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Eviction Moratoria Following COVID-19 and its Effects on Landlords, Renters, and the Economy

I. INTRODUCTION

Newton's Third Law of Motion states that for every action, there is an equal and opposite reaction.¹ Although this is a fundamental law of physics, the rule today may be metaphorically applied to governmental action during the COVID-19 pandemic. After rapid global transmission, the pandemic “brought the world to a screeching halt as governments frantically tried to ‘flatten the curve.’”² One of the leading tactics implemented to ease the economic and public health consequences of the COVID-19 outbreak was the moratorium on eviction filings.³ However, as Newton discovered, this so called “force of nature”⁴ will have an equal and opposite reaction on landlords, renters, and the economy in the near future.⁵

By August 2020, COVID-19 had spread globally resulting in 23 million cases and over 800,000 deaths.⁶ Over 5 million of these cases

1. NEWTON’S LAWS OF MOTION, <https://www1.grc.nasa.gov/beginners-guide-to-aeronautics/newtons-laws-of-motion/> [<https://perma.cc/EC4S-6DCB>] (last visited Jan. 3, 2022).

2. Anna-Nicole Cooke, *The Brick-and-Mortar Bank is Dead—COVID-19 Killed It: Analyzing The Brick-and-Mortar Bank is Dead—COVID-19 Killed It: Analyzing the “New Normal” for Data Security in the Increasingly Digital the “New Normal” for Data Security in the Increasingly Digital Financial Services Industry Financial Services Industry*, 25 N.C. BANKING INST. 419, 419 (2020), (citing Maria Nicola et al., *The Socio-Economic Implications of the Coronavirus Pandemic (COVID-19): A Review*, 78 INT’L J. SURGERY 185, 185 (2020)).

3. See MAGGIE McCARTY & DAVID H. CARPENTER, CONG. RSCH. SERV., IN11320, CARES ACT EVICTION MORATORIUM (Apr. 7, 2020), <https://crsreports.congress.gov> [<https://perma.cc/T6NN-PV7D>] (describing the CARES Act protections that were designed to alleviate the economic and public health consequences of tenant displacement during the COVID-19 outbreak).

4. NEWTON’S LAWS OF MOTION, *supra* note 1.

5. Tyler Clifford, *A Surge in Evictions Could Turn into Financial Crisis, Economist Warns*, CNBC (July 31, 2020), <https://www.cnbc.com/2020/07/31/economist-a-surge-in-evictions-could-lead-to-financial-crisis.html> [<https://perma.cc/9AR4-HSD4>].

6. *Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19*, FED. REG., <https://www.federalregister.gov> [<https://perma.cc/3CSP-5FHD>] (discussing the COVID-19 pandemic’s impact and announcing the Centers for Disease Control and Prevention’s nationwide federal moratorium on residential evictions for nonpayment of rent. By March 25, 2021, the numbers had risen to “almost 125 million cases of COVID-19 globally, resulting in over 2,700,000 deaths. Of those figures, 29.7 million cases have been identified in the United States, with new cases reported daily, and over 540,000 deaths due to the disease”).

occurred in the United States, with new cases being reported daily,⁷ presenting a “historic threat to public health.”⁸ In response, Federal, State, and local governments reacted quickly and took unprecedented actions—border closures, restrictions on travel, stay-at-home orders, mask requirements, and eviction moratoria.⁹ In the midst of a do-or-die crisis, the federal eviction moratoria protected more than 10 million adult renters from eviction and saved thousands of lives.¹⁰ However, the United States now faces a dire question: What next?¹¹

This Note examines how the pandemic, and the subsequent federal eviction moratoria, exacerbated the United States’ economic dysfunction, specifically in relation to the housing market.¹² While some housing advocates and government officials would have preferred to extend the federal eviction moratoria in order to support renters struggling to recover from the COVID-19 pandemic,¹³ the Supreme Court struck down the most recent extension as unconstitutional in August of

7. *Id.*

8. *See id.* (“According to one recent study, the mortality associated with COVID-19 during the early phase of the outbreak in New York City was comparable to the peak mortality observed during the 1918 H1N1 influenza pandemic.”).

9. *Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19*, *supra* note 6; *see also* Alexis Butler & Natasha Leonard, *Long-Term Approaches to Preventing Evictions Now and Beyond COVID-19*, NAT’L LEAGUE OF CITIES (Aug. 7, 2020), <https://www.nlc.org/article/2020/08/07/long-term-approaches-to-preventing-evictions-now-and-beyond-covid-19/> [<https://perma.cc/769A-D2AD>] (noting that as many as forty-two states implemented statewide eviction moratoria at the peak of the pandemic).

10. Alicia Mazarra, *Extending Eviction Moratorium Helpful Now, but Long-Term Housing Crisis Requires Voucher Expansion*, CTR. ON BUDGET & POL’Y PRIORITIES (June 24, 2021, 8:39 AM), <https://www.cbpp.org/blog/extending-eviction-moratorium-helpful-now-but-long-term-housing-crisis-requires-voucher> [<https://perma.cc/2HHE-Z3W8>]; *see also* Emily Benfer et al., *Opinion: The Eviction Moratorium Limbo Laid Bare the System’s Extreme Dysfunction*, WASH. POST (Aug. 12, 2021, 9:15 AM), <https://www.washingtonpost.com> [<https://perma.cc/6CX8-LAQQ>]; *see also* Matthew Desmond, *Opinion, ‘The Moratorium Saved Us. It Really Did.’*, N.Y. TIMES (Sept. 30, 2021), <https://www.nytimes.com> [<https://perma.cc/UPQ3-JRMX>] (highlighting the eviction lab at Princeton’s estimate that the eviction moratorium helped prevent 1.55 million eviction filings, and a study by researchers at Duke successively finding that eviction prevention policies reduced the pandemic death rate by 11%).

11. *See* Mazarra, *supra* note 10 (“While the substantial emergency rental assistance can help avert an immediate spike in evictions, these funds can’t address long-term housing affordability problems, which began long before the pandemic.”).

12. *See* Benfer et al., *supra* note 10 (arguing that the United States can strengthen communities by prioritizing housing stability instead of restarting a broken system).

13. *See* Krishnadev Calamur & Chris Arnold, *The Supreme Court Will Allow Evictions to Resume. It Could Affect Millions of Tenants*, NPR (Aug. 26, 2021, 10:29 PM), <https://www.npr.org/2021/08/26/1024668578/court-blocks-biden-cdc-evictions-moratorium> [<https://perma.cc/KEU3-FFAX>] (asserting that without a federal eviction moratorium, “families will face the painful impact of evictions, and communities across the country will face greater risk of exposure to COVID-19”).

2021.¹⁴ Ultimately, the Supreme Court held that the Center for Disease Control and Prevention (“CDC”) did not have authority to impose a federal eviction moratorium.¹⁵ Furthermore, Congress would have to explicitly authorize such authority for its exercise to be legitimate.¹⁶ Inevitably, this decision will have widespread economic repercussions: a surge in evictions and a domino effect on the broader housing market and the economy.¹⁷

As housing insecurity continues to increase in the United States, the federal eviction moratoria substantiated the understanding that the federal government knows little about the housing market.¹⁸ While the eviction ban was a short-term solution, it did not address the long-term housing insecurity in the United States.¹⁹ Furthermore, the government did not consider the impact on the greater economy that would result once these eviction protections were eventually lifted.²⁰

This Note proceeds in five parts. Part II explores the extent of housing insecurity prior to the COVID-19 pandemic and provides background on the federal eviction moratorium, its legislative intent, and

14. Ala. Ass’n of Realtors v. U.S. Dep’t of Health & Hum. Servs., 141 S. Ct. 2485, 2488-90 (2021); see also Joe Walsh, *Supreme Court Ends CDC Eviction Moratorium*, FORBES (Aug. 26, 2021, 9:49 PM), <https://www.forbes.com/sites/joewalsh/2021/08/26/supreme-court-ends-cdc-evictionmoratorium/?sh=7c8a248a23b2> [https://perma.cc/Z2GU-VN2A].

15. Ala. Ass’n of Realtors, 141 S. Ct. at 2490 (“[O]ur system does not permit agencies to act unlawfully even in pursuit of desirable ends.”); see also Adam Liptak & Glenn Thrush, *Supreme Court Ends Biden’s Eviction Moratorium*, N.Y. TIMES (Aug. 26, 2021), <https://www.nytimes.com/2021/08/26/us/eviction-moratorium-ends.html> [https://perma.cc/8ABY-KPLC].

16. Ala. Ass’n of Realtors, 141 S. Ct. at 2490.

17. See Jacob Passy, *The Eventual End of the Eviction Moratorium Will Hurt Renters — and Not in the Way You Expect*, MKT. WATCH (Aug. 14, 2021, 4:27 PM), <https://www.marketwatch.com/story/the-eventual-end-of-the-eviction-moratorium-will-hurt-renters-and-not-in-the-way-you-expect-11628716287> [https://perma.cc/4N5G-7VRD] (discussing how the United States is truly underhoused and how this negatively effects low-income renters).

18. See Shane Phillips, *We Need Rental Registries Now More Than Ever*, SHELTERFORCE (Dec. 18, 2020), <https://shelterforce.org/2020/12/18/we-need-a-rental-registry-now-more-than-ever/> [https://perma.cc/69JE-3XRV] (“As renters face illness and job loss due to the COVID-19 pandemic, a confusing patchwork of state and local eviction protections is the only thing staving off homelessness for hundreds of thousands, perhaps millions, of vulnerable households. Despite the importance of these protections, public officials lack real-time data to know whether landlords are complying with the rules or flouting them—not just for recent eviction protections, but also pre-existing regulations like building code requirements and rent control.”).

