

# TENANT PROTECTIONS IN THE COVID-19 PANDEMIC

NINO C. MONEA<sup>†</sup>

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<sup>†</sup> Captain, United States Army Judge Advocate General's Corps. B.S., Eastern Michigan University; J.D. Harvard Law School. Views expressed in this Article are the author's alone and do not represent those of the Department of Defense or any of its components. Thank you to James Tatum and Mary Samarkos.

## ABSTRACT

*When the COVID-19 pandemic struck, governments at all levels moved to help tenants in unprecedented ways. Though the policies were far from perfect, they were major steps forward. This Article examines those reforms. The eviction crisis predates 2020, but the pandemic made it worse. In response, the federal government took unprecedented actions to protect tenants, a long-overlooked group. States too adopted sweeping moratoriums that stopped most or all evictions from occurring—for a time—along with a number of other pro-tenant policies. States also took concerted action to ensure people did not have utilities cut off, rendering their homes unlivable. The Article gives policymakers lessons learned from the pandemic about how to craft better policies to prioritize the wellbeing of tenants in times of emergency.*

## INTRODUCTION

Bonnie McCauley had a rough life. Trying to scrape by in Polson, Montana, she spent more than a year living in a hotel with her two dogs.<sup>1</sup> She looked for jobs in the food or hospitality industry with little success and fell ill with an upper respiratory infection.<sup>2</sup> Then the pandemic hit.

Things went from bad to worse for her.<sup>3</sup> Jobs became scarce. She accumulated thousands of dollars in unpaid rent owed to the hotel where she lived.<sup>4</sup> When she applied for rental assistance, the agency denied her because she did not meet eligibility requirements.<sup>5</sup> According to the agency, the reason for her denial was because her hardship was “not directly linked to COVID-19.”<sup>6</sup> Eventually, the hotel moved to evict her.<sup>7</sup> Police showed up to her room and told her to leave the same day the court ordered her out. She had to move into her truck.<sup>8</sup>

Life was no easier for Shelley Allen of Herriman, Utah.<sup>9</sup> Her children’s father committed suicide in 2019, and she was left caring for

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1. Mara Silvers, *Late Payments*, MONT. FREE PRESS (June 3, 2020), <https://montana.freepress.org/2020/06/03/late-payments/>.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. Eric S. Peterson et al., *Landlords Evict Hundreds of Utah Renters Each Month Despite a Ban During the Pandemic*, THE SALT LAKE TRIB., <https://www.sltrib.com/news/2020/12/12/landlords-evict-hundreds/> (last updated Dec. 13, 2020, 12:43 PM).

her three children while battling drug dependency.<sup>10</sup> She lost her job during the pandemic and fell behind on rent.<sup>11</sup> She was locked out of her apartment while waiting for a Social Security check to arrive.<sup>12</sup> Although Shelley had email records proving she had told her landlord that she lost her employment, the apartment manager later claimed in court that she failed to communicate with them.<sup>13</sup> Even with evidence of correspondence between Shelley and the landlord stating the contrary, the court believed the landlord's testimony.<sup>14</sup> Allen was evicted and later arrested on drug charges. She subsequently lost custody of her children.<sup>15</sup>

COVID-19 left many aspects of society reeling, and the home was no exception. Twenty-two million people were out of work in an instant, and the clunky, error-ridden unemployment systems in many states were woefully inadequate to the task of helping them.<sup>16</sup> Over the course of the year, the pandemic drove millions into poverty.<sup>17</sup> Unfortunately for many Americans, even a few days of lost wages means the difference between making rent and not.<sup>18</sup> As such, it is no wonder an estimated one million evictions occurred during the pandemic.<sup>19</sup>

One year after the start of the pandemic in March 2021, roughly ten million renters in the United States were behind on rent and a total of fifty-seven billion dollars in unpaid rent had accrued.<sup>20</sup> This means nearly one in five tenants around the country could not make rent.<sup>21</sup> Given that renters

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10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. Ella Nilsen, *Getting Unemployment Has Been a Nightmare for Millions of People Across the Country*, VOX (Apr. 20, 2020, 7:40 AM), <https://www.vox.com/2020/4/20/21220931/unemployment-insurance-coronavirus-websites-crashing>.

17. Kyle Swenson, *Renters Thought a CDC Order Protected Them From Eviction. Then Landlords Found Loopholes.*, WASH. POST (Oct. 27, 2020), <https://www.washingtonpost.com/dc-md-va/2020/10/27/trump-cdc-eviction-moratorium-loopholes/>.

18. Wendy K. Mariner, *Quarantine for Coronavirus? Let's Make That Unnecessary*, STAT NEWS (Feb. 28, 2020), <https://www.statnews.com/2020/02/28/quarantine-coronavirus-make-that-unnecessary/>.

19. Pam Fessler, *For Black Families, Evictions Are Still at a Crisis Point—Despite Moratorium*, NPR (Feb. 24, 2021, 7: 21 AM), <https://www.npr.org/2021/02/24/970190910/for-black-families-evictions-are-still-at-a-crisis-point-despite-moratorium>.

20. CBS Chicago Staff, *Gov. JB Pritzker To Extend Illinois Eviction Moratorium For Another 30 Days*, CBS 2 CHI. (Mar. 5, 2021, 6:11 PM), <https://chicago.cbslocal.com/2021/03/05/illinois-eviction-moratorium-extended-governor-jb-pritzker/>.

21. Ashraf Khalil & Michael Casey, *Housing Advocates Call for Federal Eviction Moratorium to be Strengthened*, NEWS CTR. ME. (Mar. 26, 2021), <https://www.newscentermaine.com/article/news/health/coronavirus/eviction-moratorium-expires-march-31/507-e2f2f7a3-b558-4b08-b5bf-fb2215818430>.

have, on average, less than half of the income of homeowners, they have an even harder time digging themselves out of this hole without assistance.<sup>22</sup>

The pandemic upended the housing market as well. In 2020, many individuals moved away from city centers, causing prices to rapidly fluctuate.<sup>23</sup> Rental prices cratered thirty-one percent in San Francisco, and other high-end markets like Manhattan also saw rental price decreases in double-digit percentages.<sup>24</sup> Hawaii's rental vacancy rate went up as thousands left the state when unemployment exploded.<sup>25</sup> Rental prices fell for lower-end properties: about fifteen percent in some cases.<sup>26</sup>

However, this decrease was not universal. Many cities, from all over the United States, saw increases in rent prices during the pandemic, likely fueled by people leaving big cities and moving back home or seeking cheaper pastures in the age of telework.<sup>27</sup> Housing prices spiked too. The number of homes on the market was halved at the same time Millennials, the largest population of homebuyers in the country, were looking to buy.<sup>28</sup> Combine this low supply with high demand and home prices soar 15.6%,

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22. *Median Household Income the Past 12 Months (In 2018 Inflation-Adjusted Dollars) by Tenure*, U.S. CENSUS BUR. <https://data.census.gov/cedsci/table?t=Income%20and%20Poverty%3AOwner%2FRenter%20%28Tenure%29&g=0400000US09&y=2018&tid=ACSDT1Y2018.B25119&hidePreview=true> (last visited Jan. 17, 2022) (showing the mean household income for homeowners is about \$100,000, compared to \$40,000 for renters).

23. See e.g., Georgia Slater, *San Francisco Experiencing Biggest Plunge in Apartment Rental Prices in U.S. Amid Covid-19*, YAHOO! (Oct. 15, 2020), <https://news.yahoo.com/san-francisco-experiencing-biggest-plunge-164008797.html>.

24. *Id.*; Misyrlena Egkolfopoulou & Donald Moore, *New York's Plunging Rents Are Luring Bargain Hunters to Their Dream City*, BLOOMBERG WEALTH (Mar. 2, 2021, 7:00 AM), <https://www.bloomberg.com/news/articles/2021-03-02/new-york-real-estate-rent-drops-and-covid-deals-draw-bargain-hunters-to-nyc>.

25. Anita Hofschneider, *Gaps in Hawaii Eviction Moratorium Leave Some Renters Scrambling for Housing*, HONOLULU CIV. BEAT (Jan. 11, 2021), <https://www.civilbeat.org/2021/01/gaps-in-hawaii-eviction-moratorium-leave-some-renters-scrambling-for-housing/>.

26. *Id.* (Cheryl Kunimoto, a realtor working in Oahu, explains that apartments that used to, "... rent for \$1,500 each are now going for about \$1,250...").

27. Courtney Allen, *Albuquerque Saw Rent Prices Spike in 2020*, KRQE (Feb. 7, 2021, 9:05 PM), <https://www.krqe.com/news/albuquerque-metro/albuquerque-saw-rent-prices-spike-in-2020/>; Jessica Menton, *Where Are Rents Rising and Falling the Most in Big Cities After COVID-19?*, USA TODAY (Sept. 28, 2020), <https://www.usatoday.com/story/money/2020/09/28/rent-where-rents-rising-and-falling-most-big-cities/3519979001>.

28. Lindsay Moore, *Millennials are Looking for Dream Homes, but Michigan's Competitive Housing Market Keeps Them Out of Reach*, MLIVE, <https://www.mlive.com/public-interest/2021/04/millennials-are-looking-for-dream-homes-but-michigans-competitive-housing-market-keeps-them-out-of-reach.html> (last updated Apr. 13, 2021, 5:35 PM).

setting a record median listing price of \$370,000.<sup>29</sup> Homelessness increased as a result.<sup>30</sup>

This Article is concerned with how governments worked to address this tumult and what policies were put in place to keep people in their homes and the lights on. It focuses mainly on tenant protections as homeowners already have many foreclosure protections under the law,<sup>31</sup> whereas significant renter protections are mostly new.

This Article will proceed in six Parts. Part I gives an overview of the eviction crisis. Long before the novel coronavirus made its appearance, the rental market was a disaster. Nearly one million evictions occurred each year, and evictions were surprisingly easy to accomplish in many states.<sup>32</sup> The pandemic only threw fuel on the fire.

Part II surveys federal tenant protections put in place. These were not the strongest, but they set the baseline serving as the only protection for the significant number of states with no protections or states that ended protections too quickly. Perhaps more important than any specific policy, this represented the first time in history that the federal government took such aggressive action to protect tenants.<sup>33</sup>

Part III focuses on state eviction moratoriums, or policies that temporarily delayed otherwise legal evictions. Eviction and foreclosure moratoriums go back at least a hundred years but were used only occasionally before 2020. By analyzing the current crop of moratoriums,

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29. *Id.*

30. Madeline White, *Rebound Idaho: Beginning Friday, Renters Affected by COVID-19 Cannot Be Evicted for Inability to Pay Rent*, IDAHO NEWS 6, <https://www.kivitv.com/rebound/rebound-idaho-beginning-friday-renters-affected-by-covid-19-cannot-be-evicted-for-inability-to-pay-rent> (last updated Sept. 04, 2020, 12:28 AM).

31. There are many federal rules that regulate foreclosure, none of which apply to renters. *See* 12 C.F.R. § 1024.41 (2021); 7 C.F.R. § 3555.301 (2016); 38 C.F.R. § 36.4278 (1993); 38 C.F.R. § 36.4317 (2010); 38 C.F.R. § 36.4319 (2010); *see also* Prentiss Cox, *Foreclosure Reform Amid Mortgage Lending Turmoil: A Public Purpose Approach*, 45 HOUS. L. REV. 683, 686, 699 (2008) (noting that foreclosure is already a slow, costly process). Additionally, state policies typically had very similar protections for tenants and homeowners, if they protected both. *E.g.*, Fla. Exec. Order 20-180 (July 29, 2020), [https://www.flgov.com/wp-content/uploads/orders/2020/EO\\_20-180.pdf](https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-180.pdf); Kan. Exec. Order No. 20-61, at 3 (August 31, 2020), <https://governor.kansas.gov/wp-content/uploads/2020/08/EO-20-61-Final.pdf>; Order of the Governor of the Commonwealth of Pennsylvania Staying Notice Requirements for Specified Actions Related to the Dispossession of Property 2-3, Pa. Gov., (May 7, 2020), <https://www.governor.pa.gov/wp-content/uploads/2020/05/20200507-TWW-dispossession-of-property-order.pdf>.

32. Fessler, *supra* note 19.

33. *See* Terkel v. CDC, No. 6:20-cv-00564, 2021 U.S. Dist. LEXIS 35570, at \*3 (E.D. Tex. Feb. 25, 2021).

it becomes clear that policymakers would do well to ensure moratoriums are broadly worded, target the initiation of evictions, make them apply automatically to tenants, endure long enough to weather the crisis at hand, and have clear enforcement mechanisms.

Part IV is about other landlord-tenant policies that states enacted. These include allowing tenants to clear evictions from their records, providing direct rental assistance to tenants, giving tenants the right to counsel at eviction proceedings, canceling rent, and a handful of other miscellaneous reforms. None of these landlord-tenant policies were as widely used by the federal and state governments as eviction moratoriums, but they have the potential to permanently change the power dynamic in landlord-tenant cases rather than delay evictions for a while.

Part V covers utilities. Even if a person can remain in their home without electricity, water, heat, and communications, the home becomes unlivable, and self-isolation becomes impossible. Though the federal government had no comprehensive policy for utilities, most states took steps to prevent disconnections and offered payment plans to residents to allow them to repay once the pandemic ended. Most jurisdictions relied on state utility commissions to handle this issue, which has had its own advantages and disadvantages.

Part VI concludes that most of the tenant protections were, by design, only made to get through the current public health emergency. Nevertheless, if nothing else, the pandemic demonstrated that governments could take sweeping action to help tenants if they have the willpower to do so.

## I. THE EVICTION CRISIS

The COVID-19 pandemic exacerbated the eviction crisis but most certainly did not start it. After the housing market collapse in 2008, many low-wage workers lost their homes and, anchored down by bad credit and past eviction records, were unable to find anywhere to live.<sup>34</sup> In Orlando, Florida, many such families took to living in decrepit motels.<sup>35</sup> One of these motels, the Star Motel, was abandoned by its owner in December 2019, and the residents took over responsibility for pooling money each month to pay the utility bill.<sup>36</sup>

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34. Greg Jaffe, *A Pandemic, a Motel Without Power and a Potentially Terrifying Glimpse of Orlando's Future*, WASH. POST (Sept. 10, 2020), <https://www.washingtonpost.com/graphics/2020/national/kissimmee-star-motel/>.

35. *Id.*

36. *Id.*

Before the pandemic, there were nearly a million evictions per year.<sup>37</sup> Additionally, nearly three million people faced eviction in 2016.<sup>38</sup> Colorado had 850 evictions every week in 2016.<sup>39</sup> Shelters in North Dakota were constantly at capacity year-round, even when there was a three percent unemployment rate.<sup>40</sup>

At the beginning of the coronavirus pandemic, some landlords were understanding. In the first month of the state of emergency, “they offered rent discounts, flexible due date schedules, and conversions of security deposits into rent payments” to try to weather the storm.<sup>41</sup> This did not last long. In Ohio alone, during the deadliest weeks of the pandemic, experts predicted there would be 400,000 evictions if no protections were in place—more than all the foreclosures in the state during the entire Great Recession.<sup>42</sup>

Around the end of 2020 and the start of 2021, millions around the country were at risk of eviction—doubtless many would have been out on the street if not for legal protections.<sup>43</sup> In that span of time, numbers around the country showed the desperation. Inquiries about rental assistance nearly quadrupled in Wyoming.<sup>44</sup> Two hundred and fifty thousand

37. Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55, 292, 55,295 n.18 (Sept. 4, 2020) [hereinafter Temporary Halt in Residential Evictions 2020].

38. Jen Kinney, *The U.S. Metros Hit Hardest by Rising Eviction Rates*, NEXT CITY (Dec. 13, 2016), <https://nextcity.org/daily/entry/report-eviction-rates-housing-affordability>.

39. Jack Regenbogen, *Facing Eviction Alone: A Study of Evictions in Denver 2014-2016*, COLO. CEN. ON L. & POL'Y (Dec. 14, 2017), <https://cclponline.org/resource/facing-eviction-alone/#:~:text=Facing%20Eviction%20Alone%3A%20A%20Study%20of%20Evictions%20in%20Denver%202014%2D2016,-December%2014%2C%202017&text=%E2%80%9CFacing%20Evictions%20Alone%E2%80%9D%20includes%20recommendations,availability%20of%20emergency%20rent%20assistance>.

40. *Coalition Calls for Eviction Moratorium in North Dakota*, KVRR (Mar. 30, 2020), <https://www.kvrr.com/2020/03/30/coalition-calls-for-eviction-moratorium-in-north-dakota/>.

41. Dima Williams, *With Rent Soon Due, The Apartment Industry Copes With Coronavirus Effects*, FORBES (Mar. 30, 2020, 6:00 AM), <https://www.forbes.com/sites/dimawilliams/2020/03/30/with-rent-soon-due-apartment-industry-already-cope-with-coronavirus-effects/?sh=40e43f70347a>.

42. Josh Rultenberg, *Ohio Lawmakers Want Eviction and Foreclosure Moratorium*, SPECTRUM NEWS 1 (Dec. 8, 2020, 5:00 AM), <https://spectrumnews1.com/oh/dayton/news/2020/12/08/ohio-lawmakers-want-eviction-and-foreclosure-moratorium>.

43. Jasmine Rangel et al., *Preliminary Analysis: 11 months of the CDC Moratorium*, EVICTION LAB (Aug. 21, 2021), <https://evictionlab.org/eleven-months-cdc/>.

44. Will Thomas, *President of Cheyenne Landlords Association Explains What Eviction Moratorium Means for Local Tenants and Landlords*, WYO. NEWS NOW (Feb. 10, 2021, 3:04 PM), <https://www.wyomingnewsnow.tv/2021/02/10/president-of-cheyenne-landlords-association-explains-what-eviction-moratorium-means-for-local-tenants-and-landlords/>.

Arizonians faced eviction.<sup>45</sup> Arkansas had, 425,000 residents behind on rent, and half had zero confidence they could pay their next month's payment.<sup>46</sup> One-in-twelve Alabamians were at risk of eviction, or 360,000 people.<sup>47</sup> In Nevada, it was over 418,000 individuals<sup>48</sup> and 450,000 in New Jersey.<sup>49</sup>

Phoenix, Arizona held the crown for most evictions processed during the pandemic, followed by Houston, Texas and Memphis, Tennessee.<sup>50</sup> South Carolina was the state with the highest risk of eviction with nearly two-thirds likely to lose their homes within two months.<sup>51</sup> Maine had the lowest risk of being evicted in the country, yet a quarter of the state feared they could not make a rent or mortgage payment, and, consequently, there was an increase in people contacting eviction attorneys.<sup>52</sup> Ultimately, thirty to forty million people were staring down the barrel of eviction.<sup>53</sup>

These people were all the more at risk because evictions are so easy to do in many states—and fast. Ohio allows landlords to file an eviction after three days' notice.<sup>54</sup> If you miss rent on Monday in Georgia, your landlord can file for eviction on Tuesday, and if you fail to respond, you

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45. Catherine Reagor, *Relief Bill Extends Eviction Ban to Jan. 31, Offers Billions in Aid to Renters, Landlords*, AZ CENTRAL, <https://www.azcentral.com/story/money/real-estate/catherine-reagor/2020/12/22/eviction-ban-extended-jan-31-25-b-more-aid-provided-renters-and-landlords/3999547001/> (last updated Dec. 22, 2020, 5:59 PM).

46. Nadia Ramlagan, *Record Number of AR Evictions Expected If Moratorium Isn't Extended*, PUB. NEWS SERV. (Jan. 11, 2021), <https://www.publicnewsservice.org/2021-01-11/housing-homelessness/record-number-of-ar-evictions-expected-if-moratorium-isnt-extended/a72756-1>.

47. Ashley Bowerman, *360K Alabamians Face Eviction as CARES Act Moratorium Nears Deadline*, WSFA 12 NEWS (Aug. 3, 2020, 8:05 AM), <https://www.wsfa.com/2020/08/03/k-alabamians-face-eviction-cares-act-moratorium-nears-deadline/>.

48. Subrina Hudson, *Sisolak Confirms State Eviction Moratorium Lifts Thursday*, LAS VEGAS REV.-J. (Oct. 14, 2020), <https://www.reviewjournal.com/business/housing/sisolak-confirms-state-eviction-moratorium-lifts-thursday-2149982/>.

49. STOUT, *THE POTENTIAL IMPACT OF COVID-19 RELATED EVICTIONS IN NEW JERSEY* 4 (2020).

50. Brandon Richard, *Federal Judge Strikes Down CDC Eviction Moratorium in West Tennessee*, ACTION NEWS 5, <https://www.wmactionnews5.com/2021/03/17/federal-judge-strikes-down-cdc-eviction-moratorium-west-tennessee/> (last updated Mar. 16, 2021, 8:36 PM).

51. Maureen Milliken, *Maine Renters are at Lowest Danger of Getting Evicted, National Study Shows*, MAINEBIZ (Dec. 31, 2020), <https://www.mainebiz.biz/article/maine-renters-are-at-lowest-danger-of-getting-evicted-national-study-shows>.

52. *Id.*

53. Emily Benfer et al., *The COVID-19 Eviction Crisis: An Estimated 30-40 Million People in America Are at Risk* (Aug. 7, 2020), <https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk/>.

54. OHIO REV. CODE ANN. § 1923.04(A) (LexisNexis 2021).

could be evicted as soon as next Wednesday.<sup>55</sup> Louisiana can evict you within five days.<sup>56</sup> Utah does it so quickly that people often do not have time to hire an attorney, even if they can afford one.<sup>57</sup>

But laws and statistics do not capture the full extent of the problem. There are countless gut-wrenching stories from the pandemic, but few are worse than Sommai Peterson's. She was already suffering from cancer and other illnesses, and she was behind on rent going into the winter of 2020.<sup>58</sup> Things went from bad to worse in December when she was diagnosed with COVID-19 and became too sick to continue working at Amazon.<sup>59</sup> As a result, her landlord filed for eviction, and when she went to court, she was deemed too sick to enter the building.<sup>60</sup> Guards told her she could still talk at a later hearing, but when the judge was told she had COVID-19 symptoms and could not come in, he ruled without setting a new court date.<sup>61</sup> She was not even told she had been evicted until a day later. "I don't trust the system anymore," she said, reflecting on the process.<sup>62</sup>

COVID-19 placed an enormous strain on tenants. But as the above section shows, pre-existing conditions made the crisis much worse. People already had inadequate housing and poor wages that left them vulnerable to a system shock like the pandemic. The laws in place were designed to make eviction easy, not hard. Thus, while the coronavirus may not have been foreseeable, its consequences for tenants should have been.

