

Seton Hall University

eRepository @ Seton Hall

---

Student Works

Seton Hall Law

---

2023

## The End of the COVID-19 Eviction Moratorium: A Comparative Look at Two States' Responses

Alexandrea Williams

Follow this and additional works at: [https://scholarship.shu.edu/student\\_scholarship](https://scholarship.shu.edu/student_scholarship)



Part of the Law Commons

---

## I. Introduction

On March 13, 2020, President Donald Trump declared a national emergency due to the novel SARS-CoV-2 (“COVID”) virus.<sup>1</sup> Two days later, U.S. states began to shut down to stop the spread of the communicable virus.<sup>2</sup> From March 16, 2020, to April 3, 2020, approximately 16 million workers in the United States lost their job.<sup>3</sup> Prior to the COVID pandemic, the United States was in the midst of “a decade long-economic expansion.”<sup>4</sup> Current Population Survey found that employment fell by 21 million from the last quarter of 2019 to the second quarter of 2020.<sup>5</sup> By May 9, 2020, the United States unemployment rate jumped to approximately 14.7%, the highest unemployment rate since the Great Depression.<sup>6</sup> 20% of the workforce were either laid off or furloughed in either March or April of 2020.<sup>7</sup>

The economic fallout placed tens of millions of United States renters at risk of losing their housing.<sup>8</sup> In April, May, June, and July of 2020, approximately one-third of United States renters could not pay their rent on time and in full.<sup>9</sup> Research estimated that thirty to forty

---

<sup>1</sup> Centers for Disease Control and Prevention. CDC Museum COVID-19 Timeline, <https://www.cdc.gov/museum/timeline/covid19.html>. (last accessed Jan. 2, 2022).

<sup>2</sup> *Id.*

<sup>3</sup> Dylan Walsh, *Yes, the Unemployment Numbers Are Bad, but the Pain Might Be Relatively Short*, INSIGHTS STAN. BUS. (Apr. 10, 2020), <https://www.gsb.stanford.edu/insights/yes-unemployment-numbers-are-bad-pain-might-be-relatively-short>; see also Peter H. Huang, *Pandemic Emotions: The Good, The Bad, and The Unconscious-Implications for Public Health, Financial Economics, Law, and Leadership*, 16 NW. J. L. & SOC. POL'Y 81, 103 (2021).

<sup>4</sup> Monthly Labor Review, *Unemployment Rises in 2020, As the Country Battles the COVID-19 Pandemic*, U.S. BUREAU OF LABOR STATISTICS (June 2021), <https://www.bls.gov/opub/mlr/2021/article/unemployment-rises-in-2020-as-the-country-battles-the-covid-19-pandemic.htm>.

<sup>5</sup> *Id.*

<sup>6</sup> Centers for Disease Control and Prevention, *supra* note 1.

<sup>7</sup> Board of Governors of the Federal Reserve System, *Report on the Economic Well-Being of U.S. Households in 2019, Featuring Supplemental Data from April 2020*, FEDERAL RESERVE (May 2020), at 53, <https://www.federalreserve.gov/publications/files/2019-report-economic-well-being-us-households-202005.pdf>.

<sup>8</sup> See Sam Gilman *The Return On Investment Of Pandemic Rental Assistance: Modeling A Rare Win-Win-Win*, 18 IND. HEALTH L. REV. 293, 299 (2021).

<sup>9</sup> See Michelle D. Layser, Edward W. De Barbieri, Andrew J. Greenlee, Tracy A. Kaye, & Blaine G. Saitop, *Mitigating Housing Instability During a Pandemic*, 99 OR. L. REV. 445, 447 (2021); see also Alicia Adamczyk, 32%

million renters in the United States were at risk of eviction in the last several months of 2020.<sup>10</sup> Because of economic hardships from the pandemic, more than 25% of rental households in the United States needed help making rental payments.<sup>11</sup>

In response to these economic concerns, the federal, state, and local governments instituted measures to alleviate economic stress. Congress passed the Coronavirus Aid, Relief and Economic Security Act, which included a 120-day eviction moratorium and provided \$150 billion in a Coronavirus relief fund.<sup>12</sup> The Center for Disease Control (“CDC”) also passed agency orders providing another level of eviction protection for renters.<sup>13</sup> Forty-three states and Washington D.C. also passed eviction moratoriums with varying levels of protection.<sup>14</sup>

On August 26, 2021, the United States Supreme Court determined the CDC had acted unlawfully by extending the federal eviction moratorium.<sup>15</sup> The Court acknowledged landlord-tenant relationships as a state law issue and advised Congress that if it wanted to alter the balance of state and federal government regarding this relationship, it must pass a law with “exceedingly clear language.”<sup>16</sup> The Supreme Court left the possibility of an eviction moratorium for federally backed housing up to Congress.<sup>17</sup> While some Democratic Congress members have pushed for a

---

*of U.S. household missed their July housing payments*, CNBC (Jul. 8, 2020) <https://www.cnbc.com/2020/07/08/32-percent-of-us-households-missed-their-july-housing-payments.html>.

<sup>10</sup> Emily Benfer, et al., *The COVID-19 Eviction Crisis: An Estimated 30-40 Million People in America Are at Risk*, ASPEN INSTITUTE, (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/>.

<sup>11</sup> *Id.*

<sup>12</sup> Coronavirus Aid, Relief, and Economic Security Act (CARES Act), 15 U.S.C. § 9058 (2020) § 4024. [hereinafter CARES Act]; see also Katy Ramsey Mason *LESSONS FROM TENANT PROTECTION PROVISIONS IN FEDERAL FINANCIAL CRISIS LEGISLATION*, 14 U. ST. THOMAS J.L. & PUB. POL'Y 130, 131 (2020).

<sup>13</sup> 85 F.R. 55292, (Sept. 4, 2020).

<sup>14</sup> Benfer, *supra* note 10.

<sup>15</sup> *Alabama Assoc. of Realtors v. HHS*, 210 L.Ed.2d 856, 862 (U.S. 2021).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

federal eviction moratorium, such a bill is unlikely to make it through Congress.<sup>18</sup> Because of the lack of progress in Congress and the lack of protection for most renters (those who do not live in federally backed housing), individual States have been left to pass their own legislation to protect renters.<sup>19</sup> At the time of writing, only eleven states and Washington D.C. had some sort of eviction moratorium.<sup>20</sup> Two of the most comprehensive eviction moratoriums come from New Jersey and Washington state.

Despite the Supreme Court's decision that ended the federal eviction moratorium, certain New Jersey tenants continue to be protected from evictions for non-payment due to COVID-19.<sup>21</sup> In March of 2020, New Jersey Governor Phil Murphy put into place an eviction moratorium that allowed landlords to file eviction proceedings but barred the final steps of the eviction process.<sup>22</sup> As the COVID numbers began to decline and the public health crisis started coming to an end, New Jersey legislatures began to work on protections for tenants as the eviction moratorium lifted.<sup>23</sup> On August 4, 2021, Governor Murphy signed a new law and issued an executive order that protects certain classes of tenants from being evicted due to non-payment of rent.<sup>24</sup> For tenants with a household income below 120% of the area median income, landlords

---

<sup>18</sup> Jacob Pramuk, *Rep. Bush, Sen. Warren introduce bill to reinstate federal eviction moratorium*, CNBC, (Sep. 21, 2021, 6:26 PM), <https://www.cnbc.com/2021/09/21/eviction-moratorium-cori-bush-elizabeth-warren-want-to-reinstate-ban.html>.

<sup>19</sup> Annie Nova, *The national eviction ban is over. But renters still can't be forced out in these states*, CNBC, (Aug. 30, 2021, 1:04 PM), <https://www.cnbc.com/2021/08/30/evictions-are-still-banned-in-these-states-.html>.

