, denying public access will provide little or no protection. In the Internet age, private entities scrape vast amounts of police and court data from online private and government databases. Even if the Superior Court seals police and court records under this legislation, it is likely that businesses and private investigators will be able to purchase and use the records. But if a case is dismissed for want of prosecution and sealed, the private data source, although accurate, may be incomplete. The data provider would be unable to update its records, and the person to whom the records relate will suffer the consequences.

Because D.C. law does not prohibit discriminatory use of criminal case records in employment, leasing, licensing, financial and other contexts, and they would deprive businesses and investigators of complete, as well as accurate, information, the secrecy created by bills 24-63 and 24-110 will cause greater harm to D.C. residents' individual rights than current law.

TO PREVENT DISCRIMINATION AND PROTECT RESIDENTS' RIGHTS, CRIMINAL CASE RECORDS MUST REMAIN OPEN

Concurring in *Richmond Newspapers, supra*, at 604, Justice Blackmun wrote,

> [t]he public has an intense need and a deserved right to know about the administration of justice in general; about the prosecution of local crimes in particular; about the conduct of the judge, the prosecutor, defense counsel, police officers, other public servants, and all the actors in the judicial arena; and about the trial itself.

Justice Stevens concurred that

> public access … acts as an important check, akin in purpose to the other checks and balances that infuse our system of government. The knowledge that every criminal [case] is subject to contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power…. Indeed, [without] publicity, all other checks are insufficient: in comparison of publicity, all other checks are of small account.

Id. at 596 (citations and internal quotations omitted).

By sealing criminal case records, the bills before you would substantially remove the formidable check public scrutiny imposes on police, prosecutorial and judicial power. To illustrate why you should reject these proposals, we offer some examples of how public interest groups and the media have used law enforcement and court records, of the types these bills would seal, to challenge discriminatory practices most harmful to poor and minority community members.

The *Florida Times-Union* in Jacksonville, and ProPublica published a series, WALKING WHILE BLACK,[7] demonstrating that

> pedestrian tickets — typically costing $65, but carrying the power to damage one's credit or suspend a driver's license if unpaid — were disproportionately issued to blacks, almost all of them in the city's poorest neighborhoods. In the last five years, blacks received 55 percent of all pedestrian tickets in Jacksonville, while only accounting for 29 percent of the population.

Reporters analyzed records of 2,200 citations between 2012 and 2017 — nearly 200 issued by one officer[8] — and interviewed numerous charged individuals, government officials and experts. The paper explained its methodology:

> We obtained Traffic Citation Accounting Transmission data from Florida Court Clerks and Comptrollers through the Florida Sunshine Law. This dataset contains all tickets issued in the state of Florida from January 2012 to July 2017…. We narrowed our data to Duval County because of the completeness of its reporting and because black residents are ticketed at a higher rate there than in any other large county in Florida. This data set covered 2,232 pedestrian tickets. We removed 24 tickets issued to cyclists, producing a dataset of 2,208 pedestrian tickets.
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> …
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> The pedestrian ticket dataset included the recipient's race, date of birth, gender and residence to the zip-code level.
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> …
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> We obtained disposition records from Florida Court Clerks and Comptrollers and court records from the Duval Clerk of Courts Summary Report System data to look at the status of cases resulting from pedestrian tickets.

The Sheriff's department acknowledged that "officers typically [] questioned the pedestrians and often got them to consent to a search. Officers could also search an individual if they felt in some way threatened or the person failed to cooperate in showing identification." Using court records

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[7] WALKING WHILE BLACK: Jacksonville's enforcement of pedestrian violations raises concerns that it's another example of racial profiling, *Florida Times-Union*, November 16, 2017.
[8] WALKING WHILE BLACK: One Officer, Scores of Tickets, and a Familiar Racial Disparity, *Florida Times-Union*, November 17, 2017.

the *Times-Union* and ProPublica

> identif[ied] at least 149 cases in which a pedestrian violation led to a search and subsequent additional charge. Even more than the total pool of pedestrian violators, those that are charged with more serious offenses tend to be African American. Overall, the Times-Union/ProPublica analysis showed, 80 percent of those for whom pedestrian violations were accompanied by other charges were black; 77 percent of the additional charges involved drugs

A significant number of tickets were issued in error for such supposed offenses as not being able to produce identification when stopped for jaywalking.

To illustrate the scope of the problem and the impact of the discriminatory enforcement, the *Times-Union* interviewed several individuals who had been charged and published details of their cases.[9] If the Council enacts the proposed amendments, such reporting would be impossible in Washington.

