

No. 21-1278

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

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Heights Apartments, LLC,

Appellant,

v.

Tim Walz, in his individual and his official capacity as Governor of the State of Minnesota, and Keith Ellison, in his individual and his official capacity as Attorney General of the State of Minnesota, and John Doe,

Appellees.

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On Appeal from the United States District Court for the District of Minnesota, The Honorable Nancy E. Brasel, presiding.

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**BRIEF OF AMICI CURIAE OF HOME LINE, HOUSING JUSTICE CENTER, LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, MID-MINNESOTA LEGAL AID, MINNESOTA ASSISTANCE COUNCIL FOR VETERANS, MINNESOTA ASSOCIATION OF COMMUNITY HEALTH CENTERS, MINNESOTA COALITION FOR THE HOMELESS, SOUTHERN MINNESOTA REGIONAL LEGAL SERVICES, VIOLENCE FREE MINNESOTA, AND VOLUNTEER LAWYERS NETWORK  
IN SUPPORT OF APPELLEES**

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## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1, all of the Amici Curiae are nonprofit corporations, none of which have parent companies, subsidiaries, or affiliates that have issued shares to the public.

/s/ Lawrence R. McDonough  
Lawrence R. McDonough

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## **IDENTITY AND INTERESTS OF AMICI CURIAE**

The *amici curiae* are public interest organizations that advocate for and assist disadvantaged Minnesotans adversely impacted by evictions, homelessness, and the COVID-19 pandemic. All of them participated as amici before the court below.

**HOME Line.** HOME Line is a statewide, nonprofit organization that provides free legal advice to residential tenants on all landlord-tenant issues regardless of income and works to improve public and private policies relating to rental housing. Website: <https://homelinemn.org/>.

**Housing Justice Center (HJC).** HJC is a nonprofit public interest and legal organization whose primary mission is to preserve and expand the supply of affordable housing for low-income individuals and families. Website: <https://www.hjcmn.org/>.

**Lawyers' Committee for Civil Rights Under Law (Lawyers' Committee).** The principal mission of the Lawyers' Committee is to secure equal justice for all through the rule of law, targeting in particular the inequities confronting African Americans and other racial and ethnic minorities. The Lawyers' Committee is a nonpartisan, nonprofit organization, formed in 1963 at the request of President John F. Kennedy to enlist the private bar's leadership and resources in combating racial

discrimination and the resulting inequality of opportunity. Website: <https://lawyerscommittee.org/>.

**Mid-Minnesota Legal Aid (MMLA).** MMLA provides free lawyers to those who cannot afford them in a broad range of civil cases in thirty counties throughout Minnesota, including more than 2,000 families facing eviction from their homes per year. Website: <https://mylegalaid.org/>.

**Minnesota Assistance Council for Veterans (MACV).** MACV is a statewide non-profit organization with the mission of ending veteran homelessness. Website: <https://mnachc.org/>.

**Minnesota Association of Community Health Centers (MNACHC).** MNACHC represents the interests of the state's 17 community health centers who collectively serve nearly 200,000 low-income patients that are adversely impacted by the social drivers of health—including lack of affordable housing—that impact their overall health and wellness. Website: <https://mnachc.org/>.

**Minnesota Coalition for the Homeless (MCH).** The mission of the Minnesota Coalition for the Homeless is to generate policies, community support and local resources for housing and services to end homelessness in Minnesota. Website: <https://www.mnhomelesscoalition.org/>.

**Southern Minnesota Regional Legal Services (SMRLS).** SMRLS is a not-for-profit law office that provides legal advice and representation in civil cases only to low income persons in 33 counties in southern Minnesota, and to agricultural and migrant workers in Minnesota and North Dakota. Website: <https://www.smrls.org/>.

**Violence Free Minnesota (VFMN):** VFMN is a statewide coalition of over 90 member programs that works to end relationship abuse through several avenues, including advocating for housing access and tenant protections, providing direct financial support to survivors facing housing instability, and supporting service providers. Website: <https://www.vfmn.org/>.

**Volunteer Lawyers Network (VLN).** VLN provides civil legal services to low-income people through volunteer attorneys. Its mission is to protect and promote the basic human needs of people in poverty through the power of legal volunteers. Website: <https://www.vlnmn.org/>.

## **ARGUMENT**

### **I. Emergency Executive Order 20-79 Protects Public Health.**

#### **A. Minnesota's Eviction Moratorium Was Created to Be an Essential Public Health Tool for Controlling the COVID-19 Pandemic.**

Minnesota's eviction moratorium is directly connected to the public health emergency caused by the COVID-19 pandemic. Minnesota Governor Tim Walz

stated in Emergency Executive Order 20-14, the first state eviction moratorium issued on March 23, 2020:

Housing insecurity because of involuntary unemployment, extended sickness, or required quarantine as a result of a public health emergency in Minnesota is a subject of general concern. Losing a home is catastrophic at any time, and during the COVID-19 peacetime emergency in particular, losing housing endangers the public peace, health, and safety of all Minnesotans.