19. Clifford, *supra* note 5 (“The U.S. economy will face great risk if lawmakers do not step up and stave off a looming, far-reaching eviction crisis.”).

20. See *id.* (suggesting that as eviction moratoria lift across the country, the impact could extend beyond the rental industry into the single-family housing market and the economy as a whole).

the most recent developments.²¹ Part III assesses the pros and cons of the eviction moratorium as a short-term solution and analyzes the financial impact of the end of the eviction moratorium on landlords, renters, and the economy as a whole.²² Part IV proposes long-term housing alternatives that will address the issue of housing insecurity in the United States.²³ Finally, Part V summarizes the argument and concludes this Note.²⁴

II. BACKGROUND ON HOUSING INSECURITY AND EVICTION MORATORIA

A. *Housing Insecurity Prior to the COVID-19 Pandemic*

Housing instability predated the COVID-19 pandemic.²⁵ In 2019, 37.1 million households considered themselves to be “housing cost-burdened,” spending more than 30% of their income on housing-related costs.²⁶ Households considering themselves housing cost-burdened represented 30.2% of all households nationwide.²⁷ In North Carolina alone, “more than 1.1 million households with over 2.8 million

21. *See infra* Part II.

22. *See infra* Part III; *see also* Michael Casey, *Tenants Prepare for Unknown as Eviction Moratorium Ends*, ASSOCIATED PRESS (July 31, 2021), [https://apnews.com/\[https://perma.cc/7QTS-D5GE\]](https://apnews.com/[https://perma.cc/7QTS-D5GE]) (“The eviction moratorium is the only thing standing between millions of tenants and eviction while rental assistance applications are pending. When that essential public health tool ends on Saturday, just as the delta variant surges, the situation will become dire”); *see also* *The Employment Situation — November 2021*, BUREAU OF LAB. STAT. (Dec. 3, 2021), <https://www.bls.gov/news.release/pdf/empstat.pdf> [<https://perma.cc/J3HP-5BW2>] (comparing the unemployment rate and number of persons unemployed in November of 2021 to the unemployment situation before the COVID-19 pandemic began in February 2020).

23. *See infra* Part IV; *see also* Butler & Leonard, *supra* note 9 (suggesting eviction mediation and diversion programs in order to mitigate the effects of the eviction crisis); *see also* Shelby King, *Universal Housing Vouchers: A Promise or a Pipe Dream?*, SHELTERFORCE (Aug. 19, 2021), <https://shelterforce.org/2021/08/19/universal-housing-vouchers-a-promise-or-a-pipe-dream/> [<https://perma.cc/QBU8-ABVE>] (explaining universal housing vouchers as a strategy to combat the nation’s affordable housing crisis).

24. *See infra* Part V; *see also* Benfer et al., *supra* note 10 (“Instead of restarting a broken system, the United States can strengthen our communities by prioritizing housing stability. Access to safe, decent and equitable housing for all is essential to surviving the pandemic — and thriving as a nation.”).

25. *See The State of the Nation’s Housing 2020*, JOINT CTR. FOR HOUS. STUDIES OF HARVARD UNIV., 1, 1 (2020) https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_The_State_of_the_Nations_Housing_2020_Report_Revised_120720.pdf [<https://perma.cc/76CY-TXK9>] (emphasizing that even before the pandemic, the number of U.S. households with cost burdens held near record highs; with the economy near full employment in 2019, 30% of households were cost-burdened).

26. *Id.* at 34.

27. *Id.*

residents lived in housing that was too expensive for their incomes” prior to the COVID-19 pandemic.²⁸ This meant that over one-third of homeowners and about half of all renters in North Carolina were considered cost-burdened.²⁹ Additionally, there was a national supply shortage of 2.5 million housing units coming into the 2020 recession.³⁰ This weak supply, coupled with such a robust demand, drove housing prices up in the years leading up to the pandemic.³¹ Lack of affordability accompanied by supply shortages created barriers for future homeowners long before the pandemic.³² Accordingly, the economic fallout following the pandemic amplified housing instability.³³

B. The COVID-19 Pandemic and Subsequent Eviction Moratoria

The COVID-19 pandemic made a dire housing situation much worse.³⁴ As the number of cost-burdened households increased and the housing deficit escalated,³⁵ Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act in March of 2020 to aid individuals adversely affected by COVID-19.³⁶ The CARES Act imposed a federal moratorium on eviction filings for 120 days from enactment, which

28. Stephen J. Sills & Bruce A. Rich, *Housing Instability and Public Health: Implications of the Eviction Moratoria During the COVID-19 Pandemic*, 82(4) N.C. MED. J. 271, 271 (2021).

29. *Id.*

30. See Sam Khater et al., *Housing Supply: A Growing Deficit*, FREDDIEMAC (May 2021), http://www.freddiemac.com/fmac-resources/research/pdf/202105-Note-Housing_Supply-08.pdf [<https://perma.cc/27MM-EZTH>] (stating that one of the key reasons housing supply has not been able to keep up with demand has been “the severe underbuilding of entry-level homes, where most of the demand exists, especially now given the large cohort of Millennials entering the housing market”).

31. See Sam Khater et al., *The Major Challenge of U.S. Housing Supply*, FREDDIEMAC (Dec. 5, 2018), http://www.freddiemac.com/research/insight/20181205_major_challenge_to_u.s._housing_supply.page [<https://perma.cc/7VBH-JAGT>] (“In the last 10 years, since the Great Recession, the economy has expanded greatly, but the housing market still has not recovered. Since 2011, residential housing construction has increased, but only gradually – and not enough to meet demand.”).

32. See *id.* (“The current annual rate of construction is about 370,000 units below the level required by long-term housing demand. And after years of low levels of building, a significant shortfall has developed, with between 0.9 and 4.0 million too few housing units to accommodate long-term housing demand.”).

33. *The State of the Nation’s Housing 2020*, *supra* note 25.

34. See Sills & Rich, *supra* note 28 (noting that before the pandemic there was already a severe shortage of affordable housing and rising rents, leading to North Carolina’s high eviction rate with about 170,000 evictions each year. In turn, lack of affordability and high eviction rates contributed to more than 27,900 people in the state experiencing homelessness).

35. See KHATER ET AL., *supra* note 30 (“[E]stimates suggest that the shortage has increased 52% from 2.5 million in 2018 to 3.8 million in 2020.”).

36. Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, 134 Stat. 281 (2020).

prohibited landlords from using nonpayment of rent as grounds for evicting tenants who participate in federal housing assistance programs or who live on properties secured by federally backed mortgage loans.³⁷ Researchers estimated that this federal moratorium provided relief to a substantial portion of the nation's roughly forty-three million renters,³⁸ including 28% of renters in the approximately 12.3 million rental units with federally backed financing.³⁹ Additionally, Congress passed the Consolidated Appropriations Act (CAA) in December of 2020.⁴⁰ The CAA acted as the successor to the CARES Act and continued many of the existing programs by adding new phases, allocations, and guidance to address issues related to the continuation of the COVID-19 pandemic.⁴¹ For instance, the CAA extended the Paycheck Protection Program established by the CARES Act.⁴²

Not long after Congress enacted the CARES Act, the CDC imposed a nationwide temporary federal moratorium on evictions for nonpayment of rent, applying to all standard rental housing, effective from September 4, 2020 through December 31, 2020.⁴³ The CDC relied on authority from a 1944 public health law that Congress enacted with the legislative intent of curbing the spread of a pandemic.⁴⁴ The action,

37. See McCARTY & CARPENTER, *supra* note 3 (“While Section 4024’s tenant protections are narrower in scope than those proposed by some lawmakers, called for by some tenant-advocates, or enacted in some other countries, they represent arguably unprecedented action by the federal government in an area of law that, largely, states and localities traditionally govern.”).

38. *Id.*

39. *Id.* at 2 (recognizing that renters not covered by the federal moratorium could also be covered by a state or local moratorium).

40. Consolidated Appropriations Act (CAA), Pub. L. No. 116-260, 134 Stat. 1182 (2019-2020).

41. *Id.*; see also *About the CARES Act and the Consolidated Appropriations Act*, U.S. DEP’T OF THE TREASURY, <https://home.treasury.gov/policy-issues/coronavirus/about-the-cares-act> [<https://perma.cc/6ZV6-WSU8>].

42. *About the CARES Act and the Consolidated Appropriations Act*, *supra* note 41; see also Paycheck Protection Program Flexibility Act of 2020, Pub. L. No. 116-142, 134 Stat. 641 (2019-2020).

43. *Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19*, *supra* note 6 (indicating that Congress extended the CDC moratorium through January 2021 – and President Biden further extended it through March, June, and July); see also MAGGIE McCARTY & LIBBY PERL, CONG. RSCH. SERV., IN11516, FEDERAL EVICTION MORATORIUMS IN RESPONSE TO THE COVID-19 PANDEMIC, (Mar. 30, 2021), <https://crsreports.congress.gov/product/pdf/IN/IN11516> [<https://perma.cc/JQ32-FZWQ>] (mentioning that the CARES Act eviction moratorium began on March 27, 2020, and ended on July 24, 2020).