Using criminal case records, the ACLU in Minneapolis analyzed 96,000 arrests between January 2012 and September 2014 for low-level crimes — offenses for which penalties were less than a year in jail and fines no greater than $3,000.[10] It found that Blacks and Native Americans were nearly 9 times more likely than Whites to be arrested for such offenses.

In its introduction to the report, the ACLU quoted Hennepin County District Judge Kevin Burke, who explained that a low-level arrest

> can end up taking somebody who just got a job at Taco Bell and have him fired because they missed work because they were in jail for driving after a suspension case…. Because they missed [work], they're now behind in their child support…. Because they're behind in their child support, the county attorney's office will try to hold them in contempt, to hassle them to get them to pay child support.

To make its point, the ACLU mainly relied on statistical analysis of the records. But under the amendments before you, even that would be difficult, if not impossible, because case records, including those created by police, would be sealed, often within 90 days.

The Maryland Office of the Public Defender in 2016 relied on 700,000 court records to demonstrate the impact on poor, minority families of a predatory bail bond system.[11] It concluded that

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[9] WALKING WHILE BLACK: Learn more about Jacksonville residents who have been stopped, *Florida Times-Union*.

[10] PICKING UP THE PIECES: Policing in America, a Minneapolis Case Study, American Civil Liberties Union of Minnesota, May 6, 2015.

[11] THE HIGH COST OF BAIL: How Maryland's Reliance on Money Bail Jails the Poor and Costs the Community Millions, Maryland Office of the Public Defender, November 2016.

> [i]n practice, this system jails the poor and allows the rich to go free…. [S]tudies show that the widespread use of "secured bail" — which requires payment or security, such as a property title, posted directly to the court, or posting of corporate bond to obtain release — causes new crime, coerces convictions, and has little or no impact on defendants' return to court….

A similar examination in Ferguson, Missouri, by the U.S. Department of Justice uncovered evidence of corruption in the bail system.[12]

In SECOND-CHANCE CITY, a six-part series published between May and December 2016, *The Washington Post* analysis of arrest, court records and sentencing data prompted 2017 amendments to the Youth Act.[13] In the third article,[14] *The Post* explained how it researched the series.

> To study the implementation of the District's Youth Rehabilitation Act, The Washington Post drew from a number of sources, combining information where possible for a more complete understanding of the effects of the law.
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> The Post requested and received a data set from the D.C. Sentencing Commission containing all 3,188 felony sentences issued under the Youth Act from January 2010 to April 2016. The data did not contain information on the identities of those sentenced but included the ages of offenders, dates of conviction, charges at conviction and a statistical weighting of their criminal histories.
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> The Post wrote software to search the District's online court database to identify all publicly available criminal cases, felony and misdemeanor, 168,265 between January 2007 and November 2016. The Post then pulled docket information on every case and analyzed the data, identifying all felony and misdemeanor crimes sentenced under the Youth Act that have not been expunged. By matching crimes and sentencing dates to the Sentencing Commission's data, The Post was able to identify 85 percent of the 3,188 felony offenders sentenced under the Youth Act since 2010.
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> The Post also identified upward of 3,000 misdemeanor crimes for which sentences were given under the Youth Act. Because the Sentencing Commission does not track these crimes, reporters could not determine how many convictions have been expunged because sentences have been successfully completed.
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> The Post also requested data on those arrested on homicide charges in the District since 2010 from the Metropolitan Police Department. Using data pulled from the District's court website, reporters identified 121 individuals arrested on homicide charges who

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[12] INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT, U.S. Department of Justice, March 4, 2016.
[13] SECOND CHANCE CITY (Part I), *The Washington Post*, May 14, 2016.
[14] SECOND-CHANCE LAW FOR YOUNG CRIMINALS PUTS VIOLENT OFFENDERS BACK ON D.C. STREETS, *The Washington Post*, December 3, 2016.

previously were sentenced under the Youth Act. Reporters verified the identity of each offender by pulling files at D.C. Superior Court.

In the future, if the Council enacts these amendments, *The Post* would be unable to do this type of in-depth analysis of criminal cases and provide D.C. residents and the Council a detailed explanation of how systemic faults impact this community.[15]

Using records obtained through a FOIA lawsuit, *The Guardian* reported extensively on a secret facility Chicago police operated from 2004 to 2015 in which more than 3,500 individuals, 82 percent of them African American, were held and "eventually charged, mostly with forms of drug possession … but also for minor infractions such as traffic violations, public urination and driving without a seatbelt."[16] They were interrogated without access to counsel, and family members often did not learn where the detainees were until after they were formally charged.