Public health and safety are promoted by stabilizing households which, through no fault of their own, may suddenly have the inability to afford rent. Providing a temporary moratorium on eviction actions allows these households to remain stably housed as they safeguard the health of themselves, their families, and other Minnesotans. Current laws and rules do not allow for cessation of notices to terminate tenancies, eviction actions, or issuing of writs of recovery during the COVID-19 pandemic.

On March 18, 2020, the President announced that the U.S. Department of Housing and Urban Development will suspend all foreclosures and evictions until April 30, 2020. As of March 18, 2020, more than 24 other states, counties, cities, and judicial districts across the nation had issued directives suspending evictions. Restricting evictions is a vital tool to keep Minnesotans in their homes to mitigate the community spread of COVID-19 in Minnesota and nationwide.

Emergency Executive Order 20-14 at 1-2 (Mar. 23, 2020) (hereinafter “EEO 20-14”). When Governor Walz replaced EEO 20-14 with Emergency Executive Order 20-79, he added:

The protections provided by Executive Order 20-14 and Executive Order 20-73 have been crucial to protect public health by promoting Minnesotans’ housing stability and preventing displacement during the COVID-19 pandemic. We have continued to slowly and safely reopen Minnesota’s economy and, in line with those actions, recognize that tenants may begin to move more safely. At the same time, I recognize that COVID-19’s economic

impact continues to influence the ability of tenants and homeowners to pay their rent and mortgages. Over 800,000 Minnesotans have applied for unemployment insurance since March 16, 2020.

Today I approved the release of \$100 million in funds for a program to provide housing assistance to prevent evictions and maintain housing stability for Minnesotans in the face of economic challenges due to COVID-19. To continue to strike a balance between the crucial importance of maintaining public health and stability for residential tenants, the economic impacts of the COVID-19 pandemic on tenants, and the interests of housing providers to maintain and protect their properties, I am modifying the eviction protections to allow evictions in additional limited circumstances. In addition, I am requiring landlords to give residential tenants a 7-day notice of intent to file an eviction to help mitigate the impact upon residential tenants and encourage resolutions without court involvement.

Emergency Executive Order 20-79 at 1 (July 14, 2020) (hereinafter “EEO 20-79”).

Minnesota’s eviction moratorium remains a public health measure.

**B. Evictions Exacerbate the Pandemic.**

The Center for Disease Control and Prevention (hereinafter “CDC”) issued a similar but less protective federal eviction moratorium. *Temporary Halt in Residential Evictions*, 85 Fed. Reg. 55,292 (Sep. 4, 2020). The CDC provided a detailed explanation supporting an eviction moratorium:

In the absence of State and local protections, as many as 30-40 million people in America could be at risk of eviction. A wave of evictions on that scale would be unprecedented in modern times. A large portion of those who are evicted may move into close quarters in shared housing or, as discussed below, become homeless, thus contributing to the spread of COVID-19.

....



Evicted individuals without access to housing or assistance options may also contribute to the homeless population, including older adults or those with underlying medical conditions, who are more at risk for severe illness from COVID-19 than the general population.

....

People experiencing homelessness are a high-risk population. It may be more difficult for these persons to consistently access the necessary resources in order to adhere to public health recommendations to prevent COVID-19. For instance, it may not be possible to avoid certain congregate settings such as homeless shelters, or easily access facilities to engage in handwashing with soap and water.

....

In the context of the current pandemic, large increases in evictions could have at least two potential negative consequences. One is if homeless shelters increase occupancy in ways that increase the exposure risk to COVID-19. The other is if homeless shelters turn away the recently homeless, who could become unsheltered, and further contribute to the spread of COVID-19. Neither consequence is in the interest of the public health.

*Id.* at 55295 (endnotes omitted).

These CDC findings about the public health efficacy of eviction moratoria track closely with findings by Minnesota's own Department of Health explaining the risk of COVID-19 caused by housing instability and displacement. *Interim Guidance About People Experiencing Homelessness and Encampment Settings* (Feb. 2, 2021), available at <https://www.health.state.mn.us/diseases/coronavirus/unsheltered.pdf>.

Housing instability and frequent mobility increase the risk of exposure to infectious diseases. The prevalence of transmissible diseases is greatest among people experiencing homelessness in unsheltered settings. In the context of COVID-19, the risks associated with sleeping outdoors in an encampment setting are different than with staying indoors in a congregate setting such as an emergency shelter or other congregate living facility. Outdoor settings may allow people to increase distance between themselves and others. However, sleeping outdoors often does not provide protection from the environment, quick access to hygiene and sanitation facilities, or connection to health care.

*Id.* at 1.

