

# States Shouldn't Hinder Local Gov'ts In COVID-19 Tenant Aid

By **Emily Benfer and Nestor Davidson**

Cities and counties across the U.S. are being forced to battle two catastrophes — COVID-19 and the eviction crisis — with their hands tied. In the face of inadequate federal and state responses, local governments are struggling to adopt policies that will keep their communities safe and people in their homes.

But some states are using preemption to block cities and counties from containing the pandemic by prohibiting local masking and stay-at-home orders, even where there was a local demand for the adoption of such policies. And now there is a real concern that states will preempt local government from adopting eviction moratoriums in order to prevent the spread of COVID-19 and protect families from harm during the pandemic.

Local action to protect tenants is essential and the authority of cities and counties to act in the best interest of their communities must be affirmed and fortified. Without it, local governments will be unequipped to prevent an unparalleled housing crisis, along with the unnecessary infection and mortality it will cause.

Already, local governments are struggling to respond to the escalating eviction crisis. The economic fallout from the pandemic accelerated America's existing affordable housing crisis[1] into an unprecedented emergency. In response, the federal government and the majority of state governments issued a patchwork of eviction and foreclosure moratoria that offered limited, short-term protections, which have largely expired.[2]

Although the federal [Centers for Disease Control and Prevention](#) issued a nationwide eviction moratorium for renters who meet eligibility criteria, that protection will only last through the end of the year and is being inconsistently implemented across the country.[3]

Without intervention, the eviction cliff continues to loom as renters are predicted to accumulate an estimated \$25 billion to \$34 billion in back rent by January.[4] As a result, over 30 million adults and children are at risk of losing their homes.[5]

Although local capacity is limited, many cities and counties have stepped up to do what they can to prevent evictions in their communities. Los Angeles, for instance, approved a \$100 million rental assistance program, but it will cap payments at \$2,000 per household in one of America's priciest rental markets.

In some localities, multimillion dollar emergency rental assistance funds have been depleted in as little time as 90 minutes to one business day.[6] Cities and counties are also considering a range of interventions, from eviction moratoria and temporary rent freezes to limits on late fees and the creation of civil right-to-counsel programs to ensure equity and prevent harm.

As local governments work to prevent widespread housing displacement and contain COVID-19, however, the specter of state laws blocking local authority looms over city and county policymakers.



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Over the past decade, a steep increase in state preemption[7] has significantly limited the power of cities and other local governments and undermined their ability to solve a wide range of problems for their residents, from local minimum wage increases and antidiscrimination provisions to environmental protection and mitigating the excesses of the sharing economy, among many other areas.

Many of the local policies preempted by states in recent years would have been most beneficial to people of color, low-wage workers and women — the same communities disproportionately hurt by the health, economic and housing effects of the pandemic.[8]

Indeed, states have blocked some of the policies most critical to pandemic response — such as paid sick days for employees struggling with illness and providing municipal broadband at a moment when access to high-speed internet is essential.

Preemption now threatens to impede local housing policies in response to the pandemic. Tenant protections are among the most equitable and important housing policies; yet, they are preempted in 33 states.[9] And preemption claims were raised in nearly every lawsuit challenging local eviction moratoriums.

For example, landlords and landlord groups filed lawsuits against numerous cities, including Seattle; Philadelphia; Union City, New Jersey; and San Francisco, asserting that those cities' local eviction-protection policies are barred by state law. These claims, to date, have not succeeded, but remain a serious concern as even the risk of litigation can chill local initiative.

While state law often allows local governments to build on regulatory floors set at the state level, it is possible that as litigation proliferates in response to more local action, courts might find local efforts barred. That would be disastrous as the crisis deepens, leaving no level of government willing and able to forestall the looming wave of evictions.

Properly understood, local governments have the requisite authority to protect their residents, but where there is any doubt, states should follow California's lead and explicitly unleash local governments to act, especially in the face of severe crisis.[10]

Keeping people in their homes has always been key to protecting public health. During a pandemic, it is paramount to containing COVID-19 and to preventing the long-term consequences of eviction that will impact generations.

Access to safe, stable and affordable housing is one of the strongest predictors of long-term health and well-being. Families and children living in unstable housing or facing evictions, forced moves or homelessness are far more likely to suffer from poor mental and physical health.[11]

Adults who are homeless or housing insecure are more likely to experience psychological distress, substance use, intimate partner violence and symptoms of trauma.[12] Children facing such hardships exhibit emotional and development delays and difficulty in school.

Eviction almost always results in a downward move to substandard housing that threatens health located in higher crime neighborhoods and more poorly performing school districts. It is a barrier to employment, which could thwart efforts to reopen the economy. And when people are evicted, they face greater risk of exposure to the virus and increased risk of complications and mortality.

A secure home is one of the most critical pillars of our response to the pandemic, let alone the ability to thrive and access opportunity. While the federal government must respond by bolstering the nationwide moratorium with rental assistance, it is critical to affirm local government power and flexibility to respond to this health and economic crisis.

The impacts of displacement are felt most deeply at the local level, making it all the more important that cities and counties are empowered to keep the children and adults in their communities safe — and at home — during and after pandemic.

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***Disclosure: Benfer and Davidson are not participants in any ongoing litigation involving preemption of local control, but have participated as amici in a number of past briefs related to this issue.***

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[1] See 2019 State of the Nation's Housing report [here](#).

[2] <https://evictionlab.org/covid-policy-scorecard/>.

[3] <https://www.nytimes.com/2020/09/16/business/eviction-moratorium-renters-landlords.html>.

[4] Analysis of Current and Expected Rental Shortfall and Potential Eviction Filings in the U.S., available [here](#).

[5] <https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk/>.

[6] <https://www.houstonchronicle.com/politics/houston/article/15-million-rental-assistance-program-fills-90-min-15267544.php>.

[7] [https://www.acslaw.org/wp-content/uploads/2017/09/ACS\\_Issue\\_Brief\\_-\\_Preemption\\_0.pdf](https://www.acslaw.org/wp-content/uploads/2017/09/ACS_Issue_Brief_-_Preemption_0.pdf).

[8] <https://www.apmresearchlab.org/covid/deaths-by-race>.

[9] <https://www.supportdemocracy.org/equitablehousing>.

[10] [https://www.nclc.org/images/pdf/special\\_projects/covid-19/CA-3.16.20-Executive-Order.pdf](https://www.nclc.org/images/pdf/special_projects/covid-19/CA-3.16.20-Executive-Order.pdf).

[11] <https://www.healthaffairs.org/doi/10.1377/hpb20180313.396577/full/>.

[12] <https://www.huduser.gov/portal/publications/Family-Options-Study.html>.