

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Minnesota Multi Housing Association;
StuartCo; Eagle Creek Townhomes-TK,
LLC; Woodridge Apartments of Eagan,
LLC; Guardian Property Management,

Case No.: _____

Plaintiffs,

v.

COMPLAINT

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

JURY TRIAL DEMANDED

Defendants.

INTRODUCTION

1. Minnesota’s eviction moratorium, Executive Order 20-79 (“EO 20-79”), unconstitutionally interferes with the contract rights of tenants and property owners by effectively prohibiting those owners from removing tenants who are dangerous, destructive, or have harassed or intimidated other renters. EO 20-79 also makes it all but impossible for property owners to comply with their statutory obligations to provide clean and safe spaces for their residents—a problem that has led to tenant complaints, calls to the police, and loss of rental income from tenants that move out rather than endure harassment by their neighbors.

2. Under EO 20-79, the only way for property owners, like the members of Plaintiff Minnesota Multi Housing Association (“MHA”), to remove a dangerous tenant

is when the owner can prove that the tenant is “seriously endanger[ing]” others or has caused “significant” damage to property. Those terms are not defined in EO 20-79, and over the past year it has become clear that property owners are expected to wait until there is evidence that a person has become so dangerous that other residents have to call the police or move out, or that the rental unit is completely destroyed.

3. Without the ability to remove such tenants Minnesota property owners and managers are helpless to respond to the complaints of their renters. This has led to widespread anger and frustration with property owners and managers who are *legally prohibited* from taking the actions that their renters are demanding: to make their living spaces safe.

4. The eviction moratorium was initially implemented as a result of the unprecedented public health crisis presented by the COVID-19 pandemic. The rationale for barring evictions was, as explained by Governor Walz, to limit the number of people that may lose housing and be required to move in with other people or stay in homeless shelters. Specifically, Governor Walz stated that “[p]ublic health and safety are promoted by stabilizing households which, through no fault of their own, may suddenly have the inability to afford rent.” EO 20-79 also expressly recognized that allowing people to stay in their own homes, whether or not they could pay rent, imposed a substantial hardship on property owners who would be forced to bear the burden of maintenance and mortgage obligations without the necessary revenue to meet those obligations. EO 20-79 was promoted by the Governor as a critical component of combatting the spread of the novel coronavirus.

5. If the Governor's goal was to protect those struggling economically as a result of the COVID-19 pandemic and to prevent an increase in people experiencing homelessness which could lead to increased transmission of COVID-19, it may have been possible to craft an executive order to accomplish that result. Indeed, a federal eviction moratorium, put in place by the U.S. Centers for Disease Control ("CDC"), requires a tenant to affirm under penalty of perjury that they have used their best efforts to obtain all available government assistance for housing, meet specific income requirements, and that eviction would likely render the individual homeless. Put another way, the CDC moratorium created a clear nexus between the hardships imposed by the COVID-19 crisis and the ability to obtain the protections of the CDC moratorium.

6. EO 20-79 does not contain any of those requirements. Rather than barring evictions *solely* for non-payment of rent after a tenant has verified they are unable to make payments—which would have been narrowly tailored to the government interest of assisting those suffering economically as a result of the pandemic and reducing the need for individuals to move in with others—the Governor's eviction-related executive orders bar *all* evictions, lease terminations and lease non-renewals, for *any reason*, other than in extreme exceptions that have proven almost impossible to meet.

7. This policy has at least two glaring flaws: it does not define what "seriously endangers" or "significant" damage means, and it fails to require any nexus between stopping the payment of rent and financial hardship connected to the pandemic. Yet EO 20-79 imposes severe penalties for attempting to remove a tenant in violation of its restrictions. In other words, property owners and managers who in good faith seek to

remove a dangerous tenant and fail might be subject to criminal prosecution. And a renter that is able to pay but chooses not to has the same protections as a renter who cannot afford to pay because of hardship arising out of the pandemic—an obvious opportunity for abuse that has in fact been exploited.

8. With no clear standard to apply, property owners were left to wonder what would happen if they sought to evict a tenant based on what they, and their other renters, considered “serious endangerment” and a court disagreed. The answer came soon enough: aggressive threats of prosecution by Defendant Minnesota Attorney General Keith Ellison, immediately chilling any further efforts by landlords to protect the safety of their residents in all but the most egregious and horrifying circumstances.

9. With little modification, that situation persists to this day. What has changed, however, is practically everything else. When Governor Walz issued the first eviction-related executive order in March 2020, little was known about how widespread and deadly the COVID-19 disease would be. Now, more than a year and more than 3.7 million deaths later, the world is all too aware of the terrible toll the pandemic has taken. But the world has also learned important lessons, including how to minimize the spread of the disease, how to best care for those afflicted with it, and how to develop and administer a vaccine that has severely curtailed the spread and deadliness of COVID-19 in the United States.

10. Minnesota’s COVID-19 restrictions have also changed: in fact, they have practically all been lifted. Yet the prohibition on removing tenants that are violating the material terms of their lease and rental agreements remains.

11. Governor Walz has largely acknowledged that Minnesota's ongoing eviction moratorium is no longer in place to protect Minnesotans from COVID-19.¹ Instead, the eviction moratorium persists because of politics: both chambers of the Minnesota Legislature agree that the eviction moratorium should be wound down, but disagree on how to do it.

12. Today, Governor Walz believes it is safe to, among other activities: go to a store without a mask if vaccinated; eat at a restaurant; attend a concert; and visit gyms, fitness centers, and other exercise facilities. Despite determining that it is largely safe to do all these activities, it is, somehow, dangerous for a property owner to: remove a tenant who has harassed, intimidated, and threatened other residents and employee; remove a tenant that has destroyed property; or refuse to renew or terminate the lease of a person who would in all other circumstances not be allowed to renew.

13. EO 20-79 thus stands in sharp conflict with virtually every other action taken by Governor Walz with respect to lifting pandemic restrictions. If it is safe to go to the State Fair, it is safe for property owners to exercise their contractual and statutory rights to remove tenants who have violated the material terms of their leases or rental agreements, particularly when those violations have negatively impacted other residents' use and enjoyment of their rental properties.

14. Up to this point courts have largely rejected challenges to eviction moratoriums. The bases for those decisions were most often that the moratoriums were a

¹ See Brian Bakst, *Tenants worry and landlords fume over eviction ban*, MPRNews (May 25, 2021), <https://www.mprnews.org/story/2021/05/25/tenants-worry-and-landlords-fume-over-eviction-ban>.

legitimate exercise of an executive's emergency powers to control a public health crisis. But as the Governor's near total lifting of COVID-19 restrictions indicates, the public health crisis that precipitated EO 20-79 has changed dramatically and EO 20-79 is not necessary or tailored to protect the public from the spread of COVID-19 or any economic impacts arising out of the pandemic.

15. With EO 20-79, Governor Walz asked Minnesota's property owners to bear the burden of more than a year of expenses, mortgage payments, and debt, while restricting their ability to fulfill their contractual and statutory obligations to their tenants. They have done so, enduring harassment, complaints, threats, the loss of employees and income, and the risk of bankruptcy. Maintaining a prohibition on practically all evictions—especially when almost every other COVID-19 related restriction has been lifted and the Governor has stated he will sign *any* legislative “off-ramp” to the eviction moratorium presented to him—has become an unconstitutional exercise of power.

16. This Court is empowered to declare those portions of EO 20-79 that no longer serves a rational, reasonable, or compelling governmental purpose unconstitutional. This Court is also empowered to enjoin the enforcement of those provisions by Attorney General Ellison and any prosecutor, law firm, or other individual or entity that would otherwise enforce EO 20-79. This Court should do so, permitting property owners to wrest control of their property back from tenants that create unsafe living conditions for their fellow renters.

JURISDICTION AND VENUE

17. Jurisdiction in the District of Minnesota is proper under 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 2201 (declaratory-judgment jurisdiction), and 42 U.S.C. § 1983 (civil rights statute).

18. Venue is proper in this Court under 28 U.S.C. § 1391 because the defendants are Minnesota public officials and reside within this district, and because the events or omissions giving rise to the claims presented occurred within this district.

PARTIES

19. Plaintiff Minnesota Multi Housing Association (“MHA”) is a Minnesota non-profit corporation located at 1600 W 82nd Street, Suite 110, Bloomington, MN 55431. Many of MHA’s members own residential properties that they lease to tenants. MHA has standing because EO 20-79 and its predecessor executive orders (EO 20-14 and EO 20-73) have caused financial and other harm to MHA’s members, including but not limited to Plaintiffs StuartCo and Guardian Property Management, by preventing them from evicting tenants for material violations of their lease and rental agreements and from leasing their properties to tenants willing to abide by the material terms of the leases or rental agreements. This lawsuit is germane to MHA’s purposes because MHA advocates for Minnesota property owners and landlords before local, state, and federal officials, as well as the courts. The participation of MHA’s individual members is unnecessary in this litigation. A court declaring EO 20-79 unlawful and setting aside its moratorium on evictions would redress the MHA’s injury because its members could then evict breaching and non-paying tenants, as well as not renew leases or terminate

leases. The federal eviction moratorium's existence does not undermine the redress all plaintiffs would obtain upon having EO 20-79 declared unconstitutional, as evictions are barred under the CDC's existing eviction moratorium, among other reasons.

20. Plaintiff StuartCo is a Minnesota corporation located at 1000 West 80th Street, Bloomington, MN 55420. StuartCo is the managing agent for a portfolio of more than 6000 rental units across 37 properties. StuartCo has standing because EO 20-79 and its predecessor executive orders (EO 20-14 and EO 20-73) have caused financial and other harm to StuartCo by preventing it and the properties it is the managing agent for from evicting tenants for material violations of their lease and rental agreements and from leasing their properties to tenants willing to abide by the material terms of the leases or rental agreements. A court declaring EO 20-79 unlawful and setting aside its moratorium on evictions would redress StuartCo's injury because it and the properties it is the managing agent for could evict, not renew, or terminate the leases of breaching and non-paying tenants.

21. Plaintiff Eagle Creek Townhomes-TK, LLC ("Eagle Creek") is a Minnesota limited liability corporation located at 1000 West 80th Street, Bloomington, MN 55420. Eagle Creek owns 154 rental units, many of which it has not received rent for since the enactment of EO 20-79.

22. Plaintiff Woodridge Apartments of Eagan, LLC ("Woodridge") is a Minnesota limited liability corporation located at 1000 West 80th Street, Bloomington, MN 55420. Woodridge owns 213 rental units, many of which it has not received rent for since the enactment of EO 20-79.