Academic research supports the governmental findings. Eviction forces families into transiency and crowded residential environments. Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 Am. J. Soc. 88, 120 (2012), available at [https://scholar.harvard.edu/files/mdesmond/files/desmond.eviction\\_poverty.ajs2012.pdf](https://scholar.harvard.edu/files/mdesmond/files/desmond.eviction_poverty.ajs2012.pdf). Eviction increases the likelihood of staying with family and friends who may themselves be at high risk for COVID-19. Michelle D. Layser et al., *Mitigating Housing Instability During a Pandemic*, Or. L. Rev. (forthcoming) (manuscript at 4, 14), available at <https://bit.ly/3sOpjGS>.

Residential crowding and increased contact with others drive the spread COVID-19, Emily A. Benfer, et al., *Eviction, Health Inequity, and the Spread of COVID-19: Housing Policy as a Primary Pandemic Mitigation Strategy*, 98 J. Urb. Health 1, PDF at 2-4, nn. 12-50, Fig. 1. (2021), available at <https://bit.ly/2LcBvRA>, similar to other respiratory illnesses. Eric Lofgren et al., *Influenza Seasonality:*

*Underlying Causes and Modeling Theories*, 81 J. VIROLOGY 5429, 5431 (2007); B.L. Gleason et al., *Geospatial Analysis of Household Spread of Ebola Virus in Quarantined Village—Sierra Leone*, 2014, 145 EPIDEMIOLOGY & INFECTION 2921, 2921 (2017); M. Kermode et al., *Tuberculosis Infection and Homelessness in Melbourne, Australia, 1995-1996*, 3 INT’L J. TUBERCULOSIS & LUNG DISEASE 901, 901, 905 (1999); Andrew R. Zolopa et al., *HIV and Tuberculosis Infection in San Francisco's Homeless Adults: Prevalence and Risk Factors in a Representative Sample*, 272 JAMA 455, 458 (1994).

Adding as few as two new members to a household can as much as double the risk of other respiratory illness. See Patrick K. Munywoki et al., *Frequent Asymptomatic Respiratory Syncytial Virus Infections During an Epidemic in a Rural Kenyan Household Cohort*, 212 J. INFECTIOUS DISEASES 1711, 1711 (2015), available at <https://bit.ly/3nwYDJ2>; Abhishek Bakuli et al., *Effects of Pathogen Dependency in a Multi-Pathogen Infectious Disease System Including Population Level Heterogeneity—A Simulation Study*, 14 Theoretical Biology & Med. Modelling 1, 1 (2017), available at <https://bit.ly/2IaVtdW>.

Evicted households are likely to contract and spread COVID-19 while moving from shelter to shelter or home to home. CDC, *COVID-19 Pandemic Planning Scenarios* (Sept. 10, 2020), available at <https://bit.ly/36RatI6>. People facing

homelessness often will sleep in cars or outdoors, where they have access only to public, not private, restrooms. Sara K. Rankin, *Punishing Homelessness*, 22 New Crim. L. Rev. 99, 126, PDF at 22-23 (2019), available at <https://digitalcommons.law.seattleu.edu/faculty/810/>. Due to the high rate of movement among people who face eviction, eviction is likely to spread COVID-19 by exposing healthy individuals to those who are unaware they are carrying the virus or those who know they have COVID-19, but are unable to self-isolate. Justin Sheen et al., *The Effect of Eviction Moratoria on the Transmission of SARS-CoV-2*, 12 Nature Comm'ns 2274, PDF at 10 (2021), available at <https://go.nature.com/3esNYLV>.

**C. Pandemic Evictions Disproportionately Harm Marginalized Groups.**

COVID-19 has disproportionately harmed people of color. The CDC reports Indigenous Americans as well as Hispanic/Latinx persons face an infection rates of 1.6 and 2.0 times the rate of non-Hispanic whites, respectively. Black, Hispanic/Latinx, and Indigenous persons are 2.8, 3.0 and 3.5 times more likely to be hospitalized with COVID-19, respectively. COVID-19 death rates are similarly stark: 1.9 times higher for Black people, 2.3 times for Hispanic and Latinx people, and 2.4 times for Indigenous people. CDC, *COVID-19 Hospitalization and Death by Race/Ethnicity* (Apr. 23, 2021), available at <https://bit.ly/3mYISeu>.

People of color are more likely to face eviction during the pandemic. The most comprehensive study of millions of eviction records in 39 states finds clear racial and gender biases in eviction filings and judgments. Peter Hepburn, Renee Louis & Matthew Desmond, *Racial and Gender Disparities Among Evicted Americans*, 7 Socio. Sci. 649 (2020), available at <https://sociologicalscience.com/articles-v7-27-649>. The authors found that Black renters received a disproportionate share of eviction filings and experienced the highest rates of eviction filing and eviction judgment, Black and Latinx female renters faced higher eviction rates than their male counterparts, and Black and Latinx renters were also more likely to be serially filed against for eviction at the same address. *Id.* at 653-659. *See generally* Benjamin F. Teresa, RVA Eviction Lab, *The Geography of Eviction in Richmond: Beyond Poverty* (2017), available at <https://bit.ly/3iFEmxu>; Deena Greenberg, Carl Gershenson & Matthew Desmond, *Discrimination in Evictions: Empirical Evidence and Legal Challenges*, 51 Harv. C.R- C.L. L. Rev. 115 (2016), available at [https://scholar.harvard.edu/files/mdesmond/files/greenberg\\_et\\_al.\\_.pdf](https://scholar.harvard.edu/files/mdesmond/files/greenberg_et_al._.pdf).