<sup>20</sup> Mortgage Bankers Association, *'Map of Eviction Moratoriums by State'* MORTGAGE BANKERS ASSOCIATION (Oct. 20, 2021) <https://www.mba.org/advocacy-and-policy/cmf-policy-issues/cmf-eviction-moratoriums-by-state-map> (while eleven states have some sort of eviction moratorium, only three states have residential eviction moratoriums, one has residential and commercial, four states and Washington D.C. have residential eviction moratoriums while tenants apply for rental assistance, and the remaining three states have local eviction moratoriums).

<sup>21</sup> *See generally* N.J.S.A. 52:27D-287.9(a).

<sup>22</sup> Ashley Balcerzak, *NJ evictions: Step-by-step guide to what a landlord-tenant case looks like*, NORTHJERSEY.COM (Feb. 8, 2022), <https://www.northjersey.com/story/news/new-jersey/2022/02/08/guide-landlord-tenant-court-eviction-moratorium-nj/9190914002/>.

<sup>23</sup> *See id.*

<sup>24</sup> Catherine Weiss, Natalie J. Kraner, & Christina Holder, *Residential Evictions: What Tenants Need to Know*, LOWENSTEIN SANDLER LLP, (Oct. 7, 2021) <https://www.lowenstein.com/news-insights/publications/articles/residential-evictions-what-tenants-need-to-know-weiss>.

cannot evict tenants for non-payment from March 1, 2020, to August 31, 2021.<sup>25</sup> For tenants with a household income below 80% of the area median income, landlords cannot evict tenants for non-payment of rent due from March 1, 2020, to December 31, 2021.<sup>26</sup> Qualifying tenants had to file a self-certification form declaring “(i) the household income; (ii) that the household was unable to pay rent due to circumstances arising from the COVID-19 pandemic; and (iii) the household applied for State, county or local rental assistance programs for which they were eligible.”<sup>27</sup> Among other provisions, the legislation transfers debt arrears from rent non-payment from COVID-19 into civil debt.<sup>28</sup> The legislation attempts to strike a balance between tenant and landlord obligations by giving landlords an option to recover this debt through a money judgment in the Superior Court and promoting housing stability.<sup>29</sup>

Washington Governor Jay Inslee signed a similar piece of legislation.<sup>30</sup> Washington enacted an eviction moratorium in March of 2020 in response to the COVID-19 pandemic.<sup>31</sup> On April 22, 2021, Governor Inslee signed the Engrossed Second Substitute Senate Bill 5160<sup>32</sup> gap legislation.<sup>33</sup> The legislation expired on October 31, 2021.<sup>34</sup> The legislation added new protections for tenants who did not pay their rent between March 1, 2020, and the following six

---

<sup>25</sup> See N.J.S.A. 52:27D-287.9(a); see also N.J.S.A. 52:27D-287.8.

<sup>26</sup> See N.J.S.A. 52:27D-287.9(a); see also N.J.S.A. 52:27D-287.8.

<sup>27</sup> N.J.S.A. 52:27D-287.9(d)(1)(a).

<sup>28</sup> N.J.S.A. 52:27D-287.7(i).

<sup>29</sup> N.J.S.A. 52:27D-287.9(b).

<sup>30</sup> See generally Wash. Rev. Code § 59.18.630 (2021).

<sup>31</sup> Joseph O’Sullivan & Heidi Groover, *Inslee extends eviction ban in Washington through Sept. 30 to give more time for COVID-19 aid to help*, SEATTLE TIMES (June 24, 2021), <https://www.seattletimes.com/seattle-news/politics/inslee-extends-eviction-moratorium-in-washington-through-sept-30/>.

<sup>32</sup> Quinn Posner, *Impact of E2SSb 5160 Upon the Washington Residential Landlord Tenant Act*, NEW LANDLORD SOLUTIONS BLOG (Jun. 10, 2021), <https://www.waevictions.com/impact-of-e2ssb-5160-upon-the-washington-residential-landlord-tenant-act>.

<sup>33</sup> *Id.*

<sup>34</sup> Steve Soliz *Threat of Eviction Returns to Washington Renters With End to Statewide Moratorium*, KING 5 (Nov. 1, 2021, 7:06 PM), <https://www.king5.com/article/news/local/olympia/threat-of-eviction-returns-to-washington-renters-with-end-to-statewide-moratorium/281-e3cba1ab-f01f-46e2-8079-c9347c1a4931>.

months after the moratorium's expiration.<sup>35</sup> These new protections prevent landlords from charging late fees; reporting the non-payment to a prospective landlord; reporting any filing of an unlawful detainer; taking adverse action for new tenant applications for non-payment of rent, and requiring comprehensive repayment plans for the tenants behind on rent due to COVID-19.<sup>36</sup>

This comment will first look at the eviction crisis tied to the COVID pandemic with an emphasis on the federal government's response to the crisis. The second part of this comment will analyze and compare the legislative approaches of New Jersey and Washington to address the crisis. This comment compares the legislation of New Jersey and Washington because of the similarity in population and because of the similarity in the two states' response to the eviction crisis.<sup>37</sup> This comment will demonstrate the value of state responses and argue the importance of looking to New Jersey and Washington's legislation in response to the eviction crisis for any future eviction crises.<sup>38</sup>

---

<sup>35</sup> WASH. REV. CODE § 59.18.630(2) (2021).; *see also* Posner, *supra* note 32.

<sup>36</sup> *See* WASH. REV. CODE § 59.18.630(3) (2021); *see also* Posner, *supra* note 32.

<sup>37</sup> *See Population of the US States and principal US territories*, NATIONS ONLINE PROJECT (last visited Apr. 6, 2022), <https://www.nationsonline.org/oneworld/US-states-population.htm>; *see also* Ann O'Connell, *Emergency Bans on Evictions and Other Tenant Protections Related to Coronavirus*, NOLO (last visited Apr. 6, 2020), <https://www.nolo.com/evictions-ban>.

<sup>38</sup> This comment will not discuss the constitutionality of potential Congressional legislation or the disproportionate effect eviction moratoriums have on minority communities.

## II. Examining the Need for Government Intervention

The highly contagious coronavirus has presented the whole world with a “historic threat to public health.”<sup>39</sup> The virus spreads through respiratory droplets from an infected individual to a noninfected individual within six feet.<sup>40</sup> Even those who do not show any symptoms of the virus can spread the virus.<sup>41</sup> The virus also spreads rapidly in “poorly ventilated and/or crowded indoor settings, where people tend to spend longer periods of time.”<sup>42</sup>

Just days after the World Health Organization declared COVID-19 a pandemic, President Donald Trump declared a national emergency.<sup>43</sup> Following the declaration, states began declaring a state of emergencies; enacting stay-at-home orders, banning gatherings; restricting out-of-state travel; ordering the closures of schools, restaurants, and non-essential retail; and eventually mandating masks.<sup>44</sup> One of the primary tools governments utilized to decrease the spread of the virus was social distancing.<sup>45</sup> However, social distance measures, business closures, and stay-at-home orders caused a rise in unemployment.<sup>46</sup> The Census Bureau has estimated that 36% of the 122.8 million households in the United States are renters.<sup>47</sup> In 2019,

---

<sup>39</sup> 85 F.R. 55292, (Sept. 4, 2020) at 1.

<sup>40</sup> *Id.*

<sup>41</sup> Katie Kerwin, *The Truth About COVID-19 and Asymptomatic Spread: It's Common, so Wear a Mask and Avoid Large Gatherings*, UCHEALTH, (Nov. 5, 2020), <https://www.uchealth.org/today/the-truth-about-asymptomatic-spread-of-covid-19/> (explaining the importance of wearing a mask as individuals who are asymptomatic “play a role in community spread.”).