23. Plaintiff Guardian Property Management (“Guardian”) is a Minnesota Corporation located at 708 Cleveland Avenue SW, Suite 160, New Brighton, MN 55112. Guardian is a Minnesota property management company providing leasing services to property owners throughout the greater Minneapolis and St. Paul areas. Guardian services more than 250 property owners with over 800 properties ranging from single family homes to multi-unit apartment buildings. Guardian is the lessor on leases for properties it manages on behalf of owners. Under the terms of Guardian’s Management Agreement with property owners, Guardian is fully authorized to institute, in the owner’s name, all legal actions for the evicting or dispossessing of residents or other persons from the property under management. A court declaring EO 20-79 unlawful and setting aside its moratorium on evictions would redress Guardian’s injury because, absent relief, Guardian is unable to meet its obligations to its owners to manage those owners’ properties and collect rent owed to the owner. Moreover, if a court declared EO 20-79 unlawful, and set aside the eviction moratorium, Guardian could then evict, not renew, or terminate the leases of breaching and non-paying tenants.

24. Defendant Tim Walz is a resident of the State of Minnesota, and in his official capacity, is Governor of the State of Minnesota. He is sued in both his individual and official capacities.

25. Defendant Keith Ellison is a resident of the State of Minnesota, and in his official capacity is the Attorney General for the State of Minnesota. He is sued in both his individual and official capacities.

26. Defendant John Doe is a pseudonymous defendant representing the various city and county officials, or private individuals or law firms, to whom the State of Minnesota has delegated the authority to prosecute misdemeanor offenses including actions deemed to violate the Executive Orders outlined below, and whose identities cannot be ascertained at this time. John Doe is sued in that capacity.

BACKGROUND

I. PLAINTIFF MHA REPRESENTS THE INTERESTS OF PROPERTY OWNERS AND MANAGERS IN MINNESOTA

27. The Minnesota Multi Housing Association (“MHA”) was founded in 1967 as a state-wide nonprofit trade organization to promote the highest standards in the development and maintenance of rental and owner-occupied multi-housing. The MHA’s more than 1900 members include property owners, managers, developers, and common interest communities. Those individuals own or manage nearly 320,000 multi housing units, nearly half of all rental units in the state.

28. The majority of MHA members own or manage fewer than 20 units each.

29. MHA provides a variety of services to its members, including education resources about real estate investment, property management, and maintenance training.

30. A core concern for the MHA and its members is the development and preservation of affordable rental housing throughout Minnesota. Reflecting that priority, the MHA has developed a framework to: 1) protect residents; 2) preserve naturally occurring affordable housing; and 3) produce more multi-family housing. Critically, the MHA has observed that while many high-end buildings are built each year, a number of

factors have led to an insufficient production of new, affordable units. To remedy that issue, the MHA has advocated for lower-cost design and construction of apartments, and for expanding the use of 4d tax classification for new unsubsidized affordable housing, among other strategies.

31. MHA also engages in various lobbying activities on behalf of its members, including interacting with Minnesota legislators, and other city, state, and federal officials. The MHA represents all aspects of the multi housing industry.

II. MANY MHA MEMBERS, INCLUDING PLAINTIFFS AND OTHERS LIKE THEM, UTILIZE ONE OF SEVERAL STANDARD LEASE FORMS THAT DETAIL APPROPRIATE CONDUCT DURING A RENTAL

32. Many Minnesota property owners use a standard lease form to enter into lease or rental agreements with tenants.

33. Those agreements typically include provisions that detail:
- a. Monthly rental obligations;
 - b. Limitations on the occupancy and use of the rental unit, including usually that only the person(s) listed as leaseholder(s) can occupy the unit;
 - c. Information regarding security deposits;
 - d. Procedures for termination or alteration of the lease; and
 - e. Provisions regarding damage to the property, among other provisions.

34. In addition to those provisions, many lease agreements, including the MHA standard lease form which is used by many MHA members, requires residents to agree to a certain standard of conduct, which often includes agreements:

- a. not to act in a loud, boisterous, unruly or thoughtless manner or disturb the rights of the other residents to peace and quiet, or to allow his/her guest to do so. Also, the resident is responsible for conduct of all unit occupants and their guests;
- b. to use the unit only as a private residence, and not in any way that is illegal or dangerous, or which could cause a cancellation, restriction or increase in the premium of management's insurance;
- c. not to interfere in the management and operation of the property;
- d. to comply with any additional addenda, community policies, posted rules or other regulations of the property; and
- e. not to engage in harassing, threatening or discriminatory conduct directed at management or other residents.

35. Property owners also often make commitments through the lease agreements, which include keeping the unit and common areas fit for use as residential premises, keeping the unit in reasonable repair and making necessary repairs, and keeping common areas clean and in good conditions. Many of those obligations are also required under Minnesota law. *See* Minn. Stat. 504B.161, subd. 1.

36. Many lease agreements, including the MHA standard lease form, provides in a section titled "EVICTION" that "If RESIDENT violates any of the terms of this Lease, MANAGEMENT may terminate this Lease immediately and without prior notice. If this Lease is terminated but RESIDENT does not move out voluntarily, MANAGEMENT may bring an eviction action."

III. EVICTION, OR THE THREAT OF EVICTION, NONRENEWAL, OR TERMINATION OF A LEASE, ARE THE ONLY LEGAL TOOLS MINNESOTA PROPERTY OWNERS HAVE TO REGAIN POSSESSION OF PROPERTY WHEN A TENANT VIOLATES A LEASE

37. Minnesota has a detailed statutory scheme for evictions. Minnesota Statute Chapter 504B sets out the rights and obligations of landlords and tenants.

38. Related to evictions, prior to the issuance of EO 20-79 and its predecessors, a Minnesota landlord was not required to give a tenant notice before filing an eviction lawsuit, and the property owner could file the lawsuit when the tenant violated any term of the lease or rental agreement, including non-payment of rent. An exception to that rule, however, may apply in certain “at will” arrangements. *See, e.g.*, Minn. Stat. § 504B.135.

39. Eviction, non-renewal, and termination of lease or rental agreements are the *only* options available for a property owner to regain possession of property. Further, there is no process under Minnesota law other than an eviction action to remove a tenant that has violated the lease or rental agreement but refuses to leave other than to win an eviction lawsuit. Property owners may not themselves attempt to remove the tenant; only a law enforcement officer can do so. *See* Minn. Stat. §§ 504B.281; 504B.365, subd. 1, subd. 5

40. Also, as described above, landlords have a number of obligations to their tenants, including a duty to maintain the property and common areas to a certain standard, and to make and keep the property safe and habitable for residents. *See, e.g.*, Minn. Stat. §§ 504B.161, 171.

IV. THE MHA ISSUED GUIDANCE TO ITS MEMBERS ADVOCATING FOR A SELF-IMPOSED HALT TO EVICTIONS BEFORE THE STATE EVICTION MORATORIUM WAS ENACTED

41. On March 22, 2020, the MHA issued “shelter in place” guidelines to its members. In that guidance, the MHA noted that “[t]he last thing Minnesotans need when they are struggling to maintain stability is to lose the safe place they call home.”

42. Consistent with that idea, the guidelines “call[] upon every Minnesota rental housing provider” to adopt a number of policies through May 2020, including halting evictions of renters affected by COVID-19 absent extraordinary circumstances, waiving late fees, offering flexible payment plans, and ceasing new rent increase notifications.

V. IN RESPONSE TO THE COVID-19 PANDEMIC GOVERNOR WALZ DECLARES A PEACETIME EMERGENCY AND ISSUES EXECUTIVE ORDERS BARRING ALL EVICTIONS AND NONRENEWALS / TERMINATIONS OF LEASES

43. On March 13, 2020, in response to the worldwide COVID-19 pandemic Governor Walz signed “Executive Order 20-01: Declaring a Peacetime Emergency and Coordinating Minnesota’s Strategy to Protect Minnesotans from COVID-19.”

44. The Governor’s executive orders are publicly available online.²

45. Since then, the Governor has issued 132 executive orders, numbered 20-02 through 21-23.

² See *Executive Orders from Governor Walz*, Office of Gov. Tim Walz & Lt. Gov. Peggy Flanagan, <https://mn.gov/governor/news/executiveorders.jsp> (last visited June 14, 2021).

46. The Governor has issued subsequent executive orders extending the peacetime emergency for additional thirty-day periods with Executive Order 20-35 on April 13, 2020, Executive Order 20-53 on May 13, 2020, Executive Order 20-75 on June 12, 2020, Executive Order 20-78 on July 13, 2020, Executive Order 20-83 on August 12, 2020, Executive Order 20-89, issued September 11, 2020, Executive Order 20-92 on October 12, 2020, Executive Order 20-97 on November 12, 2020, Executive Order 20-100 on December 14, 2020, Executive Order 21-04 on January 13, 2021, Executive order 21-08 on February 12, 2021, Executive Order 21-12 on March 15, 2021, Executive Order 21-19 on April 14, 2021, Executive Order 21-22 on May 14, 2021, and Executive Order 21-24 on June 14, 2021.

47. The executive orders extending the Governor's peacetime emergency powers have generally noted that the governor's asserted authority could only be rescinded by "a majority vote of each house of the legislature pursuant to Minnesota Statute 2019, section 12.31, subdivision 2(b)."

48. Beginning in March 2020, Governor Walz enacted the first of what became a series of executive orders suspending evictions in Minnesota except under certain limited circumstances. Specifically, Governor Walz enacted Executive Orders 20-14 on March 23, 2020, 20-73 on June 5, 2020, and 20-79 on July 14, 2020, relating to terminations or non-renewals of tenancies, evictions, and writs of recovery (the "eviction-related EOs"; references to EO 20-79 include the content of EO 20-14 and 20-73 except where otherwise noted).

49. These EOs were approved by the Executive Council on those same dates. The Executive Council consists of officers of the Executive Branch: Defendant Governor Walz, the Lieutenant Governor, the Secretary of State, the State Auditor, and Defendant Attorney General Ellison.

50. These EOs have never been codified into state law or ratified by an act of the Legislative Branch of the State of Minnesota.

51. The Judicial Branch of the State of Minnesota has issued orders related to COVID-19 and access to the courts but has never issued an order adopting Governor Walz's EOs at issue here.

52. Broadly, the eviction-related EOs suspended "the ability to file an eviction action under Minnesota Statutes 2019, section 504B.285 or 504B.291" except under circumstances delineated in those orders.

53. In addition to suspending eviction actions, EO 20-79 barred landlords from issuing notices of termination of leases, notices of nonrenewal of leases, and prohibited the termination of residential leases.

54. The only circumstances by which a property owner could evict a tenant or issue a nonrenewal or termination of a lease under EO 20-79 were when the tenant:

- a. Seriously endangers the safety of other residents;
- b. Violates Minnesota Statutes 2019, section 504B.171, subdivision 1;
- c. Remains in the property past the vacate date after receiving a notice to vacate or nonrenewal under paragraph 4 of EO 20-79; or

d. Materially violates a residential lease by the following actions on the premises, including the common area and the curtilage of the premises:

- i. Seriously endangers the safety of others; or
- ii. Significantly damages property.

55. One additional circumstance that theoretically provided property owners with the right to regain possession of their property was if the property owner wished to move into the unit or have family members live in the unit.

