



# Housing Matters: Legal and Policy Approaches to Preventing Housing Instability

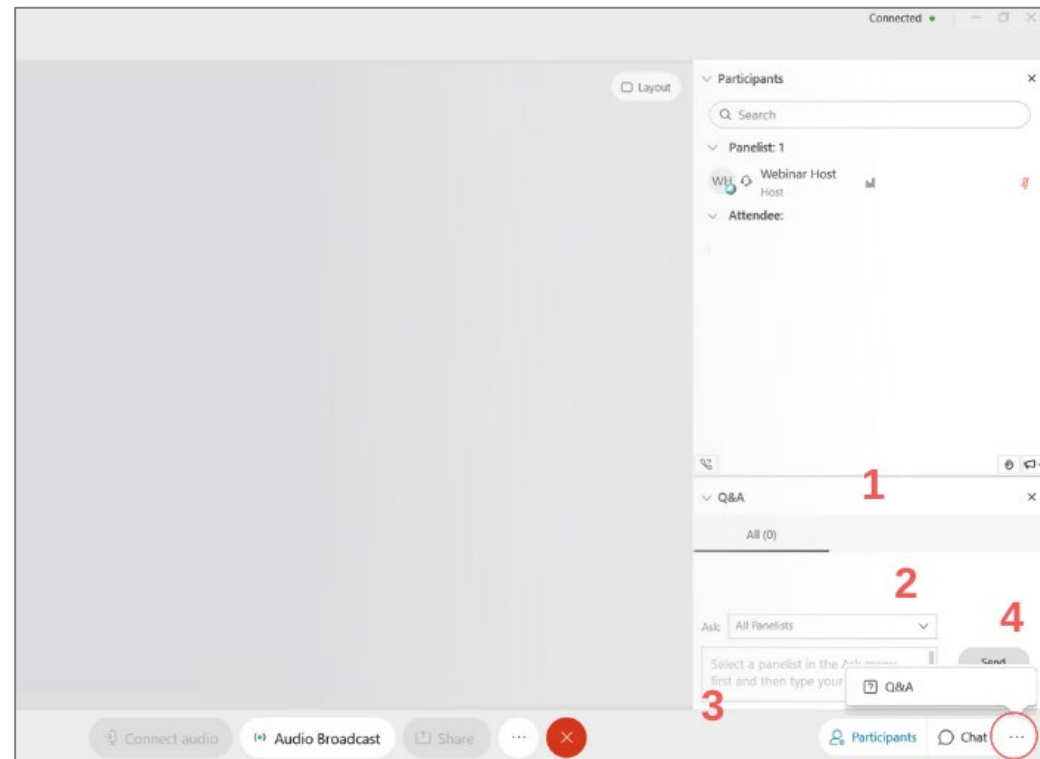
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## Moderator



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# Laws and Policies to Address Housing Instability

Deter Serial Eviction Filings

Implement Eviction Diversion and Prevention Programs

Provide Legal Representation in Eviction Proceedings

Limit Access to Eviction Records

Adopt Community-Based Measures to Promote Housing Stability



# **The Public Health Impacts of Housing Instability**

**Delaney Anderson**



# Public Health and Housing

Housing is a **social determinant of health**:

- Key condition "in the places where people live, learn, work, and play" that affects "health and quality-of-life risks and outcomes."

Housing and health are co-extensive:

- Medical conditions may lead to homelessness
- Homelessness may exacerbate existing chronic health conditions and create new health problems





# Health Impacts of Housing Instability

## People who are homeless have higher rates of:

- Diabetes, high blood pressure, heart attack, Hepatitis C, HIV, substance use, intimate partner violence, and mortality

## Homelessness makes it more difficult to:

- Access treatment and manage medications
- Gain access to consistent and healthy food sources
- Avoid weather extremes and communicable diseases