People most vulnerable to eviction are more likely to suffer from poor health conditions that place them at high risk of severe or fatal cases of COVID-19. Emily A. Benfer, et al., *Eviction, Health Inequity, and the Spread of COVID-19: Housing Policy as a Primary Pandemic Mitigation Strategy*, 98 J. Urb. Health 1, PDF at 4-5,

nn. 51–81, tbl. 1. (2021), available at <https://bit.ly/2LcBvRA>. The lower a person’s socioeconomic status, the greater their risk of eviction and suffering from chronic diseases, including heart disease, pulmonary disease, and diabetes. Danya E. Keene, “*That Wasn't Really a Place to Worry About Diabetes*”: *Housing Access and Diabetes Self-Management Among Low-Income Adults*, 197 Soc. Sci. & Med. 71 (2018), available at <https://pubmed.ncbi.nlm.nih.gov/29222997/>. Each of these may increase the mortality risk of COVID-19. Emily A. Benfer, et al., *supra*, at 57. The CDC has identified several comorbidities that increase risk of severe illness with COVID-19, including pulmonary disease, high blood pressure, diabetes, obesity, chronic liver or kidney disease, and respiratory disease. CDC, *People with Certain Medical Conditions* (Mar. 21, 2021), available at <https://bit.ly/3jVuuRL>; CDC, *People at Increased Risk* (Apr. 20, 2021), available at <https://bit.ly/2GNtvEi>. Each of these conditions is more prevalent among low-income populations and people of color, the populations most at risk of eviction before and during the pandemic. Peter Hepburn, Renee Louis & Matthew Desmond, *Racial and Gender Disparities Among Evicted Americans*, 7 Socio. Sci. 649 (2020).

**D. Eviction Moratoria Slow the Spread of COVID-19.**

To support its eviction moratorium, the CDC concluded:

In the context of a pandemic, eviction moratoria—like quarantine, isolation, and social distancing—can be an effective public health measure utilized to prevent the spread of communicable disease. Eviction moratoria facilitate self-isolation by people who become ill or who are at risk for severe illness from COVID-19 due to an underlying medical condition. They also allow State and local authorities to more easily implement stay-at-home and social distancing directives to mitigate the community spread of COVID-19. Furthermore, housing stability helps protect public health because homelessness increases the likelihood of individuals moving into close quarters in congregate settings, such as homeless shelters, which then puts individuals at higher risk to COVID-19.

*Temporary Halt in Residential Evictions*, 85 Fed. Reg. at 55,292.

Several academic studies demonstrate that eviction moratoria are an effective public health tool to slow COVID-19 infection and death. Researchers from the University of Pennsylvania, Harvard University, and University of Illinois Urbana-Champaign modeled the potential impacts of lifting eviction moratoria on COVID-19 infection and mortality rates. The authors determined that even a 1% increase in eviction rate can increase COVID-19 infections by 4%. Justin Sheen et al., *The Effect of Eviction Moratoria on the Transmission of SARS-CoV-2*, 12 Nature Comm'n's 2274, PDF at 3 (2021), available at <https://go.nature.com/3esNYLV>. One of the study authors described it at a recorded seminar on September 8, 2020. The modeling study found that when tenants are evicted, they often move in with other family members, increasing the size of households and the chance for viral transmission, and concluding that policies to stem evictions are a warranted and important

component of COVID-19 control. The model did not include the effect of homelessness in shelters and encampments. M. Levy, *Evictions and the Spread of Coronavirus, in Coronavirus and Housing/Homelessness* (Nat. Low Income Housing Coal. Sep. 8, 2020) (slides 16-20, recording at 29:20-42:10), available at <https://nlihc.org/resource/recording-available-nlihcs-september-8-national-call-coronavirus-disasters-housing-and>.

A study conducted by researchers at Duke University and the National Bureau of Economic Research analyzed the impact of eviction moratoria on COVID-19 infection and mortality rates across municipalities, concluding that policies limiting evictions reduced COVID-19 infection rates by 3.8% and mortality by 11% between March and November 2020. Had a nationwide eviction moratorium existed during the entire study period, the authors estimate that national COVID-19 infection rates would have been 14.2% lower and 40.7% fewer deaths would have occurred. Kay Jowers, et al., *Housing Precarity & The COVID-19 Pandemic: Impacts of Utility Disconnection and Eviction Moratoria on Infections and Deaths Across US Counties* at 10-11 (Jan. 2021), available at <https://www.nber.org/papers/w28394>.