56. The eviction-related EOs did not define “seriously endanger” or “significantly damage[,]” and no subsequent executive order or statement by the Governor, the Minnesota Legislature, or any court, has clarified what that subjective standard means.

57. EO 20-79 has no stated end date – it remains in effect until the Governor ends the peacetime emergency in Minnesota, until it is rescinded by the Governor, or until the Legislature abrogates the Governor’s power to maintain the eviction moratorium.

58. Though property owners and mortgage holders were barred from bringing eviction actions and notices of lease termination or nonrenewal, Governor Walz merely “requested” that financial institutions holding home mortgages implement an “immediate moratorium on all pending and future foreclosures,” but did not prohibit such foreclosures. Like evictions, foreclosures are a highly regulated statutory process.

59. EO 20-79 also provides severe penalties for anyone that violates its restrictions, making a landlord “guilty of a misdemeanor” for violating the eviction

prohibitions, and requiring that any person found liable for that misdemeanor be fined up to \$1,000 or imprisoned for up to 90 days.

VI. THE CDC ISSUED AN EVICTION MORATORIUM THAT HAS BEEN ENJOINED BY SEVERAL FEDERAL COURTS BUT WHICH REMAINS IN EFFECT

60. In March 2020 Congress enacted a 120-day eviction moratorium that applied to rental properties receiving federal assistance. *See* Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, Pub. L. No. 116-136, 134 Stat. 281 (2020). Once that moratorium expired, on September 4, 2020 the U.S. Department of Health and Human Services, through the CDC, issued an order titled “Temporary Halt in Residential Evictions to Prevent the Further Spread of Covid-19” (the “CDC Order”) implementing a broader eviction moratorium that applied to all rental properties nationwide. *See* Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55,292 (Sept. 4, 2020). It was subsequently extended to expire on June 30, 2021. *See* CDC Order, 86 Fed. Reg. 16,731 (Mar. 31, 2021).

61. The purpose of the CDC Order was to combat the spread of COVID-19 by allowing tenants that met certain financial standards and were having difficulty meeting their rental obligations to remain in their homes. The CDC Order explained that its prohibition on evictions facilitated self-isolation for individuals infected with COVID-19 who were at a higher risk of severe illness from COVID-19 given their individual medical conditions. *Id.* at 55,294. A further rationale was that the CDC Order gave state and local officials a greater ability to implement stay-at-home orders and other measures

to promote social distancing, reducing the need for group housing, and to help prevent homelessness. *Id.*

62. The eviction protections provided in the CDC Order were not automatic. Instead, to obtain the protections of the CDC Order, a “Covered Person,” was required to submit a declaration under penalty of perjury confirming a number of facts, including that:

- The individual has used best efforts to obtain all available government assistance for rent or housing;
- The individual met the income ceiling qualifications for an individual or family;
- The individual is unable to pay the full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, a lay-off, or extraordinary out-of-pocket medical expenses;
- The individual is using best efforts to make timely partial payments; and
- Eviction would likely render the individual homeless or force the individual to move into close quarters in a new congregate or shared living setting.

Id. at 55,293.

63. The CDC Order contained a number of exceptions, which, if met, would not preclude an eviction action. For example, evictions were not precluded if the eviction was based on a tenant, lessee, or resident:

- Engaging in criminal activity while on the premises;
- Threatening the health or safety of other residents;
- Damaging or posing an immediate and significant risk of damage to property;

- Violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or
- Violating any other contractual obligation, other than the timely payment of rent or similar housing related payment.

Id. at 55,294.

64. Landlords and property owners who violated the CDC Order were subject to a variety of significant potential penalties, including financial and/or criminal penalties.

65. In November 2020 a group of residential property management companies, along with several property owners, brought a lawsuit in the United States District Court for the District of Columbia (*Alabama Association of Realtors v. United States Department of Health and Human Services*, No. 20-cv-3377 (D.D.C.)), challenging the CDC Order. The suit claimed that the eviction moratorium exceeded the CDC's statutory authority and challenged the CDC Order on a number of statutory and constitutional grounds. The plaintiffs filed a motion for expedited summary judgment, and the CDC and the other defendants, represented in the action by the Department of Justice, filed a motion for summary judgment and partial motion to dismiss.

66. On May 5, 2021, the D.C. District Court granted the plaintiffs' motion and denied the Departments' motion. In its decision, the court identified the legal issue as "Does the Public Health Service Act grant the CDC the legal authority to impose a nationwide eviction moratorium?" The court concluded "[i]t does not." *Alabama Ass'n of Realtors v. U.S. Dep't of Health & Human Servs.*, ___ F. Supp. 3d ___, 2021 WL 1779282, at *10 (D.D.C. May 5, 2021).

67. The court's decision vacated the CDC Order nationwide, denying the government's request that the court narrow the effect and limit of any vacating order to the plaintiffs with standing before that court. The D.C. District Court's decision aligned with other decisions issued earlier, including a decision from the United States District Court for the Eastern District of Texas which found that the CDC Order exceeded the constitutional authority granted to the CDC, and rejected the government's argument that the CDC Order was within the legislative powers granted to Congress under the interstate commerce clause of the U.S. Constitution. *See Terkel v. Ctrs. for Disease Control & Prevention*, ___ F. Supp. 3d ___, 2021 WL 742877 (E.D. Tex. Feb. 25, 2021). But unlike some prior decisions where the courts have limited the scope of their rulings to apply only to the parties to the suits, the D.C. district court found that any such limitation would be "at odds with settled precedent."

68. Immediately following the decision in *Alabama Realtors*, the Justice Department filed a notice of appeal and request for a stay of the effect of the decision until the appeal is decided. The D.C. District Court stayed its decision pending appeal, which the D.C. Circuit Court affirmed; accordingly, the federal eviction moratorium remains in place for now. *See Alabama Ass'n of Realtors v. U.S. Dep't of Health & Human Servs.*, ___ F. Supp. 3d ___, 2021 WL 1946376, at *1 (D.D.C. May 14, 2021) (granting motion to stay vacation of nationwide eviction moratorium); *Alabama Ass'n of Realtors v. U.S. Dep't of Health & Human Servs.*, No. 21-5093, 2021 WL 2221646 (D.C. Cir. June 2, 2021) (affirming stay).

69. If Minnesota’s eviction moratorium is lifted, the CDC Order would bar evictions for non-payment when the tenant meets the criteria to be considered a “Covered Person” under that order. *See Heights Apartments, LLC, et al. v. Tim Walz, et al.*, ___ F. Supp. 3d. ___, 2020 WL 7828818, at *3 (D. Minn. Dec. 31, 2020) (“If the eviction moratorium EOs were declared invalid or rescinded before the CDC Moratorium expires, the CDC Moratorium would then apply in Minnesota.”).

70. However, that the CDC Moratorium may apply in Minnesota does not eliminate the redress that Plaintiffs would obtain if EO 20-79’s provisions regarding the eviction moratorium were declared unconstitutional. *See Heights Apartments, LLC*, at *5 (concluding that because the CDC Moratorium is narrower than EO 20-79, plaintiffs could still obtain relief if EO 20-79’s eviction moratorium provisions were set aside).

VII. EO 20-79 AND ITS PREDECESSORS GO FAR BEYOND THE RESTRICTIONS IN THE CDC ORDER AND OFFER ONLY ILLUSORY OPTIONS FOR PURSUING REMOVAL OF DANGEROUS AND DESTRUCTIVE TENANTS

71. The eviction-related Minnesota executive orders bar landlords and property owners from using the only tools available to influence tenant behavior, which is eviction or nonrenewal/termination of leases. Typical bases for eviction or termination/nonrenewal of leases include:

- a. Nonpayment of rent;
- b. Assaults on other tenants;
- c. Damage to property not deemed insignificant;

d. Materially interfering with the management of the property, such as refusing to allow access for maintenance, repairs, or inspections;

e. Materially interfering with the use and enjoyment of the leased spaces for neighbors in a multi-unit building, such as smoking in common areas, harassment or theft from other residents, significant disturbances to other tenants such as loud parties, fights, or music, or leaving secured buildings unsecured;

f. Exceeding the occupancy limit of the leased property, allowing non-lessees to live in the property, or non-lessees who claim the right of possession; or

g. Abandoning the property.

72. Without the ability to enforce a consequence for violation of lease terms the eviction-related EOs in effect converted all leases in Minnesota into indefinite leases, controlled entirely by the tenant, who can decide to stay or abandon the property, damage or destroy the rental unit, and harass, fight, or threaten, any other resident with near total impunity.

73. The limited “exceptions” in EO 20-79 that allow eviction actions for conduct that “seriously endangers” others, or as a result of “significant” property damage, are illusory options. Those standards are inherently subjective and vague, and can be interpreted differently by different courts. A property owner that genuinely believed a tenant “seriously” endangered another, or caused “significant” damage to property, could find themselves being prosecuted on misdemeanor charges and fined if a judge disagreed with them. Faced with potential criminal prosecution and jail time, property owners

simply have no realistic option except to wait for a problem tenant to leave or for the Governor to lift the eviction moratorium.

74. Further, the threat of legal consequences for property owners is real. Attorney General Ellison brought at least four actions for violation of the eviction moratorium within just over a month after the enactment of the first eviction moratorium executive order (EO 20-14). On information and belief Attorney General Ellison has also threatened such sanctions against others to create an environment in which few property owners are willing to even attempt to exercise their limited rights.³ The Attorney General's action has had a chilling impact on property owners' and tenants' rights, as well as property owners' and managers' obligations and abilities to protect their tenants.

75. The above-described restrictions go far beyond what was contemplated in the CDC Order. For example, the CDC Order provides eviction protection *only* after a tenant declares, under penalty of perjury, that they are making all efforts possible to obtain rental assistance, are paying what they can afford, and have household income below a certain threshold. Further, the CDC Order permits an eviction when the tenant violates *any* contractual obligation other than the obligation to pay rent, fees, penalties, or interest. *See* 85 Fed. Reg. at 55,294.

76. EO 20-79 has none of those requirements. In essence, any renter, for any reason, could stop paying rent and property owners have no recourse other than the

³ *See, e.g., Attorney General Ellison sues to protect tenant from illegal eviction tomorrow*, Office of Minn. Attorney General Keith Ellison (Apr. 29, 2020), https://www.ag.state.mn.us/Office/Communications/2020/04/29_Paleti.asp.

toothless “option” to pursue an eviction action (or nonrenewal or termination of a lease) in the hopes that what the property owner considered to be “seriously endangering” the safety of others, or “*significantly*” damaging property is the same as what a given judge believes it to be. Those subjective standards make it effectively impossible for any property owner to have confidence that even a good faith effort to comply with EO 20-79 would not be met with threats from the Attorney General, criminal prosecution, fines, and jail.