## People threatened with eviction have higher rates of:

- Overall poor health
- High blood pressure
- Psychological distress

## Families who are evicted experience:

- Poor mental health and financial outcomes
- Higher rates of material hardship and unemployment
- Childhood social, academic, and behavioral impacts



# Housing Instability and COVID-19

Pre-Pandemic	Post-Pandemic
2019 marked the third straight year of increases in homelessness.	Record numbers of job loss, health issues, & systems failures may continue this trend.
Racial inequality has caused disproportionate homelessness among minority groups.	Systemic inequalities could exacerbate existing racial disparities.
The number of available beds has not been sufficient to meet demand.	Increases in total homelessness numbers could add stress to an already-strained system.
Important subpopulations have seen marked reductions in recent years.	Increased inflow into the homelessness system may skew future progress.

- Homeless individuals with COVID twice as likely to experience:
  - Hospitalization
  - ICU Treatment
  - Death
  
- Lapse in moratoria linked to COVID-19 contraction and mortality.



# Housing Instability as a Health Equity Crisis

- Eviction filings disproportionately target Black renters:
  - Post-COVID-19: 1 in 6 renters are behind on rent, but substantially higher for Black renters and multiracial renters.
  - Black people make up 40% of the US homeless population vs. 13% of the general population.
- Disproportionate effect on:
  - Single mothers
  - Domestic violence victims
  - LGBTQ youth and young adults
  - People who are incarcerated
  - Veterans



## The Eviction Process





# **Detering Serial Eviction Filings**

**Mollie Soloway**



# Serial Eviction Filing: The Numbers

Between 2000 and 2016:

- >61 million eviction filings in the U.S.
- 1 eviction filing for every 17 renter households (5.8%)

Not all eviction filings result in eviction

- 1 in 40 renter households (2.5%) were evicted
- Baltimore City: 140,000 eviction filings for just 125,000 rental units, 6,500 actual evictions



# Serial Eviction Filing: Defined

The practice of repeatedly filing for eviction against a tenant, not as a means of removing the tenant from the property, but as a means to collect rent and additional fees.

In 2014, nearly 1/3 of households facing eviction nationally faced more than one filing.

- In some jurisdictions that number is much higher.



# Serial Eviction Filing: The Problem

Even if tenants are not evicted, filings themselves result in negative impacts:

- Unnecessary administrative costs & clogged rent court dockets.
- Landlords gain coercive power over threatened tenants.
- Tenants live with psychological and emotional impacts of insecurity.
- Durable public records limit future housing options.
- Additional fines and fees are most often passed on to tenants.
  - Each filing results in an average of \$180 in fines & fees, raising average monthly housing costs by 20%





# Serial Eviction Filing: Policy Solutions

Lower Barriers → More filings

Higher barriers → Fewer filings

Increase Pre-Filing Notice Requirements

Increase Eviction Filing Fees

Prevent Fees from Being Passed on to Tenants

Require That Landlords Have "Clean Hands"



## Pre-Filing Notice Requirements

Most, but not all, states require landlords to provide tenants with advance notice before filing eviction in court.

Greater notice requirements are correlated with lower serial filing rates.



## Notice: State Level Requirements

Substantial variation from state to state:

- **Tennessee:** notice period of 3-30 days; notice must be “in writing.”
- **Texas:** standard notice period of 3 days, but leases may provide for shorter periods; notice must be delivered in one of several ways.
- **DC:** standard notice period of 30 days, but leases may include waivers of this right.
- **Maryland:** notice period of 14–30 days for threats to property or lease violation; but no requirement for any notice for failure to pay rent.
  - Legislation currently before MGA that would require pre-filing notice in FTPR cases and require specific information be included in the notice



# Notice: Local Level Requirements

## Example: San Jose, CA

- Under state law, landlords must only provide a tenant who fails to pay rent or violates the rental agreement with 3 days' notice, in writing.
- City added requirements for landlords to include with any eviction notice a list of resources for tenants, and to submit a copy of the notice to a government agency.



