Government of the District of Columbia

Office of the Tenant Advocate

Testimony of

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Public Hearing:
Rent Control in the District of Columbia

Bill 18-863, the "Rental Housing Commission Reform Amendment Act of 2010"

Bill 18-864, the "Rental Housing Act Extension Amendment Act of 2010"

Bill 18-1005, the "District of Columbia Housing Authority Board of Commissioners Amendment Act of 2010"

Committee on Housing and Workforce Development
The Honorable Michael A. Brown, Chairperson
Council of the District of Columbia

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11:00 a.m.

Room 500
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Thank you, Chairperson Brown, for this opportunity to testify about three matters now pending before the Committee: Bill 18-863, the "Rental Housing Commission Reform Amendment Act of 2010"; Bill 18-864, the "Rental Housing Act Extension Amendment Act of 2010"; and Bill 18-1005, the "District of Columbia Housing Authority Board of Commissioners Amendment Act of 2010." I am Johanna Shreve, the Chief Tenant Advocate for the District of Columbia at the Office of the Tenant Advocate (OTA). I wish at the outset to thank you for introducing these measures, each of which addresses matters of great importance to District's tenant community. One of the statutory duties of the OTA is to represent the interests of tenants and tenant organizations in legislative, executive, and judicial affairs, including advocating for statutory and regulatory reforms that may be needed to better protect the rights and interests of District renters (D.C. Official Code § 42-3531.07(2)). The OTA strives to fulfill this part of our mission by providing the Council, the Mayor's office, sister agencies, and other governmental entities with reliable information regarding best practices and objective data, as well as our insights into the struggles of the tenant community.

Bill 18-863, the "Rental Housing Commission Reform Amendment Act"

First, I will discuss Bill 18-863, the "Rental Housing Commission Reform Amendment Act of 2010." This bill has two general purposes: one is to protect members and staff of the Commission from personal liability for their official acts, and the other is to add to the qualifications necessary to serve as a member of the Commission.

Sovereign immunity

My understanding of the need for the sovereign immunity provision at section 2(b) of the bill is incomplete. I am informed only that past Rental Housing Commissioners have been sued in their official capacities for damages allegedly stemming from their final decisions, and that novel arguments may have been employed to defeat the sovereign immunity defense -- possibly based on the Commission's status as an independent agency. I am not aware of the relevant details, including any of the facts or the outcome of any such case.

Thus, let me just say that I support *any clarification necessary* to ensure that the Rental Housing Commission and its members and staff are protected by the doctrine of sovereign immunity. My understanding is that the doctrine of sovereign immunity generally does protect government employees, as well as the government itself, against legal liability for actions taken in an official capacity. Nevertheless, I am aware that certain boards and commissions and possibly other government entities do have explicit sovereign immunity clauses in their establishment acts. I am sure that the Committee will consult the General Counsel to determine under what circumstances government entities are given this explicit protection. My only concern about the bill's current stand-alone immunity provision is that it not be done in a way that could create the argument that another given District entity does *not* enjoy sovereign immunity, absent an explicit statutory provision.

Qualifications for Commissioners

Section 2(a) of the bill would add to the qualifications necessary for anyone serving as a Rental Housing Commissioner. Currently, the only qualifications to serve on the Commission are that the individual must be admitted to the practice of law before the District of Columbia Court of Appeals; must be a resident of the District; and cannot be either a housing provider or a tenant (D.C. Official Code § 42-3502.01(b)). By comparison, the Rent Administrator must not only be a District resident admitted to practice law before the District of Columbia Court of Appeals, he or she must also possess "skills and expertise relevant to rental housing, preferably in the area of rent control or rent stabilization" (D.C. Official Code § 42-3502.03(b)). Any judge serving on a District of Columbia court, among other qualifications, must have actively practiced law in the District for five years, or served on a District law school faculty or been employed as a lawyer by the United States or the District of Columbia for five years (D.C. Official Code § 1-204.33)).

I believe it is fair to say that the responsibilities of a Rental Housing Commissioner are broader than those of the Rent Administrator, and more specialized than those of a District of Columbia judge. A Commissioner's duties include hearing appeals of decisions from the Rent Administrator and the Office of Administrative Hearings, and issuing, amending, and rescinding rules and procedures for the administration of the Rental Housing Act (D.C. Official Code § 42-3502.02). Title II of the Act, the rent stabilization program, is by itself a highly complex regulatory regime, made all the more arcane by decades of

administrative and judicial case law. But rent stabilization is just one component of the Act, and the other components also each have their sub-components and complexities. The fact that there are only three Commissioners means that each has a very intense workload, and must enter the job with proven ability.

Thus, I was pleased that the Committee asked the OTA this past summer to help develop draft criteria to augment the existing qualifications. We consulted several knowledgeable stakeholders and stayed in close touch with Committee staff. We also took careful note of the insightful remarks of Commissioner Szegedy-Maszak when you, Mr. Chairperson, asked him about this matter during his confirmation hearing this past March. We shared the Committee's concern that basic standards relevant to the actual work of the Commission should guide Mayoral nominations and Council consideration of nominees, without any undue risk of diminishing the pool of potential candidates for the Commission. We understood that any draft criteria would be the start of a conversation about how best to strike the appropriate balance between having too few statutory criteria and having too many.

I believe that the bill largely achieves that balance by requiring at least some minimal experience in key skill sets, as well as preferred rather than required attributes in each of these categories. Specifically, section 2(a) of the bill would require that "each member possess skills and experience relevant to ***litigation***, preferably including both appellate practice demonstrated by written work product and exposure to the concerns of pro se litigants; ***administrative law***, preferably in an area of complex regulation; and ***housing law***, preferably in

the area of rental housing and rent control or rent stabilization." However, I do not believe that this particular formula is necessarily the "final answer," and I would welcome any further discussions the Committee may wish to have following this hearing.