<sup>42</sup> *Coronavirus Disease (COVID-19): How is it Transmitted?*, WORLD HEALTH ORGANIZATION (Dec. 23, 2020), <https://www.who.int/news-room/questions-and-answers/item/coronavirus-disease-covid-19-how-is-it-transmitted>.

<sup>43</sup> Centers for Disease Control and Prevention, *supra* note 1.

<sup>44</sup> Centers for Disease Control and Prevention, *supra* note 1.

<sup>45</sup> See Laysner, De Barbieri, Greenlee, Kaye, & Saitop, *supra* note 9.

<sup>46</sup> See Laysner, De Barbieri, Greenlee, Kaye, & Saitop, *supra* note 9.

<sup>47</sup> See Drew Desilver, *As national eviction ban expires, a look at who rents and who owns in the U.S.*, PEW RESEARCH CENTER (Aug. 2, 2021).

the median income of those renters was \$42,500.<sup>48</sup> 39% of individuals who reported having a job in February of 2020 with an income below \$40,000 lost their job in March of 2020.<sup>49</sup>

Renters that cannot afford to pay their rent risk eviction. Many unsheltered individuals seek shelter in congregate living situations such as homeless shelters or with family and friends.<sup>50</sup> In 2017, the Census Bureau American Housing Survey conducted a survey and found that 32% of renters would move in with family and friends if evicted.<sup>51</sup> The very nature of congregate settings makes it difficult for them to “adhere to best practices.”<sup>52</sup> This ultimately undermines the public health response and furthers the spread of the virus.<sup>53</sup> “Unsheltered homelessness also increases the risks that individuals will experience severe illnesses from COVID-19.”<sup>54</sup>

Overcrowding in homes poses its own set of problems. Secondary attacks of COVID-19 in multi-person homes have been estimated to be 17%, and “household contacts are estimated to

---

<sup>48</sup> Erik Gartland, *2019 Income-Rent Gap Underscores Need for Rental Assistance, Census Data Show*, CENTER ON BUDGET AND POLICY PRIORITIES (Sept. 18, 2020), <https://www.cbpp.org/blog/2019-income-rent-gap-underscores-need-for-rental-assistance-census-data-show#:~:text=After%20adjusting%20for%20inflation%2C%20median,gap%20between%20rent%20and%20income>.

<sup>49</sup> Board of Governors of the Federal Reserve System, *supra* note 7 at 53.

<sup>50</sup> See, National Alliance to End Homelessness, *The State of Homelessness in America*, (last accessed Jan. 2, 2022), <https://endhomelessness.org/homelessness-in-america/homelessness-statistics/state-of-homelessness-report-legacy/> (seventeen out of every ten thousand people in the general population are unsheltered. In 2017 360,867 unsheltered individuals lived in either a shelter or a transitional housing); *see also* Pam Fessler, *HUD: Growth of Homelessness During 202 Was ‘Devastating,’ Even Before the Pandemic*, NPR, (Mar. 18, 2021, 6:01 AM), <https://www.npr.org/2021/03/18/978244891/hud-growth-of-homelessness-during-2020-was-devastating-even-before-the-pandemic> (the rate of unsheltered individuals has continued to grow for the last four years. In January 2020, there were an estimated 580,000 unsheltered individuals in the United States. This was a 2% increase from 2019. The Department of Housing and Urban Development Secretary Marcia Fudge stated the department was aware the pandemic has made the “homelessness crisis worse,” and called the statistics “devastating.”).

<sup>51</sup> 86 F.R. 43245, (Aug. 6, 2021) at 5.

<sup>52</sup> 85 F.R. 55292, (Sept. 4, 2020) at 5; *See also* Roge Karma, “*Shelter in Place*” is Impossible If You Can’t Afford a Home, VOX, (Apr. 1, 2020, 9:45 AM), <https://www.vox.com/2020/4/1/21200473/coronavirus-covid-19-homelessness-housing-public-health-social-distancing> (generally, shelters lack the resources that are needed to combat COVID. Shelters do not have hand sanitizer, they don’t have masks and gloves, they are losing staff which leads to shelter closures, and they are having difficulties implementing social distancing measures. Some shelters are even taking out beds to social distance. This is happening in a time when the number of unsheltered individuals continues to grow).

<sup>53</sup> 85 F.R. 55292, (Sept. 4, 2020) at 1.

<sup>54</sup> *Id.*



be [six] time[s] more likely to become infected by an index case of COVID-19 than other close contacts.”<sup>55</sup> In a similar study conducted by the University of North Carolina (“UNC”), one hundred positive COVID patients and 208 household members were tested.<sup>56</sup> Researchers took nasal swabs of the household members every week and found a 32% secondary attack rate among the household members.<sup>57</sup> The UNC team found that most secondary cases “occurred within the first week of the initial positive COVID test.”<sup>58</sup> Researcher Dr. Feng-Chang Lin stated that household transmission is really “the main place where most people are getting COVID.”<sup>59</sup>

Government policies that keep renters housed are essential because it prevents individuals from seeking shelter in congregate housing settings and helps decrease the spread of the virus. There are two types of government policy that further this goal: legal measures and cash assistance.<sup>60</sup>

#### **A. Legal Measures**

All levels of government can enact legal measures designed to prevent the displacement of renters. Legal measures that the government can take include “providing access to mediation services, access to counsel, and process changes to lengthen the eviction timeline.”<sup>61</sup> Legal measures are designed to keep individuals in their homes.<sup>62</sup>

---

<sup>55</sup> 86 F.R. 43245, (Aug. 6, 2021).

<sup>56</sup> *New Study Gives Insight Into How Often COVID-19 Spreads Through Households*, UNC GILLINGS SCHOOL OF GLOBAL PUBLIC HEALTH, (Aug. 30, 2021), <https://sph.unc.edu/sph-news/new-study-gives-insight-into-how-often-covid-19-spreads-through-households/>.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> See Gilman, *supra* note 8, at 308.

<sup>61</sup> See Gilman, *supra* note 8, at 308.

<sup>62</sup> See Gilman, *supra* note 8, at 308.

One of the most effective legal measures has been eviction moratoriums. Eviction moratoriums are an effective public health measure in preventing the spread of COVID.<sup>63</sup> Eviction moratoriums help mitigate the spread of the virus because they make it easier to implement self-isolation orders, stay-at-home orders, and social distancing orders.<sup>64</sup> Perhaps the most significant effect of an eviction moratorium is that it helps individuals avoid becoming homeless. When individuals have a place to live, they do not seek shelter in congregate living situations, which helps stop the spread of the virus.

Civil debt conversion is another “exceedingly powerful legal measure to prevent eviction.”<sup>65</sup> Civil debt conversion takes debt from a lack of rental payment, which landlords can use as a basis for eviction, and transfers it to civil debt, which landlords cannot use as a basis for eviction.<sup>66</sup> Civil debt conversion allows landlords to collect the money they are owed from non-payment by suing in civil court.<sup>67</sup>

## **B. Cash Assistance**

Renters need money to pay their landlords. And the landlords need money to pay their mortgages and other expenses. One way to fix both problems is to give money to renters to pay their rent. One way to do this is through direct cash transfers, such as unemployment, housing vouchers, universal basic income, emergency rental assistance, and grants.<sup>68</sup>

---

<sup>63</sup> 85 F.R. 55292, (Sept. 4, 2020) at 3.

<sup>64</sup> *Id.*

<sup>65</sup> See Gilman, *supra* note 8, at 311.