Another study found a connection between eviction and health outcomes, and concluded that eviction prevention, through moratoria and other supportive measures, is a key component of a pandemic control strategy to mitigate COVID-19



spread and death. Emily A. Benfer, et al., *Eviction, Health Inequity, and the Spread of COVID-19: Housing Policy as a Primary Pandemic Mitigation Strategy*, 98 J. Urb. Health 1, PDF at 7-8 (2021), available at <https://bit.ly/2LcBvRA>.

Researchers from University of California-Los Angeles, John Hopkins University, Boston University, University of California-San Francisco, and Wake Forest University used varying expiration dates of state eviction moratoria as a natural experiment to evaluate whether lifting moratoria was associated with increased COVID-19 spread and mortality. Kathryn M. Leifheit, et al., *Expiring Eviction Moratoria and COVID-19 Incidence and Mortality* (Nov. 30, 2020), available at <https://bit.ly/2VBio5y>. The study cohort included forty-three states and the District of Columbia, which instituted moratoria during the pandemic, and compared the twenty-seven states that lifted their moratoria to those that did not. *Id.* at 4. After controlling for mask orders, stay at home orders, school closures, and testing rates, as well characteristics of states and underlying time trends, lifting moratoria was associated with 1.6 times higher COVID-19 mortality after seven weeks and 5.4 times higher mortality after sixteen weeks. *Id.* at 3-5. Similarly, lifting moratoria was associated with 1.6 times higher incidence of COVID-19 after ten weeks, and 2.1 times higher incidence after sixteen weeks compared to maintaining eviction moratoria. *Id.* The authors estimated that lifting moratoria amounted to an

estimated 433,700 excess cases and 10,700 excess deaths during the study period of March 13 to September 3, 2020. *Id.* at 5.

The study included a table of estimated infections and deaths in states that ended their eviction suspensions. Below is the data for states with populations similar to Minnesota through September 3, 2020:

<b>State and Population</b>	<b>Date Eviction Suspension Ended</b>	<b>Weeks from End of Suspension to September 3, 2020</b>	<b>Estimated Excess Virus Cases after Date Eviction Suspension Ended</b>	<b>Estimated Excess Virus Deaths after Date Eviction Suspension Ended</b>
<b>Maryland</b> (pop. 6,045,680)	July 25, 2020	6	2,310	37
<b>Wisconsin</b> (pop. 5,822,434)	May 26, 2020	14	19,840	346
<b>Colorado</b> (pop. 5,758,736)	June 13, 2020	12	8,620	254

*table cont.*

<b>State and Population</b>	<b>Date Eviction Suspension Ended</b>	<b>Weeks from End of Suspension to September 3, 2020</b>	<b>Estimated Excess Virus Cases after Date Eviction Suspension Ended</b>	<b>Estimated Excess Virus Deaths after Date Eviction Suspension Ended</b>
<b>Minnesota</b> (pop. 5,639,632)	<i>Eviction suspension maintained</i>			
<b>South Carolina</b> (pop. 5,148,714)	May 14, 2020	16	37,590	1,090
<b>Alabama</b> (pop. 4,903,185)	May 31, 2020	14	26,470	621
<b>Louisiana</b> (pop. 4,648,794)	June 15, 2020	12	29,650	959

*Id.* at 14. Population estimates are from *State Population Totals and Components of Change: 2010-2019* (United States Census Dec. 30, 2019), Annual Estimates of Residential Populations for the United States, Regions, States, and Puerto Rico: Apr. 1, 2010 to July 1, 2019, available at <https://www.census.gov/data/tables/time-series/demo/popest/2010s-state-total.html>.

Study co-author Dr. Leifheit has estimated infections prevented and lives saved between May and September in states that maintained their eviction suspensions, including Minnesota with 22,200 positive cases prevented and 680 lives saved. Kathryn M. Leifheit, *State-level COVID-19 Cases and Deaths Associated with Eviction Moratoriums* (Dec. 2020), available at [https://drive.google.com/file/d/1x8qezy\\_mXiaaw7eKsU\\_D9zQnQYY0YMfgP/view](https://drive.google.com/file/d/1x8qezy_mXiaaw7eKsU_D9zQnQYY0YMfgP/view). Note that this estimate does not cover the fall of 2020 when many states saw dramatic increases in infections and deaths. *Coronavirus in the U.S.: Latest Map and Case Count* (New York Times Dec. 15, 2020), available at <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>.