# Increase Filing Fees

Average national cost to file for eviction ~\$112-\$120

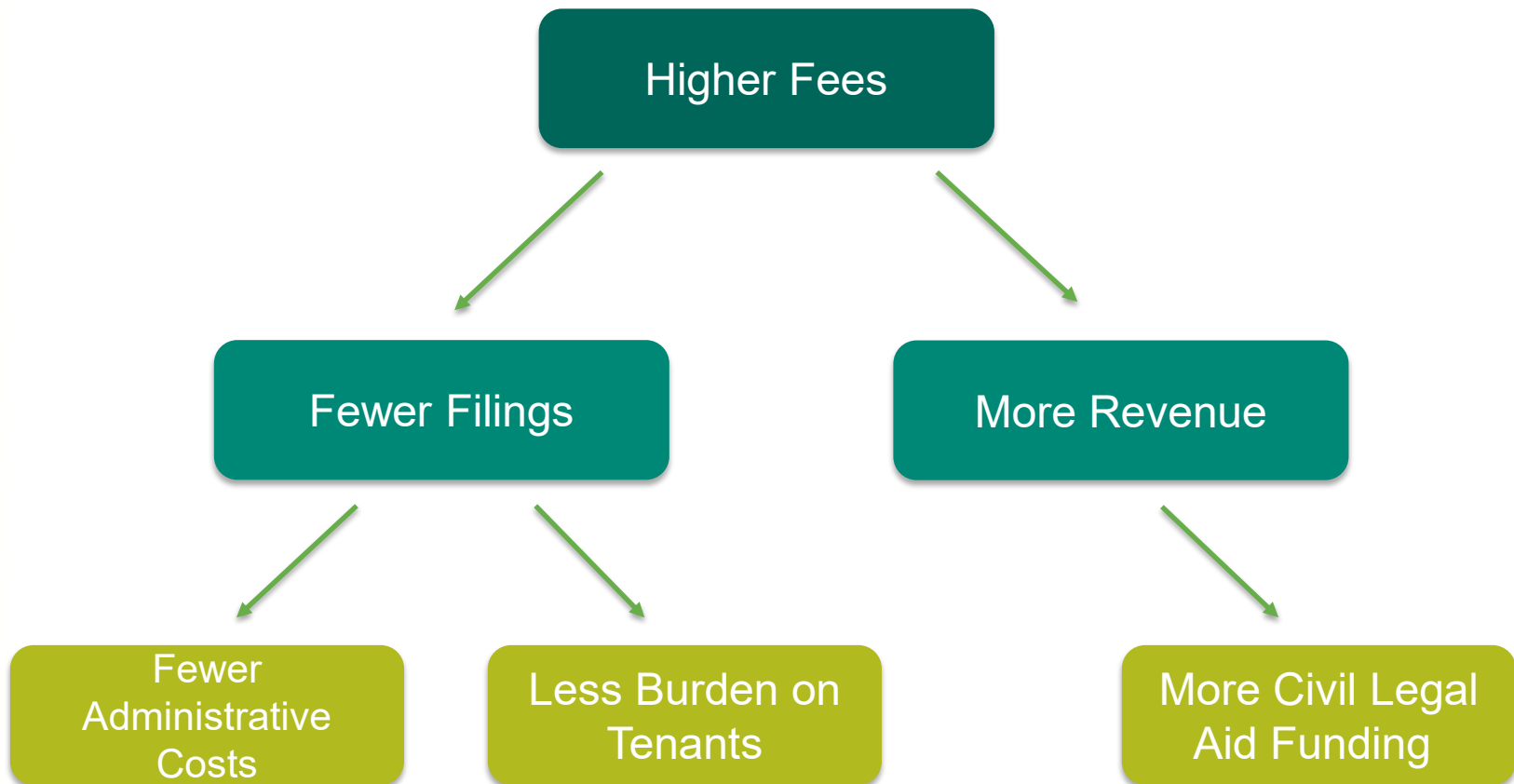
Fees range substantially:

- Low of \$15 in Maryland & DC
- High of \$300 in Minnesota

Ongoing efforts in both Maryland and DC to raise fees closer to the national average



# Increase Filing Fees: The Benefits





## Prevent Fees from Being Passed on to Tenants

Landlords typically pass the costs of eviction filing on to their tenants, making the process even cheaper for landlords and more burdensome to tenants.