Staggered Terms

I have a further recommendation that I believe is absolutely critical to preventing paralysis on the Commission in the future. Currently, the terms of all three members of the Commission run concurrently. As you know, the Commission ceased to function this past January -- and pending the swearing in of Mr. Szegedy-Maszak remains defunct -- due to the simultaneous expiration of terms of all three Commissioners. This situation was caused by the selection of nominees whom the Committee believed not to be sufficiently qualified to effectively serve on the Commission, but a similar situation could occur for any number of reasons. Thus, ***I urge the Committee to amend the bill to stagger the terms of Commissioners,*** so that each three-year term would expire in successive years rather than in the same year. Using staggered U.S. Senate terms as a model, this could be effected simply by limiting the initial term of the first seat on the Commission to one year following the effective date of the bill, should it become law; limiting the initial term of the second seat to two years following the bill's effective date; and limiting the term of the third seat to three years following the bill's effective date, with a regular three-year term for each seat to commence immediately upon the expiration of the initial term.

Bill 18-864, the "Rental Housing Act Extension Amendment Act"

Bill 18-864 would amend the Rental Housing Act of 1985 to extend the sunset provision (D.C. Official Code § 42-3509.07) to December 31, 2020. This means that the Act would not be subject to either reauthorization or expiration for another ten years, as opposed to the five-year renewal cycle that has applied throughout much of the history of the Act. Some parts of the Act, like Title V which includes eviction and retaliation law, and section 908 regarding the inspection of rental housing, do not sunset under either the bill or current law. I note that there is another bill introduced by Councilmember Graham pending before the Committee that would repeal the Act's sunset provision altogether. This would effectively mean that no provision of the Act -- including rent stabilization -- would ever sunset.

I strongly believe that the five-year renewal cycle is too short. It represents a denial of the reality that rent control is a critically needed affordable housing tool for middle and lower income residents in the District. This has been the case for decades and is likely to remain so indefinitely. As I said in July at the Committee's Rent Control Roundtable, reports earlier this year from the D.C. Fiscal Policy Institute and the Urban Institute provide ample evidence that the statutory findings in the original 1985 Act (D.C. Official Code § 42-3501.01) continue to accurately describe rental housing in the District of Columbia:

- There is a severe shortage of rental housing available to District citizens;
- The shortage of affordable housing is growing;

- The shortage of housing is felt most acutely among low and moderate-income renters, who are finding a shrinking pool of available dwellings;
- The cost of basic accommodation is so high as to cause undue hardship for many citizens of the District of Columbia;
- Many low and moderate-income tenants need assistance to cover basic shelter costs, etc.

I commend Jim McGrath and TENAC for leading the charge early on for a longer rent control renewal cycle, and perhaps permanency, among tenant advocates and at the Council. Largely due to TENAC successfully raising the profile of this issue, the OTA dedicated a stakeholder meeting earlier this year to a debate between rent control experts regarding the pros and cons of a ten year extension and permanency, as well as the current five year renewal cycle. Afterwards we surveyed our stakeholders, who largely rejected a continuation of the five year renewal cycle for the reasons I mentioned. But our stakeholders noted both advantages and disadvantages to both the other courses of action. The appeal of permanency is simply that the need for rent control in the District for the foreseeable future and beyond has become abundantly clear over the decades since the District first adopted this policy. There should be no need to rehash the threshold question of whether or not to have rent control in the District. The appeal of the ten-year extension is that periodic review of the law to make necessary adjustments and improvements may be desirable. Maintaining a periodic reauthorization requirement provides a "built-in" opportunity for the Council to do so. Also permanency may risk a legal challenge to the entire rent

control law from those who believe that rent regulation is only Constitutionally justifiable on the basis of an emergency rationale, which arguably is oxymoronic in the context of a permanent law. A ten-year extension may allow the District to avoid that challenge.

Thus, the consensus among our stakeholders is that *either* ten-year extension or permanency would represent a vast improvement over the current five-year renewal cycle. As I said at the Committee's Public Roundtable on Rent Control this past July, both measures have merit and deserve the Committee's consideration.

Bill 18-1005, the "District of Columbia Housing Authority Board of Commissioners Amendment Act"

Bill 18-1005 would amend the District of Columbia Housing Authority Act of 1999 (D.C. Official Code § 6-211(a)) to replace the resident Commissioner on the eleven-member DCHA Board of Commissioners with a housing choice voucher program recipient. As I understand it, three other Commissioner positions are designated for residents of public housing properties. I strongly endorse giving this additional category of DCHA program participants – recipients of housing choice voucher program -- a voice on the Board of Commissioners. Based on my past experience with federal and District housing programs, I believe there is no question that these programs work best with the participation of program recipients in the governance of the Authority, and this participation should represent a cross-section of relevant programs. To make the resident voices effective, it is imperative that their representatives be trained adequately in terms of the relevant laws and the programs and operation of both

the Authority and the Board on which they serve. I believe the 1999 Act does require that DCHA provide such training, and it is my understanding that such training indeed does occur as a matter of course. Thus, again, I strongly support Bill 18-1005, which believe will promote both the tenants having more say on DCHA matters, and the quality and the effectiveness of DCHA programs.

Thank you again, Chairperson Brown, for this opportunity to testify on these important measures and for your strong leadership in the area of tenant rights. I would be happy to answer any questions you may have at this time.