<sup>66</sup> Sam Gilman, Jacqueline Woo, Katherine Lucas McKay, Zach Neumann, & Tim Shaw, *With Federal Moratorium Expiring, 15 Million People at Risk of Eviction*, ASPEN INSTITUTE at 5 (Jul. 2021), [https://www.aspeninstitute.org/wp-content/uploads/2021/07/AI-017-FSP-Report\\_Eviction-Report\\_r4.pdf](https://www.aspeninstitute.org/wp-content/uploads/2021/07/AI-017-FSP-Report_Eviction-Report_r4.pdf).

<sup>67</sup> See Gilman, *supra* note 8, at 311.

<sup>68</sup> See Gilman, *supra* note 8, at 312.

Keeping the public safe from a public health crisis should be the priority of all levels of government. Any policy that keeps individuals housed and out of congregate living situations would help mitigate a public health crisis.

### III. The Federal Government's Response to the Eviction Crisis

On March 27, 2020, in response to the economic ramifications of the virus and state shutdowns, Congress passed the \$2.2 trillion CARES Act.<sup>69</sup> The CARES Act put \$150 billion in a new Coronavirus Relief Fund for state and local governments for virus-related costs.<sup>70</sup> The legislation also included a 120-day federal eviction moratorium.<sup>71</sup> The CARES Act provided the “most comprehensive set of eviction protections for residential tenants that the federal government [had] ever passed.”<sup>72</sup> Landlords could not force covered tenants to vacate the property, and landlords could not penalize tenants for late payments or non-payments during the covered period.<sup>73</sup> The Census Bureau has estimated that 36% of the 122.8 million households in the United States are renters.<sup>74</sup> Out of the 43 million renters in the United States, researchers estimated roughly 12.3 million rental units are federally backed and covered under the Act eviction moratorium.<sup>75</sup> Congress meant for the protections within the CARES Act to supplement state and local eviction moratoriums and rent freezes.<sup>76</sup>

---

<sup>69</sup> See generally CARES Act.

<sup>70</sup> See CARES Act.

<sup>71</sup> CARES Act § 4024; see also *Federal Eviction Moratoriums in Response to the COVID-19 Pandemic*, CONGRESSIONAL RESEARCH SERVICE (Mach. 30, 2021), <https://crsreports.congress.gov/product/pdf/IN/IN11516#:~:text=The%20stated%20purpose%20of%20the,housing%20conditions%20resulting%20from%20eviction.>

<sup>72</sup> Lessons From Tenant Protection Provisions In Federal Financial Crisis Legislation, 14 U. ST. THOMAS J.L. & PUB. POL'Y 130, 132 (2020).

<sup>73</sup> CARES Act § 4024(b).

<sup>74</sup> See Drew Desilver, *As national eviction ban expires, a look at who rents and who owns in the U.S.*, PEW RESEARCH CENTER (Aug. 2, 2021).

<sup>75</sup> *CARES Act Eviction Moratorium*, CONGRESSIONAL RESEARCH SERVICE, (Apr. 7, 2020), <https://crsreports.congress.gov/product/pdf/IN/IN11320>.

<sup>76</sup> *Id.*

Congress did not renew the protections when the CARES Act moratorium lapsed in July 2020.<sup>77</sup> On September 4, 2020, the CDC issued an agency order, extending the federal halt on evictions through December 31, 2020.<sup>78</sup> The CDC stated the goal of the order was “mitigating the spread of COVID-19 within congregate or shared living settings, or through unsheltered homelessness; mitigating the further spread of COVID-19 from one U.S. State or U.S. territory into any other U.S. State or U.S. territory; and supporting response efforts to COVID-19 at [all levels].”<sup>79</sup> On December 27, 2020, Congress extended the eviction moratorium until January 31, 2021, through the Consolidated Appropriations Act.<sup>80</sup> The CDC then extended the moratorium through March 31, 2021, and on March 29, 2021, the CDC extended the moratorium through June 30, 2021.<sup>81</sup> For the fourth time, on August 3, 2021, the CDC extended the eviction moratorium through October 3, 2021.<sup>82</sup>

In November 2020, the Alabama Association of REALTORS and the Georgia Association of REALTORS<sup>83</sup> initially filed a lawsuit on behalf of small housing providers across the United States.<sup>84</sup> They argued that the eviction moratorium hurt small housing providers, as they have lost months of income due to the eviction moratorium.<sup>85</sup> The associations challenged

---

<sup>77</sup> *Alabama Assoc. of Realtors v. HHS*, 210 L.Ed.2d 856, 858 (U.S. 2021).

<sup>78</sup> 85 F.R. 55292, (Sept. 4, 2020).

<sup>79</sup> *Id.*

<sup>80</sup> Paul P. Mattingly & Thomas Michaelides, *Consolidated Appropriations Act, 2021—Key Provisions Affecting the Real Estate Industry*, SEYFARTH (Jan. 8, 2021), <https://www.seyfarth.com/news-insights/consolidated-appropriations-act-2021key-provisions-affecting-the-real-estate-industry.html>.

<sup>81</sup> *Federal Eviction Moratoriums in Response to the COVID-19 Pandemic*, CONGRESSIONAL RESEARCH SERVICE (Mar. 30, 2021), <https://crsreports.congress.gov/product/pdf/IN/IN11516#:~:text=The%20stated%20purpose%20of%20the,housing%20conditions%20resulting%20from%20eviction.>

<sup>82</sup> CDC Issues Eviction Moratorium Order in Areas of Substantial and High Transmission, CENTERS FOR DISEASE CONTROL AND PREVENTION (last visited Apr. 7, 2022), <https://www.cdc.gov/media/releases/2021/s0803-cdc-eviction-order.html>.

<sup>83</sup> These two associations are housing providers who filed the suit on behalf of “mom and pop renter housing providers across the country.”

<sup>84</sup> *Issue Brief: CDC Eviction Moratorium Litigation*, NATIONAL ASSOCIATION OF REALTORS (Aug. 27, 2021), <https://www.nar.realtor/rental-assistance/issue-brief-cdc-eviction-moratorium-litigation>.

<sup>85</sup> *Id.*

the eviction moratorium on the grounds that the CDC had exceeded its grant of authority under the Public Health Service Act authority and violated the Administrative Procedures Act and Regulatory Flexibility Act.<sup>86</sup> They also argued that the Order constituted an unconstitutional taking under the Fifth Amendment and violated their due process rights.<sup>87</sup> The CDC argued that Congress had granted them the authority to issue eviction moratoriums during a national pandemic through the Public Health Service Act<sup>88</sup> The United States District Court for the District of Columbia rejected the CDC's position and vacated the order nationwide, holding that Congress never granted such authority to the CDC.<sup>89</sup> The judgment was stayed while the government appealed the decision.<sup>90</sup> The government appealed to the Supreme Court of the United States.<sup>91</sup> On August 26, 2021, the Supreme Court ruled in favor of the associations, stating “it strains credibility to believe that this statute grants the CDC the sweeping authority it asserts.”<sup>92</sup> The Court noted that as the harm to landlords increases, the Governmental interest in the eviction moratorium has decreased.<sup>93</sup> The extension of the eviction moratorium extended over three months, which should have given the government plenty of time to distribute rental assistance funds and pivot away from the eviction moratorium.<sup>94</sup> The Court noted that the moratorium “put the applicants, along with millions of landlords across the country, at risk of irreparable harm by depriving them of rent payments with no guarantee of eventual recovery.”<sup>95</sup> The Court also noted that the government’s reading of the of the Public Health Service Act could promote administrative

---

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Alabama Assoc. of Realtors v. HHS*, 210 L.Ed.2d 856, 858 (U.S. 2021).

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at 862.

<sup>93</sup> *Id.* at 861–62.