Language preventing this pass-through may help ensure higher filing fees truly act as a deterrent.



# Ensure Landlords Have Clean Hands

Another way to prevent landlords from acting in bad faith.

Examples of pending legislation:

- New York
- Philadelphia





# Eviction Diversion and Prevention Programs

Kyle Keraga



# The Concept: Early Intervention

- “The landlord gets paid. The tenant gets housed. The public health gets protected.”
- **Tenants:** Consistent positive outcomes.
  - Deferred evictions anywhere from 67% to >90%.
- **Landlords:** Less expensive to retain than to evict.
  - Costs of eviction can be ~\$10,000 - \$13,000.
  - Average rent owed = ~\$1,000 - \$2,000.
- **Communities:** Sharp decreases in filings and evictions.
  - Boston = 30% year-over-year decrease in first three years.



# Case Study: Kalamazoo, Michigan

- Adopted Eviction Diversion Program in 2010.
  - Emergency housing assistance funds.
  - Pretrial landlord-tenant mediation.
  - Available to renters below 40% median income.
- Positive Outcomes 2011 to 2015:
  - 50% decline in evictions.
  - 9% decline in homelessness.
- Model for eviction diversion programs nationwide.



# Eviction Diversion Strategies

- Jurisdictions use one or more of four different eviction diversion paradigms.

1. Notice and Tenant Education

2. Rent Assistance and Forgiveness Programs

3. Pretrial Eviction Mediation

4. Collaborative Housing Courts



# Notice and Tenant Education

- Level playing field between tenants and landlords.
- Adopt tenant education programs.
  - Tenant training.
  - Social services and free legal advice.
  - Tenant handbooks or information pamphlets.
- **Best Practice:** Provide point-of-crisis access.
  - Modify eviction summons.
  - Include pamphlets with notice to quit.



## Rental Assistance: The Basics

- Provide funds to sustain tenancies.
- Most tenants facing eviction are barely behind.
  - 2017 Eviction Lab Study: Average rent owed in 22 states between 2014 and 2016 was \$1,253.
  - In Richmond, VA, 2016, this amount was \$686.
- **Challenges:** Funding and demand.
  - Requires year-to-year persistent funding.
  - Houston: \$15-million COVID fund ran out in 90 min.



# Rental Assistance: Use of Funds

- Target greatest need and salvageable tenancies.
  - Fund renters below median income.
  - Limit eligible back-rent or prospective rent.
  - Require parties to pay up-front.
  - Minimize repeat disbursements.

## Importance of Advocacy

Highlight downstream savings achieved by comparable programs.

**Boston HomeStart Program:** 84% savings between cost of saving tenancies (\$1,570/tenant) and cost of eviction (\$10,021/tenant).



## Pretrial Eviction Mediation

- “[A]void potential eviction judgments by facilitating mutually beneficial agreements.”
- **Benefits:** Popular and low-cost
  - Baltimore: 2016 mediation pilot saw 85% participation, 81% settlement rate.
  - Kalamazoo: program has cost only \$1,100 per family.
- **Drawbacks:** Capacity and power dynamics
  - Require personnel and support staff
  - Lack of formal proceedings can exacerbate inequality.





# Collaborative Housing Courts

- Jurisdictions can adjust rent court to integrate support services into the housing process.
  - Underlying theory: collaborative/restorative justice.
  - Growing trend in criminal and drug courts.