77. Further, the lack of any required nexus between a tenant that stops paying rent and economic hardship in the eviction-related EOs distinguishes them from the CDC Order, under which tenants have an obligation to declare under penalty of perjury that they need the relief afforded by that order due to “substantial loss of household income, compensable hours of work or wages, a lay-off, or extraordinary out-of-pocket medical expenses.” 85 Fed. Reg. at 55,293.

VIII. MINNESOTANS HAVE ACCRUED MORE THAN \$200 MILLION IN UNPAID RENTAL OBLIGATIONS SINCE THE BEGINNING OF THE COVID-19 CRISIS

78. The impact of Governor Walz’s eviction moratorium on rental property owners in Minnesota has been immense.

79. A recent report estimates that as of late-May 2021, 69,000 Minnesota households owe approximately \$215 million in back rent, with an average per-renter debt of \$3,100.⁴ Other sources provide similar estimates.⁵

80. Across the United States it is estimated that more than 8 million rental properties are behind on payments by an average of \$5,600.⁶

81. Of those 8 million properties, between half and three-quarters are owned by what the government classifies as “small landlords” — individuals that manage rentals themselves and rely on the rent paid by tenants as a component of, or the entirety of, their income—not by large property management companies or banks.⁷

82. Government estimates are that a third of small landlords are at risk of bankruptcy or foreclosure as the pandemic continues into its second year.⁸

83. Renters owe tens of billions in back rent, with a typical delinquent renter almost four months behind with a balance of \$5,600, plus fees for late payments.⁹

⁴ See Bill Salisbury, *Minnesota starts making rent payments for pandemic victims*, Twin Cities Pioneer Press (May 26, 2021), <https://www.twincities.com/2021/05/26/minnesota-starts-making-rent-payments-for-by-pandemic-victims/>.

⁵ See *Rent Debt in America*, PolicyLink, <https://www.policylink.org/node/63161> (noting, in the page providing information about Minnesota, that approximately 62,000 households are behind on rent, with an average of \$3,300 per-renter debt, and a total of around \$207 million in total rent debt in the state) (last visited June 13, 2021).

⁶ See Eli Saslow, *The battle for 1042 Cutler Street*, Washington Post (May 1, 2021), <https://www.washingtonpost.com/nation/2021/05/01/landlord-tenant-eviction-moratorium-pandemic/>.

⁷ See *id.*

⁸ See *id.*

⁹ See Leandra Bernstein, *Eviction moratorium gave renters relief but property owners face billions in unpaid rent*, NBC Montana (Feb. 8, 2021), <https://nbcmontana.com/news/nation-world/eviction-moratorium-gave-renters-relief-but-property-owners-face-billions-in-unpaid-rent>.

84. The staggering economic impact of unpaid back rent on all property owners, but in particular on “small” landlords, is having real world effects now. Nationwide, property owners report feeling financial pressure to sell their properties due to non-payment of rent and concerns about covering expenses like mortgage and maintenance.¹⁰ It is estimated that approximately 35% of property owners managing relatively limited numbers of units are using savings to pay for expenses typically covered by rent income from tenants.¹¹

85. Indeed, a March 2021 study found that, “the small, independent property owners who own nearly three-quarters of all US rental properties and over two-fifths of all rental units (US Department of Housing and Urban Development 2020) are bearing the brunt of this crisis.”¹² That study also noted that “[a]s the primary providers of our nation’s naturally occurring affordable housing, these mom and pop landlords are a vital component of the rental landscape. Relative to larger landlords, they are also more likely to be people of color, be retired without other sources of income, and be lower income in

¹⁰ See Liz Brumer, *Eviction Moratoria Keep Coming: Should Landlords Consider Selling Their Properties?*, Million Acres (Apr. 8, 2021), <https://www.millionacres.com/real-estate-investing/articles/eviction-moratoriums-keep-coming-should-landlords-consider-selling-their-properties/>.

¹¹ See *id.*; see also Leo Stallworth, *LA property owner says eviction moratorium due to pandemic has left him homeless*, ABC 7 (Apr. 28, 2021), <https://abc7.com/eviction-moratorium-property-owner-renters-covid-protections/10554702/> (discussing harm to landlords resulting from eviction moratoriums).

¹² Elijah de la Campa, Jt. Ctr. For Housing Studies of Harv. Univ., *The Impact of COVID-19 on Small Landlords* at 3 (Mar. 2021), available at https://www.jchs.harvard.edu/sites/default/files/research/files/harvard_jchs_small_landlord_survey_de_la_campa_2021_0.pdf (last visited June 13, 2021.)

general. In this way, the COVID-19 rental crisis is a crisis not only for our nation's most vulnerable residents but also for our most vulnerable small businesses.”¹³

86. So called “mom and pop” landlords are not positioned to indefinitely fund properties where their tenants have stopped paying rent. Perhaps most problematically, many renters that stopped paying rent when the eviction related EOs went into place appear to be able to make rental payments, but simply stopped doing so based on the knowledge that they cannot be evicted.

IX. UNINTENDED CONSEQUENCES: EVICTION MORATORIA ARE LIKELY TO LEAD TO SIGNIFICANTLY DIMINISHED AFFORDABLE HOUSING STOCK

87. Counter to the goal of increasing the availability of affordable housing, the ongoing eviction moratoria in several states, including in Minnesota, is likely to lead to a significant *decrease* in affordable housing in the future.

88. Small “mom and pop” landlords who drew on their savings over the last year to make it through the eviction moratoriums with non-paying renters will likely have difficulty making up for their losses when the eviction moratoria end, whenever that may be. That is because it is not likely that renters will suddenly have lump-sums of cash available when their rent is due, and while the job market has been improving, hundreds of thousands of jobs have been lost that will be difficult to bring back.

89. Moreover, as illustrated by Minnesota's own efforts (discussed in detail below), state and federal rental assistance programs—established to provide funds to

¹³ *Id.*

property owners to make up for lost rent and pay a limited amount of future rent—have been plagued with administrative and processing issues. A property owner may wait weeks or months to receive any funds from those programs, much less be made whole. All the while, the property owners’ expenses and mortgage obligations must be met to maintain their properties.

90. The result of these realities is that property owners that cannot make ends meet without collecting rent checks are likely to sell.

91. A senior fellow at the Brookings Metropolitan Policy Program has noted that individual property owners that were unable to maintain their properties during the pandemic are likely to sell to families who will convert their rentals to personal housing, or to large investment groups—which, in turn, are much more likely to renovate, rebuild, and increase the rent.¹⁴ Further, it is likely that some smaller landlords will be forced to sell their buildings when they cannot cover their costs. This systemic loss of affordable rental units is likely to most directly impact individuals looking for affordable housing.

92. In sum: the negative consequences of EO 20-79, and the Governor’s failure to acknowledge and address them by rescinding or otherwise modifying that Order to allow “mom and pop” property owners to regain possession of their properties from renters that have stopped paying or are otherwise violating their lease terms, will likely

¹⁴ See Abby Vesoulis, *How Eviction Moratoriums Are Hurting Small Landlords—and Why That’s Bad for the Future of Affordable Housing*, TIME (June 11, 2020), <https://time.com/5846383/coronavirus-small-landlords/>.

harm those most in need of affordable housing and the small business owners and landlords that could have provided that housing.

X. MINNESOTA PROPERTY OWNERS HAVE ENDURED THREATS AND ABUSE AS A RESULT OF EO 20-79, AND HAVE BEEN POWERLESS TO PROTECT THEIR TENANTS IN ALL BUT THE MOST EXTREME CIRCUMSTANCES

93. Due to the ongoing restrictions of EO 20-79, property owners throughout Minnesota have gone to extreme lengths to address problems at their rental properties that would have previously been addressed through the threat, or actual process, of eviction, non-renewals of leases, or terminations of leases or rental agreements.

A. Eviction Moratorium Impacts on MHA Members

94. Plaintiff MHA's members and property owners similarly situated have reported numerous examples of violent, abusive, and frightening conduct that they have been helpless to do anything about given the ongoing eviction moratorium. For purposes of this Complaint and the protection of the members, their employees, and the affected tenants, the members are referred to only as "members," and residents are described pseudonymously.

95. One MHA member has reported a significant number of problems at its properties that under normal circumstances it could have remedied by not renewing or terminating a lease, or through eviction. Yet the eviction-related EOs have prevented the member from removing dangerous tenants or obtaining timely and effective relief from the courts.

96. For example, the MHA member owns a property at which a tenant has reported being afraid of a particular resident (referred to herein as “Resident P”) and Resident P’s guest, who visits the property frequently but is not an approved occupant on the lease. The tenant that reported being afraid of Resident P and their guest has called the police regarding Resident P and their guest’s behavior. In addition, management has issued Resident P numerous notices of lease violations during the pendency of the eviction moratorium which were not addressed, and Resident P’s unauthorized frequent guest became aggressive with the property’s management personnel when questioned about the placement of the unauthorized guest’s car. The same resident that has called the police as a result of Resident P’s conduct has made multiple complaints to the management that management is putting the complaining resident in an unsafe living environment in violation of their lease terms by not controlling or removing Resident P. Also, Resident P has alleged that management has violated Minnesota law by not keeping all premises and common areas fit for the intended use.

97. Under the terms of Resident P’s lease the MHA member would be entitled to evict, or at least not renew, Resident P’s lease. However, the member has not been able to bring an eviction action or take any other steps to regain possession of the property for fear that the conduct the member believes is endangering other residents and staff will not be accepted by a court as sufficient under the limited, vague exceptions contained in EO 20-79, and the member will be subject to criminal prosecution and fines.

98. The only circumstances in which this member has been able to successfully remove a tenant for conduct required waiting such a long time, and enduring so much

abuse, that multiple other residents moved out of the building, staff members either left employment or sought workplace accommodations to avoid having to personally interact with Resident A, and the police were called on a number of occasions. The resident (referred to herein as “Resident A”) was combative with other residents and staff as early as 2019, but was given multiple chances to reform their behavior. Instead of complying with the lease requirements, after the eviction moratorium was in place, and through December 2020, Resident A escalated the abusive conduct, including pounding on the walls of other residents’ units, banging on office doors, and stating that she had discovered the name and work address of a staff member’s parent. Resident A also threatened to get a gun or mace on several occasions.

99. *Any* of the above conduct would have been sufficient to remove Resident A from the member’s property under the terms of the relevant lease. But due to EO 20-79, the member was unable to take any steps until Resident A’s conduct escalated to such an extent that everyone involved was terrified and the member had suffered an economic impact of residents moving out, depriving the member of rent. It should never have had to get to that point. It is unfair to Resident A’s neighbors, the property owner, and the member’s employees, as well as a violation of the member’s obligations under its leases, that nothing could be done to remove Resident A from the premises earlier.

100. Another MHA member has had similar experiences. The member has had multiple residents move out because of tenants that the member has been unable to evict or terminate the lease of, despite what would have been sufficient cause under the lease

agreement and Minnesota law to begin an eviction action or end a tenancy with proper notice prior to enactment of EO 20-79.