During the time span of the Leifheit study, in Minnesota, from March 24 when the first Emergency Executive Order suspending evictions began through September 3, the state saw 1,834 deaths and 80,704 positive cases in just over 5 months. Minn. Dept. of Health, *Situation Update for COVID-19* (May 4, 2021), available at <https://www.health.state.mn.us/diseases/coronavirus/situation.html>. From September 4 through January 4, Minnesota saw another 3608 deaths and 342,455 positive cases in 4 months, or twice as many deaths and over four times as many positive cases, for a total of 5,443 deaths and 429,022 positive cases. *Id.* It has been estimated that the Minnesota eviction moratorium saved 2,040 lives and

prevented 111,000 positive cases through January 4, 2021. Larry McDonough, *Pandemic Eviction Defense and Tenant Claims in Minnesota* at 27 (April 2, 2021), available at [http://povertylaw.homestead.com/files/Reading/Pandemic\\_Eviction\\_Defense\\_and\\_Tenant\\_Claims\\_in\\_Minnesota.pdf](http://povertylaw.homestead.com/files/Reading/Pandemic_Eviction_Defense_and_Tenant_Claims_in_Minnesota.pdf).

## **II. Exceptions to Minnesota’s Eviction Moratorium and the Financial Assistance Program Protect Landlord Rights.**

### **A. Exceptions to the Eviction Moratorium Provide the Eviction Remedy for Emergency Cases.**

EEO 20-79 allows landlords to evict tenants for several emergencies: (1) serious endangerment of others, (2) significant property damage, (3) violations of Minn. Stat. § 504B.171, subdivision 1, and (4) the need to move the property owner or property owner’s family member into the property. Minn. Stat. § 504B.171, subdivision 1 provides:

Subdivision 1. Terms of covenant.

(a) In every lease or license of residential premises, whether in writing or parol, the landlord or licensor and the tenant or licensee covenant that:

(1) neither will:

(i) unlawfully allow controlled substances in those premises or in the common area and curtilage of the premises;

(ii) allow prostitution or prostitution-related activity as defined in section 617.80, subdivision 4, to occur on the premises or in the common area and curtilage of the premises;

(iii) allow the unlawful use or possession of a firearm in violation of section 609.66, subdivision 1a, 609.67, or 624.713, on the premises or in the common area and curtilage of the premises; or

(iv) allow stolen property or property obtained by robbery in those premises or in the common area and curtilage of the premises; and

(2) the common area and curtilage of the premises will not be used by either the landlord or licensor or the tenant or licensee or others acting under the control of either to manufacture, sell, give away, barter, deliver, exchange, distribute, purchase, or possess a controlled substance in violation of any criminal provision of chapter 152.

(b) In every lease or license of residential premises, whether in writing or parol, the tenant or licensee covenant that the tenant or licensee will not commit an act enumerated under section 504B.206, subdivision 1, paragraph (a), against a tenant or licensee or any authorized occupant.

Minn. Stat. § 504B.206, Subd. 1(a) acts include (1) domestic abuse, as that term is defined under section 518B.01, subdivision 2, (2) criminal sexual conduct under sections 609.342 to 609.3451, or (3) harassment, as that term is defined under section 609.749, subdivision 1.

Minnesota landlords filed 1,246 evictions from March 2020 through March 2021. HOME Line, *A Year With (Almost) No Evictions: Analyzing eviction cases filed during the pandemic* at slides 1-15 (April 28, 2021) (hereinafter “HOME Line Slides”), available at <https://homelinemn.org/wp-content/uploads/2021/04/Slides->

[for-4-28-COVID-Webinar.pdf](#); HOME Line, *Recording of 4/28/21 COVID-19 webinar: A Year With (Almost) No Evictions — Analyzing eviction cases filed during the pandemic* at 16:38 (April 28, 2021) (hereinafter “HOME Line Recording”), available at <https://homelinemn.org/7705/4-28-21-home-line-covid-19-webinar-data-on-1-year-of-evictions-in-mn-during-the-pandemic/>. Landlords filed evictions under all of the exceptions, with serious endangerment accounting for the most common ground, followed closely by Minn. Stat. § 504B.171 violations and significant property damage, and the family exception being the least common ground. HOME Line Slides at 20-24; HOME Line Recording at 28:41.

**B. Minnesota Provides Financial Assistance to Landlords and Tenants.**

In EEO 20-79, Governor Walz announced the release of \$100 million in funds for a program to provide housing assistance to prevent evictions and maintain housing stability for Minnesotans in the face of economic challenges due to COVID-19. Minnesota Housing Finance Agency Commissioner Jennifer Ho testified to the Minnesota House of Representatives Housing Finance and Policy Committee that “agency received 28,011 applications requesting \$67.2 million between Aug. 24 and Nov. 30. In the last seven days of the program, it received approximately 14,000 applications for \$35 million.” Nate Gotlieb, *With COVID rental assistance funds*

spent, \$400 million more on way from feds (Jan. 12, 2021), available at <https://www.house.leg.state.mn.us/SessionDaily/Story/15442>. She added that Minnesota will receive nearly \$400 million in emergency rental assistance from the federal stimulus package. *Id.*