44. See Public Health Service Act § 361(a), 42 U.S.C. § 264(a) (“The Surgeon General, with the approval of the Secretary, is authorized to make and enforce such regulations as in his judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one

which followed an Executive Order directing the CDC to consider measures temporarily halting residential evictions of any tenants for failure to pay rent,⁴⁵ was “unprecedented, both in terms of the federal reach into what is traditionally state and local governance of landlord-tenant law and its use of a public health authority for this purpose.”⁴⁶

The critical difference between the CARES Act and the CDC eviction moratorium was that Congress intended the former to provide economic solutions while the CDC intended the latter to primarily address the public health crisis.⁴⁷ Congress enacted the CARES Act to provide temporary economic relief to households, governments, and businesses impacted by the COVID-19 pandemic for 120 days.⁴⁸ On March 27, 2020, then President Donald Trump signed the Act into law stating that it was “the single biggest economic relief package in American history” that will “deliver urgently needed relief to our nation’s families, workers, and businesses.”⁴⁹ The CARES Act protections, however, did not absolve tenants of their legal responsibilities to pay rent.⁵⁰ Tenants who did not pay rent during the eviction grace period would still face financial and legal liabilities, including eviction, once the

State or possession into any other State or possession.”); *see also* Clifford Colby & Dale Smith, *The Federal Eviction Moratorium is Gone. What Renters Should Know Now*, CNET (Sept. 3, 2021, 10:00 PM), <https://www.cnet.com/personal-finance/the-federal-eviction-moratorium-is-gone-what-renters-should-know-now/> [<https://perma.cc/2EUW-QZ2U>].

45. *See* Exec. Order No. 13945, 85 Fed. Reg. 49,935 (Aug. 14, 2020) (“The Secretary of Health and Human Services and the Director of CDC shall consider whether any measures temporarily halting residential evictions of any tenants for failure to pay rent are reasonably necessary to prevent the further spread of COVID-19 from one State or possession into any other State or possession.”).

46. MCCARTY & PERL, *supra* note 43; 42 U.S.C.A. § 264 (West 2021) (giving the U.S. Secretary of Health and Human Services authority to take measures to prevent the entry and spread of communicable diseases from foreign countries into the United States and between states. The Secretary delegated the authority for carrying out these functions to the Centers for Disease Control and Prevention (CDC)).

47. *See* MCCARTY & PERL, *supra* note 43 (discussing the key differences between the CARES Act and the CDC eviction moratorium).

48. Marcos Dinerstein & Jon Huntley, *The Long-Run Fiscal and Economic Effects of the CARES Act*, PENN WHARTON BUDGET MODEL (May 5, 2020), <https://budgetmodel.wharton.upenn.edu/issues/2020/5/5/long-run-economic-effects-of-cares-act> [<https://perma.cc/A2HF-FFXZ>].

49. Jacob Pramuk, *Trump Signs \$2 Trillion Coronavirus Relief Bill as the US Tries to Prevent Economic Devastation*, CNBC (Mar. 27, 2020), <https://www.cnbc.com/2020/03/27/house-passes-2-trillion-coronavirus-stimulus-bill-sends-it-to-trump.html> [<https://perma.cc/HMW9-MKHB>]; *see also* Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, 134 Stat. 281 (2020) (establishing the key provisions used to provide economic relief to families, businesses, and workers: direct stimulus payments of \$1,200 to American taxpayers up to a certain income, enhanced unemployment benefits, \$350 billion dedicated to small business relief, and \$150 billion in funding allotted for state and local government relief efforts among other provisions).

50. MCCARTY & CARPENTER, *supra* note 3, at 2.

moratorium ended.⁵¹ Thus, while the CARES Act barred landlords from charging late fees and other penalties for 120 days, it is unclear whether or not accrued late fees and interest on rental payments could be charged retroactively.⁵²

Similar to the CARES Act, the CDC's Agency Order did not relieve any individuals of obligations to pay rent or make housing payments.⁵³ Moreover, nothing in the Order precluded the charging or collecting of fees, penalties, or interest as a result of the failure to pay rent or other housing payment on a timely basis.⁵⁴ Additionally, the Order did not preclude "state, local, territorial, and tribal authorities" from imposing additional requirements that would provide greater public-health protections and would be more restrictive than the CDC's requirements.⁵⁵ The purpose of this Order, on the other hand, was to be "an effective public health measure utilized to prevent the spread of communicable disease" through measures such as quarantine, isolation, and social distancing.⁵⁶ The CDC's idea being that eviction moratoria facilitate self-isolation and self-quarantine by people who become ill or who are at risk of transmitting COVID-19, instead of forcing people to move into congregate settings.⁵⁷

In response to the emergence of the Delta variant, the CDC's director, Dr. Rochelle Walensky, noted that "[t]his moratorium [was] the right thing to do to keep people in their homes and out of congregate settings where COVID-19 spreads."⁵⁸ Regardless of these varying motives behind Congress's and the CDC's respective actions, the implications of both actions make it apparent that public health and economic concerns were deeply intertwined during the COVID-19 crisis and will likely continue to be intertwined beyond.⁵⁹

During this crisis, several federal district courts considered whether to uphold the constitutionality of the CDC's "novel national

51. *Id.*

52. *Id.*

53. *Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19*, *supra* note 6.

54. *Id.*

55. *Id.*

56. *Id.*

57. *CDC Issues Eviction Moratorium Order in Areas of Substantial and High Transmission*, CTRS. FOR DISEASE CONTROL AND PREVENTION: CDC NEWSROOM (Aug. 3, 2021) <https://www.cdc.gov/media/releases/2021/s0803-cdc-eviction-order.html> [<https://perma.cc/8XLR-ZAHL>].

58. *Id.*

59. MCCARTY & CARPENTER, *supra* note 3.

eviction ban, leading to ample debate.”⁶⁰ On February 25, 2021, Federal Judge J. Campbell Barker addressed this constitutional question and held that the CDC’s eviction order exceeded the federal government’s power to “regulate interstate commerce and enact laws necessary and proper to that end.”⁶¹ The Alabama Association of Realtors also sued when the statutory moratorium expired, claiming that the CDC lacked legal authority to ban evictions.⁶² The U.S. District Court for the District of Columbia agreed and enjoined the moratorium but stayed its ruling pending appeal.⁶³ Both the D.C. Circuit Court and the United States Supreme Court, on June 29, 2021, declined to vacate the stay.⁶⁴ When the CDC eviction moratorium lapsed on July 31, 2021, the Biden Administration announced a new eviction moratorium through October 3, 2021, limited to renters living in communities experiencing a surge in COVID-19 cases, which was estimated to cover 90% of all renters.⁶⁵ The plaintiffs then returned to the D.C. Court of Appeals seeking to vacate the stay.⁶⁶ The Court of Appeals again declined to vacate the stay, but on application to the U.S. Supreme Court, on August 26, 2021, the Supreme Court held that the CDC did not have the authority to impose a

60. See HARVARD LAW REVIEW, *Recent Case: Terkel v. Centers for Disease Control and Prevention*, HARV. L. REV. BLOG (Apr. 9, 2021), <https://blog.harvardlawreview.org/recent-case-terkel-v-centers-for-disease-control-and-prevention/> [<https://perma.cc/RJ4P-MQYD>] (observing that two federal district courts, in Georgia and Louisiana, upheld the eviction order; while three others, in Ohio, Tennessee, and Texas, struck it down).

61. *Terkel v. Ctrs. for Disease Control & Prevention*, No. 6:20-cv-00564 (E.D. Tex. 2021); see also *Recent Case: Terkel v. Centers for Disease Control and Prevention*, *supra* note 60.

62. *Ala. Ass’n of Realtors v. U.S. Dep’t of Health & Hum. Servs.*, 2021 WL 2221646, at *1 (June 2, 2021).

63. *Id.*

64. See *id.* (pointing out that four Justices would have vacated the stay, and a fifth, Justice Kavanaugh concurred in the Supreme Court decision, “explaining that he agreed with the District Court that the CDC’s moratorium exceeded its statutory authority. But because the CDC planned to end the moratorium in only a few weeks, and because that time would allow for additional and more orderly distribution of congressionally appropriated rental-assistance funds, he concluded that the balance of equities justified leaving the stay in place”).

65. See *Federal Moratorium on Evictions for Nonpayment of Rent*, NAT’L LOW INCOME HOUS. COAL (Aug. 2021), <https://nlihc.org/sites/default/files/Overview-of-National-Eviction-Moratorium.pdf> [<https://perma.cc/8RXB-G9YD>] (highlighting that the eviction moratorium lapsed on July 31st, but the CDC announced on August 3rd a limited eviction moratorium through October 3rd for renters living in communities experiencing a surge in COVID-19 cases, covering an estimated 80% of all U.S. counties and 90% of all renters. “The CDC’s announcement came one day after the Biden administration announced additional steps it will take to protect renters and prevent evictions during the pandemic”).

66. *Ala. Ass’n of Realtors*, 141 S. Ct. at 2488.

“sweeping” halt on evictions, blocking the limited eviction moratorium.⁶⁷ The Supreme Court’s ruling, blocking the Biden administration’s response to an unprecedented crisis, will undoubtedly have repercussions not just for renters, but for financial markets and the United States economy as a whole.⁶⁸

At the height of the pandemic, forty-two states along with the District of Columbia implemented statewide eviction moratoria, supplementing the temporary federal moratorium on evictions, and in some jurisdictions providing more extensive protections.⁶⁹ For instance, any “state, local, territorial, or tribal area” could provide the same or a greater level of public-health protection than the requirements listed in the CDC’s Order.⁷⁰ Moreover, in some states where state and local eviction moratoria are concluding, city officials have extended moratoria temporarily for residents, as in the cases of Detroit, Michigan⁷¹ and Denver, Colorado.⁷² At least one city, San Diego, California, introduced an extended repayment period, giving tenants until the end of December 2021 to repay rent.⁷³

Some states and municipalities have extended their own eviction moratorium, keeping residents in their homes as the Supreme Court ended the federal Order preventing evictions due to the COVID-19

67. *Id.*; Colby & Smith, *supra* note 44; Walsh, *supra* note 14 (“A lower court judge ruled against the eviction moratorium . . . but temporarily stayed her decision, and in an unsigned ruling, the Supreme Court lifted the stay and allowed the moratorium to be halted. The court’s three liberal justices — Stephen Breyer, Sonia Sotomayor and Elena Kagan — dissented: They argued Congress gave the government broad latitude to prevent the spread of disease and warned striking down the moratorium could imperil public health amid a rise in Covid-19 cases.”).