## Judicial Expertise

- Assign Judges
- Housing Law
- Public Health Impacts

## Judicial Discretion

- Continuances
- Referrals
- Expungement

## Judicial Supervision

- Case Management
- Legal Services
- Payment Plans



# Right to Counsel in Eviction Proceedings

Mollie Soloway

“Establishing publicly funded legal services for low-income families in housing court would be a cost-effective measure that would prevent homelessness, decrease evictions, and give poor families a fair shake.”

Mathew Desmond, *Evicted: Poverty and Profit in the American City* (2016)



# Right to Counsel (RTC)

- 90% of landlords are represented in court, but only 10% of tenants are.
- Legal representation helps to ensure:
  - Due process of law.
  - Procedural fairness.
- Current resources are insufficient:
  - Too constrained by lack of funding.
  - Availability of legal assistance varies from jurisdiction to jurisdiction.



# RTC: Focus on Eviction

- High costs of eviction to individuals, families, and communities.
- Power imbalance between landlords and tenants.
- Growing evidence that legal representation impacts outcomes.



# RTC: Local Legislation

**New York**  
(July 2017)

**San Francisco**  
(June 2018)

**Newark**  
(Dec. 2018)

**Cleveland**  
(Sept. 2019)

**Philadelphia**  
(Nov. 2019)

**Boulder**  
(Nov. 2020)

**Baltimore**  
(Dec. 2020)

**Santa Monica, Los Angeles, Seattle??**



# RTC: State Legislation

- **Connecticut:** H.B. 5053, H.B. 6531, S.B. 531
- **Maryland:** H.B. 18/ S.B. 154
- **Massachusetts:** H.D. 2441/S.D. 1906
- **Minnesota:** H.B. 450/S.F. 1290
- **Nebraska:** L.B. 419
- **South Carolina:** H. 3072
- **Washington:** H.B. 5160



## RTC: New York

- All tenants eligible to receive access to brief counsel.
- Income-eligible tenants receive access to full legal representation.
  - Income eligible = < 200% federal poverty guideline.
- Administrative proceedings before housing authority are included.
- Phased in by zip code over five years.
- Requires annual public hearing & review.



# RTC: New York 2.0

## Proposed amendments to further expand the right include:

- Expanding protection to all tenants making <400% federal poverty guidelines.
- Providing funding for tenant organizing groups to better educate tenants on their rights.





# RTC: Success

## New York

- 86% of represented tenants able to stay in their homes.
- 98% of tenants represented in administrative termination of tenancy proceedings.
- Eviction rate in relevant zip codes down more than 30%.

## San Francisco

- 67% of represented tenants able to stay in their homes.
- Eviction filings declined by 10%.

## Cleveland

- In first 6 months, 93% of those represented avoided eviction or involuntary move.
- 83% who were seeking additional time to move were able to get it.

## Los Angeles (pilot):

- 89% of tenants represented by lawyers achieved a favorable outcome.

# Limiting Access to Eviction Records

**Kyle Keraga**

“If a tenant ends up with an eviction on their record, their rental choices are narrowed, often relegating them to poorer neighborhoods. That’s bad for renters and for the city, too. The persistent churn created by an eviction rate of this level destabilizes poor neighborhoods and breaks apart social networks. Social scientists who study the phenomenon believe violence and despair are the result.”

Jake Blumgart, *To Reduce Unfair Evictions, Tenants Need Lawyers*, WHYY (Mar. 16, 2017).



# Key Problem = False Positives

- Evictions remain on public record if the case is dismissed or the tenant wins.

## Exacerbated by “Serial Filings”

- **Cook County, IL**: From 2014-2017, 39% of 105,272 completed eviction cases did not result in eviction.
- **Philadelphia, PA**: Of 22,573 eviction cases in 2016, only 1,332, or 5.9%, came before a judge.
- **Baltimore, MD**: Of about 140,000 annual eviction filings, only 4.6% result in executed evictions.

