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## The CDC's Moratorium: Will the New Year Bring About an Eviction Crisis?

Matt Donahoe\*

On September 4, 2020, the Centers for Disease Control and Prevention (CDC) announced the issuance of an Order pursuant to section 361 of the Public Health Service Act to temporarily halt residential evictions, which is in effect through December 31, to prevent the further spread of COVID-19.<sup>1</sup> As of now there has been no extension, and even so, adherence to the order has not been uniform throughout the states.<sup>2</sup> A one-day delinquency in Ohio may lead to an eviction, whereas in New York, only monetary relief can be sought after by landlords.<sup>3</sup> The New York state Senate and Assembly are currently battling over the decision to implement a blanket eviction moratorium.<sup>4</sup> Whose rights shall be protected? Should the tenants' constitutional rights be infringed upon?

Both New York's senate and Governor Cuomo believe the laws need to protect the tenants — those who are and put others at risk: "A real eviction moratorium is necessary, especially as we approach alarmingly increasing numbers of COVID-19 cases across the state," said Senator Zellnor Myrie. "With 300,000 deaths and counting due to COVID-19, it's abundantly clear that evictions harm the tenant, harm the public and don't bring a single penny to property owners who need the relief."<sup>5</sup> Furthermore, researchers conducting studies on states that lifted their eviction bans found that

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<sup>1</sup> 85 Fed. Reg. 55292 (2020).

<sup>2</sup> Gretchen Morgenson, Adiel Kaplan & Leticia Miranda, *The CDC banned evictions for those affected by Covid. Why are tenants being thrown out on the street?*, CBS NEWS (Dec. 17, 2020), <https://www.nbcnews.com/news/us-news/cdc-banned-evictions-those-affected-covid-why-are-tenants-being-n1251439>.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Georgia Kromrei, *State Senate pushing blanket eviction moratorium: sources*, THE REAL DEAL (Dec. 15, 2020), <https://therealdeal.com/2020/12/15/state-senate-pushing-blanket-eviction-moratorium-sources/>.

nineteen of the forty-four states that did lift bans saw their mortality rates roughly double within fifteen to sixteen weeks of lifting the bans.<sup>6</sup>

However, there is a reasonable fear that some tenants—the ones who might actually be able to pay—will take advantage of the legislature. Again the question remains, should the landlords' property rights be preserved?

Access to the courts is protected under the Petition Clause of the First Amendment.<sup>7</sup> Moreover, the Due Process Clause protects this right too: civil litigants are guaranteed “a hearing appropriate to the nature of the case, the formality and procedural requisites of which can vary, depending upon the importance of the interest involved and the nature of the subsequent proceedings.”<sup>8</sup>

On December 16, D.C. Superior Court Judge Anthony Epstein released a forty page order ruling the current filing moratorium “does not pass constitutional muster.”<sup>9</sup> Judge Epstein says, “The issue here, however, is whether the moratorium . . . promotes this compelling interest enough to justify the substantial restriction on property owners' access to the courts during a time when evictions themselves are prohibited.”<sup>10</sup> He explains that a furtherance of one compelling interest does not ultimately “resolve other constitutional issues.”<sup>11</sup> Even though the moratorium might be for a compelling public interest, it limits the property owner's rights to go to court to regain possession of their property.<sup>12</sup> He concludes that a tenant's

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<sup>6</sup> Chelsea Cirruzzo, *A 'Dangerous Moment' as End of Eviction Ban Looms*, U.S. NEWS (Dec. 15, 2020), <https://www.usnews.com/news/health-news/articles/2020-12-15/a-dangerous-moment-as-covid-eviction-ban-nears-expiration>.

<sup>7</sup> See *Christopher v. Harbury*, 536 U.S. 403, 415 n.12 (2002); see also *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 387 (2011) (“The Petition Clause protects the right of individuals to appeal to courts and other forums established by the government for resolution of legal disputes.”).

<sup>8</sup> *Boddie v. Connecticut*, 401 U.S. 371, 378 (1971); see *Walters v. Nat'l Assoc. of Radiation Survivors*, 473 U.S. 305, 355 (1985) (these clauses raise “substantially the same question—whether the process allows a claimant to make a meaningful presentation”).

<sup>9</sup> *Borger Mgmt., Inc. v. Abel Hernandez-Cruz*, No. 2020 LTB 006637 (D.C. Super. Ct. Dec. 16, 2020).

<sup>10</sup> *Id.* at 3.

<sup>11</sup> *Id.* n.2

<sup>12</sup> *Id.* at 1.

inability to adhere to their contracts will not be resolved because of the moratorium; in fact, all it will do is delay the “day of reckoning.”<sup>13</sup>

Judge Epstein is not arguing against the eviction moratorium; he is saying that the filing moratorium needs to end.<sup>14</sup> Landlords, under their constitutional rights, should be allowed to file eviction cases, but because of the eviction moratorium, tenants would not be evicted until after the public health emergency concludes.<sup>15</sup> This may be a solution to protect a property owner’s interests while also promoting the CDC’s public safety efforts; however, it does relieve any fears of a massive, impending eviction crisis.

It is apparent that the increase in eviction filings stems from tenants losing their source of income due to the virus. Since ending the filing moratorium would advance a landlord’s motives to regain possession as soon as possible after the end of the health emergency, perhaps tenants should be given a reasonable amount of time to obtain the amount due.

“If policymakers don’t intervene, we are facing the very real possibility of tens of millions of people losing their homes this winter,” said Diane Yentel, president and CEO of the National Low Income Housing Coalition.<sup>16</sup> The most recent bill congress looks to pass includes \$25 billion in rental relief, and also extends the eviction moratorium one more month.<sup>17</sup> Perhaps this is enough to evade, or at the very least delay, the crisis. However, there may be timing issues that arise.

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<sup>13</sup> *Id.* at 4.

<sup>14</sup> *Borger Mgmt.*, at 2.

<sup>15</sup> *Id.* at 4.

<sup>16</sup> Gretchen Morgenson, Adiel Kaplan & Leticia Miranda, *The CDC banned evictions for those affected by Covid. Why are tenants being thrown out on the street?*, NBC NEWS (Dec. 17, 2020), <https://www.nbcnews.com/news/us-news/cdc-banned-evictions-those-affected-covid-why-are-tenants-being-n1251439>.

<sup>17</sup> Alicia Adamczyk, *‘It’s a start:’ Stimulus bill includes \$25 billion in emergency rental relief, extends eviction moratorium*, CNBC (Dec. 21, 2020), <https://www.cnbc.com/2020/12/21/stimulus-bill-includes-emergency-rental-relief-extends-eviction-ban.html>.

The rental relief is to be disbursed to the states where the tenants can apply for the aid.<sup>18</sup> Tenants are eligible for twelve months of assistance; but will the one-month extension on the eviction moratorium provide enough time for tenants to get their applications approved?<sup>19</sup> Will the money be enough? There are still plenty of looming questions. Thankfully, the bill will resolve some of the problems that COVID-19 has created. Quoting Emily Benfer — a public health and housing lawyer and professor at Wake Forest University — Chelsea Cirruzzo, staff writer for *U.S. News*, writes: “the rental assistance was a ‘needed start’ and that extending the ban was ‘crucial’ though improvement is still needed.”<sup>20</sup>

Edited by Ben Davisson

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Cirruzzo, *supra* note 6.