68. See Samantha Batko & Amy Rogin, *The End of the National Eviction Moratorium Will Be Costly for Everyone*, URB. WIRE (June 24, 2021), <https://www.urban.org/urban-wire/end-national-eviction-moratorium-will-be-costly-everyone> [<https://perma.cc/NS9K-8BSC>] (“Ending the eviction moratorium when emergency rental assistance is still unavailable at the scale needed could have devastating effects for tenants, landlords, and communities.”).

69. Butler & Leonard, *supra* note 9.

70. *Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19*, *supra* note 6.

71. Mich. Exec. Order No. 2020-134 (June 26, 2020).

72. Colo. Exec. Order No. 2021-129 (Sept. 4, 2021); see also Butler & Leonard, *supra* note 9.

73. Cal. Assemb. Bill No. 832 (June 28, 2021); see also Butler & Leonard, *supra* note 9.

pandemic.⁷⁴ Connecticut,⁷⁵ Virginia,⁷⁶ Oregon,⁷⁷ Massachusetts,⁷⁸ and Minnesota⁷⁹ all have limits on evictions tied to the rental assistance process that will expire in 2022.⁸⁰ Meanwhile, as of this Note's publication, only three states continue to have a statewide eviction moratorium in effect: New Jersey,⁸¹ New York,⁸² and New Mexico.⁸³

III. FINANCIAL IMPACTS

The nationwide closure of businesses during the COVID-19 pandemic led to a surge in unemployment.⁸⁴ More than twenty million workers lost their jobs between March and April of 2020, and “in the first five weeks of the shutdown alone, unemployment claims shot up by 20.4 million,” the same as in the first year of the 2008 Financial Crisis.⁸⁵ Furthermore, in late September of 2020, 41% of U.S. households reported a loss in income due to the pandemic since mid-March, 2020.⁸⁶ Thus, at a time when many Americans were financially pressed and some 3.6 million households were facing evictions,⁸⁷ the eviction moratoria helped slow both the spread of COVID-19 and eviction rates.⁸⁸ Researchers estimate that policies limiting evictions reduced COVID-19 infections by 3.8% and deaths by 11%, compared to what would have happened if evictions had gone forward.⁸⁹

Additionally, the U.S. Government Accountability Office (GAO) found in analyzing eviction filings in sixty-three jurisdictions nationwide that jurisdictions without an active local moratorium—that is those protected only by the CDC's moratorium—had 36% fewer eviction

74. Annie Nova, *Evictions are Still Banned in These States*, CNBC (Nov. 5, 2021, 1:09 PM), <https://www.cnn.com/2021/11/05/evictions-are-still-banned-in-these-states.html> [<https://perma.cc/9RBY-6FYM>].

75. Conn. Exec. Order No. 14A (Sept. 30, 2021).

76. H.B. 1889, Va. Gen. Assemb. (Jan. 13, 2021).

77. S.B. 891, Or. Leg. (Dec. 13, 2021).

78. S.2467, Mass. Leg. (June 10, 2021).

79. S.B. 1470, Minn. Leg. (May 11, 2021).

80. Nova, *supra* note 74.

81. S.B. 3866, N.J. Leg. (June 3, 2021).

82. S.B. S50001, 2021-2022 Leg. Sess. (N.Y. Sept. 2, 2021).

83. Nova, *supra* note 74.

84. *The State of the Nation's Housing 2020*, *supra* note 25, at 18.

85. *Id.*

86. *Id.*

87. Colby & Smith, *supra* note 44.

88. Aaron Shroyer, *Tracking the Impact of the CDC Eviction Moratorium*, HUD USER: PD&R EDGE (Mar. 22, 2021), <https://www.huduser.gov/portal/pdredge/pdr-edge-trending-032221.html> [<https://perma.cc/3WRX-HYME>].

89. *Id.*

filings in December 2020 than in December 2019.⁹⁰ Comparatively, the report found that jurisdictions with an active local moratorium had 91% fewer eviction filings in December 2020 than in December 2019.⁹¹ The eviction rates suggest that, to ease the economic and public health consequences of the COVID-19 outbreak, the government took the most practical approach.⁹²

A. *How Were Landlords Affected?*

During the pandemic, the government tailored most aid initiatives toward tenants and small businesses, while not specifically adapting them for landlords.⁹³ However, there were some programs that landlords could take advantage of to remain financially afloat.⁹⁴ For instance, under the CARES Act, landlords who held mortgages backed by Fannie Mae and Freddie Mac, or the U.S. Department of Housing and Urban Development (HUD) on multi-family properties, were eligible for up to ninety days of forbearance due to financial hardships related to COVID-19.⁹⁵ Additionally, the law prohibited foreclosures on all federally backed mortgage loans for sixty days starting on March 18, 2020, and provided 180 days of forbearance for borrowers in this category who had been affected by COVID-19.⁹⁶ Along with mortgage and foreclosure relief programs, a limited number of landlords with qualifying expenses benefitted from small business assistance funds available through the CARES Act, and its successor, the CAA.⁹⁷ For example, under the

90. *Id.*

91. *Id.*

92. *See id.* (“Early and available evidence suggests that the moratorium achieved its goal of limiting the spread of COVID-19, which clearly demonstrates the connection between stable housing and residents’ health.”).

93. *Business Assistance for Landlords During COVID-19*, JUSTIA (Apr. 2020), <https://www.justia.com/covid-19/eviction-bans-and-mortgage-relief-during-covid-19/business-assistance-for-landlords/> [<https://perma.cc/BN9K-E92L>].

94. *Id.*

95. Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, 134 Stat. 281 (2020); *Business Assistance for Landlords During COVID-19*, *supra* note 93.

96. CARES Act, Pub. L. No. 116-136, 134 Stat. 281; *see also Business Assistance for Landlords During COVID-19*, *supra* note 93 (noting that these federal mortgage and foreclosure relief programs initially were scheduled to end on December 31, 2020. However, President Biden extended the foreclosure moratorium for federally guaranteed mortgages through June 30, 2021. Similarly, the mortgage payment forbearance window was extended through June 30, 2021).

97. *See* CARES, Pub. L. No. 116-136, 134 Stat. 281.; *see also* CAA, Pub. L. No. 116-260, 134 Stat. 1182; *see also Business Assistance for Landlords During COVID-19*, *supra* note 93 (recognizing the CAA, along with the CARES Act, as critical programs in preserving

Paycheck Protection Program, small businesses were eligible to borrow the lesser of \$10 million or two and a half times the amount of their average monthly payroll expenses to cover costs associated with payroll, mortgage interest, and utilities.⁹⁸

Regardless of these relief opportunities, landlords of all sizes struggled to collect rent in 2020.⁹⁹ For example, the share of landlords collecting less than 50% of charged rent increased from 2.9% in 2019 to 9.1% in 2020.¹⁰⁰ However, 10% of small landlords (one to five units owned) and 8% of mid-sized landlords (six to nineteen units owned) reported being owed 50% or more of charged rent by 2020's end, compared to only 3% of larger landlords (twenty or more units owned).¹⁰¹ These numbers suggest that small and mid-sized landlords operated under more "dire financial conditions relative to larger ones."¹⁰²

Furthermore, survey data shows that "23% of individual single-family rental property owners planned to sell at least one property" as a result of the various eviction moratoria and inability to collect charged rent.¹⁰³ A survey published in May of 2021 found that 28% of landlords have deferred maintenance during the pandemic due to financial hardship.¹⁰⁴ Smaller "mom and pop" landlords that do not have the same resources to combat significant reductions in rental income have also "struggle[d] to pay their mortgages, utility bills, property taxes, maintenance costs, and other property-related expenses."¹⁰⁵

many people's ability to remain in their housing and "also indirectly assist[ing] landlords by making it possible for many tenants to continue paying rent despite experiencing income loss").

98. See Paycheck Protection Program Flexibility Act of 2020, Pub. L. No. 116-142, 134 Stat. 641 (2019-2020); see also *Business Assistance for Landlords During COVID-19*, *supra* note 93 (conceding that landlords with large real estate holdings may be limited in their ability to obtain relief through the Paycheck Protection Program).

99. Elijah De La Campa et al., *How Are Landlords Faring During the COVID-19 Pandemic?*, JOINT CTR. FOR HOUS. STUDIES, at 5, (Aug. 2021) (cautioning that the sample is not necessarily representative of all cities in the United States).

100. *Id.*

101. See *id.* ("Exposure to rental non-payment increased more significantly for mid-sized (6-19 units owned) and larger landlords (20+ units owned) than for smaller ones (1-5 units owned).").

102. *Id.*

103. Passy, *supra* note 17.

104. See Gary Painter, Opinion, *Opinion | The Eviction Moratorium Won't Save Renters — or Landlords*, POLITICO (Aug. 10, 2021), <https://www.politico.com/news/magazine/2021/08/10/eviction-moratorium-renters-landlord-covid-503352> [<https://perma.cc/Z2K2-UZEJ>] ("Too many tenants across the country are living in apartments with unpaid rent piling up, and landlords are facing their second straight year unable to evict people who don't pay them.").