In 2014, *USA Today* analyzed arrest records nationwide and documented a "staggering" racial gap in arrest rates in several American cities.[17] It found that "[a]t least 70 departments scattered from Connecticut to California arrested black people at a rate 10 times higher than people who are not black." Gannett newspapers in several of those cities used the data to publish stories focusing on local arrests.[18]

The mayor of Buffalo, N.Y., established a Strike Force and Housing Unit in the police department to combat gangs, drugs and guns in public housing. The mayor's goal was laudable, but, using police and court records, *InvestigativePost* found that "judges tossed out evidence seized by officers on the grounds police had no reasonable justification to conduct the searches. In two of those instances, judges raised questions about the testimony of officers because of conflicting video evidence or its sheer implausibility."[19]

When similar bills came before this committee in 2017, we cited some of these examples in discussions with D.C. government officials. They tended to say the Maryland and Missouri bail bond examples are not relevant because D.C. does not have such a system.

They are wrong. The issue before you is not about fixing specific flaws in the criminal justice system. It is about protecting individual rights, and whether sealing public court and police records will improve the lot of D.C. residents who have come in contact with the criminal justice system. These examples are very relevant because they demonstrate how public interest groups and the news media use these types of records to call attention to a broad range of systemic

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[15] Using records obtained under the Freedom of Information Act, *The Post* reported on increases in marijuana arrests since passage of Proposition 71. D.C. ARRESTS FOR PUBLIC USE OF MARIJUANA NEARLY TRIPLED LAST YEAR, July 11, 2017

[16] HOMAN SQUARE: Chicago police detained thousands of black Americans at interrogation facility, *The Guardian*, August 5, 2015.

[17] RACIAL GAP IN U.S. ARREST RATES: "Staggering disparity," *USAToday*, November 18, 2014.

[18] *See, e.g.,* WHO GETS ARRESTED MOST ON DELMARVA?, *Delmarva now*, November 18, 2014.

[19] BUFFALO POLICE WHO CROSS THE LINE, *InvestigativePost*, September 20, 2017.

problems that deprive D.C. residents of their rights.

These examples make another important point. There is a very clear difference between the reports the ACLU, the Maryland Public Defender and the Justice Department prepared on one hand, and projects done by the *Florida Times-Union*/ProPublica, *The Washington Post, The Guardian*, *USAToday* and *InvestigativePost* on the other. The former relied almost exclusively on data analysis of publicly available agency records. The reports' findings are shocking, but for most people in the community remote and abstract. The latter used similar records to find cases, defendants and victims, and ultimately to show in a compelling way how the criminal justice system failed the community. Anyone who read SECOND-CHANCE CITY, WALKING WHILE BLACK or HOMAN SQUARE could understand the problem and its impact on the community.

Bills 24-63 and 24-110 are well-intentioned, but the remedies they propose cannot effectively achieve their goal. They might prevent discrimination against some individuals by some employers, landlords, financial institutions and licensing bodies. But they do nothing to eradicate systemic impediments that prevent D.C. residents from moving on after encounters with the criminal justice system. In fact, by sealing criminal case records these bills would perpetuate systemic flaws that deprive residents of their rights.

I would like to briefly exit my role as transparency advocate and speak to you as a criminal defense lawyer. As I noted at the beginning, for the past 30 years I have represented indigent criminal defendants — mostly Black and Hispanic D.C. residents — in trial and appellate proceedings up to the U.S. Supreme Court. In furthering my clients' interests, particularly in response to prosecutors' harsh sentencing requests, I have relied on pleadings and orders in past cases, sometimes reaching back 10 to 15 years.[20] I can tell you without equivocation that if enacted, these bills will deprive future criminal defendants and their lawyers of an invaluable trove of information to defend against police and prosecutorial over-reach.

We look forward to working with you to find a solution that will better the lives of D.C. residents without depriving the public generally and future criminal defendants of access to criminal case records. Thank you.

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[20] To illustrate the detrimental impact these bills would have, I have attached a brief I filed in a sentencing appeal before the D.C. Circuit in 2017. *United States v. Powers*, 885 F.3d 728 (D.C. Cir. 2018). In arguing that my client's sentence was unduly harsh, I analyzed indictments, plea agreements and factual proffers, sentencing memoranda and judgments in approximately 90 cases from the preceding decade in which defendants had been sentenced for violating the same statute.

The D.C. Open Government Coalition is a citizens' group established in 2009 to enhance public access to government information and ensure the transparency of government operations of the District of Columbia. Transparency promotes civic engagement and is critical to responsive and accountable government. We strive to improve the processes by which the public gains access to government records (including data) and proceedings, and to educate the public and government officials about the principles and benefits of open government in a democratic society.