101. In one particularly frightening incident, a resident (“Resident L”) at one of the member’s properties became verbally abusive to the member’s staff. In repeated phone calls to an employee Resident L made statements such as, “I know where you live, you better watch your ass. You live at [employee’s actual home address]. Don’t you? When do you get home? You better watch your ass.” Resident L then came to the management’s office, continued to call and threaten the employee while banging violently on the front door, and throwing something at the window. That staff member had lived in a private residence that was not owned or operated by the company, but moved out due to his fear of Resident L’s conduct. When attempting to file an eviction under the Governor’s exceptions, this member company was threatened by the Attorney General’s office for pursuing what the member believed to be a lawful eviction action, and so the problem resident still remains in place months later.

102. Multiple residents living at this members’ properties have told management that they can do anything they like because “we know you can’t do anything about it.”

103. The member estimates that it has had dozens of tenants at multiple properties move out due to the frightening and harassing conduct of a small number of other tenants, losing both the rent associated with those tenants, as well as not being paid by the harassing tenants. With no ability to remove those tenants or terminate their leases the member’s buildings have far higher vacancy than they would normally have. Many

more resident households have had to displace themselves than the few problem tenants that could not be removed due to EO 20-79.

104. Further illustrating the unfair, confusing, and vague aspects of EO 20-79, in August 2020 an individual who owned just three rental properties was faced with the devastating news that her husband, who had been diagnosed with stage 4 lung cancer in May 2020, had only months to live. Given the burdens that prognosis imposed on her family, the member determined she could no longer manage those properties and planned to sell her personal residence, intending to move into the leased house after giving proper notice. The member gave the tenant notice in June 2020 that she needed to move into the property and would not be renewing the lease in August. The tenant refused to leave. The member's husband died in November 2020.

105. In February 2021 the owner again gave notice that she needed to move in since she would have nowhere else to live. Rather than move, the tenant contacted the Attorney General's office, which contacted the owner, indicating that this second notice was not sufficient. The owner then gave notice again in late March to vacate by mid-May. The tenant still refused to move out, and has refused to pay rent since January 2021.

106. In the meantime, the owner's personal residence sold, and she had nowhere else to live. Left without options, the owner filed an eviction action, relying on paragraph 4 of EO 20-79, which allows a landlord to issue a termination of lease or nonrenewal "due to the need to move the property owner or property owner's family member into the property." The Mille Lacs County court did not grant the request (marking "other" rather

than “granted” or “denied”), stating only that “The Eviction does not fall within the exceptions.” No further explanation was given. That decision was in spite of the owner having given notice several times for a reason she believed fell within the exception encompassed by paragraph 4 of EO 20-79. The tenant is still living at the property, has not paid rent, and is in violation of a number of other lease terms, including keeping two unauthorized dogs at the property.

B. Plaintiffs StuartCo, Eagle Creek, Woodridge, and Guardian, And The Owners They Manage Property For, Have Been Severely Impacted By The Eviction Moratorium

107. Plaintiff StuartCo is the management agent for a portfolio of properties, which include Plaintiffs Eagle Creek and Woodridge. These Plaintiffs have been significantly impacted by EO 20-79.

108. For example, Plaintiffs Eagle Creek and Woodridge each have a number of tenants that have not paid rent for many months, yet, based on information available to Eagle Creek and Woodridge, the tenants would not qualify for rent assistance, or have refused to apply. Under the terms of the above-described tenants’ leases, those Plaintiffs would have been entitled to notify the tenants they needed to vacate the premises for nonpayment, and could have filed an eviction action to remove them. Eagle Creek and Woodridge have not been able to do so, however, because of the ongoing operation of EO 20-79.

109. Guardian, which is also an MHA member, owns and manages properties, and has itself been impacted by the eviction moratorium if the tenant did not comply.

110. For example, a tenant in a property Guardian manages had become increasingly erratic and violated multiple terms of their rental agreement, including leaving large amounts of waste in the yard such as used tires. Under the terms of the relevant lease, it was a violation to leave such debris in the yard of the property.

111. After numerous notices to the tenant, Guardian scheduled the removal of the yard waste, but the company refused to collect it after being confronted and stopped by the tenant. When a city inspection of the property was scheduled to close a permit the city informed the member that because of how hostile the tenant was they would only schedule an inspection over video chat, forcing the property manager to do it instead, which Guardian's employees were afraid to do.

112. These are just a few examples of what landlords—and their tenants—have had to endure during the period EO 20-79 (and its predecessors) have been in effect. Yet under the provisions of EO 20-79, a landlord's ability to remove such tenants, recover their property, and restore some semblance of calm and peace to their residential units has been eliminated, with no end in sight.

113. Importantly, evictions in the above examples were nearly all barred despite the fact that the conduct at issue (which would otherwise give rise to an eviction action) had no known relationship to the COVID-19 pandemic, illustrating how unconnected EO 20-79 was, and has become, from the pandemic itself. Harassing others, hosting large, noisy parties, and allowing excessive waste to accumulate at a property, is not the kind of hardship stemming from the pandemic that the state should protect; it is conduct that tenants know they can get away with because of the restrictions of EO 20-79.

XI. IN DECEMBER 2020 THE UNITED STATES BEGAN A MASSIVE ROLLOUT OF COVID-19 VACCINES

114. The global effort to create a safe and effective vaccine for COVID-19 was unprecedented, with nations across the world dedicating vast resources to the development of a vaccine. Those efforts have thus far been largely successful, with three different vaccines approved by the U.S. Food and Drug Administration in approximately one year.

115. Specifically, two-dose mRNA COVID-19 vaccination became available in December 2020, and in February 2021 a single dose COVID-19 vaccine also became available.¹⁵

116. Though the vaccines were quickly developed, the effort to distribute and administer vaccines was beset by logistical challenges. The challenges included, among other things, that some of the vaccines required super-cold storage; two of the three vaccines approved for use in the United States required a two-shot regimen, which required recipients to schedule and show up for their second shots; and a huge initial demand for what was at the time a very limited supply.

117. In January 2021 then-President Elect Biden announced he would quickly release most available vaccine doses to inoculate more people.¹⁶

¹⁵ See *Different COVID-19 Vaccines*, CDC (last updated May 27, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines.html>.

¹⁶ See Ricardo Alonso-Zaldivar & Zeke Miller, *With virus surging, Biden to speed release of COVID vaccines*, AP (Jan. 8, 2021), <https://apnews.com/article/joe-biden-ap-top-news-coronavirus-pandemic-coronavirus-vaccine-f7bb372f73a4f204ec540d39a4409e18>.

118. At that time, state and local health departments had difficulty implementing mass vaccination programs while simultaneously facing a surge in COVID-19 cases and unprecedented hospitalizations. A variety of factors—including staff shortages and diminished budgets—complicated efforts to receive, store, track, distribute and administer vaccines.¹⁷

119. At the end of January 2021 the Biden administration announced plans to purchase 200 million additional COVID-19 vaccine doses to be delivered throughout the summer. Those doses were in addition to the 400 million doses already manufactured. In that timeframe vaccine distribution to states increased more than 15%.¹⁸

120. By February 2021, the United States had vaccinated more Americans than had tested positive for the virus, a significant milestone. At that time, the United States was administering vaccines faster than any other country, with nearly 26.5 million vaccinations provided.¹⁹

121. Over the next several months, vaccine production increased significantly, and vast state and federal resources were directed towards getting as many Americans vaccinated as possible.

¹⁷ Alice Park, *As Mutated Strains of COVID-19 Surface, Can the U.S. Overcome Its Vaccine Rollout Hurdles?*, TIME (Jan. 8, 2021), <https://time.com/5927345/us-vaccine-rollout/>.

¹⁸ See Isaac Stanley-Becker, Laurie McGinley & Christopher Rowland, *Biden administration seeks to buy 200 million more vaccine doses to be delivered through the summer*, Wash. Post (Jan. 26, 2021), <https://www.washingtonpost.com/health/2021/01/26/vaccine-supply-biden/>.

¹⁹ See Michelle Fay Cortez & Emma Court, *U.S. Hits Pandemic Milestone With More Vaccinated Than Cases*, Bloomberg (Feb. 1, 2021), <https://www.bloomberg.com/news/articles/2021-02-01/u-s-hits-milestone-in-pandemic-with-more-vaccinated-than-cases>.

122. Those efforts have been successful, and as of June 2021, the CDC estimates that 64.4% of adults have received at least one dose of COVID-19 vaccine, with 143.9 million people fully vaccinated.²⁰

123. The unprecedented success of the nationwide COVID-19 vaccination campaign has led to a broad rollback of many restrictions initially put in place to reduce the spread of the disease and minimize outbreaks.

XII. MINNESOTA HAS HAD ONE OF THE MOST SUCCESSFUL VACCINATION CAMPAIGNS IN THE NATION

124. On December 8, 2020, the Minnesota Department of Health issued guidance for the allocation and prioritization of the COVID-19 vaccine.²¹ It identifies sub-priority groups under the federal guidance for phase 1a vaccine allocation, which at that time included health care personnel and long-term care facility residents. The guidance detailed several “sub-prioritization” groups, including groups at high risk of infection, risk of severe morbidity and mortality, risk of transmitting to others, and risk of negative societal impact. There were three levels of sub-prioritization in phase 1a.²²

²⁰ See *COVID-19 Vaccinations in the United States*, CDC (updated daily by 8:00 pm ET), <https://covid.cdc.gov/covid-data-tracker/#vaccinations> (last visited June 13, 2021).

²¹ See Minnesota Guidance for Allocating and Prioritizing COVID-19 Vaccine – Phase 1a, Minn. Dep’t of Health (Mar. 10, 2021), available at <https://www.health.state.mn.us/diseases/coronavirus/vaccine/phase1guide.pdf> (last visited June 13, 2021).

²² See *id.*

125. The next phases, phases 1b and 1c, included populations at high risk for severe disease and essential workers, while phase 2 was the general public.²³

126. On April 8, 2021, Governor Walz announced that more than 3 million COVID-19 vaccine doses have been administered in the state of Minnesota.²⁴ In that announcement, Governor Walz stated that “normalcy is near.” The statement also says that it is “important we continue to protect each other from the virus – keep that mask up, socially distance, and get tested when needed.” Lieutenant Governor Peggy Flanagan stated, “[w]e are almost to the other side of the pandemic.”²⁵

127. As of May 10, 2021, Minnesota opened up vaccinations to all individuals 12 years old and older.²⁶

128. In a May 13, 2021 press release announcing that Governor Walz was ending the statewide face covering requirement, Governor Walz noted “[o]nce you are fully vaccinated you are protected . . . The message is clear – get vaccinated and let’s put the pandemic behind us once and for all.”²⁷

²³ See Minnesota Guidance for Allocation and Prioritizing COVID-19 Vaccine – Phases 1b, 1c, 2, (Minn. Dep’t of Health (Mar. 10, 2021), *available at* <https://www.health.state.mn.us/diseases/coronavirus/vaccine/phase1b1c2.pdf>. (last visited June 13, 2021).