105. Kristen Brody et al., *An Eviction Moratorium Without Rental Assistance Hurts Smaller Landlords, Too*, BROOKINGS (Sept. 21, 2020), <https://www.brookings.edu/blog/up->

Approximately 39% of these small-scale landlords lacked confidence in their ability to cover their costs.¹⁰⁶

On the other hand, the unprecedented government support that was available to renters and landlords likely prevented worse losses for landlords.¹⁰⁷ Analyses conducted in October of 2021 suggest that while landlords lost revenue early in the pandemic, they were also able to cut expenses as the pandemic progressed.¹⁰⁸ These expenses included those mentioned above: “deferring mortgage payments under widely available forbearance programs and putting off maintenance costs.”¹⁰⁹ Thus, while landlord struggles could affect how properties are maintained and lead some to sell their properties and exit the market,¹¹⁰ more recent data suggests that “landlords experienced modest losses in rental revenue during the pandemic rather than the catastrophic losses that might have been expected given the pandemic’s economic impact on renters.”¹¹¹

B. *How Were Renters Affected?*

The CDC’s eviction moratorium may have a counterintuitive impact long-term despite its intended goal to assist at least 11 million renters who had fallen behind on rent.¹¹² About one-third of the United

front/2020/09/21/an-eviction-moratorium-without-rental-assistance-hurts-smaller-landlords-too/ [https://perma.cc/8JRF-SY9X] (“[J]ust over 40 percent of residential units are owned by individual investors,” often referred to as “mom and pop” landlords, who carry greater financial vulnerabilities).

106. *New Survey Shows Small-Scale Landlords Feel Financial Impact of COVID-19 Pandemic*, NAT’L LOW INCOME HOUS. COAL. (Aug. 3, 2020), <https://nlihc.org/resource/new-survey-shows-small-scale-landlords-feel-financial-impact-covid-19-pandemic> [https://perma.cc/T89C-ZBYP].

107. Fiona Greig et al., *How Did Landlords Fare During COVID?*, JPMORGAN CHASE & CO. (Oct. 2021), https://www.jpmorganchase.com/institute/research/householddebt/how-did-landlords-fare-during-covid?jp_cmp=email_stakeholdernote_landlords#finding-4 [https://perma.cc/7QH7-RZ2X].

108. Jerusalem Demsas, *The Pandemic Was Hard for Everyone — Except Maybe Landlords*, VOX (Nov. 4, 2021, 9:30AM), <https://www.vox.com/2021/11/4/22759224/landlords-rent-relief-eviction-moratorium-cash-balance-covid-19> [https://perma.cc/6VS8-492Z].

109. *Id.*

110. *New Survey Shows Small-Scale Landlords Feel Financial Impact of COVID-19 Pandemic*, *supra* note 106.

111. See Fiona Greig et al., *supra* note 107 (“The median landlord ended the year with a modest 3 percent shortfall in rent. Zooming out to the entire distribution, more landlords suffered substantial drops in revenues, but most of the volatility was normal year to year volatility. Our data show that landlords were able to cut their expenses by more than their rental revenues fell, which resulted in landlords’ cash balances growing during the pandemic. Based on data on a separate sample of landlords with a mortgage, taking advantage of available mortgage forbearance to miss payments was one of the ways some landlords cut back on their expenses.”).

112. Colby & Smith, *supra* note 44.

States' population are renters, many of whom, up until the Supreme Court's recent decision, were protected by some form of an eviction moratorium since the implementation of the CARES Act in March of 2020.¹¹³ Moreover, "[n]early 2-in-5 tenants across the country, particularly low-wage workers, are in danger of being served eviction notices."¹¹⁴ Currently, the United States has a "shortage of [roughly] seven million affordable rental homes."¹¹⁵ Thus, the lack of housing inventory across the country has intensified competition among buyers and driven rent prices to record highs.¹¹⁶

With this inevitable rise in rent prices, it will be more difficult for renters to secure housing.¹¹⁷ In Raleigh, North Carolina, rental rates have gone up 11.2% from June 2020 to June 2021, while nationwide rental rates have gone up 8.4%.¹¹⁸ If landlords decide to sell their homes vacated by evicted tenants, those homes could likely end up being bought by buyers who plan to own and live in the home themselves, rather than continuing to offer the properties for rent.¹¹⁹ This could create an even larger crisis for renters.¹²⁰ A similar pattern can be seen over the past five years: while the United States added millions of homes for owner-occupants from 2015 to 2020, the number of rental units has actually decreased over that span of time.¹²¹

Additionally, unemployment rates still exceed pre-pandemic levels.¹²² From January 2020 to the end of June 2021, the country went from a "historically low unemployment rate" of around 3.6% to an unemployment rate of 14.7% in April, 13.3% in May, 11.1% in June, and

113. *Id.*

114. See Clifford, *supra* note 5 (citing an analysis from Stout Risius Ross, an investment consulting firm).

115. Butler & Leonard, *supra* note 9.

116. Passy, *supra* note 17.

117. See Jason Parker, *Triangle Rental Demand 'Pricing Out Affordability' as End to Eviction Moratorium Nears*, WRAL TECHWIRE (June 30, 2021), <https://www.wraltechwire.com/2021/06/30/triangle-rental-demand-pricing-out-affordability-as-end-to-eviction-moratorium-nears/> [https://perma.cc/BD5K-4PXJ] ("[T]he median price of renting a one- or two-bedroom apartment is increasing sharply, putting more pressure on people with fixed or lower incomes while a moratorium on rental evictions is nearing an end.").

118. *Id.*

119. Passy, *supra* note 17.

120. *Id.*

121. See *id.* (suggesting that this pattern is not sustainable, and that the Biden administration should consider ways to promote the construction of additional housing to avoid a full-blown crisis on both sides of the nation's housing market).

122. *The Employment Situation — November 2021*, BUREAU OF LAB. STAT., 2 (Dec. 3, 2021), <https://www.bls.gov/news.release/pdf/empstat.pdf> [https://perma.cc/J3HP-5BW2].

10.2% in July.¹²³ The unemployment rate was 4.2% in November 2021, and the number of unemployed persons was 6.9 million.¹²⁴ Despite the slight improvement in the numbers since July 2021, the unemployment rate remains higher than rates prior to COVID-19 when the unemployment rate was 3.5% and 5.7 million persons were unemployed in February 2020.¹²⁵

Along with increasing rent prices and the high number of unemployed persons at risk of eviction, federal rental assistance distribution—or the lack thereof—could contribute to many struggling tenants being forced out into the “red-hot” housing market.¹²⁶ In response to concerns about the economic effects of the COVID-19 pandemic on renters and landlords, Congress created an Emergency Rental Assistance (“ERA”) program.¹²⁷ The U.S. Department of the Treasury (“Treasury Department”) implemented the ERA program, in the form of two aid packages, primarily to provide financial assistance, which is defined to include rental assistance and utility assistance.¹²⁸ The law that created the ERA program established a three-part eligibility test based on income level, income loss or other financial hardship, and risk of homelessness or housing instability.¹²⁹ However, as of late-September 2021, “just \$7.7 billion in payments have been made to help those in need out of the \$46 billion that was approved last December and March, meaning more than 83% of the funds have not yet been spent.”¹³⁰

123. Gary V. Engelhardt & Michael D. Eriksen, *Housing-Related Financial Distress During the Pandemic*, RSCH. INST. FOR HOUS. AM. 9 (Sept. 2020), file:///C:/Users/morga/AppData/Local/Temp/21897_Research_RIHA_Pandemic_Payments_Report.pdf [https://perma.cc/QD87-37W4].

124. *The Employment Situation — November 2021*, *supra* note 122, at 6.

125. *Id.* at 2.

126. Casey, *supra* note 22.

127. See H.R. 133, 116th Cong. § 501 (2020) (enacted) (acknowledging that the Consolidated Appropriations Act initially funded the ERA program with an appropriation of \$25 billion); see also GRANT A. DRIESSEN ET AL., CONG. RSCH. SERV., R46688, PANDEMIC RELIEF: THE EMERGENCY RENTAL ASSISTANCE PROGRAM, 1 (Oct. 21, 2021), https://crsreports.congress.gov/product/pdf/R/R46688 [https://perma.cc/W82A-QB6T].

128. GRANT A. DRIESSEN ET AL., *supra* note 127 (noting that remaining funds may be used for housing stability services, such as case management and other supports to help families retain their housing, and administrative expenses).

129. See H.R. 133, 117th Cong. § 501; see also GRANT A. DRIESSEN ET AL., *supra* note 127 (“The eligibility definition in P.L. 117-2 does not include the detail as to how an individual can demonstrate a risk of homelessness or housing insecurity that was included in P.L. 116-260; nor does it require that financial hardship be related to the COVID-19 pandemic. A household is eligible for assistance under ERA-2 as long as hardship has occurred due to or during the pandemic.”).

130. Sarah Ewall-Wice, *More than \$2 Billion in Federal Rental Assistance Went out in August — but Millions Still Fear Eviction*, CBS NEWS (Sept. 24, 2021, 6:00 AM),

Distribution of those funds has been slow at the state and local level partially due to the flexibility and lack of guidance on how states could spend the money.¹³¹ Advocates also blame the slow rollout of funds on “complicated applications and short staffing across the hundreds of organizations tasked with giving out the money.”¹³² In response, the federal government has taken steps to encourage state and local “programs to be more flexible and to encourage ways of reducing burdens on renters and landlords.”¹³³ “But the challenge is in getting the state and local programs to actually take up those changes.”¹³⁴ If this continues, tenants may be stuck with both eviction records and back rent that will make it impossible to find new living spaces in the market, leaving many to move in with families and friends, turn to homeless shelters, or find unsafe dwellings that could further exacerbate the spread of COVID-19.¹³⁵

C. *What Will Happen to the Economy and Financial Markets?*

The nation’s ongoing eviction crisis may have “large ripple effects across the broader housing market.”¹³⁶ Since most states do not currently have eviction bans in place, roughly 90% of the country will

<https://www.cbsnews.com/news/federal-rental-assistance-data-updates-families-waiting-covid-19/> [<https://perma.cc/5E9L-7MPQ>].