<sup>94</sup> *Id.* at 862.

<sup>95</sup> *Id.* at 861.

overreach and declared the eviction moratorium beyond the CDC’s authority.<sup>96</sup> The Court noted that the public had a strong interest in stopping the spread of COVID, but that fact does not allow agencies to act unlawfully.<sup>97</sup> The Court vacated the District Courts stay.<sup>98</sup>

Three dissenting Justices argued, “it is far from ‘demonstrably’ clear that the CDC lacks the power.”<sup>99</sup> The current order is “substantially more tailored than its prior eviction moratorium, which automatically applied nationwide. Justified by the Delta-variant surge, the modified order targets only those regions currently experiencing sky-rocketing rates.”<sup>100</sup> The opening sentence of the Public Health Service Act states, “to make and enforce such regulations as in [its] judgment are necessary to prevent the introduction, trans-mission, or spread of communicable diseases [inter- state].”<sup>101</sup> The Dissent points out that this first sentence “grants the CDC authority to design measures that, in the agency’s judgment, are essential to contain disease outbreaks.”<sup>102</sup> The provision’s plain meaning includes the CDC’s authority to order an eviction moratorium that is necessary to stop the spread of COVID.<sup>103</sup>

While the majority struck down the CDC’s eviction moratorium, it made it clear that an eviction moratorium is not always unconstitutional; if Congress wanted to extend the federal eviction moratorium, it would need to pass legislation with “exceedingly clear language.”<sup>104</sup> Notably, the Court did not nullify all eviction moratoriums; state and local moratoriums were left alone.<sup>105</sup>

---

<sup>96</sup> *Id* at 862; see also Barry P. Kaltenbach & Scott R. Lesser, *CDC Eviction Moratorium: The Final Word*, XII NATIONAL LAW REVIEW 2 (2021).

<sup>97</sup> *Alabama Assoc. of Realtors* 210 L.Ed.2d at 862.

<sup>98</sup> *Id.*

<sup>99</sup> *Alabama Assoc. of Realtors* 210 L.Ed.2d at 862 (Breyer, J., dissenting).

<sup>100</sup> *Id.*

<sup>101</sup> Public Health Service Act of 1944, 42 U.S.C. § 201 (1944).

<sup>102</sup> *Alabama Assoc. of Realtors* 210 L.Ed.2d at 862 (Breyer, J., dissenting).

<sup>103</sup> *Id.*

<sup>104</sup> *Alabama Assoc. of Realtors* 210 L.Ed.2d at 862.

<sup>105</sup> Kaltenbach & Lesser, *supra* note 96.

Following the Supreme Court’s ruling, state and local eviction crisis responses became even more important. The Supreme Court only nullified federal response, and most United States renters do not live in rental units that were protected by federal law. State responses to the eviction crisis is the only way most United States renters will see any economic relief.

#### **IV. New Jersey’s Response to the Eviction Crisis**

On March 9, 2020, in response to the worsening COVID pandemic, New Jersey Governor Phil Murphy declared a state and public health emergency.<sup>106</sup> Governor Murphy passed Executive Order 103 to “protect the health, safety, and welfare of the people of the State of New Jersey.”<sup>107</sup> Governor Murphy “reserve[d] the right to utilize and employ all available resources of the State government and of each and every political subdivision of the State, whether of persons, properties, or instrumentalities, and to commandeer and utilize any personal services and any privately-owned property necessary to protect against this emergency.”<sup>108</sup> After Governor Murphy issued this executive order, he signed multiple other executive orders to mitigate the spread of COVID in the state of New Jersey.<sup>109</sup> On March 19, 2020, Governor Murphy signed Executive Order 106.<sup>110</sup> Executive Order 106 created an eviction moratorium to mitigate the spread of COVID.<sup>111</sup> The executive order did not stop eviction filings but instead

---

<sup>106</sup> Exec. Order No. 103 (2021), at 4; *see also Johnson v. Murphy*, 527 F. Supp. 3d 703, 707-08 (D.N.J. 2021).

<sup>107</sup> Exec. Order No. 103, *supra* note 106, at 4.

<sup>108</sup> Exec. Order 103, *supra* note 106 at 7.

<sup>109</sup> *See* Exec. Order No. 104 (2021) at 5 (limiting gathering in New Jersey to no more than 50 individuals, mandating the closure of schools, casinos, racetracks, gyms and fitness centers, entertainment centers, bars, and restaurants); *see also* Exec. Order No. 107 (2021) at 4 (mandating non-essential businesses close to the public and implementing a stay-at-home order).

<sup>110</sup> *The Status of the New Jersey Eviction Moratorium*, VOLUNTEER LAWYERS FOR JUSTICE (Jun. 21, 2021), <https://www.vljnj.org/news/new-jersey-eviction-moratorium-update>.

<sup>111</sup> *See generally* Exec. Order No. 106 (2021).

stayed the execution of warrants of removal.<sup>112</sup> Even the stay of removals was not absolute.<sup>113</sup> A judge could still permit the removal of a tenant if the removal was “in the interest of justice.”<sup>114</sup> Governor Murphy reserved the right to revoke or modify the order.<sup>115</sup>

As the pandemic began to settle and the economy rebounded, New Jersey state legislators began to work with both tenant and landlord groups in New Jersey to strike a balance in the interests of legislation to phase out the eviction moratorium. The predecessor to the S-3691 and A-4463, the People’s Bill, created the pathway for the successful passage of S-3691 and A-4463.

More than a year after the start of the COVID pandemic, housing insecurity has persisted and is one of the “greatest threats to the health and wellbeing of New Jerseyans.”<sup>116</sup> The Compassionate New Jersey Coalition pushed for legislation to provide strong housing protection for tenants throughout the pandemic.<sup>117</sup> Some of the guiding principles were: “no renter or homeowner should lose their home through eviction or foreclosure; have their credit damaged; or lose their ability to find a home in the future because of the pandemic.”<sup>118</sup> These pushes were the beginning of the “People’s Bill” (A-4034/S-2304).<sup>119</sup> The bill provided a holistic approach to the housing crisis. Provisions of the legislation gave renters long-term repayment options to avoid

---

<sup>112</sup> *The Status of the New Jersey Eviction Moratorium*, VOLUNTEER LAWYERS FOR JUSTICE (Jun. 21, 2021), <https://www.vljnj.org/news/new-jersey-eviction-moratorium-update>.

<sup>113</sup> *Id.*

<sup>114</sup> Exec. Order 106, *supra* note 111, at 4 (paragraph five of the order put the order in to effect immediately and held the order open for “no longer than two months following the end of the Public Health Emergency or State of Emergency established by Executive Order No. 103 (2020), whichever ends later. . .”); *see also Wash. St. Apartments v. Goodman*, No. A-1582-20, 2021 N.J. Super. Unpub. LEXIS 1241, at \*11 (Super. Ct. App. Div. June 25, 2021) (finding the “judge implicitly recognized what might constitute an emergency situation justifying relief from the moratorium,” in the case where the warrant of removal began before the start of the pandemic and was because of a disturbance of the peace).

<sup>115</sup> Exec. Order 106, *supra* note 111, at 3.