²⁴ See Press Release, Office of Gov. Tim Walz & Lt. Gov. Peggy Flanagan, Gov. Walz Announces More Than 3 Million COVID-19 Vaccine Doses Administered (Apr. 8, 2021), *available at* <https://mn.gov/governor/covid-19/news/?id=1055-476035>.

²⁵ See *id.*

²⁶ See Press Release, Office of Gov. Tim Walz & Lt. Gov. Peggy Flanagan, Gov. Walz: Minnesota Ready to Vaccinate 12-15-Year-Olds This Week as FDA Gives Pfizer Authorization (May 10, 2021), *available at* <https://mn.gov/governor/covid-19/news/?id=1055-481412>.

²⁷ See Press Release, Office of Gov. Tim Walz & Lt. Gov. Peggy Flanagan, Following New CDC Guidance, Gov. Walz Announces End to Statewide Face Covering Requirement (May 13, 2021), *available at* <https://mn.gov/governor/news/#/detail/appId/1/id/482065>.

129. In a May 20, 2021 press release promoting the success of Minnesota’s mobile COVID-19 vaccination clinics, Lt. Gov. Flanagan highlighted that “Minnesota had led the country in distributing vaccine quickly, and appointments are now widely available for any eligible Minnesotan who wants to be vaccinated.”²⁸

130. In a May 24, 2021 press release the Governor announced that 2.5 million Minnesotans have received a complete vaccination series. The release also notes that “[n]ew cases, positivity rate, hospitalizations plummet as vaccinations rise in state.” The release also reports that 64% of Minnesotans older than 16 have at least one dose, and quoting a New York Times analysis, new cases in Minnesota dropped 49% over the preceding 14 days, “faster than all but six other states.”²⁹

XIII. IN MAY 2021 GOVERNOR WALZ ISSUED EXECUTIVE ORDERS 21-21 AND 21-23 IMMEDIATELY RESCINDING NEARLY ALL COVID-19 RESTRICTIONS, AND SETTING A TIMELINE FOR RESCINDING ALMOST ALL OTHER RESTRICTIONS – BUT NOT LIFTING OR MODIFYING THE EVICTION MORATORIUM

131. On May 6, 2021, Governor Walz took the most significant step yet to lift the COVID-19 restrictions he had put in place over the preceding year by issuing Executive Order 21-21 (“EO 21-21”), titled “Safely Sunsetting COVID-19 Public Health Restrictions.”

²⁸ See Press Release, Office of Gov. Tim Walz & Lt. Gov. Peggy Flanagan, ICYMI: Lt. Gov. Flanagan Highlights Success of Minnesota’s Mobile COVID-19 Vaccination Clinics (May 20, 2021), *available at* <https://mn.gov/governor/news/#/detail/appId/1/id/482802>.

²⁹ See Press Release, Office of Gov. Tim Walz & Lt. Gov. Peggy Flanagan, 2.5 Million Minnesotans Have Received Complete Vaccine Series (May 24, 2021), *available at* <https://mn.gov/governor/news/#/detail/appId/1/id/482914>.

132. EO 21-21 amended three prior Emergency Executive Orders, and fully rescinded 21 other such orders. The basis for amending or rescinding the EOs included that “[r]ecent trends, fueled by our extraordinary vaccine efforts [have led to] . . . over 2.6 million Minnesotans hav[ing] received at least one dose of vaccine” and that “over 2 million Minnesotans have completed a full vaccine series.” Moreover, “over 87 percent of those over the age of 65 are vaccinated.”

133. EO 21-21 constituted a sweeping end to almost all COVID-19 related restrictions that the Governor had issued relating to the pandemic. Those changes included:

- a. EO 21-11 was amended to remove language discouraging indoor social gatherings.
- b. EO 21-11 was amended to increase the number of people that are permitted for indoor social gatherings from 15 to 50.
- c. EO 21-11 was amended to remove all numerical restrictions on outdoor social gatherings. EO 21-21 also removed EO 21-11’s restriction that restaurants, taprooms, and other businesses that serve food and drinks, have no greater occupancy than 250 people for outdoor space within percentage occupancy limits.
- d. EO 21-11 was amended to remove the restriction that total indoor occupancy for seated establishments not exceed 3,000 people, subject to percentage restrictions. EO 21-21 also eliminated the requirement that

establishments close and remain closed between the hours of 11:00 pm and 4:00 am.

e. EO 21-21 lifted a variety of restrictions on public pools, indoor gyms and fitness centers, entertainment venues like theaters and cinemas.

f. EO 21-21 struck language from EO 20-55 regarding at-risk persons being advised to stay at home. EO 21-21 struck the guidance that “People who can work from home must do so.”

134. Critically, EO 21-21 also set a deadline for rescission of a large number of additional executive orders—but *not* EO 20-79—at the point when the Minnesota Department of Health determines that seventy percent of people sixteen years of age and older have received at least one dose of COVID-19 vaccine. As of the date of this Complaint, the website of the Minnesota Department of Health indicated that 66% of individuals 16 and older have received at least one dose of COVID-19 vaccine.³⁰

135. Despite rescinding, or setting a clear timeline and criteria for rescinding, practically all existing executive orders issued as a result of the COVID-19 crisis, Governor Walz has not identified *any* criteria or *any* timeline by which he would lift *any* of the restrictions imposed by EO 20-79.

136. Then, on May 14, 2021, Governor Walz issued EO 21-23, further removing masking restrictions, and amending various other executive orders relating to COVID-19

³⁰ *Vaccine Data*, Minn. Dep’t of Health, available at <https://mn.gov/covid19/vaccine/data/index.jsp> (last visited June 14, 2021).

restrictions. Again, however, the Governor did not modify or lift the restrictions placed on evictions, or non-renewals or terminations of lease and rental agreements.

XIV. THERE IS BIPARTISAN AGREEMENT THAT THE EVICTION MORATORIUM NEEDS TO END BUT THE MINNESOTA LEGISLATURE HAS NOT YET REACHED AN AGREEMENT ON AN “OFF-RAMP”

137. For more than six months both chambers of the Minnesota legislature have been working to create what has been termed an “off-ramp” for the Governor’s eviction moratorium.

138. Governor Walz has made clear that he will not lift any aspect of the eviction moratorium until the Minnesota Legislature has agreed on legislation providing a phased end to EO 20-79 that also provides additional protections for tenants from immediate eviction for non-payment of rent.³¹ Most recently, on June 10, 2021, Governor Walz gave a press conference at which he stated “we need to get an off ramp done on the eviction moratorium . . . we also need to get that done so landlords get paid.” He also commented that “I’ve been asking since January why don’t you guys [the Legislature] just write it into law and whatever you come up with, I’ll sign.”

139. Bills have been introduced in both the Minnesota House and Senate that would phase out the eviction moratorium. The Senate bill was approved by the Senate with broad bipartisan support.

³¹ See Bakst, *supra* at n.1.

140. The Senate Bill, SF-1470, contemplated a phased end to the moratorium. Plaintiff MHA supported the Senate bill and lobbied for it to be passed by the full legislature and signed by Governor Walz.

141. Specifically, SF 1470 provided that termination or nonrenewal of residential leases could occur for, *inter alia*, “material violations of the lease other than the nonpayment of rent.”³² This is largely consistent with the exceptions to the eviction moratorium in the CDC Order, which permitted evictions for violations of any “contractual obligation, other than the timely payment of rent or similar housing-related payment.”

142. Further, SF 1470 allowed termination or nonrenewal of residential leases (30 days after the enactment of the bill) for those with outstanding rent but who are ineligible for rental assistance through the COVID-19 emergency rental assistance program.

143. Similar requirements were included regarding evictions, however SF 1470 provided that eviction actions were permitted only for material lease violations other than nonpayment of rent 30 days or more after enactment of the proposed act, and evictions for those with outstanding rent obligations who were ineligible for rental assistance could be initiated 60 days or later after enactment of the proposed act.

144. Finally, SF 1470 also provided that a landlord could file an eviction action against a tenant who is eligible for emergency COVID-19 rental assistance but refuses to

³² S.F. No. 1470 (3d Engrossment) at 2.11-2.12, 92nd Legislature (2021-2022) (Minn. 2021).

apply, refuses to provide information needed by the landlord to apply on the tenant's behalf, or refuses to provide proof that the tenant applied to the program.

145. Broadly speaking, SF 1470 provided a logical, humane, common sense approach to ending Minnesota's eviction moratorium: those who created dangerous situations at rental properties could be removed, individuals who could afford to pay rent but were not could be evicted, and tenants that refused to take any steps to obtain assistance could not continue to stay rent free in units being paid for by the property owners.

146. The corresponding House bill contained more limiting language, and also included unrelated policies that led to the bill failing to obtain broad bipartisan consensus. Despite that failure, there was bipartisan agreement that an "off-ramp" for the eviction moratorium is necessary.

147. As is clear, legislators across the political spectrum understand that barring property owners from pursuing evictions, particularly in the case of dangerous destructive tenants, cannot continue indefinitely. There also appears to be widespread agreement, based on statements from legislators and the Governor, that property owners have borne a significant burden as a result of the eviction moratorium and that they should be entitled to regain their contractual and constitutional rights, and receive payment for back-rent owed.

148. Despite that agreement, the Legislature has yet to approve any plan providing an "off ramp" that would allow property owners to begin regaining control of

property from tenants that would otherwise have been evicted or whose leases or rental agreements would be terminated.

149. The Minnesota Legislature is reconvening for a special session in mid-June to attempt to reach agreement on a budget that must be passed before July 1 to avoid a government shutdown. Due to the very real risk that the Legislature will be unable to reach agreement on a budget within that timeframe—or address any “off ramp” to the eviction moratorium—Governor Walz has already sent state government employees a message reminding them that if there is no agreed upon budget, they will be temporarily out of work.³³ Layoff notices began to be sent out over Memorial Day weekend to nearly 38,000 state employees.

150. If no budget or housing bill is passed—and Governor Walz does not choose to rescind or modify EO 20-79 or end the peacetime emergency—the eviction moratorium will continue. If the Minnesota government does shut down, it is almost certain that any action to create an “off ramp” for the eviction moratorium will be delayed for months, as the most pressing legislative priority will be agreement on a budget and reopening the government.

151. Given Governor Walz’s statements that he will not lift any part of the eviction moratorium until there is “sunset” legislation, property owners no way to know

³³ See Brian Bakst, *MN government begins planning for potential shutdown*, MPRNews (June 1, 2021), <https://www.mprnews.org/story/2021/06/01/mn-government-begins-planning-for-potential-shutdown>.

when that they will be able to gain control of property from dangerous or destructive tenants anytime soon, if ever.