## II. FEDERAL EVICTION PROTECTIONS

Although the federal government did not have the strongest response to keeping people in their homes, their actions set the baseline and were historic in scope. On March 18, 2020, the Department of Housing and

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55. Dana Fowle, *Eviction Protections Are No Longer in Place in Georgia*, FOX 5 ATLANTA (Aug. 12, 2020, 10:01 AM), <https://www.fox5atlanta.com/news/eviction-protections-are-no-long-in-place-in-georgia>.

56. Maria Clark & Andrew J. Yawn, *Federal Eviction Moratorium a Relief for New Orleans Renters but Crisis Looms*, TENNESSEAN, <https://www.tennessean.com/story/news/american-south/2020/09/03/eviction-moratorium-relief-new-orleans-renters-but-crisis-looms/5625545002/> (last updated Sept. 3, 2020, 9:56 AM).

57. Peterson, et al., *supra* note 9.

58. PJ Randhawa & Erin Richey, *Judge Grants Eviction Against St. Peters Woman Too Sick From COVID-19 to be Allowed in Courthouse*, 5 ON YOUR SIDE, <https://www.ksdk.com/article/news/investigations/st-charles-county-eviction-granted-while-tenant-too-sick-with-covid-for-court/63-e987cd6d-e162-4298-9124-62f479674b76> (last updated Feb. 15, 2021, 4:19 PM).

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

Urban Development (HUD) authorized a sixty-day moratorium on foreclosures of all federally backed mortgages and evictions from federally backed properties.<sup>63</sup> This pause on foreclosures was extended continuously throughout the year.<sup>64</sup> Mortgage giants Fannie Mae and Freddie Mac repeatedly extended moratoriums on foreclosures on properties they had underwritten as well.<sup>65</sup>

In March 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which instituted a 120-day moratorium on eviction filings.<sup>66</sup> It only protected rental properties receiving federal assistance or federally related financing and expired in July of 2020.<sup>67</sup> This guaranteed uneven protections throughout the land, for tenants living in non-federally backed properties were only safe as long as their state kept a moratorium going.<sup>68</sup> To make matters worse, the average tenant probably would not know whether the law even protected them. The lack of any central, publicly available database of protected properties for CARES made it hard for tenants to determine if their units were safe.<sup>69</sup> Additionally, as one housing advocate put it, “generally speaking, landlords are not providing detailed information to their tenants about their mortgage types.”<sup>70</sup>

The Centers for Disease Control and Prevention (CDC) issued a temporary halt in residential evictions on September 4, 2020 (the CDC Order).<sup>71</sup> As originally conceived, it applied nationwide until December

63. U.S. Dep’t of Hous. & Urban Dev., Mortgagee Letter 2020-27 (Aug. 27, 2020).

64. *Id.*

65. *FHFA Extends Foreclosure and REO Eviction Moratoriums and COVID Forbearance Period*, FED. HOUSING FIN. AGENCY (Feb. 9, 2021), <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Extends-Foreclosure-and-REO-Eviction-Moratoriums-and-COVID-Forbearance-Period.aspx>; *FHFA Extends COVID-19 Foreclosure and REO Eviction Moratoriums*, FED. HOUSING FIN. AGENCY (June 24, 2021), <https://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Extends-COVID-19-Foreclosure-and-REO-Eviction-Moratoriums.aspx>.

66. Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 4024 (2020).

67. Michelle Fox, *Beware the Covid Cliff: Here Are the CARES Act Benefits Coming to an End This Year*, CNBC (Dec. 04, 2020, 8:00 AM), <https://www.cnbc.com/2020/12/04/here-are-the-cares-act-benefits-coming-to-an-end-this-year.html>.

68. *Evictions*, EIGHTH JUD. CIR. CT. ALA., <https://morgan.alacourt.gov/evictions/> (last visited Feb. 23, 2021).

69. Meris Lutz, *Lack of Eviction Ban Leaves Georgia Renters Vulnerable*, ATLANTA J. CONST. (Apr. 28, 2020), <https://www.ajc.com/news/local/lack-eviction-ban-leaves-georgia-renters-vulnerable/5VJi2rKnREhRJJszxdRQLP/>.

70. Travis Lux, *Gov. Edwards Extends Suspension of Evictions, But Housing Advocates Want Longer*, WWNO (May 15, 2020, 11:13 AM), <https://www.wwno.org/latest-news/2020-05-15/gov-edwards-extends-suspension-of-evictions-but-housing-advocates-want-longer>.

71. Temporary Halt in Residential Evictions 2020, 85 Fed. Reg. 55, 292.

31, 2020, but it was extended to January 31, 2021, again to March 31,<sup>72</sup> and then again to June 30.<sup>73</sup> This was the first time in the nation's history that the federal government asserted its power to protect renters in this way.<sup>74</sup>

To institute this order, the CDC relied on a novel application of its authority.<sup>75</sup> Federal regulations empower the CDC director to "take such measures to prevent such spread of the [communicable] diseases as he/she deems reasonably necessary."<sup>76</sup> An eviction moratorium helps prevent the spread of disease because evictions push tenants into unsafe situations, such as homeless shelters or moving in with families. Studies of observational data from eviction moratoria in forty-three jurisdictions found an increase in COVID-19 infections and mortality two to three months after moratoria were lifted.<sup>77</sup> If an evicted tenant moves in with friends or family, their household becomes more crowded. Homeless shelters are often hotspots of COVID-19. Among 208 homeless shelters reporting universal COVID testing, nine percent of clients were positive, and one Boston shelter reported a thirty-six percent positivity rate.<sup>78</sup> It was estimated that "over 433,000 cases of COVID-19 and over 10,000 deaths" were caused by lifting moratoriums.<sup>79</sup> Increases like this affect even people who were not evicted themselves.<sup>80</sup>

Novel as the CDC Order may have been, it was not self-executing. Tenants could avail themselves of the Order by providing a declaration to their landlord that affirmed (1) they used their best efforts to obtain rental relief, (2) they made less than \$99,000, (3) they were unable to pay rent due to loss of income or medical expenses, (4) they were making their best efforts to pay, and (5) an eviction would push them into homelessness or a shared living arrangement.<sup>81</sup> Once a landlord received the declaration,

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72. *Id.*

73. Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 86 FR 16,731 (Mar. 31, 2021).

74. *Terkel*, 2021 U.S. Dist. LEXIS 35570, at \*3.

75. Amendment of Admin. Order No. 2020-17, Mich. ADM File No. 2020-08, at 5 (Oct. 22, 2020) ([https://www.courts.michigan.gov/siteassets/covid/covid-19/2020-08\\_2021-07-02\\_formattedorder\\_amendtofao2020-17.pdf](https://www.courts.michigan.gov/siteassets/covid/covid-19/2020-08_2021-07-02_formattedorder_amendtofao2020-17.pdf)) (Viviano, J., dissenting) ("I am unaware of any historical uses of eviction moratoriums in response to public-health crises").

76. 42 C.F.R. § 70.2 (2021).

77. Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 86 Fed Reg 34,010, 34,014 (June 28, 2021).

78. Temporary Halt in Residential Evictions 2020, 85 Fed. Reg. 55,292, 55,295.

79. Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 86 Fed Reg 34,010, 34,014.

80. *Id.*

81. Temporary Halt in Residential Evictions 2020 85 Fed. Reg. 55,292, 55,293.

the landlord could not finalize the eviction until the CDC Order expired for nonpayment of rent though they could still evict for illegal conduct or contractual breach unrelated to payment.<sup>82</sup>

Thus, a tenant had to know about the Order, where to find the declaration form, print it out, fill it out, and give it to their landlord all before an eviction proceeding was complete. Since all the Order did was stop the final execution of the eviction, a tenant would still have had to go to court to enforce it. Ordinary tenants, who are not trained as lawyers, may mistakenly have believed they were automatically covered, especially if they saw attention-grabbing headlines like “CDC Issues Sweeping Temporary Halt On Evictions Nationwide Amid Pandemic.”<sup>83</sup> Maryland Assistant Attorney General Karen Straughn said the CDC Order was “very limited” and “not helpful to a lot of people” for these reasons.<sup>84</sup>

There was no reason the moratorium needed to be designed this way. Consider the policy the Department of Justice used for corporate criminals: companies that had to pay millions or billions in fines to the federal government—like bid riggers or malfeasant banks—were given a reprieve of a few months.<sup>85</sup> It was a blanket policy with no means-testing for large corporations, and it was automatic: if a company did not explicitly opt-in to continue paying, the government would not enforce collections.<sup>86</sup> The Environmental Protection Agency also announced that companies that failed to monitor pollution during the outbreak would not be punished and applied this rule retroactively.<sup>87</sup>

82. *Id.* at 55,294.

83. Chris Arnold, *CDC Issues Sweeping Temporary Halt On Evictions Nationwide Amid Pandemic*, NPR (Sept. 1, 2020, 8:58 PM), <https://www.npr.org/sections/coronavirus-live-updates/2020/09/01/908581048/sweeping-new-eviction-ban-from-trump-administration>; see also Kevin Freking, *CDC Directs Halt to Renter Evictions to Prevent Virus Spread*, AP NEWS (Sept. 1, 2020), <https://apnews.com/article/virus-outbreak-health-politics-lifestyle-business-1eb82db82ec722d329e52eff638c797f>; See also Allison Stevens & Bennett Leckrone, *CDC Halts Evictions for Pandemic-Related Overdue Rent Until January*, MD. MATTERS (Sept. 1, 2020), <https://www.marylandmatters.org/2020/09/01/cdc-halts-evictions-for-pandemic-related-overdue-rent-until-january/>.

84. Stevens & Leckrone, *supra* note 83; Bennett Leckrone, *U.S. Eviction Moratorium ‘Not Helpful to a Lot of People in Md.’ Official Warns*, MD. MATTERS, (Sept. 9, 2020), <https://www.marylandmatters.org/2020/09/09/u-s-eviction-moratorium-not-helpful-to-a-lot-of-people-in-md-official-warns/>.

85. Rebecca Beitsch, *DOJ Lets Companies Skip Paying Penalties During Pandemic*, HILL (Apr. 16, 2020, 4:29 PM), [https://thehill.com/homenews/administration/493216-doj-lets-companies-skip-paying-penalties-during-pandemic?amp&\\_\\_twitter\\_impression=true&fbclid=IwAR2zBDwvqhRHWMre0Sml6Hzvj6LpPxcbNYT0C52bHa86LJAchYRvVzhZsmc](https://thehill.com/homenews/administration/493216-doj-lets-companies-skip-paying-penalties-during-pandemic?amp&__twitter_impression=true&fbclid=IwAR2zBDwvqhRHWMre0Sml6Hzvj6LpPxcbNYT0C52bHa86LJAchYRvVzhZsmc).

86. *Id.*

87. Memorandum from Susan Parker Bodine, Assistant Administrator of the EPA, to All Governmental and Private Sector Partners, (Mar. 26, 2020), <https://westernvaluesproj>

Beyond direct eviction protections, the federal government also provided direct relief to Americans. At the dawn of 2021, Congress passed an appropriations bill that authorized over twenty-one billion dollars in new funding for tenant-based rental assistance.<sup>88</sup> This was a break from the past, where the national government typically left renters on their own.<sup>89</sup>

### III. STATE EVICTION MORATORIUMS

The eviction moratorium was by far the favorite tool of policymakers during the pandemic. Though calling eviction protections “moratoriums” or “bans” is a helpful shorthand and commonly used in the press, it is somewhat misleading. The term “eviction moratorium” implies a complete cessation of removals. Unfortunately, this was not the case. Throughout 2020 in Maine, a state with such a moratorium, evictions fell by forty percent from previous years, and there was an immediate, steep drop after the CDC Order went into effect.<sup>90</sup> While a formidable reduction, this is a far cry from eliminating forced homelessness during the pandemic. In Harris County, Texas, the CDC Order only stopped 9.6% of evictions from occurring.<sup>91</sup>

For simplicity, the term “moratorium” is used throughout this Article to mean a policy that temporarily prevents an otherwise lawful eviction, though eviction “restrictions,” or “limitations,” would be more accurate in a strict sense.

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ect.org/wp-content/uploads/2020/03/COVID10-EPA-Enforcement-and-Compliance.pdf; See also, *Fed waives insider dealing rule for Paycheck Protection Program loans*, REUTERS (Apr. 17, 2020, 4:42 PM), [https://www.reuters.com/article/us-health-coronavirus-fed-smallbusiness-idUSKBN21Z3AC?utm\\_campaign=trueAnthem%3A+Trending+Content&utm\\_medium=trueAnthem&utm\\_source=facebook](https://www.reuters.com/article/us-health-coronavirus-fed-smallbusiness-idUSKBN21Z3AC?utm_campaign=trueAnthem%3A+Trending+Content&utm_medium=trueAnthem&utm_source=facebook) (The Federal Reserve also waived its rules against insider dealing for Paycheck Protection Program loans).

88. Consolidated Appropriations Act, H.R. 133, 116<sup>th</sup> Cong. at 1704 (2021); See also, A. Mechele Dickerson, *The Myth of Home Ownership and Why Home Ownership Is Not Always a Good Thing*, 84 IND. L.J. 189, 195 (2009) (In 2007, the federal government spent \$120 billion on tax breaks alone for homeowners).

89. Matthew Desmond, *How Homeownership Became the Engine of American Inequality*, N.Y. TIMES (May 9, 2017), <https://www.nytimes.com/2017/05/09/magazine/how-homeownership-became-the-engine-of-american-inequality.html>.

90. Robbie Feinberg, *Maine Renters Still Vulnerable, Even As Evictions Plummet During Pandemic*, *Advocates Say*, BANGOR DAILY NEWS (Feb. 9, 2021), <https://bangordailynews.com/2021/02/09/news/portland/maine-renters-still-vulnerable-even-as-eviction-s-plummet-during-pandemic-advocates-say/>.

91. Jen Rice, *CDC Eviction Moratorium Stopped Less Than 10% Of Houston Court Proceedings*, TEX. STANDARD (Dec. 22, 2020, 11:06 AM), <https://www.texasstandard.org/stories/cdc-eviction-moratorium-stopped-less-than-10-of-houston-court-proceedings/>.

### A. Historical Uses

Eviction and foreclosure moratoriums are not new. Illinois imposed one as far back as 1921.<sup>92</sup> That same year, Congress passed a law that allowed tenants to remain in hotels and apartments beyond the expiration of their lease.<sup>93</sup> Economic devastation brought by the Great Depression led farmers to march on Washington to demand an end to evictions and cash support to help them survive.<sup>94</sup> Clad in overalls, these “farmers turned lobbyists” met with the Vice President, Speaker of the House, and made the rounds in both chambers in Congress to plead their case.<sup>95</sup> A farmer’s association passed a resolution to be sent to President Franklin D. Roosevelt insisting that “banks cannot possibly return to normalcy” quickly, and thus, farm foreclosures should be stayed.<sup>96</sup>

The states would answer the call. On February 24, 1933, Minnesota Governor Floyd B. Olson issued an executive order halting mortgage foreclosures until May 1, 1933.<sup>97</sup> The order came after farmers resorted to violence and intimidation to remain in their homes.<sup>98</sup> They mobbed foreclosure auctions to prevent bidders from gobbling up homes.<sup>99</sup> The legislature ultimately extended the mortgage redemption period to 1935.<sup>100</sup> The Supreme Court ratified Minnesota’s authority to pass a moratorium.<sup>101</sup>

Pennsylvania’s State House passed a short eviction moratorium as well.<sup>102</sup> The Apartment House Association of Los Angeles instituted its own eviction moratorium during that “period of uncertainty.”<sup>103</sup> It was not

92. *Gov. Green Calls Special Session*, J. GAZETTE, July 20, 1946, at 4 (the newspaper article is available at <https://www.newspapers.com/image/93680985>).

93. *Block v. Hirsh*, 256 U.S. 135, 153–54 (1921).

94. *Capital Police to Permit Farm March So Long as Protest Session Is Peaceable*, TIPTON DAILY TRIB., Nov. 12, 1932, at 1 (the newspaper article is available at <https://www.newspapers.com/image/14844562>).

95. *Farmers Demand End to Evictions; Debt Moratorium*, NEWS J., Dec. 9, 1932, at 11 (the newspaper article is available at <https://www.newspapers.com/image/154180284/>).

96. *Grangers Hit Foreclosures in Resolution*, SANTA ROSA REPUBLICAN, Mar. 15, 1933, at 7 (the newspaper article is available at <https://www.newspapers.com/image/609256670/>).

97. Iric Nathanson, *In 1933, A Governor Moved Boldly To Halt Foreclosures*, MINN. POST (June 4, 2008), <https://www.minnpost.com/politics-policy/2008/06/1933-governor-moved-boldly-halt-foreclosures/>.

98. *Id.*

99. *Id.*

100. *Id.*

101. *See generally* *Home Bldg. & Loan Asso. v. Blaisdell*, 290 U.S. 398 (1934).

102. *Relief Plan Is Ready for Legislature*, MOUNT CARMEL ITEM, Mar. 13, 1933, at 5 (the newspaper article is available at <https://www.newspapers.com/image/76335215/>).

103. *Policy Eased by Landlords*, L.A. EVENING CITIZEN NEWS, Mar. 9, 1933, at 8 (the newspaper article is available at <https://www.newspapers.com/image/683065803>).

binding, but most member landlords agreed to abide by it.<sup>104</sup> An Oakland, California Justice of the Peace declared an eviction moratorium for the holiday season in 1932 making headlines around the country.<sup>105</sup> A Camden District Court in New Jersey declared a ban on residential evictions for a short while in 1933.<sup>106</sup> Judges in Wayne County, Michigan went farther: they agreed to stop residential foreclosures for six to twelve months.<sup>107</sup> Executive Judge Ira W. Jayne noted, “We instituted the moratorium because the mortgage laws are too inflexible to meet the needs of present conditions.”<sup>108</sup> He called the moratorium an attempt to “apply the laws equitably, so that we can give aid to persons out of work through no fault of their own and in imminent danger of losing the money they have invested to make homes for themselves.”<sup>109</sup> Between 1933 and 1934, twenty-seven states enacted some form of foreclosure protection law.<sup>110</sup>

The onset of the Great Depression spurred one wave of eviction moratoria; the conclusion of World War II would spawn another. Near the start of the war, the Office of Price Administration (OPA) was created to impose rent ceilings and restrict the ability of landlords to remove tenants.<sup>111</sup> Such actions were seen as wartime necessities as workers could not “perform satisfactorily on a production line with the shadow of eviction at the whim of the landlord hanging over their heads.”<sup>112</sup> Even if the property was sold, tenants would be given three to six months to move out.<sup>113</sup> But thousands of people were served with eviction notices on June 30, 1946, the very day the OPA allowed it.<sup>114</sup>

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104. *Id.*

105. *Judge Has Heart*, TRIBUNE, Dec. 28, 1932, at 4 (the newspaper article is available at <https://www.newspapers.com/image/161032084/>); *See also Judge Has Christmas Spirit*, KINGSTON DAILY FREEMAN, Dec. 22, 1932, at 20 (the newspaper article is available at <https://www.newspapers.com/image/28453208/>).

106. *Evictions Held Up*, TIMES-TRIBUNE, Nov. 30, 1933, at 3 (the newspaper article is available at <https://www.newspapers.com/image/532363669/>).

107. *Judges to Retard Eviction Hearings*, DETROIT FREE PRESS, Jan. 8, 1933, at 5 (the newspaper article is available at <https://www.newspapers.com/image/97471669/>).

108. *Id.*

109. *Id.*

110. Geoff Walsh, *The Finger in the Dike: State and Local Laws Combat the Foreclosure Tide*, 44 SUFFOLK U. L. REV. 139, 139 (2011).

111. E.P. McCarron, *Rent Control and Evictions Under Emergency Price Control*, 27 MARQ. L. REV. 125, 126 (1943).

112. *Id.* at 127.

113. *Consider Eviction Moratorium*, DES MOINES REG., July 21, 1946, at 15 (the newspaper article is available at <https://www.newspapers.com/image/128216691/>).

114. *Illinois Law Makers Baffled on Rent Procedure*, TIPTON DAILY TRIB., July 25, 1946, at 3 (the newspaper article is available at <https://www.newspapers.com/image/545614116/>).

Calls for a pause to evictions proliferated around the country. Illinois's governor said that an eviction moratorium would be "absolutely necessary to avert widespread hardship and confusion," and both parties were supportive of a yearlong plan.<sup>115</sup> San Francisco imposed an eighteen-month public housing eviction freeze after an attempted eviction caused a riot.<sup>116</sup> Many more jurisdictions considered a moratorium or had people agitating for it in the years following the war.<sup>117</sup>

After the 1940s, policymakers largely forgot about eviction moratoriums.<sup>118</sup> A search of newspapers reveals that the term "eviction moratorium" shows up in roughly 100 articles in 1946, but only a handful of mentions per year until 2020.<sup>119</sup> Between 1946 and 2020, no *decade* has produced even 100 articles on the topic.<sup>120</sup> To the extent moratoria did arise, they only lasted as long as the Christmas season.<sup>121</sup> It was more common to find articles where calls for moratoriums never came to

115. *State Solons Gather for Rent Control*, TIMES, July 23, 1946, at 1 (the newspaper article is available at <https://www.newspapers.com/image/543234231/>).

116. Donald Carter, *Eviction Moratorium Ends*, S.F. EXAMINER, Oct. 8, 1967, at 24 (the newspaper article is available at <https://www.newspapers.com/image/458541173/>).