The agency recently announced the new program called RentHelpMN. “Congress passed a COVID Relief package as part of the omnibus funding package on December 21 and it was signed into law on December 27, 2020. The Relief package includes \$25 billion in emergency rental assistance that will provide an estimated \$375 million to Minnesota from the federal government.” Minn. Housing Fin. Agency, *RentHelpMN COVID-19 Emergency Rental Assistance*, available at <https://www.mnhousing.gov/sites/np/covid19emergencyrentalassistance> (last visited May 5, 2021). Both landlords and tenants may apply for assistance. Minn. Housing Fin. Agency, *RentHelpMN*, available at <https://www.renthelpmn.org/> (last visited May 5, 2021). “Payments will be made directly to the landlord, property owner or utility company on the tenant’s behalf via direct deposit or check. If the landlord will not accept payment or does not respond, payment may be offered to the renter so the renter can make the rental payment to the landlord.” Minn. Housing Fin. Agency, *Learn More - Frequently Asked Questions about RentHelpMN COVID-*



19 *Emergency Rental Assistance*, available at <https://www.renthelpmn.org/learn-more> (last visited May 5, 2021).

### **III. Lifting Minnesota’s Eviction Moratorium Would Trigger an Avalanche of Evictions.**

Before the pandemic, 16,000 evictions were filed in Minnesota in 2017, or 1,333 per month. *See* S. Spaid, *Evictions in Greater Minnesota Report* at 2 (HOME Line June 1, 2018), available at <https://Bakumn.org/wp-content/uploads/2018/06/Evictions-in-Greater-Minnesota-Report-with-Appendix.pdf>. The Fourth Judicial District for Hennepin County saw the most, with 6,000 annually and 500 per month. *See* A. Holdener, et al., *Eviction and Homelessness in Hennepin County* at 2 (Hubert H. Humphrey School of Public Affairs May 19, 2018), available at [https://cdn2.hubspot.net/hubfs/4408380/PDF/Eviction-Reports-Articles-Cities-States/Minnesota\\_humphrey-report-eviction-homelessness-may-2018.pdf](https://cdn2.hubspot.net/hubfs/4408380/PDF/Eviction-Reports-Articles-Cities-States/Minnesota_humphrey-report-eviction-homelessness-may-2018.pdf)

Thirteen months after issuance of the first Minnesota eviction moratorium, simple math would indicate that 17,329 evictions could have been filed. Subtracting the 1,246 evictions HOME Line reported in the last year leaves 16,083 that might be on hold. Some tenants may have moved, some tenants may have negotiated with their landlords, and some tenants may have received assistance, perhaps lowering the number of blocked evictions, if the economy is ignored.

The Minnesota unemployment rate in March 2021 was 4.2%, down from 7.6% in July 2020 and 11.3% in May 2020, but still up from 3.5% in March 2020. Minn. Dept. of Employment and Econ. Development, State and National Employment and Unemployment Current Data, available at <https://mn.gov/deed/data/current-econ-highlights/state-national-employment.jsp> (last visited May 5, 2021); Dept. of Numbers, *Minnesota Unemployment*, available at <https://www.deptofnumbers.com/unemployment/minnesota/> (last visited May 5, 2021).

The state's employment data does not take into account tenants, but the United States Census data does. U.S. Dept. of Commerce, *Week 28 Household Pulse Survey: April 14 – April 26* (May 5, 2021), available at <https://www.census.gov/data/tables/2021/demo/hhp/hhp28.html>. As of April 26, 2021, out of 669,749 adult Minnesota tenants estimated by the Census, it estimated:

- 70,885 (10.1%) were not currently caught up on rent payments, U.S. Dept. of Commerce, *Table 1b. Last Month's Payment Status for Renter Occupied Housing Units, by Select Characteristics: Minnesota*, [https://www2.census.gov/programs-surveys/demo/tables/hhp/2021/wk28/housing1b\\_week28.xlsx](https://www2.census.gov/programs-surveys/demo/tables/hhp/2021/wk28/housing1b_week28.xlsx) (last visited May 5, 2021),

- 194,011 (29.0%) were unemployed, *Id.*, and
- 87,093 (13.0%) had no or slight confidence in the ability to make the next month's payment, U.S. Dept. of Commerce, *Table 2b. Confidence in Ability to Make Next Month's Payment for Renter Occupied Housing Units, by Select Characteristics: Minnesota*, [https://www2.census.gov/programs-surveys/demo/tables/hhp/2021/wk28/housing2b\\_week28.xlsx](https://www2.census.gov/programs-surveys/demo/tables/hhp/2021/wk28/housing2b_week28.xlsx) (last visited May 5, 2021).