XV. RENTAL ASSISTANCE PROGRAMS DO NOT ENSURE THAT PROPERTY OWNERS WILL RECEIVE RENT OWED BY TENANTS

152. Minnesota received \$375 million in housing assistance from the federal COVID-19 relief bill passed by the United States Congress in December 2020.³⁴

Minnesota received (or will receive) an additional \$229 million for emergency rental assistance from the American Rescue Plan.³⁵ Under those programs, eligible households may use the funds to pay for up to 18 months of rent, utilities and other housing expenses incurred since March 13, 2020 (comprised of 15 months of past due rent, and up to 3 months of future rent).

153. The aid is limited to households with incomes below 80 percent of their home county's median income.

154. Crucially, however, there is presently no mechanism by which property owners can obtain the funds being distributed by that program directly. Instead, property owners are entirely dependent on their tenants to complete a nearly 20-page form, submit all required information and documents, and pursue the process through to the end. Only when a tenant successfully accomplishes each of those steps is there an opportunity for a

³⁴ Peter Callaghan, *Minnesota to receive at least \$3 billion from federal COVID stimulus passed in December*, MINNPOST (Jan. 15, 2021), <https://www.minnpost.com/state-government/2021/01/minnesota-to-receive-at-least-3-billion-from-federal-covid-stimulus-passed-in-december/>.

³⁵ Hannah Yang, *More COVID-19 relief coming for Minnesota's renters*, St. Peter Herald (May 18, 2021), https://www.southernminn.com/st_peter_herald/news/state/article_05d35dfa-e62e-5220-aa5e-0852e6ccd470.html.

property owner to receive the rent owed by a tenant through that program, even when that tenant has not paid rent for more than a year and may not otherwise have the resources to pay.

155. For a variety of reasons this program is not likely to lead in the near term to property owners being made whole for, in some cases, more than a year of back-rent. Indeed, the website established by the State of Minnesota to administer the program, www.renthelpmn.org, includes a document titled “Landlords, Get Ready,” which is a checklist of items landlords should undertake to assist their renters in applying for the program. Those recommendations include:

- Print the information flier and give it to tenants;
- Meet with tenants to discuss the program;
- Provide tenants with a “ledger” or “rent due” statement, and it is “particularly helpful if it is broken out by month”
- Make an internet connected computer and scanner available to tenant occupants
- If you are a management company, develop and distribute guidance on what address and contact information property managers should share with tenants to use, and download and fill in a W-9 for the property owner.

156. The information sheet notes that “Landlords cannot apply to the program directly but can encourage tenants to apply.” Further, in order to be eligible to receive payments from the program, landlords must also register, a further administrative burden.

157. In sum, after not being paid rent for more than a year, according to RentHelpMN, landlords should undertake a wide variety of administrative obligations, dedicate time and resources to assisting tenants with applying for a complex program,

provide computers and internet service, and wait patiently while the tenants and the State process those applications, all in the hope that at some point back rent will be paid. Meanwhile, landlords continue to be obligated to make their own mortgage payments, pay their own maintenance expenses, and account for overhead.

158. On May 26, 2021, the Star Tribune reported that Minnesota has “given out less than \$1 million of the \$672 million it received” from the federal government.³⁶

159. Minnesota is well behind other states in beginning to distribute funds. Moreover, it is unlikely that—even with increased public awareness of the program—that the funds will get out to landlords faster.

160. As Minnesota Housing Commissioner Jennifer Ho noted, “Each application is unique, each situation is unique.” Commissioner Ho also said that four out of five applications require additional work with the renter or owner.³⁷

161. Thus, even a tenant acting in good faith will likely need to spend significant time initially applying for funds, then follow up to correct errors or provide additional information, all before any funds will begin to be paid to landlords.

162. That problem is illustrated by the example of a tenant who owed \$3,000 and applied for help through the RentHelpMN program, but abandoned the apartment, leaving the landlord with no ability to get money from the state program.³⁸ This also highlights a key

³⁶ See Jessie Van Berkel, *Minnesotans anxiously await rent help as a fraction of federal aid has gone out*, StarTribune (May 26, 2021), <http://strib.mn/2QVpS4B>.

³⁷ *Id.*

³⁸ *See id.*

point: it is unlikely that the ultimate lifting of the eviction moratorium will lead to a “wave of evictions,” because a property owner will no longer be able to receive any of the federal assistance dollars if a tenant leaves the property. In fact, property owners are incentivized to work with their renters to both keep them in their rental units, and assist them in applying for assistance through RentMN if they want to receive any payments. Given the hundreds of millions of dollars available to be paid to property owners on behalf of their tenants, there are limited if any reasons to pursue evictions except for violations of lease obligations *other* than non-payment of rent.

163. Also, landlords and tenants have found the software necessary to apply and register for the RentHelpMN program to be glitchy and frustrating, further reducing the chance that the program will effectively get badly needed funds to landlords.³⁹

164. Even more concerning, the software vendor hired by the Housing Finance Agency to build RentHelpMN, Allita 360, has run into issues in other states. In April 2021, Rhode Island replaced Allita 360 after Rhode Island’s housing agency termed the arrangement “unsuccessful.”

165. Commissioner Ho has indicated that the State intends to add a “dashboard” to one of its websites so Minnesotans can track the distribution of the dollars, but that does not yet exist, and it is unclear when it will be developed, if ever.

³⁹ See Peter Callaghan, *Rollout of Minnesota’s rental assistance program beset by glitches, slow payments*, MINNPOST (May 21, 2021), <https://www.minnpost.com/state-government/2021/05/rollout-of-minnesotas-rental-assistance-program-beset-by-glitches-slow-payments/>.

166. Further, the huge number of “mom and pop” property owners, who own one or two properties that provide necessary income to support their families, are also obligated to “encourage” and “assist” sometimes difficult or combative renters with completing a form that anyone would struggle to get done, much less a person being impacted by a COVID-19 related job loss, furlough, or other challenging circumstances.

167. While some Minnesota counties have recently opened a rental assistance program in which landlords can file applications for their tenants, the program currently has only \$34 million in funding (compared to over \$600 million in RentHelpMN), and is limited to certain counties.⁴⁰

168. On June 14, 2021, Governor Walz extended the peacetime emergency by another thirty days, but did not rescind or modify EO 20-79.⁴¹

169. At a press conference announcing the extension Governor Walz stated that “[i]t is very clear now that we are in the final stages and most of the executive orders, as I have said, will unwind or have unwound or will in the near future[.]” Today, Governor Walz noted that EO 21-24 is “simply re-upping the state of emergency so that the status quo of the work that we’re doing continues.”⁴²

⁴⁰ *The Zero Balance Project: Rental Assistance in Dakota, Hennepin and Ramsey counties, and Minneapolis and St. Paul*, HousingLink, <https://housinglink.org/List/emergency-rental-assistance> (last visited June 14, 2021).

⁴¹ Dana Ferguson, *Minnesota council extends peacetime emergency, Gov. Tim Walz’s emergency powers*, Post Bulletin (June 14, 2021), <https://www.postbulletin.com/news/government-and-politics/7072284-Minnesota-council-extends-peacetime-emergency-Gov.-Tim-Walzs-emergency-powers>.

⁴² *Id.*

170. Further highlighting the concerns of Minnesota property owners that the eviction moratorium could go on indefinitely, the Commissioner of the Minnesota Department of Health stated that “[t]he pandemic itself *won’t be over until the World Health Organization declares it ceases to be a threat.*”⁴³ That vague standard, which may *never* be met, cannot be the justification for keeping in place an eviction moratorium in a state where, by the Governor’s own analysis, the pandemic is in its “final stages.”

COUNT ONE
Declaratory Judgment – 28 U.S.C. § 2201
Certain Sections of EO 20-79 violate Contract Clause of U.S. Constitution
Against All Defendants

171. Plaintiffs reallege and incorporate by reference all prior allegations.

172. An actual and live controversy exists between the parties as to the constitutionality of EO 20-79.

173. Article 1, Section 10, Clause 1 of the United States Constitution states that “[n]o State shall . . . pass any . . . Law impairing the Obligation of Contracts[.]” U.S. Const., art. 1, § 10, cl. 1.

174. Sections 2, 3, 4, and 10 of EO 20-79 unconstitutionally impair Plaintiffs’ lease agreements with their tenants by restricting without any time limitation— in all but a few limited exceptions that have proven illusory—the core, fundamental right to possession of property. That impairment includes interfering with the ability of a property owner to regain possession of property through a process like eviction inherent in every residential lease and rental contract in Minnesota, and which is explicitly

⁴³ *Id.* (emphasis added).

provided for in many, if not most, Minnesota lease and rental agreements. Those restrictions have existed for more than a year and, based on Governor Walz's own statements, such restrictions will exist indefinitely unless and until the Minnesota Legislature takes some action, which there is no guarantee will occur at any point.

175. The right to exclude others from private property or regain possession of owned private property, even if based on a statutory scheme, is fundamental to Plaintiffs' property rights, and is why lease agreements specify who can occupy a rental unit to the exclusion of others.

176. Sections 2, 3, 4 and 10 of EO 20-79 also unconstitutionally impair Plaintiffs' contracts with their tenants by restricting without any time limitation—in all but a few limited exceptions that have proven illusory—Plaintiffs' obligations to provide safe, habitable residences for their tenants. This violation occurs by effectively barring Plaintiffs from exercising the only options available to them to remove dangerous and harassing tenants from a property: eviction, and non-renewal and termination of lease agreements.

177. The statutory scheme for eviction is the only method by which Plaintiffs can enforce their contractual right to recover possession of their private property from breaching tenants; Sections 2, 3, 4 and 10 of Executive Order 20-79 not only eliminate that right in all but a very limited set of circumstances that in reality do not provide relief, but they also criminalize even good faith but failed efforts to vindicate that right in state court.

178. Accordingly, Sections 2, 3, 4 and 10 of EO 20-79 violate the Contract Clause of the United States Constitution.

179. Pursuant to 28 U.S.C. § 2201, the Court should issue a binding declaration that Sections 2, 3, 4 and 10 are unconstitutional in violation of the Contracts Clause of the United States Constitution and enjoin said provisions.

COUNT TWO
Declaratory Judgment – 28 U.S.C. § 2201
Certain Sections of EO 20-79 violate Fifth Amendment Takings Clause
Against All Defendants

180. Plaintiffs reallege and incorporate by reference all prior allegations.

181. An actual and live controversy exists between the parties as to the constitutionality of EO 20-79.

182. The Fifth Amendment to the United States Constitution provides that “private property [shall not] be taken for public use, without just compensation.” U.S. Const. amend. V. The Takings Clause applies to the states through the Fourteenth Amendment to the U.S. Constitution. *See Chic., B & Q.R. Co. v. City of Chi.*, 166 U.S. 226, 239 (1897).

183. EO 20-79’s eviction moratorium provisions (sections 2, 3, 4, and 10) constitute a non-categorical “regulatory taking” under Fifth Amendment jurisprudence.

184. Sections 2, 3, 4, and 10, read together, bar owners such as the Plaintiffs and others similarly situated from obtaining legal recourse or enforcement remedies to remove either a non-paying tenant, or a tenant who otherwise breaches a lease in all but a few circumstances.