117. See e.g. *State Moves on 3 Fronts to Speed Vet Housing Plans*, COURIER-NEWS, Oct. 3, 1946, at 1 (the newspaper article is available at <https://www.newspapers.com/image/221308351/>); *Housing Eviction Moratorium Urged by Buffalo Official*, BERKSHIRE CNTY. EAGLE, Dec. 4, 1946, at 1 (the newspaper article is available at <https://www.newspapers.com/image/532940444/>); *Eviction Moratorium Bill Recommended*, MINN. STAR, Jan. 16, 1947, at 17 (the newspaper article is available at <https://www.newspapers.com/image/178724898/>); *Cheers, Boos in Rent Row*, VALLEY TIMES, July 18, 1947, at 2 (the newspaper article is available at <https://www.newspapers.com/image/580195255/>); *Democratic Senate Passes Eviction Moratorium Bill*, MERIDEN DAILY J., Feb. 11, 1949, at 2 (the newspaper article is available at <https://www.newspapers.com/image/677111818/>); *House Democrats Revolt Again; Longer Stay in Evictions Argued*, BOSTON GLOBE, Mar. 16, 1949, at 7 (the newspaper article is available at <https://www.newspapers.com/image/433561209/>) [hereinafter *House Democrats Revolt Again*]; *Policemen on Guard as Bitter Rent Battle Rages*, Jan. 23, 1951, at 2 (the newspaper article is available at <https://www.newspapers.com/image/689558065/>).

118. During a recession in the 1980s, several states enacted foreclosure protections for homeowners, but these were designed to protect farmer-homeowners, not renters. Walsh, *supra* note 110, at 152. By the time of the 2007-08 financial crisis, states opted instead for foreclosure regulations, rather than outright moratoria. *Id.* at 158.

119. Search conducted through <https://www.newspapers.com/> (Apr. 2, 2021).

120. *Id.*

121. E.g., Robert Davis, *Eviction Moratorium Declared*, CHI. TRIB., Dec. 22, 1970, at 3 (the newspaper article is available at <https://www.newspapers.com/image/377216/>); *Evictions Moratorium in Effect for Holidays*, HARFORD COURANT, Dec. 18, 1976, at 87 (the newspaper article is available at <https://www.newspapers.com/image/240551699/>).

fruition.<sup>122</sup> In 2020, for comparison, there were 2,600 mentions of the term.<sup>123</sup>

### *B. Scope of Modern Protections*

Most states did do something to keep renters in their homes during the pandemic, and most states achieved this through executive orders. Only a handful of orders by state governments could genuinely be described as total eviction moratoriums. Kentucky instructed law enforcement to stop carrying out evictions, with no exceptions listed.<sup>124</sup> Louisiana suspended all criminal and civil court deadlines which had the effect of stymieing evictions.<sup>125</sup> Mississippi's first order did not list any exceptions, qualifications, or prerequisites that tenants had to meet.<sup>126</sup> Nor did the

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122. *E.g.*, *House Democrats Revolt Again*, *supra* note 117, at 7; *Policemen on Guard as Bitter Rent Battle Rages*, *supra* note 117, at 2; *Urban League Urges Evictions Moratorium*, DECATUR DAILY REV., Apr. 6, 1970, at 18 (the newspaper article is available at <https://www.newspapers.com/image/79940650/>); *Eviction Moratorium Asked by Neighbors*, TAMPA BAY TIMES, Dec. 17, 1974, at 24 (the newspaper article is available at <https://www.newspapers.com/image/318604914/>).

123. Search conducted through <https://www.newspapers.com/> (Apr. 2, 2021).

124. Ky. Exec. Order 2020-257 (Mar. 25, 2020), [https://governor.ky.gov/attachments/20200325\\_Executive-Order\\_2020-257\\_Healthy-at-Home.pdf](https://governor.ky.gov/attachments/20200325_Executive-Order_2020-257_Healthy-at-Home.pdf).

125. La. Proclamation No. 52 JBE 2020 (Apr. 30, 2020), <https://gov.louisiana.gov/assets/Proclamations/2020/52-JBE-2020-Stay-at-Home-Order.pdf>; La. Proclamation No. 59 JBE 2020 (May 14, 2020), <https://gov.louisiana.gov/assets/Proclamations/2020/59-JBE-2020.pdf>.

126. Miss. Exec. Order No. 1466, at 2 (Apr. 1, 2020), <https://www.sos.ms.gov/Education-Publications/ExecutiveOrders/1466.pdf>; Miss. Exec. Order, No. 1477 (Apr. 24, 2020), [https://mcusercontent.com/08cb3e52aa1308600f84d49ea/files/e24a9045-8ab7-4aa0-bb23-bb49d342c816/Executive\\_Order\\_1477\\_Safer\\_at\\_Home.pdf](https://mcusercontent.com/08cb3e52aa1308600f84d49ea/files/e24a9045-8ab7-4aa0-bb23-bb49d342c816/Executive_Order_1477_Safer_at_Home.pdf) (The second order did not list any either).

initial orders for Illinois,<sup>127</sup> Indiana,<sup>128</sup> New Hampshire,<sup>129</sup> New York,<sup>130</sup> North Carolina,<sup>131</sup> Pennsylvania,<sup>132</sup> or Rhode Island.<sup>133</sup>

Slightly below absolute bans, there were near-total moratoriums. For example, Minnesota suspended landlords' ability to file evictions, with exceptions for "seriously endangering" the safety of other residents or committing drug crimes.<sup>134</sup> While Connecticut only allowed eviction for serious nuisance,<sup>135</sup> Iowa allowed it for emergencies,<sup>136</sup> Massachusetts for essential evictions,<sup>137</sup> Washington for immediate risks to health or safety,<sup>138</sup> and Nevada<sup>139</sup> and Vermont<sup>140</sup> for danger to others or property, or criminal activity. Michigan's executive order permitted evictions for

127. Ill. Exec. Order 2020-10 (Mar. 20, 2020), <https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-10.aspx>.

128. Ind. Exec. Order 20-06 (Mar. 19, 2020), [https://www.in.gov/gov/files/EO\\_20-06.pdf](https://www.in.gov/gov/files/EO_20-06.pdf).

129. N.H. Emergency Order No. 4, at 1 (Mar. 17, 2020), <https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/emergency-order-4.pdf>.

130. N.Y. Exec. Order No. 202.8 (Mar. 20, 2020), <https://www.governor.ny.gov/news/no-2028-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>.

131. N.C. Exec. Order No. 124, at 6 (Mar. 31, 2020), <https://files.nc.gov/governor/documents/files/EO124-Utilities-Evictions-Financial-Services.pdf>.

132. Order of the Governor of the Commonwealth of Pennsylvania Staying Notice Requirements for Specified Actions Related to the Dispossession of Property 2–3 (May 7, 2020), <https://www.governor.pa.gov/wp-content/uploads/2020/05/20200507-TWW-dispossession-of-property-order.pdf>.

133. Press Release, Gina M. Raimondo, Governor, Rhode Island & Nicole Alexander-Scott, Director of Health, Eviction Processing Suspended During Crisis, Rhode Islanders Encouraged to Report Price Gouging (Apr. 19, 2020), <https://www.ri.gov/press/view/37970>.

134. Minn. Exec. Order 20-14, at 2 (Mar. 23, 2020), [https://mn.gov/governor/assets/EO%2020-14%20Filed\\_tcm1055-424508.pdf](https://mn.gov/governor/assets/EO%2020-14%20Filed_tcm1055-424508.pdf).

135. Conn. Exec. Order No. 7X, at 3 (Apr. 10, 2020), <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7X.pdf>.

136. Proclamation of Disaster Emergency, Iowa Gov., at 3 (Mar. 19, 2020), <https://governor.iowa.gov/sites/default/files/documents/Public%20Health%20Proclamation%20-%202020.03.19.pdf>.

137. H. B. 4647, 191 Gen. Ct., 2019-2020 Sess. § 3(b) (Mass. 2020).

138. Wash. Proclamation No. 20-19.1, at 3 (Apr. 16, 2020), [https://www.governor.wa.gov/sites/default/files/20-19.1%20-%20COVID-19%20Moratorium%20on%20Evictions%20Extension%20%28tmp%29.pdf?utm\\_medium=email&utm\\_source=govdelivery](https://www.governor.wa.gov/sites/default/files/20-19.1%20-%20COVID-19%20Moratorium%20on%20Evictions%20Extension%20%28tmp%29.pdf?utm_medium=email&utm_source=govdelivery).

139. Nev. Exec. Order Declaration of Emergency Directive 008 (Mar. 29, 2020), [https://gov.nv.gov/News/Emergency\\_Orders/2020/2020-03-29\\_-\\_COVID-19\\_Declaration\\_of\\_Emergency\\_Directive\\_008\\_\(Attachments\)/](https://gov.nv.gov/News/Emergency_Orders/2020/2020-03-29_-_COVID-19_Declaration_of_Emergency_Directive_008_(Attachments)/).

140. S. B. 333, 2019-2020 Gen. Assem., 2019-2020 Reg. Sess. (Vt. 2020).

threats to people or property but also said it “should be broadly construed” to keep people in their homes.<sup>141</sup>

Even less protective was something like Utah’s executive order. It allowed eviction for everything except non-payment of rent.<sup>142</sup> This type of moratorium was also seen in California,<sup>143</sup> Florida,<sup>144</sup> Hawaii,<sup>145</sup> Nebraska,<sup>146</sup> and Wisconsin.<sup>147</sup> Some states went beyond nonpayment. Maine’s executive order applied to tenants who were being evicted for nonpayment of rent, expiration of the lease, or no cause.<sup>148</sup> Oregon’s initial executive order protected nonpayment and evictions without cause.<sup>149</sup> Maryland said a tenant could not be evicted if they suffered a substantial loss of income from the pandemic,<sup>150</sup> much like Alaska<sup>151</sup> and Kansas.<sup>152</sup>

At the bottom of the heap were states who left tenants to fend for themselves. Arkansas, “already deemed to have the worst laws for renters in the U.S.,” lived up to its reputation by not only not having any moratorium, but the state supreme court also summarily reversed a lower court that insisted on having a hearing before evicting a tenant.<sup>153</sup> Ohio’s

141. Mich. Exec. Order No. 2020-19 (Mar. 20, 2020), [https://www.michigan.gov/whitmer/0,9309,7-387-90499\\_90705-522509--,00.html](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-522509--,00.html).

142. Utah Exec. Order, at 1 (Apr. 1, 2020), <https://drive.google.com/file/d/1DIvfcaMeSeUhfNmzr-3Cwo3DyZQZIO2l/view>.

143. Cal. Exec. Order N-37-20, at 2 (Mar. 27, 2020), <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.27.20-EO-N-37-20.pdf>.

144. Fla. Exec. Order No. 20-94, at 2 (Apr. 2, 2020), [https://www.flgov.com/wp-content/uploads/orders/2020/EO\\_20-94.pdf](https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-94.pdf).

145. Haw. Fifth Supp. Emergency Proclamation, at 6 (Apr. 16, 2020), [https://governor.hawaii.gov/wp-content/uploads/2020/04/2004088-ATG\\_Fifth-Supplementary-Proclamation-for-COVID-19-distribution-signed.pdf](https://governor.hawaii.gov/wp-content/uploads/2020/04/2004088-ATG_Fifth-Supplementary-Proclamation-for-COVID-19-distribution-signed.pdf).

146. Neb. Exec. Order No. 20-07, at 2 (Mar. 25, 2020), <https://govdocs.nebraska.gov/docs/pilot/pubs/eofiles/20-07.pdf>.

147. Wis. Emergency Order No. 15, at 2 (Mar. 27, 2020), <https://evers.wi.gov/Documents/COVID19/EO15BanonEvictionsandForeclosures.pdf>.

148. Me. Exec. Order No. 40 FY 19/20, at 2 (Apr. 16, 2020), <https://www.maine.gov/governor/mills/sites/maine.gov/governor.mills/files/inline-files/An%20Order%20Regarding%20Unlawful%20Evictions%2C%20Writs%20of%20Possession%2C%20and%20Initiation%20of%20Eviction%20Proceedings.pdf>.

149. Or. Exec. Order No. 20-13 (Apr. 1, 2020), [https://www.oregon.gov/gov/admin/Pages/eo\\_20-13.aspx](https://www.oregon.gov/gov/admin/Pages/eo_20-13.aspx).

150. Md. Exec. Order Temporarily Prohibiting Evictions of Tenants Suffering Substantial Loss of Income Due to COVID-19, at 1-2 (Mar. 16, 2020), <https://governor.maryland.gov/wp-content/uploads/2020/03/Executive-Order-Temp-Evictions-Prohibiting.pdf>.

151. S. B. 241, 31st Leg., 2nd Sess. (Alaska 2020).

152. Kan. Exec. Order No. 20-10, at 2 (Mar. 23, 2020), <https://governor.kansas.gov/wp-content/uploads/2020/03/EO-20-10-Executed.pdf>.

153. Max Brantley, *Arkansas Judge Declares CDC Eviction Moratorium Unconstitutional*, ARK. TIMES (Dec. 16, 2020, 5:38 PM), <https://arktimes.com/arkansas-blog/2020/12/16/arkansas-judge-declares-cdc-eviction-moratorium-unconstitutional>.

governor did not issue any order to protect residential tenants but did sign one for commercial tenants.<sup>154</sup> Sometimes, the popular branches of government left the duty to protect tenants to the courts,<sup>155</sup> and sometimes courts punted back.<sup>156</sup> Missouri Governor Michael Parson did not order any kind of eviction ban but did trumpet the federal CARES Act and its protection for renters and homeowners.<sup>157</sup> Georgia's governor did not issue any executive orders to protect renters, along with Idaho, New Mexico, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, West Virginia, and Wyoming. Virginia did not issue a broad-based moratorium early on but delayed evictions for furloughed federal government employees for 60 days.<sup>158</sup> It was not until months later that the Commonwealth gave a 60-day reprieve to all renters being evicted by landlords for non-payment.<sup>159</sup>

### C. Lessons from State Efforts

When properly employed, state policy could be transformational for renters. As an example, many jurisdictions saw steep drop-offs in evictions at the beginning of the pandemic when protections were strongest.<sup>160</sup> However, when assessing the effectiveness of eviction restrictions, there

154. See generally Ohio Exec. Order No. 2020-08D (Apr. 1, 2020), <https://governor.ohio.gov/wps/portal/gov/governor/media/executive-orders/executive-order-2020-08d>.

155. See generally Letter from Ralph Northam, Virginia Governor, to Donald W. Lemons, Chief Justice of Virginia (June 7, 2020) (<https://www.governor.virginia.gov/media/governorviriniagov/governor-of-virginia/pdf/FINAL-6.7.2020-RSN-Letter-to-Chief-Justice-Lemons.pdf>); Admin. Order 27, N.D. Sup. Ct. (Mar. 26, 2020), <https://www.ndcourts.gov/news/north-dakota/north-dakota-supreme-court/notices/20200107/Order-of-Adoption>; Tori Yorgey, *W.Va. Officials Discuss Evictions Issue During COVID-19*, WSAZ 3 (Sept. 9, 2020, 11:06 PM), <https://www.wsaz.com/2020/09/10/wva-officials-discuss-evictions-issue-during-covid-19/>.

156. *Statement of the Nebraska Supreme Court: Statutes Govern Eviction Hearings in Neb.*, NEB. JUD. BRANCH, (Mar. 23, 2020), <https://supremecourt.nebraska.gov/statement-nebraska-supreme-court-statutes-govern-eviction-hearings-nebraska>.

157. *Governor Parson Highlights COVID-19 Housing Assistance for Missourians*, GOVERNOR MO., (Apr. 30, 2020), <https://governor.mo.gov/press-releases/archive/governor-parson-highlights-covid-19-housing-assistance-missourians>.

158. H. B. 340, 2020 Gen. Assem., 2020 Sess. (Va. 2020).

159. H. B. 5115, 2020 Gen. Assem., 2020 1st Spec. Sess. (Va. 2020).

160. *Connecticut*, EVICTION LAB, (last visited Apr. 15, 2021), <https://evictionlab.org/eviction-tracking/connecticut/>; *Delaware*, EVICTION LAB, (last visited Apr. 15, 2021), <https://evictionlab.org/eviction-tracking/delaware/>; *Indiana*, EVICTION LAB, (last visited Apr. 15, 2021), <https://evictionlab.org/eviction-tracking/indiana/>; *Minnesota*, EVICTION LAB, (last visited Apr. 15, 2021), <https://evictionlab.org/eviction-tracking/minnesota/>; *Milwaukee, Wisconsin*, EVICTION LAB, (last visited Apr. 15, 2021), <https://evictionlab.org/eviction-tracking/milwaukee-wi/>; *Boston, Massachusetts*, EVICTION LAB, (last visited Apr. 15, 2021), <https://evictionlab.org/eviction-tracking/boston-ma/>.

is more to it than looking at the scope of whom the order applies to, as detailed above. This section will proceed to provide insights on how to make an effective moratorium.

### 1. *Avoid Narrow Application*

Eviction restrictions are often too narrow. As noted in the previous section, some states flatly banned eviction, some made exceptions for emergencies, and some allowed eviction for almost anything besides non-payment of rent. Only protecting tenants in certain categories produces confusion and gives landlords room to invent a pretext.

These sorts of myopic protections miss one of the fundamental purposes of stopping evictions: public health.<sup>161</sup> If a person is evicted by their landlord, they pose a health risk because they cannot easily self-isolate. Evicted people can end up at homeless shelters or boarding with family and friends. Teleworking or e-learning is also very difficult without a roof over one's head.

Additionally, focusing solely on non-payment of rent makes it easy for landlords to contrive a pretextual reason to evict tenants. After Maryland courts halted eviction for non-payment, landlords changed their tactics. Data shows that in the months before the pandemic, roughly 200 evictions per month were filed across Maryland for tenants overstaying their lease, called tenant holding over.<sup>162</sup> However, by the fall of 2020, when evictions for non-payment were restricted, monthly evictions based on overstaying a lease more than doubled.<sup>163</sup> This in spite of the fact that evictions overall were down dramatically.<sup>164</sup> By a similar token, Nebraska Legal Aid reported an increase of landlords seeking eviction for reasons other than nonpayment at a time when landlords were legally barred by the government from evicting for nonpayment.<sup>165</sup>

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161. This was the basis for the CDC to issue an eviction order. 85 Fed. Reg. 55292.

162. See generally DIST. CT. OF MD., LANDLORD/ TENANT CASE ACTIVITY REPORT 7, 14 (2020) (Report available at <https://mdcourts.gov/sites/default/files/import/district/statistics/2020/Calendar20.pdf>).

163. *Id.* at 70, 78, 86, 94.

164. Compare *id.* at 7 (showing over 60,000 evictions filed in the “grand total” column at the bottom) with *id.* at 70 (showing about half as many total evictions filed in the grand total column).

165. Kent Luetzen, *Loophole in Eviction Moratorium Lets Landlords Evict Tenants*, KMTV 3 (Mar. 3, 2021), <https://www.3newsnow.com/news/coronavirus/omaha-landlord-exploits-loophole-in-cdc-eviction-moratorium>.

It was common for orders to specifically allow evictions for threats to people or property, criminal activity, or nuisances.<sup>166</sup> Understandably, orders would permit evictions in emergencies, such as when there was a threat to person or property or criminal activity.

Nevertheless, desperate landlords may even attempt to exploit this. Knowing they could kick out non-paying tenants for criminal misconduct, two Vermont landlords trained five security cameras on their tenant and started calling the police a few times a month—so much so that the landlords were on a first-name basis with officers.<sup>167</sup> The supposed infractions they were reporting could be as piddling as improper license plates on cars that visited the tenants.<sup>168</sup>

The takeaway is that policymakers should be cautious about which exceptions they add to eviction moratoriums, if any. Alternatively, policymakers could follow the Kansas model: the Sunflower State put the burden on landlords to show that an eviction was truly based on something other than nonpayment of rent.<sup>169</sup>

## 2. *Target the Initiation of Evictions, not Execution*

A common pitfall was focusing on the *execution* of the eviction rather than the *initiation* of it. Arizona directed law enforcement to delay enforcement of eviction actions for tenants quarantining or who lost substantial income due to the pandemic.<sup>170</sup> Illinois<sup>171</sup> and New Jersey<sup>172</sup>

166. Me. Exec. Order No. 40 FY 19/20, at 2-3 (Apr. 16, 2020), <https://www.maine.gov/governor/mills/sites/maine.gov.governor.mills/files/inline-files/An%20Order%20Regarding%20Unlawful%20Evictions%2C%20Writs%20of%20Possession%2C%20and%20Initiation%20of%20Eviction%20Proceedings.pdf>; Mich. Exec. Order No. 2020-19 (Mar. 20, 2020), [https://www.michigan.gov/whitmer/0,9309,7-387-90499\\_90705-522509--,00.html](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-522509--,00.html); Neb. Exec. Order No. 20-07 (Mar. 25, 2020), <https://govdocs.nebraska.gov/docs/pilot/pubs/eofiles/20-07.pdf>.

167. See Anne Wallace Allen, *As the Pandemic Stretches on, Landlords Ask for Help With Tenant Troubles*, VT DIGGER (Oct. 14, 2020), <https://vtdigger.org/2020/10/14/as-the-pandemic-stretches-on-landlords-ask-for-help-with-tenant-troubles/>.

168. *Id.*

169. Kan. Exec. Order No. 20-10, at 2 (Mar. 23, 2020), <https://governor.kansas.gov/wp-content/uploads/2020/03/EO-20-10-Executed.pdf>.

170. Ariz. Exec. Order No. 2020-14, at 2 (Mar. 24, 2020), [https://azgovernor.gov/sites/default/files/eo\\_2020-14.pdf](https://azgovernor.gov/sites/default/files/eo_2020-14.pdf).

171. Ill. Exec. Order No. 2020-10, at 9 (Mar. 20, 2020), <https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-10.aspx>.

172. N.J. Exec. Order No. 106, at 3 (Mar. 19, 2020), <https://nj.gov/infobank/eo/056murphy/pdf/EO-106.pdf>.

also did the same. Florida only blocked the “final action at the conclusion” of the eviction, which is similar.<sup>173</sup>

If a sheriff cannot forcibly remove a tenant from a property and trash their belongings, the eviction cannot be completed in its barest sense. Moreover, in a world where everyone knew their rights and enforced them scrupulously, this would be enough, but tenants do not always fully understand their rights.<sup>174</sup> Filing an eviction can be used as an intimidation tactic and may still show in public record checks, which makes it harder to find new housing.<sup>175</sup> Many landlords threatened evictions whether or not they actually could go through with them which suggests that intimidation was the goal.<sup>176</sup>

There is a better way to structure moratoriums. Nevada stopped landlords from initiating evictions<sup>177</sup> as did New Hampshire,<sup>178</sup> Pennsylvania,<sup>179</sup> and Oregon,<sup>180</sup> among others. Vermont allowed landlords to file but prevented them from serving notice on the tenant until the emergency was over.<sup>181</sup> Connecticut forbade landlords from even delivering paperwork to tenants telling them to vacate.<sup>182</sup>

173. Fla. Exec. Order 20-180, at 2 (July 29, 2020), [https://www.flgov.com/wp-content/uploads/orders/2020/EO\\_20-180.pdf](https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-180.pdf).