<sup>116</sup> Beverly Brown Ruggia, Maria Lopez-Nunez & James C. Williams, ‘People’s Bill’ Would Keep the States Residents Home and Safe, NJ SPOTLIGHT (Apr. 12, 2021), <https://www.njspotlight.com/2021/04/op-ed-peoples-bill-would-keep-the-states-residents-home-and-safe/>.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.* (“The People’s Bill was “developed in collaboration with . . . Assemblywoman Britnee Timberlake (D-Essex) . . . Sen. Troy Singleton (D-Burlington) and housing advocates.”).



landlords demanding the full and immediate repayment back rent at the close of the eviction moratorium. It also offered homeowners forbearance options to avoid foreclosure.<sup>120</sup> The legislation listed “unexpected death of a family member, loss of employment, or increased childcare expenses” as “viable reasons for an applicant to be deemed eligible for a rental repayment plan.”<sup>121</sup>

Opponents of the legislation argued that “codifying the eviction ban and giving delinquent tenants a long time to pay rent arrears would unfairly shift the financial burden on landlords, forcing some into bankruptcy.”<sup>122</sup> Organizations such as the New Jersey Apartment Association opposed the bill saying, “it’s based on inflated forecasts for the number of people who could become homeless without the protection of the moratorium.”<sup>123</sup> Executive Director of the Apartment Association David Brogan argued that if the bill were to pass, “it will encourage people not to pay rent. Some people are already taking advantage of the moratorium by withholding rent even though they don’t need to financially, and there are likely to be more of those if there is a legally mandated 30-month period for repaying arrears.”<sup>124</sup> Assemblywoman Britnee Timberlake, one of the bill’s sponsors, stated “if this bill is not passed, they stand to make a lot of money because there will be mass evictions of people. And once they mass-evict, the current rent controls go away, and they can set whatever rent they want.”<sup>125</sup>

---

<sup>120</sup> Press Release, Governor Murphy, Governor Murphy Recognizes “The People’s Bill” During 202 Revised Budget Address (Sept. 1, 2020), <https://www.insidernj.com/press-release/governor-murphy-recognizes-peoples-bill-2020-revised-budget-address/>.

<sup>121</sup> *Id.*

<sup>122</sup> John Hurdle, *Bill to Protect Pandemic-Stress Tenants Seems Stalled in State Senate*, NJ SPOTLIGHT (Feb. 3, 2021), <https://www.njspotlight.com/2021/02/nj-covid-19-tenant-evictions-state-legislation-moratorium/>.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

In September 2020, Governor Murphy recognized the People’s Bill during a budget address.<sup>126</sup> The People’s Bill never made it to Governor Murphy’s desk; after passing in the New Jersey House in July of 2020, the bill stalled in the New Jersey Senate.<sup>127</sup> While Senators recognized the need to protect both homeowners and renters, Senators felt there was no immediate need to pass this kind of legislation because of the current state executive order and the federal eviction moratorium.<sup>128</sup>

After the failure of the People’s Bill, Assemblywoman Britnee Timberlake and State Senator Brian Stack pushed forward a new bill that would extend the state eviction moratorium for some renters until the end of the year.<sup>129</sup> Senate President Steve Sweeny claimed the new legislation was real eviction protection because “it backs up housing protections with finances, so tenants aren’t burdened with debt and landlords aren’t forced into bankruptcy.”<sup>130</sup> The legislation “will help prevent renters from losing the safety and security of their homes and allow landlords to continue to maintain their properties in a safe and secure way.”<sup>131</sup>

Both supporters and opponents of the People’s Bill believed the new legislation was going in the right direction. Following the U.S. Supreme Court decision in *Alabama Assoc. of Realtors v. HHS*,<sup>132</sup> David Brogan, the executive director of the New Jersey Apartment Association, stated:

While the US Supreme Court decision invalidating the CDC’s authority to extend the federal eviction moratorium was not surprising, it has a minimal impact on New Jersey. Not only did New Jersey have its own eviction moratorium, but we also

---

<sup>126</sup> Press Release, Governor Murphy, *supra*, note 120.

<sup>127</sup> Hurdle, *supra*, note 122.

<sup>128</sup> Hurdle, *supra*, note 122.

<sup>129</sup> David Wildstein, *At Eviction Protection Bill Signing, Stack Tells Murphy He’d ‘Knock Down A Wall’ For Him*, NEW JERSEY GLOBE (Aug. 4, 2021, 2:39 PM), <https://newjerseyglobe.com/campaigns/at-eviction-protection-bill-signing-stack-tells-murphy-hed-knock-down-a-wall-for-him/>.

<sup>130</sup> Senate President Steve Sweeny, *Tenant Protections and \$750 Million In Rental and Utility Assistance Enacted Into Law*, (Aug. 4, 2021), <https://www.senatorstevessweeney.com/press/tenantprotectionsenactedintolaw>.

<sup>131</sup> *Id.*

<sup>132</sup> 210 L.Ed.2d 856, 861 (U.S. 2021).

have a pathway back to normalcy. A new law, sponsored by Senator Brian Stack, provides a phased-out approach to New Jersey’s eviction moratorium, legal remedies for landlords, additional rental assistance, and continued protections for tenants in need. Having said that, the glacial pace in the disbursement of rental assistance is placing added strain on both landlords and tenants. Additionally, the expectation that landlords can continue to meet their financial obligations without rent revenue is completely unreasonable. Rent revenue is the lifeblood of the multifamily ecosystem, and government cannot expect private sector landlords to continue to provide housing for free. Government policies that inhibit or eliminate rent revenue, or allow for the exploitation of eviction moratoria, are not the answer to our housing problems. Furthermore, continued inaction or delays by government to distribute emergency rental assistance to both landlords and tenants in need will lead many small landlords to sell their properties and dissuade others from ever becoming landlords – further exacerbating the housing crisis in our state. It is time for government view landlords as partners, not as enemies, and it is imperative that government view our housing policy more holistically, rather than picking winners and losers. Government must step up and do more to help landlords and they must do so without further delay. If not, the ramifications of such inaction will not only negatively impact our housing ecosystem today, but for decades to come.<sup>133</sup>

The ACLU released the following statement:

Over the last 18 months, the COVID-19 pandemic has exacerbated the longtime housing crisis in New Jersey that has disproportionately impacted Black and brown communities. The signing of S3691/A5685 is significant, as it protects tenants from evictions for rental payments missed during the health emergency and moves toward addressing the housing crisis in a comprehensive way. In taking this important step forward, we urge lawmakers to commit additional resources to ensure New Jerseyans are protected against eviction once the provisions in the bill expire. We’re grateful to prime sponsors Senator Brian Stack and Assemblywoman Brittany Timberlake for their leadership and applaud Governor Murphy for taking swift action by signing the bill into law. We welcome the opportunity to work with the DCA to ensure all allocated funds are distributed effectively, allowing tenants to remain at home and landlords to remain compensated.<sup>134</sup>

The legislation aimed to protect “very low-, low-, moderate-, and middle-income households from residential evictions based upon non-payment or habitual late payment

---

<sup>133</sup> Press Release, New Jersey Apartment Association Statement on the U.S. Supreme Court Decision to End the CDC Eviction Moratorium, (Aug. 29, 2021), <https://www.insidernj.com/press-release/new-jersey-apartment-association-statement-u-s-supreme-court-decision-end-cdc-eviction-moratorium/>.

<sup>134</sup> Press Release, ACLU-NJ Statement on Signing of S3691/A5685 to Prevent Eviction For Missed Rental Payments During COVID-19, (Aug. 4, 2021), <https://www.aclu-nj.org/news/2021/08/04/aclu-nj-statement-signing-s3691a5685-prevent-evictions-misse>.

of rent, or a failure to pay a rent increase, that accrued during the covered period, which began on March 1, 2020, and would last until the end of August 2021.”<sup>135</sup> For certain qualifying tenants, the eviction protections extended until December 2021.<sup>136</sup> Any payments made by a tenant after the end of the covered period are credited first to the current month’s rent.<sup>137</sup> If the tenant made a payment in excessive of the rental payment, the landlord had to put the balance toward the back rent.<sup>138</sup> New Jersey landlords could not evict renters that made below 80% of the median county income for missed rent payments from March 1, 2020, through December 31, 2021.<sup>139</sup>

Notably, the amount of rent a tenant owes a landlord from the covered period was converted to civil debt, and landlords could not pursue repayment through a money judgment.<sup>140</sup> The legislation also prohibited landlords from providing “information about the non-payment or late payment of rent, or failure to pay a rent increase, or other court filings or proceedings related to non-payment or late payment of rent which accrued during the covered period, directly to another residential landlord, or a debt collection or credit reporting agency.”<sup>141</sup> On August 4, 2021, Governor Murphy signed S-3691 and A-4463 into law.<sup>142</sup>

---

<sup>135</sup> See generally N.J.S.A. 52:27D-287.10.