185. The Act seeks to “forc[e] some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

186. The operation of Sections 2, 3, 4, and 10 so deprives Plaintiffs and others similarly situated of their fundamental right to possession of their property—including because EO 20-79 has no stated end date and Governor Walz has made clear he will not lift or modify EO 20-79 but is waiting for the Minnesota Legislature to act, which it may never do—that it operates as a non-categorical regulatory taking in violation of the Fifth Amendment, for which just compensation is due.

187. The economic impact of EO 20-79’s eviction moratorium on landlords is significant and on information and belief has led to the loss of hundreds of millions of dollars in unpaid rent owed to Plaintiffs, Plaintiffs’ members, and those similarly situated.

188. EO 20-79’s interference with Plaintiffs’ investment-backed expectations regarding their ability to repossess their property should a tenant violate a lease—particularly if a tenant violates a lease in a way that harms other tenants—is substantial. Although Plaintiffs operate in a regulated industry, they could not have expected a once-in-a-century pandemic and the ensuing restrictions on evictions, much less the ongoing duration and scale of EO 20-79’s eviction moratorium.

189. The “character” of the governmental action that is EO 20-79 fails to satisfy even rational basis review at this point in the pandemic. EO 20-79 is no longer actually believed to be needed to address public health concerns, as reflected by Governor Walz’s

lifting of nearly every other COVID-19 related restriction based in significant part on the percentage of Minnesotans that have received one or both doses of a COVID-19 vaccine and the widely reported diminishing number of infections and deaths attributable to COVID-19, as well as Governor Walz's statements that he would sign any "off-ramp" legislation presented to him.

190. EO 20-79 is not now—regardless of whether it ever was—a regulation arising from a public program that adjusts the benefits and burdens of economic life to promote the common good. Instead, it is now a governmental action (not a program, like pension or retirement plans) that takes a public burden—the burden of ensuring housing stability during a pandemic, and the burden of trying to address the consequences that arise from tenants that do not conform their conduct to the law and their lease agreements, in order to satisfy Plaintiffs' obligations to other tenants—and places it solely on the shoulders of property owners through regulation.

191. Accordingly, Sections 2, 3, 4, and 10 constitute a non-categorical regulatory taking of Plaintiffs' property, for which Plaintiffs are entitled just compensation.

192. All Plaintiffs or members of a Plaintiff have not received just compensation for EO 20-79's taking. Despite that all Plaintiffs—and, on information and belief, a significant number of members of a Plaintiff—have renters who have not paid rent, all affected Plaintiffs have not received just compensation for their inability to regain possession of their property, including through eviction of non-paying tenants (or even any other tenant that breaches their lease in a manner not enumerated in EO 20-79), or

nonrenewal or termination of leases, and lack the ability to even mitigate damages by replacing the non-paying tenant with a paying tenant.

193. Pursuant to 28 U.S.C. § 2201, the Court should issue a binding declaration that Sections 2, 3, 4, and 10 of EO 20-79 constitute an unconstitutional taking in violation of the Takings Clause of the United States Constitution, and enjoin said provisions.

194. Plaintiffs' are also entitled to "just compensation" for past takings, and prospective injunctive relief to avoid future takings without due process of law.

COUNT THREE
Declaratory Judgment – 28 U.S.C. § 2201
Certain Sections of EO 20-79 violate First Amendment Petition Clause
Against All Defendants

195. Plaintiffs reallege and incorporate by reference all prior allegations.

196. An actual and live controversy exists between the parties as to the constitutionality of EO 20-79.

197. The First Amendment to the United States Constitution provides that "Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances." The First Amendment applies to the states through the Fourteenth Amendment to the U.S. Constitution. *See Bigelow v. Virginia*, 421 U.S. 809, 811 (1975) ("The First Amendment, of course, is applicable to the States through the Fourteenth Amendment."); *see also DeJonge v. Oregon*, 299 U.S. 353 (1937).

198. Among other benefits, a residential lease is an exchange of value by the tenant for the right of the tenant to occupy the premises, which remains the property of the property owner.

199. Minnesota has long outlawed “self-help” measures for landlords. *See* Minn. Stat. § 504B.281 (prohibiting the occupation or taking of possession of real property except “where occupancy or possession is allowed by law, and in such cases, the person may not enter by force, but only in a peaceable manner”).

200. Accordingly, absent voluntary self-eviction or departure by the tenant, a landlord’s only option for recovering possession of his or her property from a tenant who will not leave after proper notice, non-renewal or termination of a lease or rental agreement, is the eviction proceeding set forth in Minn. Stat. § 504B.321, which permits a landlord to file a complaint in state court seeking to recover the premises at issue.

201. Normally, to recover possession of leased real property, a residential landlord *must* utilize the statutory procedure set forth in Minn. Stat. § 504B.285 *et. seq.* Under that procedure, the landlord must obtain judgment and a “writ of recovery of premises and order to vacate.” Minn. Stat. § 504B.345, subd. 1(a).

202. There is no other form of action under Minnesota law that allows for recovery of the possession of leased premises from a tenant in a residential lease.

203. Section 2 of EO 20-79 states that:

The ability of property owners, mortgage holders, or other persons entitled to recover residential premises to file an eviction action on the grounds that a residential tenant remains in the property after a notice of termination of lease, after a notice of nonrenewal of a lease, after a material violation of a

lease, after the termination of the redemption period for a residential foreclosure, or after nonpayment of rent, is suspended.

204. Section 2(a)-(d) excludes from this “eviction moratorium” situations where tenants: (a) “[s]eriously endangers the safety of other residents;” (b) “[v]iolates Minnesota Statutes 2019, section 504B.171, subdivision 1;” (c) “[r]emains in the property past the vacate date after receiving a notice to vacate or nonrenewal under paragraph 4 of this Executive Order; or” (d) “[m]aterially violates a residential lease by the following actions on the premises, including the common area and the curtilage of the premises: (i) [s]eriously endangers the safety of others; or (ii) [s]ignificantly damages property.” The terms “seriously endangers” and “significantly damages” are undefined.

205. Section 3 bars residential landlords from issuing “notices of termination of lease or nonrenewal of lease or terminate residential leases during the pendency of the peacetime emergency unless the termination or nonrenewal is based upon one of the grounds permitted by paragraph 2.”

206. Section 4 of EO 20-79 states that the bar to issuing “notices of termination” or “nonrenewal” to tenants set forth in Section 3 does not apply where the residential landlords issue the notice “due to the need to move the property owner or property owner’s family member(s) into the property and where the property owner or property owner’s family member(s) move into the property within 7 days after it is vacated by the tenant.”

207. Pursuant to Section 10, a landlord who “willfully violates paragraphs 2, 3, and 5 of [EO 20-79] is guilty of a misdemeanor and upon conviction must be punished by

a fine not to exceed \$1,000, or by imprisonment for not more than 90 days” and is enforceable by the Minnesota Attorney General.

208. Read together, Sections 2, 3, 4, and 10 of EO 20-79 operate as a wholesale prohibition against Plaintiffs even entering a state courthouse and filing—much less prosecuting or pursuing—the vast majority of eviction actions in Minnesota.

209. Not only are Plaintiffs barred from filing an eviction action in state court; they could be held criminally liable for doing so. If Plaintiffs attempt to file an eviction action—even in good faith under one of the undefined, yet enumerated exceptions set forth in EO 20-79—and a court finds the exception does not apply, Plaintiffs would be guilty of a misdemeanor, and face financial penalties and jail time.

210. By barring nearly every eviction action in the state, and creating exceptions with standards so vague that property owners, tenants, and even some courts have not been able to consistently interpret or enforce them, EO 20-79 has all but completely barred Plaintiffs’ ability to petition the Government for redress of tenants refusing to return possession of Plaintiffs’ property.

211. This “eviction moratorium” has no end date; the Governor retains the power to renew the moratorium every thirty days, and has done so for more than a year by the time of this filing.

212. By failing to define the meaning of key terms in the limited exceptions to EO 20-79’s “eviction moratorium” and criminalizing even good faith eviction actions that seek—but fail—to rely on those exceptions, the Governor (through EO 20-79) has

both locked the courthouse door to Plaintiffs, and made it a crime for the Plaintiffs to even attempt to use a key they think might let them in.

213. By criminalizing even good faith attempts to file eviction actions, EO 20-79 suppresses and chills even good faith attempts to petition the government by Plaintiffs; not only do Plaintiffs' attempts to exercise their contractual and statutory rights face dismissal under undefined and vague "exceptions" in EO 20-79, but the very act of petitioning is criminalized if a court were to find the Plaintiffs' eviction action did not meet an exception to EO 20-79.

214. Such restrictions violate the Petition Clause of the First Amendment to the United States Constitution.

215. Pursuant to 28 U.S.C. § 2201, the Court should issue a binding declaratory judgment that Sections 2, 3, 4, and 10 of EO 20-79 are unconstitutional in violation of the right to petition under the First Amendment to the United States Constitution, and enjoin enforcement of those sections of EO 20-79.

COUNT FOUR
Claim under 42 U.S.C. § 1983
Certain Sections of EO 20-79 violate Plaintiffs' Constitutional Rights
Against All Defendants

216. Plaintiffs reallege and incorporate by reference all prior allegations.

217. Defendants in their official capacities as public officials of the State of Minnesota have taken the above actions complained of under color of state law.

218. As outlined above, these actions have deprived Plaintiffs of their rights under the First and Fifth Amendments, as well as Article I, Section 10, Clause 1 of, the United States Constitution.

219. As a result of the actions complained of above, Plaintiffs have suffered harm, including but not limited to the loss of revenue, inability to enforce statutory and contractual lease covenants, the loss of use and enjoyment of their property (including the right to exclude others from their property) without compensation, and the loss of their ability to seek redress in the courts.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs request the following relief:

1. A declaration, under 28 U.S.C. § 2201 and pursuant to each respective Count above, that Sections 2, 3, 4, and 10 of EO 20-79 are unconstitutional because they violate the Contracts Clause, Takings Clause, and Petition Clause of the United States Constitution.
2. Pursuant to all Counts, and in accordance with Fed. R. Civ. P. 65, that the Court enjoin the enforcement and application of Sections 2, 3, 4, and 10 of EO 20-79, issued by Defendant Walz.
3. Pursuant to all Counts, and in accordance with Fed. R. Civ. P. 65, that the Court issue a preliminary and permanent injunction, enjoining Defendants—and all agencies, departments, and/or employees under their control, either collectively or individually—from enforcing Sections 2, 3, 4, and 10 of EO 20-79.

4. An order awarding Plaintiffs their reasonable attorneys' fees and costs under 42 U.S.C. § 1983 or any other applicable statute, law, or principle; and

5. For such further relief—including attorneys' fees, interest, and costs—that the Court deems equitable and just.

**ANTHONY OSTLUND
BAER & LOUWAGIE P.A.**

Dated: June 14, 2021

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