174. See e.g., JOEL AURINGER ET AL., *ADVANCING HOUSING JUSTICE IN TULSA: AN EXAMINATION OF THE FED DOCKET 6 (2020)* (examples of tenants not being aware of their right to counsel or to request a trial); Annie Knox, *Fearful of Getting Evicted, Utahns Innovate to Make Ends Meet*, DESERET NEWS (Jan. 10, 2021, 6:33 PM), <https://www.deseret.com/utah/2021/1/10/22216074/coronavirus-eviction-fearful-pandemic-federal-aid-s-crape-together-rent-housing-salt-lake-valley> (noting that many tenants are not even aware of the CDC Order limiting evictions).

175. Lutz, *supra* note 69.

176. Clark & Yawn, *supra* note 56; Richard Allyn, *Legal loopholes Allow CA Landlords to Force Tenants Out Even During Eviction Moratorium*, CBS8 (Feb. 13, 2021, 8:25 AM), <https://www.cbs8.com/article/news/local/california-eviction-moratorium/509-67bf3db0-f877-4450-a6e4-ac6ff0674ce9>; Rebekah F. Ward, *Landlords Are Threatening Renters, Despite the Eviction Moratoriums*, DOCUMENTED (Nov. 9, 2020), <https://documentedny.com/2020/11/09/landlords-are-threatening-renters-despite-the-eviction-moratorium/>.

177. Nev. Exec. Order Declaration of Emergency Directive 008 (Mar. 29, 2020), [https://gov.nv.gov/News/Emergency\\_Orders/2020/2020-03-29\\_-\\_COVID-19\\_Declaration\\_of\\_Emergency\\_Directive\\_008\\_\(Attachments\)/](https://gov.nv.gov/News/Emergency_Orders/2020/2020-03-29_-_COVID-19_Declaration_of_Emergency_Directive_008_(Attachments)/).

178. N.H. Emergency Order No. 4, at 1 (Mar. 17, 2020), <https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/emergency-order-4.pdf>.

179. Order of the Governor of the Commonwealth of Pennsylvania Staying Notice Requirements for Specified Actions Related to the Dispossession of Property 2–3 (May 7, 2020), <https://www.governor.pa.gov/wp-content/uploads/2020/05/20200507-TWW-dispossession-of-property-order.pdf>.

180. H.B. 4213, 80<sup>th</sup> Legis. Assemb., Spec. Sess., § 3 (Or. 2020).

181. S. B. 333, 2019-2020 Gen. Assem., 2019-2020 Reg. Sess. (Vt. 2020).

182. Conn. Exec. Order No. 7X (Apr. 10, 2020), <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7X.pdf>.

Massachusetts passed a law that forbade landlords from so much as sending notices of eviction or demanding that the tenant leave, stopped courts from accepting or resolving evictions, and banned law enforcement from enforcing an eviction.<sup>183</sup> This tri-pronged approach targets all stages of the eviction process, increasing the odds that the tenant will be kept in their home. Another advantage of stopping evictions from being initiated is that it creates a buffer at the end of the pandemic. Even though evictions could resume in October 2020 in Massachusetts, people could not be forced from their homes until 2021 at the earliest.<sup>184</sup> If merely the execution had been blocked, people could be forced out almost as soon as the pandemic was over. This highlights the value of blocking all stages of eviction, not just the endpoint.

### 3. *Be Wary of Imposing Obligations on Tenants*

By asking tenants to do too much in the middle of a crisis, states may end up confusing the people they are trying to help. Maryland's governor required tenants to show thorough documentation or other objectively verifiable means that the tenant suffered a substantial loss of income from the pandemic.<sup>185</sup> Arizona mandated tenants to document financial hardships and submissions for housing assistance and suggested these documents be turned over to law enforcement.<sup>186</sup> Montana required tenants to document to the landlord that they were quarantining, were part of an at-risk population, or suffered a substantial loss of income.<sup>187</sup> Such a feature was not unique to these states.<sup>188</sup>

183. H. B. 4647, 191 Gen. Ct., 2019-2020 Sess. § 3(b) (Mass. 2020).

184. Erin Tiernan, *Landlords Move to Evict as Massachusetts Moratorium Ends*, BOS. HERALD, <https://www.bostonherald.com/2020/10/19/landlords-move-to-evict-as-moratorium-ends/> (last updated Oct. 20, 2020, 7:50 AM).

185. Md. Exec. Order Temporarily Prohibiting Evictions of Tenants Suffering Substantial Loss of Income Due to COVID-19, at 1-2 (Mar. 16, 2020), <https://governor.maryland.gov/wp-content/uploads/2020/03/Executive-Order-Temp-Evictions-Prohibiting.pdf>.

186. Ariz. Exec. Order 2020-49, at 3 (July 16, 2020).

187. Directive Implementing Exec. Orders 2-2020 and 3-2020 and Providing Additional Guidance Related to Evictions and Establishing Relief Funds for Affected Renters from Steve Bullock, Governor of Montana, at 3 (Apr. 13, 2020) (<https://dphhs.mt.gov/assets/Coronavirus/LowIncomeRentAssistanceDirective.pdf>).

188. *E.g.*, H. B. 4647, 191 Gen. Ct., 2019-2020 Sess. § 3(e) (Mass. 2020). (requiring documentation of hardship); Andrew Quintana, *Evictions in Florida are Reaching Pre-Pandemic Levels: Is the State Heading Toward a Crisis?*, TAMPA BAY 10 (Mar. 2, 2021, 9:35 PM) <https://www.wtsp.com/article/news/health/coronavirus/florida-evictions-reaching-pre-pandemic-levels/67-4eda67ee-615e-4312-aab3-e210b0175736> (noting that the federal CDC Order required documentation of hardship); Alex Zielinski, *Multnomah County to Adopt Statewide Eviction Moratorium Rules*, PORTLAND MERCURY (Apr. 13,

Putting the onus on tenants is a dangerous policy. The more complicated a policy is for tenants to utilize, the more likely they simply will not utilize it. It is particularly unfair to require documentation because proof of rental assistance will be hard to produce through the fault of governments, not tenants. Many jurisdictions distributed funds by lottery after demand outstripped supply.<sup>189</sup> Also, COVID can hurt people in ways beyond sickness or direct unemployment. A parent may be forced to quit their job to stay home with their children because of school closures, resulting in being unable to pay rent. A person may have to withdraw from the workforce to care for an ailing parent when nursing homes become unsafe. Alternatively, a person may simply quit, deciding to prioritize their health. Depending on how an eviction moratorium is phrased, these scenarios may not be considered ‘pandemic-related’.

Presumably, the government uses tenant documentation to weed out cases of abuse, but if policymakers wish to limit protections to only those tenants who can demonstrate a genuine hardship, there are ways to mitigate the risk of tenants missing out on protections. Given that landlords have all the power in the dynamic and are more likely to have legal counsel, they are in a better position to do the heavy lifting.<sup>190</sup>

Some states appropriately placed the burden on landlords. Montana’s original executive order required landlords, before evicting, to give tenants notice of the opportunity to seek protection under the state moratorium.<sup>191</sup> Nevada passed a similar law that required landlords, if serving notice to evict, to inform the tenant of the right to contest the eviction.<sup>192</sup>

Massachusetts required landlords to give a tenant an eviction notice that included information on available rental assistance, a copy of any emergency local, state, or federal protections for tenants, and notice that the tenant does not need to leave until a court orders.<sup>193</sup> This statute was

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2020, 12:10 PM), <https://www.portlandmercury.com/blogtown/2020/04/13/28285388/multnomah-county-to-adopt-statewide-eviction-moratorium-rules> (Local order required tenants to give proof to landlords that their finances have been impacted by the pandemic); Dallas, Tex., Ordinance 31,521 (Apr. 22, 2020) (also required tenants to give proof to landlords that their finances have been impacted by the pandemic).

189. Rebecca Burns, *As the Housing Crisis Explodes, the Trump Admin Is Quietly Undoing Its “Eviction Moratorium,”* IN THESE TIMES (Oct. 13, 2020), <https://inthesetimes.com/article/donald-trump-eviction-moratorium-landlords-tenants-housing-crisis>.

190. Rene Rodriguez, *Florida Legislature to Consider Two New Bills Regarding COVID-related Evictions*, MIA. HERALD (Feb. 1, 2021) <https://www.miamiherald.com/news/coronavirus/article248921399.html>.

191. Directive Implementing Exec. Orders 2-2020 and 3-2020 and Establishing Conditions for Phase Two, at 3 (May 19, 2020) ([https://covid19.mt.gov/\\_docs/Phase%20Two%20Directive%20with%20Appendices.pdf](https://covid19.mt.gov/_docs/Phase%20Two%20Directive%20with%20Appendices.pdf)).

192. S.B. 151, 2019 Leg., 80th Sess. (Nev. 2019).

193. H. B. 4647, 191 Gen. Ct., 2019-2020 Sess. § 3(e) (Mass. 2020).

further fleshed out by regulation, creating a standard form for landlords to use to comply with the law. As part of the eviction process, landlords must affirmatively state whether they are complying with federal law.<sup>194</sup>

New York passed one of the strongest tenant protection laws in the country. Adopted in late 2020, it not only halted all evictions for sixty days but did much more.<sup>195</sup> Landlords had to mail tenants a hardship declaration and a list of nonprofits that handle housing matters, and they were also responsible for making sure it was in the tenant's primary language and had the landlord's contact information.<sup>196</sup> If the tenant returned a declaration and claimed a hardship, a rebuttable presumption of hardship was created.<sup>197</sup> Once a rebuttable presumption was created, the landlord could not initiate the eviction, and it could not proceed until May 1, 2021 nor could any court accept an eviction filing without a landlord's affidavit asserting a declaration was served.<sup>198</sup> Courts could not even issue a default judgment until a hearing was held verifying that the landlord served notice to the tenant of the declaration.<sup>199</sup> This is a much better way to handle evictions than to force tenants to invoke legal protections on their own. Not only are landlords better resourced, but they are also the ones who benefit from an eviction. It makes sense to require them to put in the effort.

#### 4. *Ensure Orders Match the Length of the Crisis*

Many states were far too hasty to end or relax eviction moratoriums. As of December 14, 2020, forty-nine states were still in states of emergency.<sup>200</sup> Yet even as "emergencies" were raging all around the country, eviction and foreclosure protections were winding down.<sup>201</sup> Iowa's first eviction ban was strongly worded but lasted less than a month.<sup>202</sup> The governor agreed to extend it for a few weeks more but added, "Iowans should not expect that I will issue any further extensions

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194. 400 MASS. CODE REGS. 6.00 (2021).

195. Assemb. B. A11181, 2019-2020 Leg., Reg. Sess. § 2 (N.Y. 2020).

196. *Id.*

197. *Id.* at part A, § 11.

198. *Id.* at part A, §§ 4–6, 11.

199. *Id.* at part A, § 7.

200. Minn. Exec. Order 20-100 (Dec. 14, 2020), [https://mn.gov/governor/assets/EO%2020-100%20Final%20Signed%20and%20Filed\\_tcm1055-458402.pdf](https://mn.gov/governor/assets/EO%2020-100%20Final%20Signed%20and%20Filed_tcm1055-458402.pdf).

201. *COVID-19 Related Eviction and Foreclosure Orders/Guidance 50-State Tracker*, PERKINS COIE, <https://www.perkinscoie.com/en/news-insights/covid-19-related-eviction-and-foreclosure-ordersguidance-50-state-tracker.html> (showing most protection orders expired during 2020) (last visited Apr. 2021).

202. Office of Iowa Governor, Proclamation of Disaster Emergency (Mar. 19, 2020), <https://governor.iowa.gov/sites/default/files/documents/Public%20Health%20Proclamation%20-%202020.03.19.pdf>.

of this suspension.”<sup>203</sup> By May 21, 2020, Alabama proclaimed its “Safer At Home” order allowed people to “return to work and therefore earn income to satisfy their rental and mortgage payment obligations,” which was used as a pretext to end the eviction moratorium.<sup>204</sup> Never mind the fact that state unemployment was still 12.9%, the highest level in four decades,<sup>205</sup> almost a half million Alabamians had filed for unemployment,<sup>206</sup> and food stamp applications were skyrocketing.<sup>207</sup> Several governors initially said that the eviction moratorium would last for the duration of the pandemic but later walked that back and gave a specific date.<sup>208</sup>

Even if a state did not end an eviction moratorium, they frequently watered them down as the months dragged on. Arizona started with a relatively robust and straightforward eviction ban<sup>209</sup> but soon downgraded it to require tenants to provide documentation to their landlord of their financial hardship and submission of an application to a rental assistance program (tenants would also give this information to law enforcement).<sup>210</sup> Delaware initially said no eviction “may be brought,” but they later backtracked by allowing landlords to file evictions and then staying the case once it was in the system.<sup>211</sup> Following an extremely broad

203. Office of Iowa Governor, Proclamation of Disaster Emergency (April 27, 2020), <https://governor.iowa.gov/sites/default/files/documents/Public%20Health%20Proclamation%20-%202020.04.27%20-%20Pt%20.pdf>.

204. Proclamation by Ala. Governor Kay Ivey, at 2 (May 21, 2020) <https://www.alabama-public-health.gov/legal/assets/soe-covid19-eviction-052120.pdf>.

205. Sarah Whites-Koditschek, *Some Alabama Counties Resume Evictions for Unpaid Rent*, AL.COM (June 6, 2020), <https://www.al.com/news/2020/06/some-alabama-counties-resume-evictions-for-unpaid-rent.html>.

206. Sarah Whites-Koditschek, *Alabama Leaves Decision to Utilities: When to Cut Off Power for Late Bills in Pandemic*, AL.COM (May 17, 2020), <https://www.al.com/news/2020/05/alabama-leaves-decision-to-utilities-when-to-cut-off-power-for-late-bills-in-pandemic.html>.

207. Caroline Beck, *Alabama Eviction Cases Rose in June, Expected to Keep Increasing*, 6 WBRC (Aug. 5, 2020), <https://www.wbrc.com/2020/08/05/alabama-eviction-cases-rose-june-expected-keep-increasing/>.

208. *Evictions & Housing: What is Happening with the Eviction Moratorium in Maine?*, ME. PUB. RADIO, (Aug. 3, 2020, 7:00 AM), <https://www.maine-public.org/show/maine-calling/2020-08-03/evictions-housing-what-is-happening-with-the-eviction-moratorium-in-maine>.

209. Ariz. Exec. Order 2020-14 (Mar. 24, 2020).

210. Ariz. Exec. Order 2020-49 (July 16, 2020).

211. Del. Exec. Order, Sixth Modification of the Declaration of a State of Emergency for the State of Delaware due to a Public Health Threat (Mar. 24, 2020), <https://governor.delaware.gov/health-soe/sixth-state-of-emergency/>; Del. Exec. Order, Twenty-Third Modification of the Declaration of a State of Emergency for the State of Delaware due to a Public Health Threat (June 30, 2020), <https://governor.delaware.gov/health-soe/twenty-third-state-of-emergency/>.

moratorium, Illinois pared back its order so that it only applied to people covered by the CDC Order, and it authorized evictions where the tenant posed a direct threat to people or property.<sup>212</sup> Indiana's first executive order stated the eviction ban would last as long as the emergency and contained no exceptions, but later Indiana added exceptions and terminated the ban on August 14, 2020.<sup>213</sup>

Many jurisdictions claimed at first that they would protect tenants as long as necessary but had second thoughts. Nevada initially said its eviction moratorium would last as long as the crisis but ended up cutting it in mid-October 2020.<sup>214</sup> New Hampshire started with an indefinite moratorium but later decided to end it on July 1, 2020.<sup>215</sup> The City of Baltimore stated it would suspend evictions until the state of emergency ended,<sup>216</sup> but evictions resumed by summer 2020.<sup>217</sup>

Minnesota added exceptions to allow evictions for threats to property, having a landlord move themselves or a family member into the property, prostitution, illegal firearm use, or storing stolen property.<sup>218</sup>

Note that relaxing eviction protections had nothing to do with improving conditions of the pandemic. Many states lifted their eviction

212. Ill. Exec. Order 2020-72 (Nov. 13, 2020), <https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-72.aspx>. A month later, Illinois did slightly strengthen its order by banning eviction against people who have fully paid rent unless they posed a safety risk; *see* Ill. Exec. Order 2020-74 (Dec. 11, 2020), <https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-74.aspx>.

213. Ind. Exec. Order 20-06, at 2 (Mar. 19, 2020), [https://www.in.gov/gov/files/EO\\_20-06.pdf](https://www.in.gov/gov/files/EO_20-06.pdf); Ind. Exec. Order 20-39, at 2 (July 30, 2020), <https://www.in.gov/gov/files/Executive-Order-20-39-2nd-Extension-Stage-4.5.pdf>.

214. Nev. Exec. Order Declaration of Emergency Directive 008 (Mar. 29, 2020), [https://gov.nv.gov/News/Emergency\\_Orders/2020/2020-03-29\\_-\\_COVID-19\\_Declaration\\_of\\_Emergency\\_Directive\\_008\\_\(Attachments\);](https://gov.nv.gov/News/Emergency_Orders/2020/2020-03-29_-_COVID-19_Declaration_of_Emergency_Directive_008_(Attachments);) Hudson, *supra* note 48.

215. N.H. Emergency Order No. 4, at 1 (Mar. 17, 2020), <https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/emergency-order-4.pdf>; N.H. Emergency Order No. 51, at 2 (June 11, 2020), <https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/emergency-order-51.pdf>.

216. Cody Boteler, *Baltimore County Suspends Evictions, Prohibits Gatherings of More Than 50 in Coronavirus Response*, BALTIMORE SUN (Mar. 16, 2020, 10:25 AM), <https://www.baltimoresun.com/coronavirus/cng-co-evictions-suspended-coronavirus-20200316-57ac0jc32zgfmbuqr7fmuexjqe-story.html>.

217. Louis Krauss, *Fear and Protest as Baltimore Rent Court Resumes*, BALTIMORE BREW (July 28, 2020, 9:09 AM), <https://baltimorebrew.com/2020/07/28/fear-and-protest-as-baltimore-rent-court-resumes/>; Maryland's state of emergency was extended over a dozen times, most recently in April 2021. *See COVID-19 Pandemic: Orders and Guidance*, MD. GOV. (last visited May 7, 2021), <https://governor.maryland.gov/covid-19-pandemic-orders-and-guidance/>.

218. *Compare* Minn. Exec. Order 20-14, at 2 (Mar. 23, 2020), [https://mn.gov/governor/assets/EO%2020-14%20Filed\\_tcm1055-424508.pdf](https://mn.gov/governor/assets/EO%2020-14%20Filed_tcm1055-424508.pdf), *with* Minn. Exec. Order 20-79, at 2 (July 14, 2020), [https://mn.gov/governor/assets/EO%2020-79%20Final%20Signed%20and%20Filed%20\(002\)\\_tcm1055-440501.pdf](https://mn.gov/governor/assets/EO%2020-79%20Final%20Signed%20and%20Filed%20(002)_tcm1055-440501.pdf).

moratorium even though the pandemic was still in force.<sup>219</sup> A likely explanation for these weakened reforms is that states were worn down by relentless opposition from the landlord industry.

Whatever the details, many landlords hate eviction moratoriums. Some would rather leave properties vacant than rent them out without full eviction powers.<sup>220</sup> Others claimed that tenants were abusing the system, refusing to pay rent even though they were fully employed, or money was available.<sup>221</sup> Countless landlords complained that without the ability to evict destitute tenants, they could not pay their mortgages,<sup>222</sup> and many have filed lawsuits in droves against federal and state moratoriums.<sup>223</sup> By giving in to this sort of opposition, the termination of moratoriums were based on politics, not public health.

### 5. *The Role of State Attorneys General*

State attorney generals had their role to play too though they did not receive nearly as much attention as governors. They could help reduce the knowledge gap between tenants and landlords. For instance, New York's Attorney General issued guidance for New Yorkers about their rights and protections for evictions.<sup>224</sup> They could help other governmental entities

219. *MBA CREF State Eviction Moratorium Tracker (June 25, 2021)*, MORTGAGE BANKERS ASS'N (June 25, 2021), [https://www.mba.org/Documents/MBA's%20CREF%20State%20Eviction%20Moratorium%20Tracker%20\(June%2025,%202021\).pdf](https://www.mba.org/Documents/MBA's%20CREF%20State%20Eviction%20Moratorium%20Tracker%20(June%2025,%202021).pdf).

220. Hofschneider, *supra* note 25.

221. Lisa Parker & Courtney Copenhagen, *How Illinois' Eviction Moratorium Has Increased Tension Between Renters*, NBC CHI. (Mar. 17, 2021), <https://www.nbcchicago.com/news/local/how-illinois-eviction-moratorium-has-increased-tension-between-renters-landlords/2464819/>; Mal Meyer, *Options Still Available for Tenants Behind on Rent as Eviction Ban Extended*, WGME (Mar. 29, 2021), <https://wgme.com/news/local/options-still-available-for-tenants-behind-on-rent-as-eviction-ban-extended>.

222. Brittany Hunter, *The CDC's Eviction Moratorium Ignores Landlords Struggling to Make Ends Meet*, PAC. L. FOUND., (Jan. 26, 2021), <https://pacificlegal.org/eviction-moratoriums-landlords-struggling/>; Marty Schladen, *Extend Eviction Moratorium to Slow Covid Spread, Advocates Say*, OHIO CAP. J., (Dec. 16, 2020, 12:55 AM), <https://ohiocapitaljournal.com/2020/12/16/extend-eviction-moratorium-to-slow-covid-spread-advocates-say/>; Joseph Cranney, *SC Extends Halt on Evictions, Foreclosures Another Two Weeks Amid Coronavirus Downturn*, POST & COURIER, [https://www.postandcourier.com/health/covid19/sc-extends-halt-on-evictions-foreclosures-another-two-weeks-amid-coronavirus-downturn/article\\_4891bd1e-8b23-11ea-b9ec-c3774779593a.html](https://www.postandcourier.com/health/covid19/sc-extends-halt-on-evictions-foreclosures-another-two-weeks-amid-coronavirus-downturn/article_4891bd1e-8b23-11ea-b9ec-c3774779593a.html) (last updated Sept. 14, 2020).