131. See GRANT A. DRIESSEN ET AL., *supra* note 127 (“Within the statutory requirements—and any additional guidance established by Treasury—states and localities have flexibility in designing their rental assistance programs. The ability of states and localities to structure their programs differently means that the experience of similarly situated renters seeking assistance will likely vary geographically. Some states and localities were able to use the new funds to supplement existing rental assistance programs created with CARES Act or other funds, to the extent their existing programs aligned with the emergency rental assistance statutory requirements others had to develop new programs from scratch. To the extent states and localities were able to fund existing programs with their ERA dollars instead of having to establish new programs, the assistance could potentially be distributed more quickly.”).

132. Nova, *supra* note 74; see also *Treasury Announces Further Action to Support Housing Stability for Renters at Risk of Eviction*, U.S. DEP’T OF THE TREASURY: EMERGENCY RENTAL ASSISTANCE FACT SHEET (June 24, 2021), https://home.treasury.gov/system/files/136/Treasury_Fact_Sheet_6-24-21.pdf [<https://perma.cc/28SG-JUGY>].

133. See Leila Fidel, *Why The Delay For Those Needing Federal Rental Assistance?*, NPR (Aug. 26, 2021, 5:01 AM), <https://www.npr.org/2021/08/26/1031193152/why-the-delay-for-those-needing-federal-rental-assistance> [<https://perma.cc/L6GX-8J6Z>] (encouraging more self-attestation of eligibility for these programs rather than having to provide a lot of documentation).

134. *Id.*

135. See Casey, *supra* note 22 (warning that many of those displaced will be debt-ridden and forced to turn to unsafe dwellings in low-income neighborhoods that lack good schools, good jobs, and access to transportation).

136. Passy, *supra* note 17.

lose access to these emergency protections now that the CDC eviction moratorium has been struck down as unconstitutional.¹³⁷ Furthermore, unless rental assistance is distributed at a much faster rate, “[t]he end of the eviction moratorium is likely to result in a sharp and rapid increase in eviction rates.”¹³⁸

A spike in eviction rates, coupled with the likely increase in foreclosures due to the end of forbearance, could have a substantial impact on local housing markets.¹³⁹ At the end of September 2021, nearly three-in-four loans (approximately 1.2 million loans total) in forbearance reached the eighteen-month maximum limit.¹⁴⁰ Rental evictions could likely cause mortgage delinquencies and foreclosures to rise, along with a rise in foreclosures from those who are not able to pick up their mortgage payments as forbearance ends.¹⁴¹ Without the security of the pandemic mortgage forbearance program, the resources of the ERA program “will become essential to providing stability to both renters and property owners.”¹⁴² “[T]he impact would not be limited to housing if a substantial number of properties entered foreclosure—the loss of wealth would quickly translate into lower spending and employment and therefore lower rates of overall economic growth.”¹⁴³ Thus, this imminent eviction wave could very well “morph into a financial crisis, bleeding into other industries.”¹⁴⁴

137. Ala. Ass’n of Realtors v. U.S. Dep’t of Health & Hum. Servs., 141 S. Ct. 2485, 2488 (2021); see also Spencer Hill, *Evictions and the Economy as the Moratoriums End*, U.S. ECONS. ANALYST: GOLDMAN SACHS (Aug. 29, 2021), <https://www.gspublishing.com/content/research/en/reports/2021/08/30/a3fe726a-6228-44e6-b820-5e66572ec80a.html> [<https://perma.cc/6QSB-DUSM>].

138. See Hill, *supra* note 137 (“Despite the \$25bn dispersed from the Treasury to state and local governments, the process of providing these funds to households and landlords has been slow. Only 350k households received assistance in July, and at this pace, we estimate 1-2 million households will remain without aid and at risk of eviction when the last 2021 eviction bans expire.”).

139. Patricia Buckley, *Trouble Ahead for the Housing Sector?*, DELOITTE (Sept. 27, 2021), <https://www2.deloitte.com/us/en/insights/economy/spotlight/eviction-moratorium-housing-sector.html> [<https://perma.cc/C4Z4-B73C>].

140. Brenda Richardson, *Mortgage Forbearance Is Ending for over 1.2 Million Loans*, FORBES (Oct. 1, 2021, 6:00 PM) <https://www.forbes.com/sites/brendarichardson/2021/10/01/mortgage-forbearance-ending-for-over-12-million-loans/?sh=2060a40c5b40> [<https://perma.cc/BG3G-25LN>].

141. Buckley, *supra* note 139.

142. *Id.*

143. *Id.*

144. Clifford, *supra* note 5.

Moreover, the COVID-19 pandemic impacted the already dire housing situation in the United States.¹⁴⁵ Factory shutdowns, along with other supply chain disruptions, initially led to a shortage in homebuilding materials.¹⁴⁶ Approximately “90% of builders reported shortages of framing lumber, plywood and oriented strand board, and 87% reported a shortage of windows and doors.”¹⁴⁷ Thus, the price of lumber and other supplies soared to “record highs — if [they were] available at all.”¹⁴⁸ These material shortages have delayed and driven up the price of many of the new homes that the United States desperately needs.¹⁴⁹ Ultimately, the lack of homes causes them to stay on the market for a short period and often sell for more than the asking price in a “seller’s market.”¹⁵⁰

IV. LONG-TERM SOLUTIONS TO HOUSING INSECURITY

The end of the eviction moratorium presents an opportunity to reconsider how the economy and the housing market work and how they can work more efficiently for more people.¹⁵¹ Thus, as short-term solutions expire or as funding is depleted, housing security advocates have begun to examine housing solutions in a package: more rent and rental regulation, eviction diversion programs, restricting use of eviction records, and enforcing current laws designed to protect the rights of owners and renters.¹⁵²

A. *Rental Registries*

The first step in helping renters in a crisis like the COVID-19 pandemic involves providing data to properly identify who needs help

145. Jennifer Bringle, *Real Estate Market Explodes in Wake of Pandemic*, CAROLINA PUB. PRESS (June 4, 2021), <https://carolinapublicpress.org/46120/real-estate-market-explodes-in-wake-of-pandemic/> [<https://perma.cc/24RV-YQZE>].

146. *Id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

151. See Michael Stegman, *To Rebuild America’s Post-Pandemic Economy, We Need to Rethink Housing*, HARV. JOINT CTR. FOR HOUS. STUDIES (July 1, 2020), <https://www.jchs.harvard.edu/blog/to-rebuild-americas-post-pandemic-economy-we-need-to-rethink-housing> [<https://perma.cc/4KXL-6RCN>] (arguing that housing is a gateway to opportunity which plays a critical role in every individual’s life).

152. See Kathryn A. Sabbeth, *Erasing the “Scarlet E” of Eviction Records*, THE APPEAL (Aug. 12, 2021), <https://theappeal.org/the-lab/report/erasing-the-scarlet-e-of-eviction-records/> [<https://perma.cc/W32D-ECLC>] (asserting that eviction records limit access to housing and thereby exacerbate inequality while also pushing already marginalized populations into substandard rental markets).

through rental registries.¹⁵³ A rental registry is a simple online tool to track basic information about rental housing and the treatment of tenants.¹⁵⁴ These registries require landlords to register their property with a governmental body and disclose information like the address of the property and contact information for the landlord.¹⁵⁵ Simple forms of rental registries exist in cities across the country: Seattle¹⁵⁶, Baltimore¹⁵⁷, and multiple cities in California¹⁵⁸ and Texas.¹⁵⁹ The existing rental registries have been established solely by state legislation, rather than by a federal agency.¹⁶⁰ When implementing future rental registries, state legislation could mandate that landlords also provide more detailed information: the number of tenants, the number of units in each property, the rental amount, and contact information for tenants.¹⁶¹ This could create much-needed transparency throughout landlord-tenant relationships, holding landlords accountable and fostering safe and stable housing.¹⁶²

During the height of the pandemic, rent relief dollars failed to reach at-risk renters because many tenants were not even aware that the aid was available to them, and the hurdles to proving financial need were so burdensome that many aid applicants were unable to provide the necessary documentation.¹⁶³ Even if tenants surpassed the onerous

153. Jerusalem Demsas, *One Way the US Could Have Prevented the Fight Over the Eviction Moratorium*, VOX (Aug. 4, 2021, 9:40AM), <https://www.vox.com/2021/8/4/22606530/eviction-moratorium-rent-relief-rental-registry> [https://perma.cc/HHM2-9L2B].

154. Phillips, *supra* note 18.

155. *Id.*

156. SEATTLE, WASH., MUN. CODE § 22.214 (2012).

157. BALT., MD., CITY CODE art. 13, § 4-2 (2008).

158. LOS ANGELES, CAL., ORDINANCE 184529 (Sept. 28, 2016).

159. DALLAS, TEX., CODE § 27-30 (2017); *see also* Demsas, *supra* note 153.

160. Phillips, *supra* note 18; *see also* Demsas, *supra* note 153.

161. *See* Phillips, *supra* note 18 (“At a minimum, landlords should also be required to report the monthly rent due for each unit, when the rent was last increased, whether parking or utilities are included in the rent, and when the tenant first moved into the unit. Cities currently lack this information, making it impossible to accurately measure affordability or track vacancies over time. Requiring information like rent and utility costs also establishes a record of the basic terms of the lease agreement, making it more challenging for landlords to revoke or alter them with impunity. Landlords must also include their contact information so they can be easily reached by the local housing agency for periodic inspections or to respond to complaints.”).