## Creates “Dirty Data”

- Eviction screening agencies typically do not differentiate between outcomes
- **No-fault eviction records**: Notable anecdotes of inequitably burdened tenants:
  - Rent stolen by landlord’s collector
  - Landlord’s building foreclosed
  - Tenant never served with notice



## Lasting Financial Consequences



- Visible to the public for years or decades
- Typical time period = seven years
- Rental debts affect credit reports
- Concurrent collection efforts by landlord
- Ineligible for favorable loans
- Employers less likely to hire with outstanding debt
- Public housing benefits often require clean record
- Landlords rely on automatic screening

“Eviction is a cause, not just a condition, of poverty.”



# Policy Solution: Seal Eviction Records

- Limit landlord's ability to use prior housing record.
  - **Expungement:** Record “permanently deleted.”
  - **Sealing:** Record “unavailable to the public.”
- Landlords have other, better tools available.

## Three Time Periods

### No Trial

- Mediation / ADR
- Pretrial Settlement

### Tenant Prevails

- Case Dismissed
- Successful Defense

### Landlord Prevails

- Tenant Evicted
- Right of Redemption



# Jurisdictions with Record-Sealing Laws

- Growing trend among states and municipalities
  - Mandatory or Automatic sealing in CA, MN, NV, OR.
  - Discretionary Sealing in several states (eg. IL).
  - Cities experimenting with sealing (Cleveland, DC).
- Gaining steam following COVID-19 pandemic
  - Aspen Institute: 30 million Americans at risk of eviction
  - Many jurisdictions now considering sealing legislation



# State Record-Sealing Laws

State	Tenant Wins / No Trial	Landlord Wins
Minnesota	Discretionary expungement: <ul style="list-style-type: none"> <li>Case was meritless <u>and</u></li> <li>Interests of justice outweigh public interest in record.</li> </ul>	Mandatory expungement in holdover cases due to foreclosure of premises.
Oregon	Mandatory on tenant motion: <ul style="list-style-type: none"> <li>Case dismissed <u>or</u></li> <li>Parties settled; tenant complied</li> </ul>	Mandatory on tenant motion: <ul style="list-style-type: none"> <li>Five years passed <u>and</u></li> <li>All debt has been paid</li> </ul>
Nevada	Automatic sealing	Discretionary expungement: <ul style="list-style-type: none"> <li>Eligible for relief of judgment <u>and</u></li> <li>Interests of justice outweigh public interest in record.</li> </ul>
California	Automatic sealing	Automatic sealing unless: <ul style="list-style-type: none"> <li>landlord wins within 60 days <u>or</u></li> <li>landlord wins after 60 days and court unseals record</li> </ul>



# Alternatives to Record-Sealing Laws

- **Wisconsin:** Records visible online for 2 years.
- **Minnesota:** Accuracy in tenant screening reports.
- **New York City:** Two proposals:
  - 2015: legislation would make participants in housing proceedings a protected class.
  - 2016: legislation would require screening reports to disposition of the cited rental matter.

## Critique

Compared to record sealing, these measures are procedurally complex, difficult to enforce, and a burden for tenants to litigate.





# Best Practice Policy Solution

Expunge eviction records at the **point of filing:**

- Protects tenants without prejudicing landlords.
- Little complexity, inequity, underenforcement.
- No burden on tenants to litigate.
- Minimize risk of false positives.

# Community-Based Measures to Promote Housing Stability

**Delaney Anderson**



# Community-Based Resources

Community-based measures play a significant role in addressing the impacts of housing instability and homelessness.

1. Adopt a  
Community-Wide  
Strategic Response

2. Provide Immediate  
Re-Housing and  
Support Services

3. Promote Long-  
Term Stability with  
Housing Vouchers



# Community-Wide Strategic Response

Provide a centralized response to community members who are homeless and at risk of homelessness.