223. Hunter, *supra* note 222; *Private Props., Ltd. Liab. Co. v. Wolf*, 237 A.3d 399 (Pa. 2020); Joseph O'Sullivan, *Inslee Extends Washington's Moratorium on Evictions Through Dec. 31*, SEATTLE TIMES, (Oct. 8, 2020), <https://www.seattletimes.com/seattle-news/politics/inslee-extends-washingtons-moratorium-on-evictions-through-dec-31/>.

224. Press Release, Letitia James, N.Y. Att'y Gen., *Tenant Guidance for New Yorkers During Coronavirus Pandemic* (Apr. 16, 2020) (<https://ag.ny.gov/press-release/2020/attorney-general-james-issues-tenant-guidance-new-yorkers-during-coronavirus>).

to do more. Tennessee's Attorney General lobbied the state Public Utility Commission to suspend disconnections.<sup>225</sup> However, perhaps their most valuable role is in enforcement.

It was rare to see eviction moratoriums that specified punishment for non-compliance. Hawaii made violation of its order a misdemeanor.<sup>226</sup> Austin, Texas's local order imposed a two-month eviction bar and made violation a criminal offense.<sup>227</sup> El Paso also authorized criminal penalties for its tenant protection ordinance.<sup>228</sup> But even when there were penalties attached, practically, there was little enforcement unless Attorney Generals were proactive.<sup>229</sup>

Washington's Attorney General sued Whitewater Creek, Inc., a corporation that illegally threatened to evict Spokane County tenants in April 2020.<sup>230</sup> The company worked out a deal to pay \$50,000, train employees on tenants' rights, and give the Attorney General's office notice

225. Emergency Petition of the Consumer Advocate Unit of the Financial Division of the Office of the Tenn. Att'y Gen., at 3, (No. 20-00047), Tenn. Pub. Util. Comm'n, Docket No. 20-00047 (July 20, 2020), <https://share.tn.gov/tra/orders/2020/2000047iv.pdf>.

226. Haw. Fifth Supp. Emergency Proclamation, at 6 (Apr. 16, 2020), [https://governor.hawaii.gov/wp-content/uploads/2020/04/2004088-ATG\\_Fifth-Supplementary-Proclamation-for-COVID-19-distribution-signed.pdf](https://governor.hawaii.gov/wp-content/uploads/2020/04/2004088-ATG_Fifth-Supplementary-Proclamation-for-COVID-19-distribution-signed.pdf).

227. Mayor of Austin Order 2020-0724-18, at 2 (July 24, 2020), <https://www.austintexas.gov/sites/default/files/files/Health/Order%20No.%2020200724-18%20OCR-july242020.pdf>.

228. City of El Paso Emergency Declaration, Ordinance Instituting Emergency Measures Due to a Public Health Emergency, at 4 (Mar. 17, 2020), <https://www.taa.org/wp-content/uploads/2020/03/452093250-City-of-El-Paso-Emergency-Declaration.pdf>.

229. Wa. Proclamation 20-19.1, at 5 (Apr. 16, 2020), [https://www.governor.wa.gov/sites/default/files/20-19.1%20-%20COVID-19%20Moratorium%20on%20Evictions%20Extension%20%28tmp%29.pdf?utm\\_medium=email&utm\\_source=govdelivery](https://www.governor.wa.gov/sites/default/files/20-19.1%20-%20COVID-19%20Moratorium%20on%20Evictions%20Extension%20%28tmp%29.pdf?utm_medium=email&utm_source=govdelivery) (Proclamation made noncompliance a criminal act); Katie Wilson, *King County Courts Continue Ordering Evictions, Despite Moratoriums*, CROSSCUT (Mar. 25, 2021), <https://crosscut.com/opinion/2021/03/king-county-courts-continue-ordering-evictions-despite-moratoriums> (Practically, there was no consequence to noncompliance); Jeff Ernsthansen, Ellis Simani, & Justin Elliott, *Despite Federal Ban, Landlords Are Still Moving to Evict People During the Pandemic*, PROPUBLICA (Apr. 16, 2020, 5:00 AM), <https://www.propublica.org/article/despite-federal-ban-landlords-are-still-moving-to-evict-people-during-the-pandemic> (A review of records in four states found over 100 people who were being evicted in violation of the CARES Act, with no apparent punishment); Chris Arnold, *Renters Are Getting Evicted Despite CDC Order — 'I'm Scared'*, NPR (Feb. 12, 2021, 5:00 AM), <https://www.npr.org/2021/02/12/966879082/renters-are-getting-evicted-despite-cdc-eviction-ban-im-scared> (As of early 2021, there were zero enforcement actions taken for violations of the CDC Order).

230. Megan Carroll, *North Idaho company will pay \$50K to resolve eviction moratorium lawsuit*, KHOU (Jan. 19, 2021), <https://www.khou.com/article/news/local/north-idaho-company-pays-50k-resolve-eviction-moratorium-lawsuit/293-9ab5260b-6605-486a-95be-8d79e1ec527c>.

when it seeks to evict tenants for non-payment of rent in the future.<sup>231</sup> Maura Healy, Attorney General for Massachusetts, prioritized complaints of “self-help” evictions—a euphemism for landlords illegally kicking people out without going through the legal system.<sup>232</sup> Her office monitored court eviction dockets and successfully blocked at least eighty illegal evictions this way.<sup>233</sup> The legislators of New Mexico asked New Mexico’s Attorney General to do the same.<sup>234</sup> In North Carolina, the Attorney General’s office reached out to nearly 100 motels and hotels that were threatening to evict residents,<sup>235</sup> and West Virginia had the same idea.<sup>236</sup> All of these actions helped strengthen eviction bans.

Enforcement against unscrupulous landlords is important, but educating police, the front line of law enforcement, remains essential too. New Jersey saw hundreds of illegal evictions during its moratorium, yet only seventeen tenants filed complaints.<sup>237</sup> A more proactive strategy is to issue guidance to law enforcement on illegal evictions to prevent them from happening in the first place. New Jersey’s Attorney General directed law enforcement officers who were called out for an eviction to first determine the facts of the matter, specifically, whether the eviction complied with the law.<sup>238</sup> If it turned out the landlord illegally evicted the tenant, law enforcement was to ensure the tenant was returned home.<sup>239</sup> The landlord was to be warned not to violate the law, and if they continued

231. *Id.*

232. *Massachusetts Attorney General issues advisory to inform tenants of their rights during COVID-19 pandemic*, WWLP, <https://www.wwlp.com/news/massachusetts/massachusetts-attorney-general-issues-advisory-to-inform-tenants-of-their-rights-during-covid-19-pandemic/> (last updated Jan. 7, 2021, 10:55 PM).

233. *Id.*

234. *Rep Gregg Schmedes Requests AG Investigation Into Eviction Of Residents at Albuquerque Rehab Facility*, GRANT CNTY. BEAT, (May 15, 2020), <https://www.grantcountybeat.com/news/news-articles/57914-rep-gregg-schmedes-requests-ag-investigation-into-eviction-of-residents-at-albuquerque-rehab-facility>.

235. *Attorney General Josh Stein Works to Protect North Carolinians from Evictions During COVID-19 Pandemic*, N.C. DEP’T JUST. (Apr. 3, 2020), <https://ncdoj.gov/attorney-general-josh-stein-works-to-protect-north-carolinians-from-evictions-during-covid-19-pandemic/>.

236. Courtney Hessler, *WV Attorney General Warns Landlords Against Unlawful Evictions*, CHARLESTON GAZETTE-MAIL (Mar. 27, 2020), [https://www.wvgazette.com/coronavirus/wv-attorney-general-warns-landlords-against-unlawful-evictions/article\\_385895e8-41c4-5b4f-aa2f-3c369170a97f.html](https://www.wvgazette.com/coronavirus/wv-attorney-general-warns-landlords-against-unlawful-evictions/article_385895e8-41c4-5b4f-aa2f-3c369170a97f.html).

237. Sophie Nieto-Munoz, *N.J. Announces New Measures to Protect Tenants From Illegal Lockouts During Eviction Moratorium*, NJ.COM, <https://www.nj.com/coronavirus/2021/04/nj-announces-new-measures-to-protect-tenants-from-illegal-lockouts-during-eviction-moratorium.html> (last updated Apr. 5, 2021, 7:42 AM).

238. N.J. Att’y Gen. Law Enforcement Directive No. 2021-2, at 3–4 (Mar. 30, 2021), [https://www.nj.gov/oag/dcj/agguide/directives/ag-Directive-2021-2\\_Illegal\\_Evictions.pdf](https://www.nj.gov/oag/dcj/agguide/directives/ag-Directive-2021-2_Illegal_Evictions.pdf).

239. *Id.* at 5.

to try to evict the tenant, the landlord was to be charged with a crime.<sup>240</sup> New York's Attorney General directed law enforcement similarly.<sup>241</sup> These efforts are critical to making sure that policies work as intended.

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Despite the shortcomings of eviction restrictions, it would be wrong to call them worthless. A University of Minnesota law professor estimated that his state's eviction moratorium saved 2,000 lives and prevented 111,000 infections.<sup>242</sup> However, the best endorsement of moratoriums is what happened after they expired. Evictions in Delaware jumped 38.2% after its moratorium concentrated in minority and low-income areas ended.<sup>243</sup> As soon as the federal CARES Act moratorium expired, landlords started filing by the hundreds.<sup>244</sup> Hillsborough County and Pinellas County, both in the state of Florida, each issued about 800 writs of possession in the months following the end of state protections; Miami-Dade County, also in Florida, issued thousands.<sup>245</sup> New York also saw a sharp uptick in eviction filings when the governor loosened the state policy.<sup>246</sup> The week before Pennsylvania's near-total eviction ban expired, there were about fifty evictions filed a day while there were 1,917 the day after.<sup>247</sup> Virginia saw a "crush of proceedings" as soon as evictions were allowed to resume on May 18, 2020.<sup>248</sup> The first month after the

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240. *Id.* at 6.

241. Memorandum from Letitia James, N.Y. Att'y Gen. to N.Y. State Law Enforcement Dep'ts (May 4, 2020) ([https://ag.ny.gov/sites/default/files/guidance\\_to\\_law\\_enforcement\\_on\\_illegal\\_lockouts.pdf](https://ag.ny.gov/sites/default/files/guidance_to_law_enforcement_on_illegal_lockouts.pdf)).

242. Bill Salisbury, *Minnesota Braces for Glut of Evictions Once Pandemic Ban Ends*, TWIN CITIES, <https://www.twincities.com/2021/03/08/minnesota-prepares-for-glut-of-evictions-once-pandemic-ban-ends/> (last updated Mar. 10, 2021, 2:33 PM).

243. Stephen Metraux & Joshua Solge, *Eviction Filings in Delaware: July 1 – September 30, 2020*, UNIV. DEL. CENT. FOR CMTY. RES. & SERV. (Oct. 2020), <https://udspace.udel.edu/bitstream/handle/19716/27880/201023%20Post%20Moratorium%20Evictions%20final.pdf?sequence=1&isAllowed=y>.

244. Fowle, *supra* note 55.

245. Mitch Perry, *National Eviction Ban Extended, But Tampa Bay Renters are Still Concerned*, SPECTRUM NEWS BAY NEWS 9 (Dec. 21, 2020, 4:54 PM), <https://www.baynews9.com/fl/tampa/news/2020/12/21/national-eviction-ban-extended--but-renters-concerned>; Rodriguez, *supra* note 190.

246. *Eviction Crisis Monitor*, RIGHT TO COUNSEL NYC COALITION, <https://www.righttocounselnyc.org/evictioncrisismonitor> (last visited Apr. 9, 2021).

247. Charlotte Keith, *From Relief to Despair, One Pa. Family Struggles With the Ambiguity of Federal Eviction Ban*, SPOTLIGHT PA (Sept. 12, 2020), <https://www.spotlightpa.org/news/2020/09/pa-eviction-ban-cdc-gray-area-renter-assistance/>.

248. *Tenants Behind on Rent in Pandemic Face Harassment, Eviction*, HAYS POST (June 15, 2020, 7:00 AM), <https://hayspost.com/posts/5ee6b3b6ebfb13423b27b431>.

government lifted the moratorium, Southeast Louisiana Legal Services saw a surge of evictions that tripled when compared to the same period from 2019.<sup>249</sup> Even imperfect moratoria are better than none at all.

#### IV. OTHER STATE EVICTION POLICIES

Eviction moratoriums may have generated the most attention during the pandemic, but they are not the only tools to stop forced displacement. Some of the most common reforms can be put into a few camps: keeping evictions off a tenant's publicly searchable records, giving funding to tenants to help pay rent, providing attorneys to represent tenants at eviction proceedings, canceling rent, and a few other miscellaneous policies.

##### *A. Sealing / Expunging Eviction Records*

Evictions can linger on a person's record for years, making it harder for them to find housing elsewhere.<sup>250</sup> A single eviction could mean a tenant may never find rental housing again.<sup>251</sup> This is especially true during an era of eviction moratoriums. Many landlords, wary about not being able to evict tenants, raised standards on whom they would rent to.<sup>252</sup> In this environment, an eviction on one's record could be regarded as a scarlet letter "E."

Policymakers could remedy this by allowing or requiring courts to seal eviction records. In the past, policymakers only suggested the idea. A Florida legislator proposed such a bill in 2021 though it has yet to go anywhere.<sup>253</sup> Hoosier Housing Needs Coalition lobbied for a right to view one's tenant screening reporting; this is similar to a consumer's right to see credit reports.<sup>254</sup>

Nevada succeeded in passing a law to seal evictions.<sup>255</sup> It operates automatically, applying to any eviction that occurs during the COVID-19

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249. Clark & Yawn, *supra* note 56.

250. Matt Levin, Nigel Duara, & Erica Yee, *Thousands Forced From Their Homes Despite California's Eviction Moratorium*, HIGH COUNTRY NEWS (Aug. 13, 2020), <https://www.hcn.org/articles/justice-thousands-forced-from-their-homes-despite-californias-eviction-moratorium>.

251. UNIV. UTAH SJ QUINNEY COLL. LAW JUST. LAB, ON THE SAME PAGE: REINFORCING RIGHTS & PROTECTIONS FOR UTAH RENTERS (2020).

252. Hofschneider, *supra* note 25.

253. S.B. 926, 2021 S., Reg. Sess. (Fla. 2021).

254. *Federal Rent Relief Could Help Hoosiers Facing Eviction*, FOX 59, <https://fox59.com/news/politics/federal-rent-relief-could-help-hoosiers-facing-eviction/> (last updated Dec. 22, 2020, 5:03 PM).

255. Assemb. B. 141, 2021 Leg., 81st Sess. § 2 (Nev. 2021).

emergency, regardless of the cause of the suit.<sup>256</sup> The governors of Oregon<sup>257</sup> and Washington<sup>258</sup> prohibited landlords from reporting lateness of rent to a credit agency. Connecticut also barred landlords from reporting non-payment to a credit bureau or otherwise retaliating.<sup>259</sup> With these kinds of policies, renters will not be unfairly punished their entire lives for a single month of ill fortune.

Sealing records is ideal since it prevents an eviction from ever appearing on someone's record. However, expungement is still a beneficial alternative that allows someone to do damage control after the fact. Even before the pandemic, Minnesota law allowed courts to expunge an eviction case if the landlord's case was baseless or if expungement would be "in the interest of justice."<sup>260</sup> During the pandemic, Minnesota added to this, as did North Carolina<sup>261</sup>, by ending the practice of having utilities report late payments to credit agencies.<sup>262</sup>

### *B. Rental Assistance*

Eviction moratoriums alone do not solve forced homelessness. Rental assistance attempts to ensure tenants are not crushed by the weight of many months of unpaid rent and ensures landlords can meet their financial obligations such as mortgages.

Unfortunately, insufficient funding plagued many rental assistance programs. At a time when Marylanders were racking up \$238 million in unpaid rent every month, the governor allocated only thirty million dollars in rent relief.<sup>263</sup> New Jersey received 444.7 million dollars in federal support for rent relief and expected 400 million dollars more, but still

256. *Id.*

257. Or. Exec. Order No. 20-56 (Sept. 28, 2020), [https://www.oregon.gov/gov/admin/Pages/eo\\_20-56.aspx](https://www.oregon.gov/gov/admin/Pages/eo_20-56.aspx).

258. Wa. Proclamation 20-19.1, at 5 (Apr. 16, 2020), [https://www.governor.wa.gov/sites/default/files/20-19.1%20-%20COVID-19%20Moratorium%20on%20Evictions%20Extension%20%28tmp%29.pdf?utm\\_medium=email&utm\\_source=govdelivery](https://www.governor.wa.gov/sites/default/files/20-19.1%20-%20COVID-19%20Moratorium%20on%20Evictions%20Extension%20%28tmp%29.pdf?utm_medium=email&utm_source=govdelivery).

259. Conn. Exec. Order No. 7X (Apr. 10, 2020), <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7X.pdf>.

260. Minn. Stat. Ann. § 484.014 (West 2010).

261. Investigation of Necessary and Appropriate Responses to the Novel Coronavirus COVID-19, N.C. Util. Comm'n Docket No. M-100, Sub 158 et al., at 8 (July 29, 2020), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=73f62403-d0c3-4932-bc25-54a25d940e6>.

262. Will Seuffert, *PUC Reviews Plans for Utility Customer Outreach and Approves Schedule to Lift Disconnection Moratorium on August 2*, MINN. PUB. UTIL. COMM'N (Apr. 15, 2021), <https://mn.gov/puc/about-us/news/?id=14-476672>.

263. Leckrone, *supra* note 84.

landlords were short two billion dollars in rent.<sup>264</sup> To parcel out the money, New Jersey officials used a lottery.<sup>265</sup> Wisconsin consumers received eight million dollars in utility assistance when they were, collectively, 201 million dollars in arrears.<sup>266</sup> New Hampshire's Housing Relief Program could only spare a one-time payment of \$2,500 per applicant.<sup>267</sup> Even if programs had money, they could rarely spend it.<sup>268</sup> Mississippi spent less than a sixth of its funding after half a year of operation.<sup>269</sup>

The government implemented unnecessary roadblocks to those collecting aid. Mississippi excluded people who had suffered losses before the pandemic as well as those protected by the CDC Order.<sup>270</sup> Eventually, the non-profits running the Magnolia State's rental assistance program shut it down until the CDC Order expired.<sup>271</sup> Vermont required applicants to submit proof of their 2020 income to qualify, but many low-income people do not file income taxes, and many more did not file before the April 15 deadline; therefore, they were at risk of being shut out from aid.<sup>272</sup>

Sometimes, as a condition for accepting money, landlords had to agree not to evict tenants for a while<sup>273</sup> or share the pain by forgiving some portion of the rent.<sup>274</sup> California would reimburse landlords for eighty

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264. Jon Hurdle, *Federal Rent Relief Won't Be Enough to Protect All Tenants or Erase Landlord Losses*, *Advocates Say*, NJ SPOTLIGHT NEWS (Apr. 2, 2021), <https://www.njspotlight.com/2021/04/federal-rent-relief-evictions-landlord-losses-covid-19-state-ban-on-evictions/>.

265. *Id.*

266. Danielle Kaeding, *State Regulators Extend Moratorium On Utility Shutoffs For Residential Customers*, WIS. PUB. RADIO (July 23, 2020), <https://www.wpr.org/state-regulators-extend-moratorium-utility-shutoffs-residential-customers>.

267. *New Hampshire Housing Relief Program*, N.H. GOV. OFF. (last visited Apr. 24, 2021), <https://www.goferr.nh.gov/covid-expenditures/new-hampshire-housing-relief-program>.

268. Nushrat Rahman, *Michigan Supreme Court Issues New Guidance to Courts, Landlords on CDC COVID Eviction Ban*, DETROIT FREE PRESS (Oct. 22, 2020), <https://www.freep.com/story/news/local/michigan/2020/10/22/courts-cdc-covid-eviction-order-guidance/3733414001/>.

269. Anna Wolfe, *Mississippi Evictions Never Stopped Despite Federal Moratorium and COVID-19 Relief*, MISS. TODAY (Dec. 30, 2020), <https://mississippitoday.org/2020/12/30/mississippi-evictions-never-stopped-despite-federal-moratorium-and-covid-19-relief/>.

270. *Id.*

271. *Id.*

272. Anne Wallace Allen, *A New Rental Assistance Program Comes With New Federal Roadblocks*, VTDIGGER (Jan. 20, 2021), <https://vtdigger.org/2021/01/20/a-new-rental-assistance-program-comes-with-new-federal-roadblocks/>.

273. *Gov. Edwards Announces New Program to Assist Renters and Landlords Impacted by COVID-19*, LA. GOV. (Mar. 5, 2021), <https://gov.louisiana.gov/index.cfm/newsroom/detail/2993>.

274. *See e.g., Governor Newsom Signs Legislation to Extend Eviction Moratorium and Assist Tenants and Small Property Owners Impacted by COVID-19*, OFF. GOV. GAVIN NEWSOM (Jan. 29, 2021), <https://www.gov.ca.gov/2021/01/29/governor-newsom-signs-l>

percent of their missed rent if they agreed to forgive twenty percent.<sup>275</sup> Oregon did the same thing.<sup>276</sup> In Michigan, it was ninety percent and ten percent respectively.<sup>277</sup> These sorts of programs were typically made possible through federal funding.<sup>278</sup>

However, anything less than 100% proved to be unacceptable to some landlords. Many landlords refused to participate in Pennsylvania's rental relief program because it capped payments at \$750 per month and required them to forgive any remaining rent.<sup>279</sup> One Washington landlord would not accept rental assistance because they would lose twenty percent.<sup>280</sup> A Vermont landlord forsook \$6,000 in state aid, preferring to keep his right to evict when the state moratorium ended.<sup>281</sup> Arkansas legislature approved ten million dollars in rent assistance, which went directly to landlords, but many landlords refused to take the money and evicted their tenants nonetheless.<sup>282</sup>

Application windows for aid would close well before the crisis had passed. Kansas' program closed December 15, 2020, and it announced that the government would not consider further applications.<sup>283</sup> In Maine, tenants needed to apply for rental assistance every month, and each time, it could take weeks to hear back if one heard back at all.<sup>284</sup> Louisiana had to pause its program after it buckled from receiving 40,000 applications in

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egislation-to-extend-eviction-moratorium-and-assist-tenants-and-small-property-owners-impacted-by-covid-19/.