<sup>136</sup> See N.J.S.A. 52:27D-287.9(d)(1)(a).

<sup>137</sup> N.J.S.A. 52:27D-287.9(a).

<sup>138</sup> *Id.*

<sup>139</sup> See N.J.S.A. 52:27D-287.9(a); see generally N.J.S.A. 52:27D-287.8.

<sup>140</sup> N.J.S.A. 52:27D-287.7(i).

<sup>141</sup> See N.J.S.A. 52:27D-287.9(i)(1).

<sup>142</sup> Press Release, Governor Murphy, Governor Murphy Signs Sweeping Housing Eviction Prevention and Utility Assistance Bill (Aug. 4, 2021), <https://www.nj.gov/governor/news/news/562021/20210804b.shtml>.

## V. Washington Eviction Prevention Legislation

The first known and confirmed case of COVID was in Snohomish County, Washington, on January 21, 2020.<sup>143</sup> The Seattle area of Washington soon became the first epicenter of the United States COVID outbreak.<sup>144</sup> Due to the COVID outbreak, on February 29, 2020, Washington State Governor Jay Inslee declared a state of emergency and directed the “plans and procedures of the Washington State Comprehensive Emergency Management Plan be implemented. State agencies and departments are directed to utilize state resources and to do everything reasonably possible to assist affected political subdivisions to respond to and recover from the outbreak.”<sup>145</sup>

On April 22, 2021, Governor Jay Inslee signed the Engrossed Second Substitute Bill 5160 (“E2SSB”).<sup>146</sup> The E2SSB’s stated goals are to “increase tenant protections during the public health emergency, provide legal representation for qualifying tenants in eviction cases, establish an eviction resolution pilot program to address nonpayment of rent eviction cases before any court filing, and ensure tenants and landlords have adequate opportunities to access state and local rental assistance programs to reimburse landlords for unpaid rent and preserve tenancies.”<sup>147</sup> The legislation added many new protections for tenants and consequences for landlords. Landlords cannot impose any late fees or report the late or non-payment for any back rent assessed between March 1, 2020, and December 31, 2021.<sup>148</sup> Prospective landlords may not take adverse action because of the previous non-payment.<sup>149</sup> At the end of the moratorium,

---

<sup>143</sup> *This Day in History: First Confirmed Case of COVID-19 Found in U.S.*, HISTORY (Jan. 21, 2020), <https://www.history.com/this-day-in-history/first-confirmed-case-of-coronavirus-found-in-us-washington-state>.

<sup>144</sup> *Id.*

<sup>145</sup> Office of Governor Jay Inslee Proclamation No. 20-05 (Feb. 29, 2020).

<sup>146</sup> *See generally* WASH. REV. CODE § 59.18.630 (2021).

<sup>147</sup> WASH. REV. CODE § 59.18.620 (2021).

<sup>148</sup> WASH. REV. CODE § 59.18.630(2) (2021).

<sup>149</sup> WASH. REV. CODE § 59.18.620(4) (2021).

landlords must have “offer[ed] the tenant a reasonable schedule for repayment of the unpaid rent that does not exceed monthly payment equal to one-third of the monthly rental charges during the period of accrued debt.”<sup>150</sup> If the tenant does not make a payment owed under the repayment plan, the landlord may “apply for reimbursement from the landlord mitigation program or proceed with an unlawful detainer action, subject to requirements of the Eviction Resolution Pilot Program.”<sup>151</sup> The legislature created the Eviction Resolution Pilot Program to “address nonpayment of rent eviction cases before any court filing, and ensure tenants and landlords have adequate opportunities to access state and local rental assistance programs to reimburse landlords for unpaid rent and preserve tenancies.”<sup>152</sup>

On June 29, 2021, a day before the Washington eviction moratorium expired, Governor Inslee signed into law a moratorium bridge.<sup>153</sup> The moratorium bridge went into effect on July 1, 2021, and was set to expire on September 30, 2021.<sup>154</sup> Over \$650 million of the federal rental assistance aid was not set to be distributed until early July.<sup>155</sup> The Governor intended the moratorium bridge not to act as an extension of the eviction moratorium under E2SSB, but as support for both tenants and landlords until the proper funding and programs were in place.<sup>156</sup> Under the moratorium bridge, landlords could not evict tenants for rents past due from February 29, 2020, to July 31, 2021, until an eviction resolution pilot program is operational in their county.<sup>157</sup> On September 24, 2021, Governor Inslee extended the moratorium bridge until

---

<sup>150</sup> WASH. REV. CODE § 59.18.630(2) (2021).

<sup>151</sup> *Id.*

<sup>152</sup> *See* WASH. REV. CODE § 59.18.620 (2021).

<sup>153</sup> Proclamation No. 21-09, WASH. ADMIN. CODE (Jun. 29, 2021).

<sup>154</sup> *Id.*

<sup>155</sup> *Eviction Moratorium Bridge*, WASHINGTON LANDLORD ASSOCIATION, (last accessed Apr. 24, 2022).

<https://www.wal landlord.org/eviction-moratorium-bridge.html>.

<sup>156</sup> *Id.*

<sup>157</sup> Proclamation No. 21-09, *sura* note 153.

October 31, 2021.<sup>158</sup> The eviction moratorium bridge and the eviction moratorium expired on October 31, 2021, without further action from the Washington State legislature or Governor Inslee.

## **VI. Comparison of New Jersey and Washington Legislation to Address the Eviction Crisis**

Both the New Jersey and Washington State eviction legislation attempted to balance tenant and landlord rights amid the highly contagious COVID pandemic. The New Jersey legislation is some of the strongest legislation in the country. The legislation was created after many groups, with a myriad of interests, came together to craft a holistic piece of legislation that would balance both landlord and tenants' interests as best as possible. The legislation created an eviction moratorium that phased out from the date of its passage to December 31, 2021. The provisions it included allowed landlords to recoup the money they lost because of COVID-19 while keeping tenants secure in their current housing. Accepting that these conditions are not the fault of landlords or tenants, the legislation creates a system that acknowledged the most important needs of all parties.

Governor Murphy's early pandemic eviction moratorium drastically decreased eviction filings. In New Jersey, in 2019, there were 151,000 eviction cases, while in 2020, there were 82,000, and from January 2021 to November 2021, there were only 42,000.<sup>159</sup> SB 3691 restarted the legal proceedings for evictions that were filed before the pandemic, and it also allowed landlords to evict tenants in any situation except when a tenant missed a rent payment, the tenant

---

<sup>158</sup> Proclamation No. 20-05, WASH. ADMIN. CODE (Feb. 29, 2020).