162. *Id.*

163. *See* Sarah Kleiner et al., *More Than \$425 Million Promised for Rental Assistance Didn't Make it to Tenants or Their Landlords*, THE CTR. FOR PUB. INTEGRITY (June 29, 2021), <https://publicintegrity.org/inequality-poverty-opportunity/covid-divide/rental-assistance-did-not-go-to-tenants-landlords/> [https://perma.cc/FD5J-WXAA]; Alicia Adamczyk, *Why Tenants are Still Struggling to Pay Their Bills, Despite \$46 Billion in Rental Relief Available*, CNBC (Aug. 3, 2021), <https://www.cnbc.com/2021/08/03/why-tenants-are->

application process, the organizations designated to distribute the relief often lacked the capacity to get it out in a timely manner.¹⁶⁴

Further, there are still substantial barriers for the most vulnerable low-income renters that do not have access to the internet.¹⁶⁵ If landlords submitted key information, such as contact information for renters, agencies would have been able to use this information to contact all local renters and inform them of available funds and how to receive them.¹⁶⁶ The agencies could have also acted as sources of information for renters.¹⁶⁷ However, without these much-needed rental registries, “[w]e’re watching in real time what happens when we don’t know enough about renters at risk of eviction.”¹⁶⁸

B. *Eviction Diversion Programs*

State and local eviction diversion programs are a more equitable way to resolve housing disputes as opposed to the formal adjudication process.¹⁶⁹ The majority of these programs are intended to deter formal legal proceedings by offering landlords and tenants opportunities for negotiation and mediation.¹⁷⁰ Eviction diversion programs may also “include supports such as legal assistance for tenants and financial compensation to landlords for past-due rent.”¹⁷¹ For example, Durham County, North Carolina launched a program in 2017 which enables residents to receive information on rental assistance and legal aid resources attached to their eviction court summons.¹⁷² This intake strategy has resulted in 80% of participants avoiding an eviction judgment on their record.¹⁷³

still-struggling-despite-46-billion-dollars-in-rental-relief.html [https://perma.cc/34EG-QYP4].

164. Adamczyk, *supra* note 163.

165. *Id.*

166. Phillips, *supra* note 18.

167. *Id.*

168. Demsas, *supra* note 153.

169. Mike Bebernes, *Eviction Bans Can’t Last Forever. What are Long-term Solutions?*, AOL. (Aug. 7, 2021, 9:43 AM), <https://www.aol.com/news/eviction-bans-cant-last-forever-what-are-long-term-solutions-134352054.html> [https://perma.cc/U2EV-NFM2].

170. See Melissa Hammer & Sean Martin, *Benefits of Eviction Diversion Programs*, HUD USER: PD&R EDGE (June 21, 2021), <https://www.huduser.gov/portal/pdredge/pdr-edge-featd-article-062121.html> [https://perma.cc/5KZ3-BSAP] (“Best practices include building partnerships with landlords, courts, and social service agencies; offering comprehensive services that include rental assistance, mediation, social services, and legal assistance; and focusing on equity in program design and outreach.”).

171. *Id.*

172. Butler & Leonard, *supra* note 9.

173. *Id.*

Overall, in a study of forty-seven eviction diversion programs across the United States, more than half of the programs offered some form of legal assistance, with the most common being access to pro bono attorneys or legal aid.¹⁷⁴ Additionally, in California's *Shriver Housing Pilot Project* initiative, 56% of tenants facing eviction who participated in the program received full legal representation and 44% received more limited legal assistance, such as brief advice or help with preparing forms.¹⁷⁵ Among the program participants receiving full legal representation, 66% settled their cases, and only 4% went to trial.¹⁷⁶ Eviction diversion programs could be especially helpful in offering a smooth alternative to flooding the court systems with eviction filings following the end of the eviction moratorium.¹⁷⁷

C. State and Local Government Intervention

State and local governments are working on the “front lines” to respond to the housing needs of renters affected by COVID-19.¹⁷⁸ These government entities can implement a variety of strategies to help tenants remain housed and to maintain stability during a time of economic and health uncertainty: enact temporary state and local eviction moratoria, require “just cause” eviction during the pandemic, regulate eviction records, and work in tandem with federal government organizations to create effective rental assistance programs.¹⁷⁹

As of late-September 2021, state and local programs have disbursed only \$7.7 billion of the \$46.5 billion in federal funds allocated for rental assistance.¹⁸⁰ This indicates that extended local eviction bans could help prevent a wave of evictions while renters are still waiting to

174. Mark Treskon et al., *Eviction Prevention and Diversion Programs*, URB. INST. (Apr. 2021), https://www.urban.org/sites/default/files/publication/104148/eviction-prevention-and-diversion-programs-early-lessons-from-the-pandemic_0_0.pdf [<https://perma.cc/GL4D-4R7J>] (noting that twenty-eight of the forty-seven eviction diversion programs offered some form of legal assistance).

175. Hammer & Martin, *supra* note 170.

176. *Id.*

177. *Id.*

178. Solomon Greene et al., *What Can State and Local Governments Do to Stabilize Renters during the Pandemic?*, URB. INST. (Apr. 22, 2020), <https://housingmatters.urban.org/articles/what-can-state-and-local-governments-do-stabilize-renters-during-pandemic> [<https://perma.cc/C7KG-3X4X>].

179. *Safe at Home: State and Local Strategies to Protect Tenants During the COVID Emergency*, NAT'L LOW INCOME HOUS. COAL.: NAT'L HOUS. LAW PROJECT (Jan. 14, 2021), <https://nlihc.org/sites/default/files/State-and-Local-Strategies-to-Protect-Tenants-During-the-COVID-Emergency.pdf> [<https://perma.cc/KLP4-U35N>].

180. Ewall-Wice, *supra* note 130.

receive relief.¹⁸¹ In addition to extended protections in the form of local moratoria, states can require landlords to “give a reason (known as ‘just cause’ eviction) when seeking to expel a tenant.”¹⁸²

For instance, a recent bill enacted in Baltimore, Maryland, requires landlords “to provide a codified reason — one outlined and defined by city officials — for not renewing a lease when a tenant’s lease expires.”¹⁸³ This bill prevents landlords from finding loopholes to force tenants out of their homes if they are behind on their rent when their leases expire.¹⁸⁴ Moreover, Baltimore landlords must now afford renters the opportunity to renew their leases unless a “good cause” exception exists, such as a substantial breach of lease.¹⁸⁵ It also protects vulnerable renters at risk of losing their homes as the economic effects of the pandemic continue to affect their ability to pay rent, and it persuades landlords to participate in eviction diversion programs as an alternative to expensive and timely court proceedings.¹⁸⁶

Next, by restricting how eviction records are used, officials can mitigate the harm that these records have on renters’ ability to access future housing.¹⁸⁷ Having an eviction record effectively “blacklists” tenants from finding future housing.¹⁸⁸ Landlords will typically screen tenants before renting their properties, which provides the landlords with information about prospective tenants, including whether any of the prospective tenants have eviction filings against them.¹⁸⁹ Further, because these screening companies pull eviction actions upon their filing, before the court has established any fault, “not only do tenants with eviction records face harsh collateral consequences, but tenants with mere eviction filings on their record do as well.”¹⁹⁰

181. *Id.*

182. Benfer et al., *supra* note 10.

183. BALT., MD. CITY CODE art. 13 § 8c-2 (2021); Hallie Miller, *Baltimore Tenant Protections Take Effect, Requiring ‘Just Cause’ Before Eviction*, BALT. SUN (July 20, 2021, 6:11 PM), <https://www.baltimoresun.com> [<https://perma.cc/EMK4-6WYK>].

184. Miller, *supra* note 183.

185. *See id.* (listing other exceptions: “the landlord wanting to recover the property for a relative as a primary residence; the landlord wanting to permanently remove the property from the rental market; or the landlord needing to conduct repairs that cannot be done in otherwise occupied properties”).

186. *Id.*

187. Sabbeth, *supra* note 152.

188. Katelyn Polk, *Screened Out of Housing: The Impact of Misleading Tenant Screening Reports and the Potential for Criminal Expungement as a Model for Effectively Sealing Evictions*, 15 NW. J. L. & SOC. POL’Y. 338, 338 (2020) (“Even renters with mere eviction filings—not eviction orders—on their records face the harsh collateral consequences of eviction.”).

189. *See id.* at 344 (citing Robert R. Stauffer, *Tenant Blacklisting: Tenant Screening Services and The Right to Privacy*, 24 HARV. J. LEGIS. 239, 268 (1987)).