275. *Id.*

276. H.B. 4401, 80th Leg. Assemb., 2020 3rd Sess., § 2 (Or. 2020).

277. Press Release, Mich. State Hous. Dev. Auth., New Eviction Diversion Program Offers \$50 Million in Relief for Renters, Landlords (July 16, 2020) ([https://www.michigan.gov/mshda/0,4641,7-141-7559\\_9637-534249--,00.html](https://www.michigan.gov/mshda/0,4641,7-141-7559_9637-534249--,00.html)) [hereinafter Mi. State Hous. Dev. Auth. Press Release].

278. See e.g., *id.*; *Illinois Rental Payment Program*, ILL. HOUS. DEV. AUTH. (last visited Mar. 27, 2021), <https://www.ihda.org/about-ihda/illinois-rental-payment-program/>.

279. Charlotte Keith, *After Waffling, Gov. Tom Wolf Says He Can't Extend Pa.'s Eviction Ban, Looks to Lawmakers*, SPOTLIGHT PA (Sept. 1, 2020), <https://www.spotlightpa.org/news/2020/09/pa-eviction-moratorium-tom-wolf-republican-lawmakers/>.

280. Wilson, *supra* note 229.

281. Allen, *supra* note 167.

282. Lynn Foster, *November Eviction Report*, ARK. STRONGER COMMUNITIES (Dec. 17, 2020), <https://www.arkstrongcommunities.com/november-eviction-reports/>.

283. *Kansas Eviction Prevention Program (KEPP)*, KAN. HOUS. RES. CORP., (last visited Apr. 1, 2021), <https://kshousingcorp.org/eviction-prevention-program/>.

284. ME. AFFORDABLE HOUS. COAL., *EVICIONS IN MAINE: AN ANALYSIS OF EVICTION DATA AS THE COVID-19 PANDEMIC LEADS TO INCREASED RENTAL HOUSING INSTABILITY*, FEBRUARY 2021 UPDATE (2021).

the first week.<sup>285</sup> As of March 2021, North Carolina's rental support program stated it was no longer active.<sup>286</sup>

Since states were flying blind, these problems were magnified. Many had to set up entirely new programs to administer rental relief.<sup>287</sup> Virginia was fumbling to get its program off the ground as the state eviction ban expired and put thousands at risk.<sup>288</sup> It was not until January 2021 that West Virginia even announced a state program to give direct financial assistance to landlords and tenants, and, even then, it was only a tentative announcement.<sup>289</sup>

One must ask, why were these programs not created years ago? A public health crisis may give new urgency to the need to protect renters, but this was not the first time that tenants needed help.

Compare this to unemployment assistance. States may have stumbled in getting money out the door, but that was because of outmoded systems<sup>290</sup> and huge demand,<sup>291</sup> not because they had to erect new offices from scratch. As poor as the rollout may have been, there was a preexisting system: a recognition of the fact that government should step in to help people who lose their jobs through no fault of their own. There was,

285. Greg Hilburn, *Louisiana COVID Rental Assistance Program Suspended After 'Overwhelmed' with Applicants*, TENNESSEAN (July 19, 2020, 7:01 PM), <https://www.tennessean.com/story/news/2020/07/19/louisiana-covid-rental-assistance-program-suspended-after-overwhelmed/5469637002/>.

286. *Emergency Rental Assistance Program*, 211 N.C., <https://nc211.org/hope/> (last visited Mar. 29, 2021).

287. *Gov. Edwards Announces New Program to Assist Renters and Landlords Impacted by COVID-19*, LA. GOV. (Mar. 5, 2021), <https://gov.louisiana.gov/index.cfm/newsroom/detail/2993>; Mich. State Hous. Dev. Auth. Press Release, *supra* note 277.

288. Ally Schweitzer, *Evictions Can Now Resume in Virginia. Thousands Could Be at Risk of Losing Housing*, NPR (June 24, 2020), <https://www.npr.org/local/305/2020/06/24/882787838/evictions-can-now-resume-in-virginia-thousands-could-be-at-risk-of-losing-housing>.

289. *State Gives Details on New West Virginia Program to Help Renters Affected by COVID-19*, WV NEWS (Jan. 14, 2021), [https://www.wvnews.com/news/wvnews/state-gives-details-on-new-west-virginia-program-to-help-renters-affected-by-covid-19/article\\_33d1dc37-0848-524f-8479-2b0f7db49270.html](https://www.wvnews.com/news/wvnews/state-gives-details-on-new-west-virginia-program-to-help-renters-affected-by-covid-19/article_33d1dc37-0848-524f-8479-2b0f7db49270.html).

290. *See, e.g.*, Lawrence Mower, *Florida Didn't Prioritize Fixing Its Unemployment System*, GOVERNING (May 4, 2021), <https://www.governing.com/work/florida-didnt-prioritize-fixing-its-unemployment-system>.

291. *E.g.*, Curtis Killman, *Renters and Landlords Face Uncertain Future Amid COVID-19*, TULSA WORLD (Apr. 12, 2020), [https://tulsaworld.com/news/local/renters-and-landlords-face-uncertain-future-amid-covid-19/article\\_2e4b26ea-6205-598b-b6dc-8da19740b6a0.html](https://tulsaworld.com/news/local/renters-and-landlords-face-uncertain-future-amid-covid-19/article_2e4b26ea-6205-598b-b6dc-8da19740b6a0.html); *See also*, Ross Williams, *Jobless Claims Slow, Struggles Remain for Record Number of Idled Workers*, GA. RECORDER (May 28, 2020, 12:03 PM), <https://georgiarecorder.com/brief/jobless-claims-slow-struggles-remain-for-record-number-of-idled-workers/>.

however, no similar recognition for people behind on rent through no fault of their own.

Rental protection systems could also be compared to those in place for homeowners. Even before the pandemic, homeowners could claim thousands of dollars in tax breaks related to their mortgage payments.<sup>292</sup> This operates as a mortgage assistance program of sorts, incorporated right into the tax code. Homeowners with federally backed mortgages (which is most of them<sup>293</sup>) could request forbearance if affected by the pandemic which gave them up to twelve months of safety.<sup>294</sup> A lender cannot foreclose on a home until they create a “loss mitigation plan,” which includes setting up a repayment plan and working with the homeowner to make it through their financial hardship.<sup>295</sup> Policymakers did not wait until a public health crisis before doing something to save homeowners from losing the roof over their heads. If the same sort of attention was given to tenant protections all along, states would have been in a much stronger position to meet the pandemic head-on.

### C. Right to Tenant Counsel

De Borah Wells was a line cook who lived in a crumbling three-room apartment.<sup>296</sup> Termites ravaged the wood in her apartment while dust and cement clogged her stove burners.<sup>297</sup> She stopped paying rent due to these deplorable conditions, and her landlord threatened to evict her.<sup>298</sup> Wells could have walked out, but her credit would be negatively impacted, and

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292. I.R.C. §§ 164(a), (b)(6) (offering deductions for real property taxes); I.R.C. § 163(h)(3)(B)–(C) (offering deduction for mortgage interest payments).

293. Stephanie Zimmerman, *Can't Pay Mortgage Due to Coronavirus? What You Need to Know, Where to Turn to Help.*, CHI. SUN TIMES (Apr. 3, 2020, 2:00 PM), <https://chicago.suntimes.com/2020/4/3/21207154/mortgage-coronavirus-covid-19-cares-act-consumer-guide-tips> (noting about seventy percent of all mortgages are federally backed); Jonathan Ping, *Percentage of New Mortgages Backed by US Government = 90%+*, MY MONEY BLOG (Oct. 12, 2011), <https://www.mymoneyblog.com/percentage-of-new-mortgages-backed-by-us-government-90.html> (After the financial crisis of 2007-08, the percentage rose to over ninety percent of new mortgages).

294. Becca Most, *With Minnesota's Eviction Moratorium Set to End, Renters Brace for Future*, TWIN CITIES PIONEER PRESS, <https://www.twincities.com/2021/01/12/with-minnesotas-eviction-moratorium-set-to-end-renters-brace-for-future/> (last updated Jan. 13, 2021, 4:24 PM).

295. 12 C.F.R. § 1024.41 (2021). *See also* 7 C.F.R. § 3555.301 (2020); 38 C.F.R. § 36.4278 (1993) (Other regulations also protect struggling mortgage-holders who are going through a rough patch).

296. Clark & Yawn, *supra* note 56.

297. *Id.*

298. *Id.*

she would lose her \$850 security deposit, something she could not afford to do.<sup>299</sup> Instead, she sued her landlord and won.<sup>300</sup>

Wells' story is the exception, however. Typically, tenants without representation have their rights trampled on and their homes dispossessed. Researchers at Creighton University found at least sixty people evicted in Nebraska whom the CARES Act should have protected.<sup>301</sup> In each case, the landlord had representation while the tenant did not.<sup>302</sup> Memphis tenants prevailed only two percent of the time.<sup>303</sup> In a sample of nearly 600 eviction cases from Connecticut, roughly ninety percent of landlords had attorneys, but only five percent of tenants did.<sup>304</sup> Nebraska researchers found that only two percent of tenants had lawyers in four years of data that they examined.<sup>305</sup> Lest there be any doubt over the importance of counsel, it has been shown that when tenants have attorneys, their odds of prevailing double.<sup>306</sup>

To level the playing field, lawmakers in Connecticut introduced legislation to give tenants a right to counsel in eviction proceedings.<sup>307</sup> As proposed, it would require judges to inform indigent tenants at eviction proceedings of a right to appointed counsel drawn from a list managed by the state department of justice.<sup>308</sup> By late 2021, the bill passed, bringing the total number of states that offer tenants the right to appointed counsel to three.<sup>309</sup>

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299. *Id.*

300. *Id.*

301. Christopher Burbach, *Study Finds Big Drop in Evictions in Nebraska in 2020, but Thousands Still Lost Housing*, STAR HERALD (Apr. 19, 2021), [https://starherald.com/news/state-and-regional/govt-and-politics/study-finds-big-drop-in-evictions-in-nebraska-in-2020-but-thousands-still-lost-housing/article\\_fa84dfd8-b823-5644-bf3e-1a2af5c07039.html](https://starherald.com/news/state-and-regional/govt-and-politics/study-finds-big-drop-in-evictions-in-nebraska-in-2020-but-thousands-still-lost-housing/article_fa84dfd8-b823-5644-bf3e-1a2af5c07039.html).

302. *Id.*

303. Irina Ivanova, *Memphis Faces Eviction Crisis After Court Strikes Down Federal Ban*, CBS NEWS (Apr. 23, 2021, 9:37 PM), <https://www.cbsnews.com/news/eviction-memphis-crisis-court-cdc-ban/>.

304. Jacqueline Rabe Thomas, *Few Tenants Facing Eviction Have an Attorney. Top Lawmakers are Poised to Change That*, CT MIRROR (Mar. 4, 2021), <https://ctmirror.org/2021/03/04/few-tenants-facing-eviction-have-an-attorney-top-lawmakers-are-poised-to-change-that/>.

305. Burbach, *supra* note 301.

306. ME. AFFORDABLE HOUS. COAL., *supra* note 284, at 7.

307. See Substitute for Raised H.B. 6531, 2021 Gen. Assemb., Reg. Sess. (Conn. 2021), [https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill\\_num=HB06531&which\\_year=2021](https://www.cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=HB06531&which_year=2021).

308. *Id.*

309. Ginny Monk, *Connecticut Renters Facing Eviction Can Get Free Legal Services in 2022*, CT INSIDER (Nov. 16, 2021), <https://www.ctinsider.com/realestate/article/Connecticut-renters-facing-eviction-can-get-free-16624539.php?src=ctipromostrip>.

Several other states introduced legislation to guarantee the right to counsel in eviction cases.<sup>310</sup> As moratoriums sunset and huge waves of people face eviction at once, more jurisdictions may follow suit. Houston, Texas, for example, alarmed by the wave of evictions, piloted a tenant counsel program amid the pandemic.<sup>311</sup> Additionally, Denver, Colorado guaranteed low-income tenants the right to counsel in 2021.<sup>312</sup> John Pollock of the National Coalition for a Civil Right to Counsel said that the idea of tenant counsel was “hugely popular” during the pandemic, and at least two dozen other jurisdictions are considering the idea.<sup>313</sup>

A tenant attorney can have a profound effect on an eviction proceeding and the community. In a study of Colorado eviction cases, the vast majority of unrepresented tenants failed even to answer the complaint, much less prevail on the merits.<sup>314</sup> However, when tenants had lawyers, they kept their homes the vast majority of the time.<sup>315</sup> New York City saw a forty-one percent reduction in evictions after guaranteeing a right to counsel and a thirty percent reduction in the number of evictions being filed by landlords.<sup>316</sup> Evidently, many landlords did not believe they could win an eviction case against a knowledgeable adversary. According to research from Maryland, for every dollar spent on tenant counsel, three to six dollars were saved on social safety net costs.<sup>317</sup> An analysis of a similar program in Philadelphia estimated that every dollar spent would yield roughly thirteen dollars in savings.<sup>318</sup> The savings generally come from less spending on welfare, law enforcement, and incarceration due to

310. *Maryland is Second State with Eviction Right to Counsel*, NAT’L COAL. FOR CIV. RIGHT COUNSEL (Jan. 5, 2021), [http://civilrighttocounsel.org/major\\_developments/1497](http://civilrighttocounsel.org/major_developments/1497).

311. Clarissa Ayala, *Lone Star Legal Aid Launches Eviction Right to Counsel Project*, LONE STAR LEGAL AID (Sept. 3, 2020), <https://lonestarlegal.blog/2020/09/03/lone-star-legal-aid-launches-eviction-right-to-counsel-project/>.

312. Conor McCormick-Cavanagh, *Eviction Legal Defense Fund Could Land on Denver Ballot in November*, WESTWORD (Mar. 10, 2021, 6:03 AM), <https://www.westword.com/news/denver-eviction-legal-defense-fund-ballot-tenant-rental-homeless-11916947>.

313. Matt Bloom, *How a Voter-Approved Program in Boulder Could Drastically Reduce Evictions*, KUNC (Nov. 4, 2020, 4:08 PM), <https://www.kunc.org/2020-11-04/how-a-voter-approved-program-in-boulder-could-dramatically-reduce-evictions>.

314. AUBREY HASVOLD & JACK REGENBOGEN, *FACING EVICTION ALONE: A STUDY OF EVICTIONS*, DENVER COLORADO 2014-2016 7, (2017).

315. *Id.* at 8; See also Ryan Clancy, *The Right to Counsel*, BAY VIEW COMPASS (Mar. 1, 2021), <https://bayviewcompass.com/right-to-counsel/> (noting that in Cleveland, ninety-three percent of represented tenants were able to avoid eviction).

316. Clancy, *supra* note 315.

317. STOUT, *THE ECONOMIC IMPACT OF AN EVICTION RIGHT TO COUNSEL IN BALTIMORE CITY* 8 (2020).

318. STOUT, *ECONOMIC RETURN ON INVESTMENT OF PROVIDING COUNSEL IN PHILADELPHIA EVICTION CASES FOR LOW-INCOME TENANTS* 8 (2018).

decreased rates of homelessness.<sup>319</sup> In addition to monetary benefits, housing stability is associated with better performance at school for students.<sup>320</sup>

#### *D. Rent Cancellation*

States may have been all over the map regarding the exact terms of their eviction moratoriums, but one point was consistent: they did not negate rent.<sup>321</sup> Cities, however, passed a few reforms related to rent payments. Portland, Maine anchored rent increases to the rate of inflation, created a rental board to mediate disputes between landlords and tenants, and tripled the time before a landlord can evict a tenant without a lease.<sup>322</sup> Similarly, New York City adopted a rent freeze from October 2020 through September 2021.<sup>323</sup>

Ithaca, New York, took a bolder route. During the pandemic, it became the first city to pass a plan to cancel rent.<sup>324</sup> Under the plan, the mayor would have the authority to cancel rent owed by tenants.<sup>325</sup> Even if the city did not cancel rent, the power could be used as leverage to force landlords to the table to ascertain how to deal with a nonpaying tenant short of eviction.<sup>326</sup> City leadership said this was the main intention of the policy.<sup>327</sup>

The plan has not been able to take flight as of yet. Governor Andrew Cuomo issued an executive order that all local pandemic ordinances must be reviewed and approved by the state before going into effect.<sup>328</sup> This

319. *Id.*

320. BOS. BAR ASSN', INVESTING IN FAIRNESS, JUSTICE AND HOUSING STABILITY 19 (2020).

321. *E.g.* Mich. Exec. Order No. 2020-19 (Mar. 20, 2020), [https://www.michigan.gov/whitmer/0,9309,7-387-90499\\_90705-522509--,00.html](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-522509--,00.html); S. B. 333, 2019-2020 Gen. Assem., 2019-2020 Reg. Sess. (Vt. 2020); Wis. Emergency Order No. 15, at 2 (Mar. 27, 2020), <https://evers.wi.gov/Documents/COVID19/EO15BanonEvictionsandForeclosures.pdf>.

322. Randy Billings, *Portland Voters Pass \$15 Minimum Wage, Rent Control and More*, PORTLAND PRESS HERALD, <https://www.pressherald.com/2020/11/03/portland-awaits-results-on-15-minimum-wage-rent-control-and-more/> (Nov. 4, 2020).

323. N.Y. CITY RENT GUIDELINES BD., *Summary of Guidelines Adopted on June 17, 2020*, CITY OF N.Y., <https://rentguidelinesboard.cityofnewyork.us/2020-summary-of-guidelines/> (last visited Jan. 18, 2022).

324. Abby Vesoulis, *'Cancel Rent' Has Become a Rallying Cry for Cash-Strapped Americans. Here's Why It Hasn't Yet Worked in The U.S. City That Championed It*, TIME (Sept. 18, 2020, 11:46 AM), <https://time.com/5889749/cancel-rent-ithaca/>.

325. *Id.*

326. *Id.*

327. *Id.*

328. *Id.*

slowed down the implementation of all local policies, and Ithaca's was no exception.<sup>329</sup> It has languished for months, with no word on when, if ever, the state will greenlight it.<sup>330</sup>

### *E. Miscellaneous Reforms*

A few other laws are of note. Idaho's legislature passed a law during the pandemic that required landlords to give thirty-days' notice before raising rent or expressing the landlord's intent to not renew a lease.<sup>331</sup> This is hardly revolutionary, but it is a step forward.<sup>332</sup> The Connecticut Department of Housing offered assistance to help move the homeless out of crowded shelters and into safer housing alternatives, like hotel rooms.<sup>333</sup> Delaware announced a joint effort between different government agencies to educate renters on how to stay in their homes.<sup>334</sup> Voters in several cities throughout the country approved new revenue to fund affordable housing projects.<sup>335</sup> Nevada passed a law that forbade landlords from rejecting rent that is provided after they have already filed an eviction and allowed tenants to file suit against landlords to challenge the reasonableness of an

329. *Id.*

330. Ryan Bieber, *Ithaca is Tenants!*, ITHACA.COM (May 6, 2021), [https://www.ithaca.com/news/ithaca/ithaca-is-tenants/article\\_245f07c0-aeb4-11eb-ab24-eff5d09c1128.html](https://www.ithaca.com/news/ithaca/ithaca-is-tenants/article_245f07c0-aeb4-11eb-ab24-eff5d09c1128.html).

331. H.B. 594, 65th Leg., 2nd Reg. Sess. (Idaho 2020), <https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2020/legislation/H0594.pdf> (codified as IDAHO CODE § 55-307(3) (2020)).

332. *Id.*; See also Bill Dentzer, *Landlords Oppose Proposed Eviction Reforms*, LAS VEGAS REV.-J., <https://www.reviewjournal.com/news/politics-and-government/2021-legislature/landlords-oppose-proposed-eviction-reforms-2294752> (last updated Mar. 4, 2021, 6:55 PM) (A Nevada proposal would force landlords to give more notice of intent to evict for tenants who had rented with them for long periods of time).

333. Conn. Dep't Hous. Notice and Order Regarding Exec. Order 7P Safe Hous. for Experiencing Homelessness, (Mar. 31, 2020) (<https://portal.ct.gov/-/media/Coronavirus/20200331-DOH-Notice-and-Order-Regarding-Executive-Order-7P-Safe-Housing-for-People-Experiencing-Home.pdf>).

334. AG Jennings, DSHA, *Delaware Judiciary Announce Joint Effort on Foreclosure & Eviction Prevention*, DEL. NEWS (July 1, 2020), <https://news.delaware.gov/2020/07/01/gov-carney-ag-jennings-dsha-delaware-judiciary-announce-joint-effort-on-foreclosure-eviction-prevention/>.

335. Lauren Lindstrom, *Charlotte Bonds for Housing, Neighborhoods and Streets Cruise to an Easy Victory*, CHARLOTTE OBSERVER (Nov. 4, 2020), <https://www.charlotteobserver.com/news/politics-government/election/article246891792.html>; Anna Johnson, *'We Are Thrilled.' Raleigh Voters Back Affordable Housing Bond by a Landslide*, NEWS & OBSERVER (Nov. 3, 2020), <https://www.newsobserver.com/news/politics-government/election/article246753011.html>; Conrad Sawnsen, *Denver Ballot Measure 2A, 2B Results: Voters Approve Taxes for Homeless, Environment*, DENVER POST, <https://www.denverpost.com/2020/11/03/denver-election-results-2a-2b-taxes-homeless-environment/#comments-anchor> (last updated Nov. 4, 2020, 12:28 AM).

eviction.<sup>336</sup> Creativity like this helps address housing instability on all fronts.