<sup>159</sup> Ashley Balcerzak, *NJ's Moratorium On Renter Evictions Ends on Jan. 1, 2022. Here's What to Know*, NORTHJERSEY.COM (Dec. 30, 2021, 4:00 AM), <https://www.northjersey.com/story/news/new-jersey/2021/12/30/eviction-moratorium-new-jersey-renters-ends-january-1/8806370002/>.

habitually paid rent late, or when the landlord increased the rent and the tenant refused to pay.<sup>160</sup> If tenants that met the income requirements filed a self-certification form, their landlord could not evict them for those three reasons for the covered period.<sup>161</sup>

Renter advocates fear that not enough renters are aware of the legislation and the protections it grants them. Another issue is that renters must apply; the protections are not immediate. As of the first week of December of 2021, there had only been 3,100 cases dismissed under the moratorium.<sup>162</sup> The anti-poverty program director for New Jersey Citizen Action, Renee Koubiadis, explained that renters “are just afraid that claiming these rights is going to come back and haunt them in the future, and may negatively impact them in some way.”<sup>163</sup> As of early December of 2021, there were more than 55,000 evictions in the court system, Koubiadis believes “most of these cases could be stopped if [impacted] tenants apply for state rental aid.”<sup>164</sup>

The New Jersey eviction moratorium converted back rent owed to civil debt. Civil debt conversion is an “exceedingly powerful legal measure to prevent eviction.”<sup>165</sup> This allows landlords to collect the money they are owed from nonpayment’s by suing in civil court. Despite landlord interest groups working towards this legislation, landlords believe the current process “is too costly and doesn’t guarantee they will get paid because the tenants don’t have money.”<sup>166</sup> Rental assistance programs have proven to be the best solution for landlords. But the rental assistance programs were set up as a lottery system and did not always cover the entire rental

---

<sup>160</sup> *Id.*

<sup>161</sup> See N.J.S.A. 52:27D-287.9(d)(1)(a).

<sup>162</sup> Balcerzak, *supra* note 159.

<sup>163</sup> April Xu, *As NJ Eviction Moratorium Draws to An End, Advocate Says State Rental Aid Application Remain ‘Surprisingly Low’* CENTER FOR COOPERATIVE MEDIA (Dec. 15, 2021) <https://centerforcooperativemedia.org/as-nj-eviction-moratorium-draws-to-an-end-advocate-says-state-rental-aid-applications-remain-surprisingly-low/>.

<sup>164</sup> *Id.*

<sup>165</sup> Gilman, *supra* note 8 at 311.

<sup>166</sup> Balcerzak, *supra* note 159.



payment, which means not all landlords will be helped.<sup>167</sup> David Brogan claimed the cuts in the funding have hurt small landlords, which will “lead to a reduction in the overall supply of rental housing and will ultimately exacerbate the existing affordable housing crisis we face in the state.”<sup>168</sup>

New Jersey’s legislation requires individuals to certify their income to receive the protection.<sup>169</sup> Even renters who applied for rental assistance had to self-certify to qualify for protection.<sup>170</sup> Ultimately, legislation that requires affirmative action on the part of the tenant is not going to protect all individuals the legislation was created to protect. Renters must seek out the rental assistance and the self-certification form. This may not be feasible for individuals. Some may not have access to the forms needed to self-certify. Some may not be able to access the internet to fill out the form. Some may not have the time. Some may not know they qualify for protection and not seek it out. This means that some of the very individuals the legislation was meant to protect will not be protected.

The Washington legislation is also not without its problems. Landlord groups believe the legislation did not offer any benefits to landlords.<sup>171</sup> While the New Jersey legislation attempted to strike a balance between landlord and tenant interests, the Washington State legislation offers more tenant protections than any landlord benefits or compromise.

On November 1, 2021, Washington State landlords could pursue eviction proceedings again. “[N]early one in [seventeen] renters [are] now facing eviction,” in Washington State.<sup>172</sup>

---

<sup>167</sup> Balcerzak, *supra* note 159.

<sup>168</sup> Balcerzak, *supra* note 159.

<sup>169</sup> Weiss, Kraner, & Holder, *supra* note 24.

<sup>170</sup> Weiss, Kraner, & Holder, *supra* note 24.

<sup>171</sup> See Posner, *supra* note 32 (“Essentially, E2SSB 5160 adds a host of tenant protections. Sadly, the legislature did not see fit to be as kind to landlords.”).

<sup>172</sup> Soliz, *supra* note 34.

Experts say the end of the moratorium will benefit renters and landlords.<sup>173</sup> The legislature created a process and a notice that helps prevent people from ending up on the streets the day after the eviction moratorium ended. The Eviction Resolution Pilot Program connects tenants who cannot afford to pay their rent with rental assistance. Renters may qualify for rental assistance to cover up to twelve months of back rent as well as three months of future rent.<sup>174</sup>

Washington State seems to be having the opposite problem that New Jersey has. An agency tasked with handling mediation for tenants with back rent saw about 2,000 cases while the eviction moratorium was still in effect.<sup>175</sup> Before the end of the eviction moratorium, the agency saw only about 25% engagement of those they contacted.<sup>176</sup> As of the beginning of December, they have seen between 65-75% engagement in those they contacted, with an estimated 100 to 200 new cases a day.<sup>177</sup> The engagement of renters shows that the program is working; tenants know about their rights and are seeking help.

## VII. Conclusion

Prior to the COVID-19 outbreak and resulting economic fallout, the United States rental economy “was already enduring a deep housing affordability crisis.”<sup>178</sup> The COVID-19 pandemic has only worsened this housing crisis. As the COVID-19 pandemic seemingly calms down, it is unlikely any level of government will resort to eviction moratoriums again. It is still

---

<sup>173</sup> Olivia LaVoice, *WA Eviction Moratorium to Expire Monday, But Experts Say No One Has To Worry About Being Evicted*, Q 13 FOX (Oct. 30, 2021), <https://www.q13fox.com/news/wa-eviction-moratorium-to-expire-monday-but-experts-say-no-one-has-to-worry-about-being-evicted>.

<sup>174</sup> *Id.*

<sup>175</sup> Jared Wenzelburger, *Eviction Mediation Program Sees ‘tsunami’ of Activity in November*, THE REFLECTOR (Dec. 6, 2021, 6:03 PM), <https://www.thereflector.com/stories/eviction-mediation-program-sees-tsunami-of-activity-in-november,280369>.

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> Gilman, *supra* note 8 at 298.

important to look at the legislation of New Jersey and Washington in the coming months and years to determine what worked and what did not in fighting a public health crisis. Despite long term studies on the efficacy of the measures taken by either state, eviction moratoriums are an effective public health tool.

New Jersey and Washington are two of just a handful of states that have provided strong eviction protections. New Jersey utilized two legal measures: eviction moratorium and civil debt conversion. Washington implemented an eviction moratorium. The federal government provided cash assistance for the country. It would be a benefit to the country if all renters were protected from evictions as renters in New Jersey and Washington beyond federal cash assistance.

Overall, New Jersey passed the most holistic legislation. The New Jersey legislator gathered with groups that represented both tenant and landlord interests and crafted legislation with input from both sides. Even though the legislation was holistic, it seems both sides have issues with how the actual process works. On the other hand, Washington did not gather with groups that represented different interests. Despite the lack of compromise in the Washington legislation, the Washington legislation is working. Washington agencies tasked with dealing with this have seen renters pursuing their options. New Jersey has not seen similar results.<sup>179</sup>

The Supreme Court left open the option for Congress to pass an eviction moratorium. Any Congressional legislation will only protect the 12.3 million renters with federally backed housing. That leaves nearly 31 million renters unprotected, which is why the individual states need to pass robust and comprehensive eviction moratorium legislation. As we move toward a post-COVID-19 world, other states should look to the New Jersey and Washington state

---

<sup>179</sup> New Jersey and Washington implemented legislation that is not likely to see immediate results. To see the full efficacy of either states legislation may take months or years.

legislation because the legislation from these two states have proven to be comprehensive and workable.