## Three Key Practices

Coordinated  
point of entry

Community  
prevention  
strategies

Data collection  
on risks + needs



# Re-Housing Support Services

## Rapid Re-Housing

- **Goal:** reduce period of homelessness.
- **Includes:** finding housing, short-term financial assistance, case management.
- Shown to be effective at stopping homelessness and promotes individual and community health goals.

## Permanent Supportive Housing

- **Goal:** housing and support for the chronically homeless.
- **Housing First Approach:** screen in focus, ease of access, voluntary services, tenant rights.
- Shown to be effective at reducing chronic homelessness and lowering other community costs.



# Housing Stability and Vouchers

- Families contribute a portion of the rent according to their income (usually 30%).
- Two types: tenant-based and project-based.
- Linked to reduced rates of housing instability, hospitalization, food insecurity, intimate partner violence, and child separations.



# Source of Vouchers

## HUD Vouchers: Housing Choice Voucher Program

- Majority are tenant-based vouchers.
- About 2.2 million households use HC vouchers.
- Limitations: significant backlog and many who qualify never receive assistance .

## State and Local Voucher Programs

- States and municipalities can provide subsidies to promote long-term stability.
- Examples: HUD Moving On Program, NJ State Rental Assistance Program, proposed Baltimore City legislation.



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# Questions?

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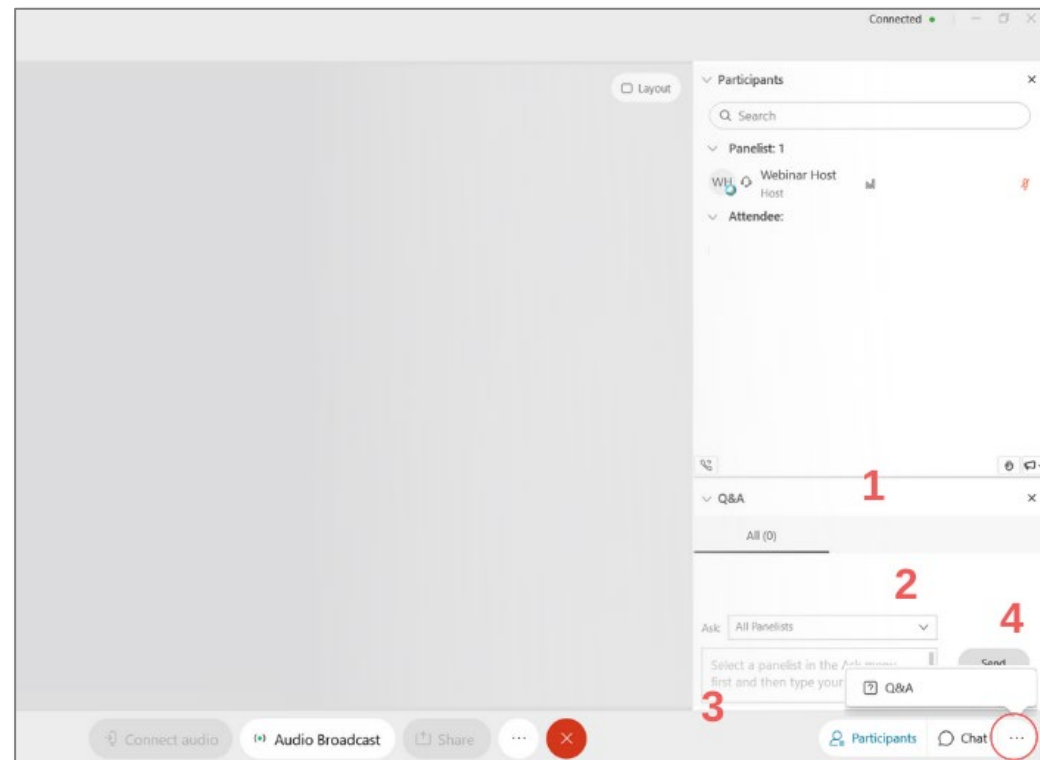
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