#### *F. Failed and Counterproductive Legislative Actions*

The aforementioned laws are hopeful developments, but the legislative track record for tenant protections over the course of the pandemic is mixed. Only a few states adopted moratoriums by way of legislation rather than executive fiat.<sup>337</sup> The relative lack of legislative action suggests that most states saw the surge of evictions as a temporary problem, not a structural one. When a governor acts to unilaterally institute some policy, they need to rely on an emergency power, and this power ends with the emergency.<sup>338</sup> The dangers of COVID-19 recede with every person who becomes vaccinated, but the harsh realities of the eviction system do not.

Frequently, state assemblies have stalled out. Nebraska tried to include an amendment that would authorize municipalities to impose eviction moratoriums in a law, but the amendment was voted down.<sup>339</sup> New Hampshire's legislature succeeded in passing a tenant protection bill during the pandemic, but Governor Chris Sununu vetoed it.<sup>340</sup>

Maryland only charges fifteen dollars to file an eviction, the third-lowest in a country where some jurisdictions charge as much as \$300.<sup>341</sup> Filing costs this low mean landlords will go to court over anything; in

336. S.B. 151, 2019 Leg., 80th Sess. (Nev. 2019).

337. See S. B. 241, 31st Leg., 2nd Sess. (Alaska 2020); H. B. 4647, 191 Gen. Ct., 2019-2020 Sess. § 3(e) (Mass. 2020); Assemb. B. A11181, 2019-2020 Leg., Reg. Sess. § 2 (N.Y. 2020); H. B. 5115, 2020 Gen. Assem., 2020 1st Spec. Sess. (Va. 2020); S. B. 333, 2019-2020 Gen. Assem., 2019-2020 Reg. Sess. (Vt. 2020).

338. See e.g., Ill. Exec. Order 2020-10 (Mar. 20, 2020), <https://www2.illinois.gov/Page/Executive-Orders/ExecutiveOrder2020-10.aspx>; Nev. Exec. Order Declaration of Emergency Directive 008 (Mar. 29, 2020), [https://gov.nv.gov/News/Emergency\\_Orders/2020/2020-03-29\\_-\\_COVID-19\\_Declaration\\_of\\_Emergency\\_Directive\\_008\\_\(Attachments\)](https://gov.nv.gov/News/Emergency_Orders/2020/2020-03-29_-_COVID-19_Declaration_of_Emergency_Directive_008_(Attachments)); N.H. Emergency Order No. 4, at 1 (Mar. 17, 2020), <https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/emergency-order-4.pdf>.

339. JoAnne Young, *Legislature Rejects Attempt by Lincoln Senator to Put Moratorium on Evictions*, LINCOLN J. STAR, [https://journalstar.com/legislature/legislature-rejects-attempt-by-lincoln-senator-to-put-moratorium-on-evictions/article\\_4e9c8d26-5fca-535e-97a9-f463d71e01ed.html](https://journalstar.com/legislature/legislature-rejects-attempt-by-lincoln-senator-to-put-moratorium-on-evictions/article_4e9c8d26-5fca-535e-97a9-f463d71e01ed.html) (last updated Sept. 1, 2020) (referring to Leg. B. 394, 107th Leg., 1st Sess. (Neb. 2021)).

340. Ethan DeWitt, *Sununu Vetoes Eviction Protection Bill, Paid Family Leave*, CONCORD MONITOR (July 10, 2020, 6:13 PM), <https://www.concordmonitor.com/Sununu-vetoes-eviction-protection-bill-paid-family-leave-35170489>.

341. Kate Ryan, *Maryland Lawmakers to Focus on Eviction Challenges in Upcoming General Assembly*, WTOP NEWS (Dec. 28, 2020, 7:55 PM), <https://wtop.com/maryland/20/12/maryland-lawmakers-focus-eviction-challenges-upcoming-general-assembly/>.

some parts of the state, there are more evictions filed than there are apartment units.<sup>342</sup> To try to combat this, reformers in Maryland proposed raising the price of filing an eviction, requiring landlords to pursue rental assistance dollars before evicting, and banning evictions without good cause.<sup>343</sup> It did not pass.<sup>344</sup>

Occasionally, legislators believed that the midst of the most lethal disease in a century was a propitious time to scale back what little comfort the law offered tenants. Indiana passed a law, over the governor's veto, that prohibited municipalities from passing landlord-tenant ordinances.<sup>345</sup> This was done in response to the City of Indianapolis which had recently passed a Tenant Bill of Rights that guaranteed the right to a safe, livable home, and mandated that landlords inform tenants about their rights under the law.<sup>346</sup> Pennsylvania's state senate scuttled a plan to fix the state's COVID-19 relief program, shutting out renters and landlords from potential aid.<sup>347</sup> Utah passed a law that appeared tailor-made to limit the application of the CARES Act as much as possible.<sup>348</sup>

Other efforts in the same vein are working their way through the legislative process around the country. Illinois lawmakers tried and failed to pass a law that would narrow the governor's eviction moratorium, as well as relieve landlords from the responsibility of handling utilities for tenants in arrears.<sup>349</sup> A bill in Oklahoma would strip courts of the power to forestall an eviction upon the entry of judgment, meaning landlords could immediately apply to the sheriff for a forcible eviction.<sup>350</sup> The law specifies that it is enforceable even during a "catastrophic health

342. *Id.*

343. *Id.*

344. Bennett Leckrone, *Advocates Petition Hogan to Temporarily Halt Evictions*, WTOP NEWS (May 1, 2021, 11:09 PM), <https://wtop.com/maryland/2021/05/advocates-petition-hogan-to-temporarily-halt-evictions/>.

345. S. Enrolled Act No. 148, 121st Gen. Assemb., 2nd Reg. Sess. § 17 (Ind. 2020).

346. INDIANAPOLIS, IND., MUN. CODE §§ 582-103-104, Appendix (2020), [https://library.municode.com/in/indianapolis\\_-\\_marion\\_county/codes/code\\_of\\_ordinances?nodeId=TITIIIIPUHEWE\\_CH582PRTERI](https://library.municode.com/in/indianapolis_-_marion_county/codes/code_of_ordinances?nodeId=TITIIIIPUHEWE_CH582PRTERI); Mary Milz, *Mayor Signs Renter Rights Ordinance as State Lawmakers Look to Gut it*, 13 WTHR, <https://www.wthr.com/article/news/local/mayor-signs-renter-rights-ordinance-state-lawmakers-look-gut-it/531-66fbb6c9-86f4-4de4-9a5e-c66c4bfac364> (last updated Feb. 28, 2020, 3:16 AM).

347. Charlotte Keith, *Senate GOP Halts Fixes for Pa.'s Troubled Rent Relief Program, Surprising Even Their Own*, SPOTLIGHT PA (Oct. 22, 2020), <https://www.spotlightpa.org/news/2020/10/pa-rental-assistance-program-bill-house-senate-republicans/>.

348. S.B. 6009, 2020 Leg., 6th Spec. Sess., §15 (Utah 2020).

349. Kevin Bessler, *Bill to Make Exceptions to Illinois Eviction Ban Fails to Pass Committee*, CTR. SQUARE (Mar. 10, 2021), [https://www.thecentersquare.com/illinois/bill-to-make-exceptions-to-illinois-eviction-ban-fails-to-pass-committee/article\\_8d3b99aa-81d9-11eb-8ca6-93df3f10c85a.html](https://www.thecentersquare.com/illinois/bill-to-make-exceptions-to-illinois-eviction-ban-fails-to-pass-committee/article_8d3b99aa-81d9-11eb-8ca6-93df3f10c85a.html).

350. H.B. 1564, 58th Leg., 1st Sess. (Okla. 2021).

emergency.”<sup>351</sup> The bill was authored by Senator Blake “Cowboy” Stephens, whose campaign website boasts “I am pro-life and hold the dignity of every human heart in high regard.”<sup>352</sup> If enacted, these sorts of laws would make life for tenants even more perilous by eroding what few legal protections they still have.

## V. UTILITIES

Much like affordable housing in general, the utility market was already in crisis long before COVID-19 hit. Between 2000 and 2016, energy prices rose fifty percent, meaning that one-in-five impoverished families missed a payment in a typical year and had a disconnection notice delivered.<sup>353</sup> To try to cope, desperate residents pirated six billion dollars in energy per year.<sup>354</sup> In July 2019, utility delinquencies in Arizona jumped fifteen percent from the year before, and the average past-due bill grew by twelve percent.<sup>355</sup> One woman died of a heat stroke after having her power cut in mid-June for being fifty-one dollars short on her bill.<sup>356</sup>

Utilities are just as important as having a roof over one’s head when it comes to dignified living and observance of public health guidelines.<sup>357</sup> Without clean water, handwashing is impossible. Without electricity and

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351. *Id.*

352. *See generally* BLAKE COWBOY FOR SENATOR, <http://cowboyleftorsenator.com/> (last visited Apr. 29, 2021).

353. MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* 15 (2016).

354. *Id.*

355. David Wichner, *Tucson Electric Bills Mount Amid Summertime Shutoff Moratorium*, ARIZ. DAILY STAR, [https://tucson.com/news/local/tucson-electric-bills-mount-amid-summertime-shutoff-moratorium/article\\_3a1d3fae-6b0b-5b8f-9106-4c92ec7b2966.html#:~:text=Q%3A%20What%20is%20the%20moratorium,15](https://tucson.com/news/local/tucson-electric-bills-mount-amid-summertime-shutoff-moratorium/article_3a1d3fae-6b0b-5b8f-9106-4c92ec7b2966.html#:~:text=Q%3A%20What%20is%20the%20moratorium,15) (last updated July 16, 2021).

356. *Id.*

357. *See* Administrative Orders Relating to the COVID-19 State of Emergency, Ark. Pub. Serv. Comm’n Docket No. 20-012-A, at 2 (Apr. 10, 2020), [http://www.apscservices.info/pdf/20/20-012-A\\_1\\_1.pdf](http://www.apscservices.info/pdf/20/20-012-A_1_1.pdf) (noting that the availability of water, gas, and electricity services is “vital” to prevent transmission of COVID-19); Moratorium on Disconnection of Utility Services during the Public Health Emergency, Ill. Commerce Comm’n Docket No. 20-0309 (Mar. 18, 2020), <https://www.icc.illinois.gov/docket/P2020-0309/documents/297460> (calling access to utilities “necessary” to slow the spread of disease); Mississippi Public Service Commission Omnibus Docket, Pub. Serv. Comm’n Miss., Docket No. 2018-AD-141 (May 12, 2020), [https://www.psc.state.ms.us/InSiteConnect/InSiteView.aspx?model=INSITE\\_CONNECT&queue=CTS\\_ARCHIVEQ&docid=649374](https://www.psc.state.ms.us/InSiteConnect/InSiteView.aspx?model=INSITE_CONNECT&queue=CTS_ARCHIVEQ&docid=649374) (the Commission said that “utility service is necessary to appropriately carry out” public health hygiene recommendations).

internet, teleworking and e-learning is a mirage.<sup>358</sup> Without heating and cooling, homes can be deadly. Despite this, utility protections have been a bridge too far for some. A collection of senators called for a national moratorium on shutoffs for electricity, gas, water, telecommunications, and internet, but this call went unanswered.<sup>359</sup>

The issue instead fell to the states and, occasionally, municipalities.<sup>360</sup> Unfortunately, utility shutoff protections were not a common feature of executive or legislative action. The governor of Kentucky banned disconnections for late payment and required a waiver of late fees.<sup>361</sup> Delaware took gubernatorial action<sup>362</sup> as did Kansas,<sup>363</sup> Montana,<sup>364</sup> New Hampshire,<sup>365</sup> New Jersey,<sup>366</sup> and North Carolina.<sup>367</sup>

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358. *4.4 million Households With Children Don't Have Consistent Access to Computers for Online Learning During the Pandemic*, USA FACTS, <https://usafacts.org/articles/internet-access-students-at-home> (last updated Oct. 19, 2020, 8:41 AM) (stating that an estimated fourteen percent of children lack internet at home, though not necessarily as a result of shutoffs during the pandemic).

359. Letter from Jeffrey Merkley, et al, U.S. Senators, to Mitch McConnell, Majority Leader U.S. Senate & Chuck Schumer, Minority Leader U.S. Senate (Mar. 20, 2020) (<https://www.merkley.senate.gov/imo/media/doc/20.03.20%20Utility%20Access%20Letter.pdf>). Months later, there was still no federal action: Press Release, Jeff Merkley, U.S. Senator, Merkley, Wyden, Colleagues Press Nation's Utility Companies to Cease Utility Shutoffs for the Duration of the COVID-19 Crisis (Oct. 30, 2020) ([https://www.merkley.senate.gov/news/press-releases/merkley-wyden-colleagues-press-nations-utility-companies-to-cease-utility-shutoffs-for-the-duration-of-the-covid-19-crisis-2020is#\\_ftnref1](https://www.merkley.senate.gov/news/press-releases/merkley-wyden-colleagues-press-nations-utility-companies-to-cease-utility-shutoffs-for-the-duration-of-the-covid-19-crisis-2020is#_ftnref1)).

360. *E.g.* Boteler, *supra* note 216; Leah Cantor, *Santa Fe Mayor Announces Eviction Freeze*, SANTA FE REP. (Mar. 18, 2020, 5:36 AM), <https://www.sfreporter.com/news/2020/03/18/santa-fe-mayor-announces-eviction-freeze/>.

361. Ky. Exec. Order 2020-323 (May 8, 2020), <https://russellvilleky.org/index.php/covid-19-information/governor-executive-orders/576-executive-order-2020-323>.

362. Del. Exec. Order, Sixth Modification of the Declaration of a State of Emergency for the State of Delaware due to a Public Health Threat (Mar. 24, 2020), <https://governor.delaware.gov/health-soe/sixth-state-of-emergency/>.

363. Kan. Exec. Order No. 20-05 (Mar. 17, 2020), <https://governor.kansas.gov/wp-content/uploads/2020/03/20-05-Executed.pdf>.

364. Directive Implementing Exec. Orders 2-2020 and 3-2020 and Providing Additional Guidance Related to Evictions and Establishing Relief Funds for Affected Renters from Steve Bullock, Governor of Montana, at 3 (Apr. 13, 2020) (<https://dphhs.mt.gov/assets/Coronavirus/LowIncomeRentAssistanceDirective.pdf>).

365. N.H. Emergency Order No. 3 (Mar. 17, 2020), <https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/emergency-order-3.pdf>.

366. N.J. Exec. Order No. 229 (Mar. 3, 2021), <https://nj.gov/infobank/eo/056murphy/pdf/EO-229.pdf>.

367. N.C. Exec. Order No. 124 (Mar. 31, 2020), <https://files.nc.gov/governor/documents/files/EO124-Utilities-Evictions-Financial-Services.pdf>.

Most frequently, if a state took action to block utility shutoffs, they left it to their state public utility commissions.<sup>368</sup> These utility commissions are responsible for regulating energy and water providers in a state and are independent of the legislature.<sup>369</sup> Many states already have routine utility shutoff moratoriums that coincide with the harshest weather in the state.<sup>370</sup> In chilly Connecticut, no electric company may turn off the power from November 1st to May 1st.<sup>371</sup> In scorching Arizona, utilities go into a summer moratorium beginning in June.<sup>372</sup>

Sometimes, public officials formally requested state commissions to take action to protect consumers. Illinois' governor and attorney general asked the state's Commerce Commission to implement a utility shutoff moratorium statewide.<sup>373</sup> Maine legislators called on the state utility commission to extend its disconnection ban but did not pass any law requiring this.<sup>374</sup> Sometimes, public officials requested the opposite. Utah's executive branch urged the state Public Service Commission to be idle and do nothing.<sup>375</sup> South Carolina's governor nudged the state commission to end its moratorium and start striking people's power again, and it complied.<sup>376</sup>

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368. See e.g., *Maine PUC Orders Halt to Utility Disconnections Due to Coronavirus*, WMTW 8 ABC, <https://www.wmtw.com/article/maine-puc-orders-halt-to-utility-disconnections-due-to-coronavirus/31674992> (last updated Mar. 16, 2020, 5:15 PM).

369. William Boyd & Ann E. Carlson, *Accidents of Federalism: Ratemaking and Policy Innovation in Public Utility Law*, 63 UCLA L. REV. 810, 822-23 (2016).

370. MARCUS FRANKLIN & CAROLINE KURTZ, LIGHTS OUT IN THE COLD: REFORMING UTILITY SHUT-OFF POLICIES AS IF HUMAN RIGHTS MATTER 17 (2017) (stating that only nine states lack some sort of seasonal utility shutoff moratorium).

371. CONN. GEN. STAT. ANN. § 16-262c (b)(1) (West 2021).

372. David Wichner, *Tucson Electric Bills Mount Amid Summertime Shutoff Moratorium*, TUCSON.COM, [https://tucson.com/news/local/tucson-electric-bills-mount-amid-summertime-shutoff-moratorium/article\\_3a1d3fac-6b0b-5b8f-9106-4c92ec7b2966.html#:~:text=Q%3A%20What%20is%20the%20moratorium,15](https://tucson.com/news/local/tucson-electric-bills-mount-amid-summertime-shutoff-moratorium/article_3a1d3fac-6b0b-5b8f-9106-4c92ec7b2966.html#:~:text=Q%3A%20What%20is%20the%20moratorium,15) (last updated July 16, 2021).

373. Moratorium on Disconnection of Utility Services during the Public Health Emergency, Ill. Commerce Comm'n Docket No. 20-0309 (Mar. 18, 2020), <https://www.icc.illinois.gov/docket/P2020-0309/documents/297460>.

374. Christian Wade, *Maine Lawmakers Push for New Utility Shut-off Ban*, CTR. SQUARE, (Jan. 6, 2021), [https://www.thecentersquare.com/maine/maine-lawmakers-push-for-new-utility-shut-off-ban/article\\_e0710532-503e-11eb-b2ed-ff5e19ca3346.html](https://www.thecentersquare.com/maine/maine-lawmakers-push-for-new-utility-shut-off-ban/article_e0710532-503e-11eb-b2ed-ff5e19ca3346.html).

375. Letter from Utah Div. Pub. Utilities to Pub. Serv. Comm'n Utah (Apr. 23, 2020) (<https://pscdocs.utah.gov/misc/20docs/2099901/313338DPUCmnts4-23-2020.pdf>).

376. Pub. Serv. Comm'n S.C., Comm'n Directive Order No. 2020-374, (May 14, 2020), <https://dms.psc.sc.gov/Attachments/Matter/340a5345-c8b2-4e72-a5e3-8c176a757ca1>.

*A. Observations about Utility Disconnection Moratoriums*

*1. Variance Over Which Utilities Were Protected*

Precisely what counted as a utility varied from state to state. Washington's order may have been the strongest, applying to all energy, telecommunications, and water providers.<sup>377</sup> Massachusetts' shutoff moratorium applied to gas, electric, and water services.<sup>378</sup> Nebraska's commission banned natural gas disconnections<sup>379</sup> but only encouraged utilities not to shut off the electricity.<sup>380</sup> New Hampshire covered all providers of electric, gas, water, telephone, cable, Voice over Internet Protocol (VOIP), internet, propane, and heating oil.<sup>381</sup> New Jersey banned shutoffs for electricity, water, and gas but only protected the internet if there was a school-aged child in the home using it for education.<sup>382</sup> North Carolina ended disconnections for electric, gas, water, and wastewater but only "urged" telecommunications and internet companies to do the same.<sup>383</sup> This shows wide disagreement over what is an essential utility.

*2. Disconnection Moratoriums Were Stronger than Typical Eviction Moratoriums*

On a positive note, unlike many eviction moratoriums, utility shutoff moratoriums were not restricted by numerous exceptions, means-testing, or other cumbersome prerequisites. Typically, they simply barred disconnections for non-payment, perhaps with a public safety exception.<sup>384</sup>

377. Wash. Proclamation No. 20-23.3, at 4 (May 5, 2020), <https://www.governor.wa.gov/sites/default/files/proclamations/20-23.3%20-%20COVID-19%20Ratepayer%20Assistance%20Ext%20%28tmp%29.pdf>.

378. Customer Assistance Plan From the First Report of the Customer Assistance and Rate-making Working Group, Mass. Dep't Pub Utilities Order No. 20-58-B (July 31, 2020), <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/12506975>.

379. Responding to the COVID-19 State of Emergency, Neb. Pub. Serv. Comm'n App. No. PI-231, (May 19, 2020), <https://www.nebraska.gov/psc/orders/admin/2020-05-19%20PI-231%20Progression%20Order%201.pdf>.

380. *Keep Nebraskans Connected Pledge Participants*, NEB. PUB. SERV. COMM'N (last visited Apr. 22, 2021), <https://psc.nebraska.gov/telecommunications/keep-nebraskans-connected-pledge-participants>.

381. N.H. Emergency Order No. 3 (Mar. 17, 2020), <https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/emergency-order-3.pdf>.

382. N.J. Exec. Order No. 229, at 5, 7 (Mar. 3, 2021), <https://nj.gov/infobank/eo/056murphy/pdf/EO-229.pdf>.

383. N.C. Exec. Order No. 124, at 4, 6 (Mar. 31, 2020), <https://files.nc.gov/governor/documents/files/EO124-Utilities-Evictions-Financial-Services.pdf>.

384. See e.g., Ratification and Termination of Exec. Order dated Mar. 13, 2020 Regarding Utilities Prohibited from Disconnecting Customers During Statewide Pub.

California's commission went further, ordering various utilities in California to not only cease disconnections but to waive deposits to reconnect service, stop estimated usage billing for unoccupied homes, expand outreach to low-income residents about services, stop requiring customers to provide current income information, offer repairs, and provide payment plans for customers who fell behind.<sup>385</sup> The order applied not only to power and water but also to telecommunications and Wi-Fi providers.<sup>386</sup> Protections lasted for a year, giving clear guidance to consumers.<sup>387</sup>

Arkansas' Public Service Commission passed an order directing all utilities within its jurisdiction to suspend disconnection until the public health emergency was ended by the commission or the governor.<sup>388</sup> Utilities were also directed to establish records of money consumers owed during this time, and the commission could scrutinize these records to see if the charges were reasonable.<sup>389</sup> Any costs saved by the moratorium—for example, not sending crews out to disconnect people—had to be tallied and returned to customers.<sup>390</sup>

Payment plans were a common feature of utility shutoff resumptions. This is to say, even when disconnections resumed, utilities had to offer consumers a payment plan to get back on top of their debts. This is another way that disconnection moratoriums tended to be better structured than eviction moratoriums. New Hampshire gave six months.<sup>391</sup> North Carolina

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Health Emergency Associated with COVID-19, La. Pub. Serv. Comm'n, Spec. Order No. 43-2020 (July 1, 2020), [http://www.lpsc.louisiana.gov/\\_docs/\\_Orders/43-2020.pdf](http://www.lpsc.louisiana.gov/_docs/_Orders/43-2020.pdf); Pa. Pub. Util. Comm'n, Docket No. M-2020-3019244 (Mar. 11, 2021), <https://www.puc.pa.gov/docket/M-2020-3019244>.