Of the 70,885 Minnesota tenants estimated to not be currently caught up on rent payments, it estimated 26,068 (36.8%) very likely or somewhat likely to leave home due to eviction in next two months. U.S. Dept. of Commerce, *Table 3b. Likelihood of Having to Leave this House in Next Two Months Due to Eviction, by Select Characteristics: Minnesota*, available at [https://www2.census.gov/programs-surveys/demo/tables/hhp/2021/wk28/housing3b\\_week28.xlsx](https://www2.census.gov/programs-surveys/demo/tables/hhp/2021/wk28/housing3b_week28.xlsx) (last visited May 5, 2021).

The data is worse for people of color. Out of 176,086 tenants of color, the Census estimated 47,667 (27.1%) had no or slight confidence in the ability to make the next month's payment. U.S. Dept. of Commerce, *Table 2b. Confidence in Ability to Make Next Month's Payment for Renter Occupied Housing Units, by Select Characteristics: Minnesota*, <https://www2.census.gov/programs-surveys/demo/>

[tables/hhp/2021/wk28/housing2b\\_week28.xlsx](https://www2.census.gov/programs-surveys/demo/tables/hhp/2021/wk28/housing2b_week28.xlsx) (last visited May 5, 2021). Out of 77,569 African American tenants, the Census estimated 19,555 (25.2%) were not currently caught up on rent payments. U.S. Dept. of Commerce, *Table 1b. Last Month's Payment Status for Renter Occupied Housing Units, by Select Characteristics: Minnesota*, [https://www2.census.gov/programs-surveys/demo/tables/hhp/2021/wk28/housing1b\\_week28.xlsx](https://www2.census.gov/programs-surveys/demo/tables/hhp/2021/wk28/housing1b_week28.xlsx) (last visited May 5, 2021).

National estimates for post moratorium evictions in Minnesota are even more dire. Stout conducted a national survey from November 11 to 23, 2020, and estimated that Minnesota would see 32,100-69,800 potential evictions in January 2021 if evictions were unlimited. Stout Risius Ross, *Estimation of Households Experiencing Rental Shortfall and Potentially Facing Eviction* (last visited May 5, 2021), available at <https://app.powerbi.com/view?r=eyJrIjoiNzRhYjg2NzAtMGE1MC00NmNjLTllOTMtYjM2NjFmOTA4ZjMyIiwidCI6Ijc5MGJmNjk2LTE3NDYtNGE4OS1hZjI0LTc4ZGE5Y2RhZGE2MSIsImMiOiN9>. In June 2020, the Aspen Institute estimated nationally, that if the tenant “unemployment rate is 25 percent, 19 million people would be at risk of eviction by September 30, as their unemployment benefits expire, stimulus payments are spent, and savings dwindle; that rises to 23 million if renters’ unemployment rate is 30 percent.” It concluded the risk of eviction at 30% renter unemployment for Minnesota on December 31, 2020

would be 281,085 tenants if evictions were unlimited. a, Z. Neumann & S. Gilman, *20 Million Renters Are at Risk of Eviction; Policymakers Must Act Now to Mitigate Widespread Hardship* (The Aspen Institute June 19, 2020), available at <https://www.aspeninstitute.org/blog-posts/20-million-renters-are-at-risk-of-eviction/>. As noted above, the Census estimates the unemployment rate of Minnesota tenants at 29.0%. U.S. Dept. of Commerce, *Table 1b. Last Month's Payment Status for Renter Occupied Housing Units, by Select Characteristics: Minnesota*, [https://www2.census.gov/programs-surveys/demo/tables/hhp/2021/wk28/housing\\_1b\\_week28.xlsx](https://www2.census.gov/programs-surveys/demo/tables/hhp/2021/wk28/housing_1b_week28.xlsx) (last visited May 5, 2021). While the national estimates of eviction in Minnesota might be high, the high unemployment rate among tenants, high rent burden, and limited financial assistance indicate that the eviction numbers will be considerably higher than before the pandemic.

Compared with 16,000 eviction court actions statewide in 2017, the unemployment data and Census data support estimating the number of evictions on hold right now to well exceed the annual statewide. These evictions would overwhelm the courts and tenants and endanger the health of everyone.

## CONCLUSION

For the foregoing reasons, these amici curiae respectfully ask the Court to affirm the district court's dismissal of Appellant's complaint and the denial of its motion for a preliminary injunction.

DATED: May 11, 2021

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE WITH RULE 32(a)(7) OF THE  
FEDERAL RULES OF APPELLATE PROCEDURE**

I hereby certify that this brief is typed in Microsoft Word using 14-point type and “Times New Roman” proportionally spaced font. The length of this brief is, with allowed exclusions, 5,138 words.

I further certify that the electronic version of this brief provided to the Court and parties has been scanned for viruses and has been found to be virus-free, as required by Eight Circuit Local Rule of Appellate Procedure 28A(h).

Dated: May 11, 2021

/s/Joanna K. Dobson  
Joanna K. Dobson

## CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: May 11, 2021

/s/Joanna K. Dobson  
Joanna K. Dobson