190. Polk, *supra* note 188, at 356.

However, a few state and local legislatures have started to look into the expungement and sealing of eviction records, including Nevada, Oregon, and Minnesota.¹⁹¹ For example, SB 873 took effect in Oregon in January 2020, allowing expungement of certain eviction records: cases older than five years with no outstanding money owed; cases where the tenant has completed agreements made between the landlord and tenant in court; and cases that were ruled in the tenant's favor and where the eviction was dismissed.¹⁹² In 2021, Oregon expanded this list to include eviction cases carried out during the COVID-19 pandemic and cases where the tenant has satisfied all monetary obligations included in the judgment.¹⁹³ An Illinois state law, enacted in June of 2021, seals eviction court records for cases filed before and during the COVID-19 pandemic and prohibits tenant screening companies from reporting sealed eviction records.¹⁹⁴ At a time where 3.6 million households are facing eviction in the coming months,¹⁹⁵ it would be wise for state and local governments to provide "greater protection of tenants' records" to protect them from the harsh consequences of an eviction history.¹⁹⁶

D. *Rental Assistance and Housing Voucher Programs*

On the federal level, the origins of the current eviction crisis are "rooted in our nation's underfunded rental assistance programs, which have long failed to meet the country's need for affordable housing."¹⁹⁷ The Housing Choice Voucher Program, better known as "Section 8," is the federal government's major rental assistance program to aid low-income families, the elderly, and the disabled in affording decent, safe, and sanitary housing.¹⁹⁸ However, these housing vouchers are only available to one-in-four eligible families due to funding limitations.¹⁹⁹

Although Section 8 currently receives about \$24 billion each year from Congress and provides housing vouchers to approximately 2.3

191. See Sabbeth, *supra* note 152.

192. S.B. 873, 80th Or. Leg. Assembl., Reg. Sess. (June 17, 2019).

193. *Id.*

194. H.B. 2877, 102nd Gen. Assemb. (Ill. May 17, 2021); *COVID-19 Emergency Housing Act Signed into Law by Governor Pritzker*, SHRIVER CTR. ON POVERTY LAW (May 26, 2021), <https://www.povertylaw.org/article/covid-19-emergency-housing-act-signed-into-law-by-governor-pritzker/> [<https://perma.cc/4K9Y-D6AY>].

195. Colby & Smith, *supra* note 44.

196. Polk, *supra* note 188 at 356.

197. Mazarra, *supra* note 10.

198. *Housing Choice Vouchers Fact Sheet*, U.S. DEP'T OF HOUS. AND URB. DEV., https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/about/fact_sheet [<https://perma.cc/Z28E-PHJF>].

199. Mazarra, *supra* note 10.

million households, post-pandemic predictions put the cost at almost \$100 billion each year in order to meet the needs of all eligible families.²⁰⁰ As a practical matter, the housing voucher program would need to have the funds to issue a voucher to anyone who meets the income requirements.²⁰¹ To accomplish this, Congress would have to make this program into an entitlement—whereby eligible recipients automatically receive the benefit—like SNAP, Medicaid, Medicare, and Social Security disability benefits.²⁰²

In July of 2021, Representative Maxine Waters, a Democrat representing California, introduced legislation that would make Housing Choice Vouchers an entitlement.²⁰³ This bill was historic: it was the “first time that a member of Congress has proposed universal rental assistance, so that any low-income person who needs help with rent can get assistance right away.”²⁰⁴ Although this legislation is expensive, it is one of the most powerful tools the government can use to combat the affordable housing crisis in the United States and should be further examined as one part of a larger long-term solution.²⁰⁵

State and local governments should also implement or bolster preexisting rental assistance programs to mitigate the effects of the end of the eviction moratorium on renters.²⁰⁶ For instance, the North Carolina Housing Opportunities and Prevention of Evictions (HOPE) Program “provides rent and utility bill assistance to renters who have been financially impacted by the COVID-19 pandemic.”²⁰⁷ The HOPE

200. See King, *supra* note 23 (“Turning Section 8 into an entitlement isn’t a new idea, though it’s one that’s been historically unpopular with conservatives, at least in part because it’s expensive.”).

201. *Id.*

202. *Id.*

203. Ending Homelessness Act of 2021, H.R. 4496, 117th Cong. (2021), <https://www.govtrack.us/congress/bills/117/hr4496>; Chris Holden, *Bill Would Make Housing Vouchers an Entitlement for All That Need Assistance*, AFFORDABLE HOUS. ONLINE (Nov. 2, 2021), https://affordablehousingonline.com/blog/bill-would-make-housing-vouchers-an-entitlement-for-all-that-need-assistance/#google_vignette [<https://perma.cc/74XW-NG5P>].

204. H.R. 4496 (proposing phasing in 1.5 million new rental assistance vouchers over five years and authorizing 500,000 new vouchers in the first year, with the remaining one million phased in over the next three years).

205. King, *supra* note 23.

206. See Butler & Leonard, *supra* note 9 (addressing how cities have implemented or supplemented emergency rental assistance programs that provide residents with cash to cover rent payments).

207. See HOPE PROGRAM OVERVIEW, N.C. DEP’T OF PUB. SAFETY (Aug. 11, 2021), <https://www.rebuild.nc.gov/media/1984/open> [<https://perma.cc/R5U9-PG56>] (“The N.C. Housing Opportunities and Prevention of Evictions (HOPE) Program has distributed more than \$342 million in rent and utility payment to 96,944 North Carolina households since opening last fall. The HOPE Program now ranks #2 in the nation for number of households

Program serves low-income renters in eighty-eight North Carolina counties and eligible applicants may receive up to twelve months of rent assistance, which may include up to nine months of past due rent.²⁰⁸

Additionally, the Treasury Department allocated \$9.6 million in federal funds toward the Durham Emergency Rental Assistance Program (ERAP), a partnership between the City of Durham and Durham County governments, to assist Durham residents who are behind on rent and facing eviction.²⁰⁹ Partnerships between cities, community-based nonprofits, and state legislatures are critical in institutionalizing these rental assistance programs that have been developed to address the risk of eviction.²¹⁰

E. Authority Following the Supreme Court's Decision

The very reason that the eviction moratorium was only a short-term solution was due to the Supreme Court's holding that the CDC lacked the authority to impose a halt on evictions without express authorization from Congress.²¹¹ Moreover, the conflicting decisions throughout the judiciary have raised questions about the extent of the CDC's authority to respond to both current and future health crises that are bound to evolve.²¹² Thus, it is critical for the government to address a plan that the United States can implement in the event that another national emergency transpires.²¹³

According to the CDC, state governments, not the federal government, have the most power to place people in isolation or

served and North Carolina ranks #6 for spending of federal Emergency Rental Assistance Program money, which is funding the current phase of the program.”).

208. *Id.* (“Low income is defined as earning less than or equal to 80% of the area median income for the county where the renter lives.”).

209. See *Durham Emergency Rental Assistance Program Now Accepting Applications*, CITY OF DURHAM (May 11, 2021), <https://durhamnc.gov> [<https://perma.cc/7PW3-JUBY>] (“Upon acceptance into the program, residents can receive assistance for a period of up to 12 months, which includes both arrears and forward rent and utilities.”).

210. Butler & Leonard, *supra* note 9.

211. Ala. Ass’n of Realtors v. U.S. Dep’t of Health & Hum. Servs., 141 S. Ct. 2485, 2488-90 (2021).

212. See DAVID CARPENTER, CONG. RSCH. SERV., LSB10632, LITIGATION OF THE CDC’S EVICTION MORATORIUM 2-6 (Aug. 2, 2021), <https://crsreports.congress.gov> [<https://perma.cc/BP7E-7MK5>] (summarizing the main cases challenging the eviction moratorium on statutory and constitutional grounds).

213. See *id.* at 7 (discussing, in light of the conflicting court decisions, how Congress could bolster the CDC’s legal authority to halt evictions in the future).

quarantine under certain circumstances.²¹⁴ Hence, most of the long-term solutions discussed above require state and local government intervention.²¹⁵ However, to the extent that Congress does determine that the CDC should be authorized to implement a nationwide eviction moratorium to control the spread of a communicable disease, Congress could also enact new legislation that provides “clear and specific congressional authorization” for the CDC to do so and specify the conditions under which such authority may be exercised.²¹⁶

V. CONCLUSION

Throughout the pandemic, the United States grappled with unprecedented economic distress that called for swift, unparalleled government action.²¹⁷ Although the eviction moratoria provided a temporary fix for a complex housing crisis, the Supreme Court’s decision that the CDC’s moratorium was unconstitutional means that “the eviction cliff [that] researchers, advocates, renters, and owners have anticipated for months is finally here,” and it may have a domino effect on the nation’s economy.²¹⁸ The equal and opposite reaction to the eviction moratorium exposed our nation’s affordable housing crisis.²¹⁹

To respond to this crisis, State and local governments should simultaneously follow a package-deal plan—establish rental registries, enact eviction diversion programs, promote state and local government intervention, and bolster rental assistance programs—to stabilize families and reduce eviction, overcrowding, and homelessness.²²⁰ Additionally, Congress should consider new legislation that gives the CDC express authority to impose a nationwide eviction moratorium in anticipation of

214. Scott Bomboy, *Constitutional Powers and Issues During a Quarantine Situation*, NAT’L CONST. CTR.: CONST. DAILY (Mar. 13, 2021), <https://constitutioncenter.org/blog/constitutional-powers-and-issues-during-a-quarantine-situation> [<https://perma.cc/ZE8J-KGPZ>].

215. *Id.*

216. CARPENTER, *supra* note 212; *Ala. Ass’n of Realtors*, 141 S. Ct. at 2488-90 (suggesting that the CDC lacked the statutory authority to issue an eviction moratorium without “clear and specific congressional authorization,” via new legislation).

217. Stegman, *supra* note 151.

218. Christopher Davis & Monique King-Viehland, *With Limited State and Local Protections, the End of the Federal Eviction Moratorium Puts Millions of Renters at Risk*, URB. INST.: URB. WIRE (Aug. 30, 2021), <https://www.urban.org> [<https://perma.cc/7YPK-N2BQ>].

219. *See* Mazarra, *supra* note 10 (“The origins of the looming eviction crisis are rooted in our nation’s underfunded rental assistance programs, which have long failed to meet the need for affordable housing”); *see also* Sam Khater et al., *supra* note 31 (“After nearly a decade of low levels of building, housing stock is well short of what the United States needs.”).

220. Mazarra, *supra* note 10.

future health emergencies alike.²²¹ After all, “[a]ccess to safe, decent and equitable housing for all is essential to surviving [a] pandemic — and thriving as a nation.”²²²

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221. CARPENTER, *supra* note 212.

222. Benfer et al., *supra* note 10.

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