385. Emergency Authorization and Order Directing Util. to Implement Emergency Customer Protections to Support Cal. Customers During the COVID-19 Pandemic, Pub. Util. Comm'n Cal., Resol. M-4842, at 5 (Apr. 17, 2020), <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M333/K482/333482381.PDF>.

386. *Id.* at 4–8.

387. *Id.* at 4.

388. Administrative Orders Relating to the COVID-19 State of Emergency, Ark. Pub. Serv. Comm'n Docket No. 20-012-A, at 2-3 (Apr. 10, 2020), [http://www.apscservices.info/pdf/20/20-012-A\\_1\\_1.pdf](http://www.apscservices.info/pdf/20/20-012-A_1_1.pdf).

389. *Id.* at 3.

390. *Id.*

391. N.H. Emergency Order No. 58, at 2 (June 30, 2020), <https://www.governor.nh.gov/sites/g/files/ehbemt336/files/2020-06/emergency-order-58.pdf>.

mandated twelve months<sup>392</sup> as did New Jersey.<sup>393</sup> Rhode Island gave 36 months.<sup>394</sup> Pennsylvania had the longest mandate with low-income residents entitled to a five-year repayment plan.<sup>395</sup> Utilities in New Mexico had to issue monthly reports detailing their efforts to get customers onto repayment plans.<sup>396</sup> Thirty-one states had a payment plan requirement.<sup>397</sup>

### 3. Legislative Action on Utility Shutoffs Was Rare

Alaska was one of the few states that enacted a legislative ban on utility shutoffs. Under Senate Bill 241, no public utility could disconnect customers for non-payment if they suffered financial hardship related to COVID-19.<sup>398</sup> Public utilities were also required to make reasonable efforts to reconnect utilities to people experiencing financial hardship related to COVID-19, provide payment plan agreements over the course of the pandemic, and waive interest or late fees.<sup>399</sup> Additionally, New York banned utility disconnections and stopped municipalities from cutting off residential services for nonpayment of bills or taxes.<sup>400</sup> Legislation is ideal as it puts the full weight of state government behind the power, but legislation is very much the exception to the rule.

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392. Investigation of Necessary and Appropriate Responses to the Novel Coronavirus COVID-19, N.C. Util. Comm'n Docket No. M-100, Sub 158 et al., at 7 (July 29, 2020), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=73f62403-d0c3-4932-bc25-54a25d940e66>.

393. N.J. Exec. Order No. 229, at 6 (Mar. 3, 2021), <https://nj.gov/infobank/eo/056murple/pdf/EO-229.pdf>.

394. Suspension of Service Terminations and Certain Collections Activities During the COVID-19 Emergency, R.I. & Providence Plantations Pub. Util. Comm'n Docket No. 5022, at 4 (Mar. 16, 2020), [http://www.ripuc.ri.gov/eventsactions/docket/5022-PUC-EmergencyOrd23786%20\(COVID\)%203-17-2020.pdf](http://www.ripuc.ri.gov/eventsactions/docket/5022-PUC-EmergencyOrd23786%20(COVID)%203-17-2020.pdf).

395. Pa. Pub. Util. Comm'n, Docket No. M-2020-3019244, at 4 (Mar. 11, 2021), <https://www.puc.pa.gov/docket/M-2020-3019244>.

396. Hannah Grover, *PRC Approves Disconnection Moratorium Aimed at Balancing Needs of Utilities and Customers*, FARMINGTON DAILY TIMES, <https://www.daily-times.com/story/news/2021/02/04/nm-public-regulation-commission-moratorium-residential-disconnection-utility-companies/4380767001/> (last updated Feb. 4, 2021, 1:41 PM).

397. *State Response Tracker*, NAT'L ASS'N REGUL. UTIL. COMM'RS (Mar. 23, 2021), <https://www.naruc.org/compilation-of-covid-19-news-resources/state-response-tracker/>.

398. S. B. 241, 31st Leg., 2nd Sess. § 19(a) (Alaska 2020).

399. *Id.* § 19(d).

400. N.Y. Assemb. B. No. A10521, 2020 Assemb., Reg. Sess. §§ 1–4 (N.Y. 2020), [https://nyassembly.gov/leg/?default\\_fld=%0D%0A&leg\\_video=&bn=A10521&term=2019&Summary=Y&Actions=Y&Text=Y](https://nyassembly.gov/leg/?default_fld=%0D%0A&leg_video=&bn=A10521&term=2019&Summary=Y&Actions=Y&Text=Y).

*B. Shortcomings of Over-Reliance on Commissions**1. Commissions May not Take the Crisis Seriously*

When the elected branches rely on commissions to protect their citizens rather than doing it themselves, there are risks. For one thing, the commission may opt to do nothing. North Dakota's Public Service Commission put out an informational paper about resources available but did not offer any help itself.<sup>401</sup> In South Dakota, the commission "remind[ed]" consumers that utilities "do not want to disconnect you" but would not do anything to guarantee this.<sup>402</sup> Wyoming's commission authorized, but did not mandate, a suspension of disconnection<sup>403</sup> Nevada's Commission decided it was too dangerous to allow the public into its offices but, apparently, not dangerous enough to issue any shutoff moratorium to protect the public.<sup>404</sup> A total of sixteen state commissions failed to impose a disconnection moratorium.<sup>405</sup>

When commissions do not act, individual utilities get to make the decisions which leads to disparate outcomes. Alabama allowed each utility to decide whether it wanted to discontinue shutoffs. Huntsville Utility and Alabama Power, the largest energy providers in the state, decided to not disconnect customers or charge late fees; the utilities in the cities of Brundidge and Athens brought back disconnections almost at once.<sup>406</sup> Some rural cooperatives in New Mexico threatened people with

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401. News Release, N.D. Pub. Serv. Comm'n, Lifeline Program Available to Help North Dakotans with Phone or Internet Costs (Mar. 19, 2020) (<https://www.psc.nd.gov/public/newsroom/2020/3-19-20LifelineProgram.pdf>).

402. Press Release, S.D. Pub. Util. Comm'n, South Dakota PUC Reminds Consumers to Utilize Available Resources During Pandemic (Apr. 17, 2020), <https://puc.sd.gov/News/2020/04172020.aspx>.

403. Commission's Consideration on a Temporary Grant of Authority for Public Utilities to Suspend Certain Tariffs Pertaining to Discontinuation of Service, Wyo. Pub. Serv. Comm'n Docket No. 90000-151-XO-20, (Mar. 26, 2020), <https://nasuca.org/wp-content/uploads/2020/05/wyoming.pdf>.

404. Bailey Schulz, *Public Utilities Commission of Nevada Closing to the Public*, Las Vegas Rev.-J. (Mar. 16, 2020), <https://www.reviewjournal.com/business/public-utilities-commission-of-nevada-closing-to-the-public-1982845/>; Press Release, NV Energy, NV Energy Offers Payment Support for Customers (Mar. 13, 2020) ([https://puc.nv.gov/uploadedFiles/pucnv.gov/Content/About/Media\\_Outreach/Announcements/Announcements/2020%20-%20No%20Disconnects%20COVID%20FINAL.pdf](https://puc.nv.gov/uploadedFiles/pucnv.gov/Content/About/Media_Outreach/Announcements/Announcements/2020%20-%20No%20Disconnects%20COVID%20FINAL.pdf)) (some companies voluntarily suspended disconnections).

405. *State Response Tracker*, NAT'L ASS'N REGUL. UTIL. COMM'RS (Mar. 23, 2021), <https://www.naruc.org/compilation-of-covid-19-news-resources/state-response-tracker/>.

406. Sarah Whites-Koditschek, *Alabama Leaves Decision to Utilities: When to Cut Off Power for Late Bills in Pandemic*, AL.COM, <https://www.al.com/news/2020/05/alabama-leaves-decision-to-utilities-when-to-cut-off-power-for-late-bills-in-pandemic.html> (last updated May 19, 2020, 4:39 PM).

disconnection even when they could not actually terminate service, forcing the state commission to clarify utilities could not threaten disconnection either.<sup>407</sup>

Even if utilities comply with a voluntary request to cease disconnections, patience can quickly run thin. This is proven through Kenneth Parson's story. After Georgia allowed utilities to resume cutoffs in June of 2020,<sup>408</sup> Kenneth Parson, 62, found himself in the dark by the end of July.<sup>409</sup> Without power for his refrigerator, he had to store his insulin in an ice cooler.<sup>410</sup> Idaho's power utility voluntarily suspended disconnections in March 2020, but with no policies to constrain it, was back to normal operations by August.<sup>411</sup> No utility shutoffs occurred in Oregon in April 2020 on goodwill alone,<sup>412</sup> but by summer, utilities were back to normal.<sup>413</sup>

Utilities, mindful of their budget, are often eager to resume disconnections and are not shy about saying so. Barely two months into lockdowns, a consortium of energy companies petitioned the Indiana Utility Regulatory Commission for permission to go after customers to recover money lost from the pandemic.<sup>414</sup> Utility companies in Maine lobbied for a resumption of cutoffs after the average past-due balance went up fifty percent between 2019 to 2020.<sup>415</sup> Oklahoma Gas and Electric announced it would resume disconnections in June, though it offered one-

407. KRQE Staff, *PRC Clarifies Utilities Cannot Threaten Disconnection at This Time*, KRQE, <https://www.krqe.com/news/new-mexico/prc-clarifies-order-of-moratorium-on-utility-disconnections/> (last updated Mar. 18, 2021, 1:26 PM).

408. Jill Nolin, *PSC Could Let Georgia Utilities Resume Late-Payer Service Shut Offs*, GA. RECORDER (June 2, 2020, 5:14 AM), <https://georgiarecorder.com/brief/psc-could-let-georgia-utilities-resume-late-payer-service-shut-offs/>.

409. Tony Romm, *Millions of Americans Risk Losing Power and Water as Massive, Unpaid Utility Bills Pile Up*, WASH. POST (Oct. 1, 2020), <https://www.washingtonpost.com/business/2020/10/01/power-water-gas-bills/>.

410. *Id.*

411. *Staying Safe Through the Pandemic*, IDAHO POWER, <https://www.idahopower.com/outages-safety/safety/our-covid-19-response/> (last visited Mar. 27, 2021).

412. Bob Jenks, *Oregon Utility Service Shut-Off Moratorium: More Safeguards Needed*, OR. CUB (June 8, 2020), <https://oregoncub.org/news/blog/oregon-utility-service-shut-off-moratorium-more-safeguards-needed/2193/>.

413. Dirk VanderHart, *Some Oregon Utilities Resume Disconnecting Customers*, OPB (Aug. 26, 2020, 9:00 AM), <https://www.opb.org/article/2020/08/26/some-oregon-utilities-resume-disconnecting-customers/>.

414. *See* Joint Petition, Duke Energy Indiana, LLC, Cause No. 45377, 2020 IND. PUC LEXIS 219 (Ind. U.R.C. June 29, 2020).

415. *Maine Utility Moratorium Ends After Pressure from Power Companies*, ME. BEACON (Nov. 20, 2020), <https://mainebeacon.com/maine-utility-moratorium-ends-after-pressure-from-power-companies/>.

time assistance using money that other customers donated.<sup>416</sup> Utilities in Washington lobbied against the governor imposing a disconnection ban saying, “No one was being shut off. There were no complaints.”<sup>417</sup> Having a legislative or executive policy in place acts as insurance against a commission bowing to pressure from utilities.

## 2. *Commissions May End Moratoriums Too Quickly*

Even if commissions start with a proper moratorium, they might end things too soon. Texas’s Public Utility Commission allowed disconnections to resume in the summer and bragged that it “protected roughly 600,000 Texas households from disconnection for non-payment during the darkest days of the COVID-19 pandemic.”<sup>418</sup> Of course, it was proclaiming the “darkest days” had passed while in the eye of the hurricane.

Connecticut’s Commission quickly ended utility shutoffs when the pandemic began, originally stating the ban would last as long as the state of emergency.<sup>419</sup> However, by 2021, power companies were submitting requests to resume cutting off power.<sup>420</sup> An energy lobbyist in Georgia told the state utility commission in the first week of June, “[a] lot of the dire predictions for the state of Georgia have not come true...” as he urged the commission to restart disconnections.<sup>421</sup> The commission agreed and approved disconnections that same day.<sup>422</sup>

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416. Jack Money, *OG&E To Resume Disconnects for Customers Who Don’t Pay Their Bills*, OKLAHOMAN, <https://www.oklahoman.com/article/5665352/coronavirus-in-oklahoma-oklahoma-gas-and-electric-to-resume-disconnects-for-customers-who-dont-pay-their-bills> (June 25, 2020, 1:22 AM),

417. VanderHart, *supra* note 413.

418. TEX. PUB. UTIL. COMM’N, *A LOOK BACK AT THE PUC’S RESPONSE TO COVID-19* (2020) (report available at <http://www.puc.texas.gov/images/facts/PUCTX-COVID19-FAQ-FAQ.pdf>); *See also* News Release, Tex. Pub. Util. Comm’n, PUC Emergency Actions to Protect Texas Electricity Customers (Feb. 21, 2020) (<https://www.puc.texas.gov/agency/resources/pubs/news/2021/PUCTX-REL-COLD21-022121-EOM.pdf>) (the Commission eventually brought back utility disconnections, but only after ice storms hobbled the state).

419. Letter from Jeffrey R. Gaudiosi, Exec. Sec’y Pub. Util. Reg. Auth., to William Tong, Conn. Att’y Gen. (Mar. 12, 2020) (<https://portal.ct.gov/-/media/Coronavirus/20200312-PURA-utility-shut-off.pdf>).

420. Pat Eaton-Robb, *Lamont Seeking to Extend Expired Shut-off Moratorium*, AP NEWS (Feb. 24, 2021), <https://apnews.com/article/pandemics-connecticut-ned-lamont-utilities-coronavirus-pandemic-8df0dfdce5fbb62d48a1348603022b2>.

421. Nolin, *supra* note 408.

422. Jill Nolin, *PSC Gives Utilities OK to Once Again Cut Service to Delinquent Customers*, GA. RECORDER (June 2, 2020, 2:51 PM), <https://georgiarecorder.com/brief/psc-gives-utilities-ok-to-once-again-cut-service-to-delinquent-customers/>.

By October 2020, only twenty-one states still had disconnection bans in place.<sup>423</sup> By January 2021, it was eleven.<sup>424</sup> Recall that January 2021 was the heart of the worst surge for both cases and deaths of COVID-19 at the time,<sup>425</sup> and many people were still at risk of disconnection. A survey of 187 utilities in Wisconsin found that more than 71,000 customers were eligible to be disconnected.<sup>426</sup> Pennsylvania's commission voted to end the moratorium at a time when the most recent data (which admittedly was several months old) indicated 800,000 people would risk losing power across the state.<sup>427</sup>

### 3. Commissions Have Limited Jurisdiction

Another problem with relying on commissions alone to handle the issue is that their reach is often limited. They may only regulate utilities that fall under their jurisdiction.<sup>428</sup> This means that shutoff moratoriums could only be mandated for a subset of utilities. For instance, New Mexico's commission could not bar municipal utilities from disconnecting customers.<sup>429</sup> Arizona's regulated utilities voluntarily stopped disconnections through the end of 2020, but publicly owned utilities were

423. Tony Romm, *supra* note 409.

424. Alex Brown, *'Tidal Wave' of Evictions, Utility Shutoffs Tests Lawmakers*, PEW CHARITABLE TRUSTS (Jan. 28, 2021), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2021/01/28/tidal-wave-of-evictions-utility-shutoffs-tests-lawmakers>.

425. *COVID-19 Tracker, United States*, REUTERS, <https://graphics.reuters.com/world-coronavirus-tracker-and-maps/countries-and-territories/united-states/> (last visited May 16, 2021).

426. WIS. DIV. DIGIT. ACCESS, CONSUMER & ENV'T AFF. STAFF, 5-UI-120 UPDATE UTILITY DISCONNECTION PLANS AND UPDATED DATA 8 (2020) (presentation available at [https://www.wpr.org/sites/default/files/disconnection\\_data\\_-\\_july\\_2020.pdf](https://www.wpr.org/sites/default/files/disconnection_data_-_july_2020.pdf)).

427. Anya Litvak, *Utilities Can Resume Shutting Off Non-Paying Customers Next Month, Regulators Decide*, PITT. POST-GAZETTE (Oct. 8, 2020), <https://www.post-gazette.com/business/powersource/2020/10/08/Utilities-can-resume-shutting-off-non-paying-customers-November-PUC-regulators-pandemic/stories/202010080142>.

428. *E.g.* CAL. CONST. art. XII, § 6 (stating the commission may regulate "all public utilities subject to its jurisdiction"); MONT. LEGIS. SERV. DIV., UTILITY COMMISSIONS: STATE REGULATORY STRUCTURES IN THE WEST 3–6 (2019) (report available at <https://leg.mt.gov/content/Committees/Interim/2019-2020/Energy-and-Telecommunications/Meetings/Sept-2019/%28Tab%20%29%20Utility%20Commission%20Structures.pdf>) (listing varying jurisdictions of different commissions); VanderHart, *supra* note 413 (noting that different types of utilities were subject to different kinds of shutoff orders).

429. Associated Press, *Regulation Gap to Allow Utility Disconnections in New Mexico*, U.S. NEWS & WORLD REP. (Aug. 7, 2020, 12:41 PM), <https://www.usnews.com/news/best-states/new-mexico/articles/2020-08-07/regulation-gap-to-allow-utility-disconnections-in-new-mexico>.

exempt from even this pledge.<sup>430</sup> On the other hand, North Carolina Governor Roy Cooper relied on his broad emergency power to pause disconnections for all “political subdivisions, organizations, quasi-governmental entities, and businesses that provide” utilities—a much wider sweep.<sup>431</sup>

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This is not to say that commissions should not be involved in preventing utility shutoffs, only that states should supplement commission orders with legislative and/or executive action. Every state listed in this Article where the governor or legislature acted also had support from the state commission.<sup>432</sup> The more government actors working to protect residents, the less likely someone will slip through the cracks.

#### CONCLUSION

The year is 1946. The thought of five or six evictions a day was described as “so numerous as to impose an impossible burden on the court.”<sup>433</sup> It was such a disturbing figure that a St. Joseph, Missouri justice of the peace threatened to declare an unofficial ban on evictions.<sup>434</sup> In Racine, Illinois, Sheriff Robert Matheson was so shocked by the prospect of executing twenty-two eviction writs—which would put 100 children on the streets—he called together a meeting of civic leaders and vowed if there was “anything” he could do to stop evictions, he would do it.<sup>435</sup>

Somewhere along the way, we became numb to the horrors of eviction and allowed them to multiply to levels that would have been unimaginable less than a century ago. People like Jamie Burson are paying the price.

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430. Abigail Sawyer, *Arizona Utilities Extend Shut-Off Suspensions Until 2021*, CAL. ENERGY MKT.S (Sept. 18, 2020), [https://www.newsdata.com/california\\_energy\\_markets/southwest/arizona-utilities-extend-shut-off-suspensions-until-2021/article\\_39446624-f9e9-11ea-82a5-9bcd011357b4.html](https://www.newsdata.com/california_energy_markets/southwest/arizona-utilities-extend-shut-off-suspensions-until-2021/article_39446624-f9e9-11ea-82a5-9bcd011357b4.html).

431. N.C. Exec. Order No. 124, at 4 (Mar. 31, 2020), <https://files.nc.gov/governor/documents/files/EO124-Utilities-Evictions-Financial-Services.pdf>.

432. *State Response Tracker*, NAT’L ASS’N REGUL. UTIL. COMM’RS (Mar. 23, 2021), <https://www.naruc.org/compilation-of-covid-19-news-resources/state-response-tracker/>.

433. *St. Joseph Justice of Peace May Declare Evictions ‘Moratorium,’* MOBERLY MONITOR-INDEX, July 16, 1946, at 8 (the newspaper article is available at <https://www.newspapers.com/image/19398514/>).

434. *Id.*

435. *Eviction Moratorium Urged During Housing Shortage*, DAILY TRIBUNE, Sept. 12, 1946, at 1, (the newspaper article is available at <https://www.newspapers.com/image/243359326/>).

Jamie spent much of the pandemic living out of her two-door sedan.<sup>436</sup> Her eleven-year-old son used the passenger seat as his bedroom and classroom as it was the only place he had available to attend virtual classes.<sup>437</sup> Jamie still held down a job at Wal-Mart and occasionally asked friends and family to allow her son to stay with them, but not herself, as she was afraid of inadvertently spreading the virus to them.<sup>438</sup> As tragic as her situation was, it was made all the worse by its timing: she was evicted for missing rent in February 2020, so she was not protected by the state eviction moratorium or the courts.<sup>439</sup> Had she been able to gather together rent money in February, she probably would have found safe harbor under the state's eviction moratorium.

During this pandemic, there was a collective acknowledgment that ordinary people should not be held responsible for economic turmoil and health conditions that were outside of their control. To this end, the government undertook historic efforts to expand unemployment, provide direct stimulus, stave off evictions and utility disconnections, and freely distribute vaccines. As welcome as this epiphany is, it only underscores how absurd the status quo was. Of course, it is not the dishwasher's fault when their restaurant closes due to COVID-19, but the factory worker is no more responsible when their plant shuts down due to cheap foreign labor. Why was it Jamie Burson's fault for missing rent in February 2020 but nobody's fault for missing rent in March?

Unfortunately, most of the above-listed reforms will melt away when the pandemic is declared over. But the shift in societal expectations of what the government owes tenants may well endure. After all, the government has shown beyond a doubt that it has the power to help. The only question now is whether it will.

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436. Levin, Duara & Yee, *supra* note 250.

437. *Id.*

438. *Id.*

439. *Id.*