



AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION

West Virginia

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April 30, 2020

Governor Jim Justice  
c/o Brian Abraham, General Counsel  
State Capitol, 1900 Kanawha Blvd. E  
Charleston, WV 25305  
*sent via email to [Brian.R.Abraham@wv.gov](mailto:Brian.R.Abraham@wv.gov)*

Attorney General Patrick Morrisey  
c/o Vicki Pendell, Administrative Assistant  
State Capitol Complex, Bldg. 1, Room E-26  
Charleston, WV 25305  
*sent via email to [vicki.l.pendell@wvago.gov](mailto:vicki.l.pendell@wvago.gov)*

Joseph Armstrong, Administrative Director – Supreme Court of Appeals  
Capitol Complex  
1900 Kanawha Boulevard East  
Building One, Room E-100  
Charleston, WV 25305  
*sent via email to [joseph.armstrong@courtswv.gov](mailto:joseph.armstrong@courtswv.gov)*

Dear Governor Justice, Attorney General Morrisey, and Mr. Armstrong:

The American Civil Liberties Union (ACLU) and the ACLU of West Virginia urge you to immediately extend and expand the statewide moratorium on evictions and issue a moratorium on utility shut-offs in West Virginia and commit to prevention of mass evictions after the moratorium ends.

Across the nation, the COVID-19 pandemic has already resulted in widespread and devastating economic consequences, as the number of unemployment claims filed has reached over 26 million – over 150,000 in West Virginia alone. In the face of staggering unemployment numbers and climbing medical costs, millions of people living in the United States—and over 455,000 renters living in West Virginia face the imminent threat of losing their homes or access to utility service. These consequences risk further spread of COVID-19 throughout West Virginia and undermine efforts to protect public health and well-being. Moreover, the nearly guaranteed wave of evictions and utility shut-offs would inflict far-reaching and significant economic and social harm on thousands of state residents—particularly on women, people of color, low-income residents, and other vulnerable communities.

The ACLU's Data Analytics team [analyzed national eviction data from 2012 to 2016](#), provided by the Eviction Lab at Princeton University, and found that on average, Black renters had evictions filed against them by landlords at nearly

twice the rate of white renters.<sup>1</sup> Women of color, and particularly Black women, [bear the burden of eviction](#).<sup>2</sup> The harmful impact of eviction is further compounded by other racial, gender, and socioeconomic barriers—such as wealth gaps, pay disparities, and inequities in our healthcare system.

Critically, the aftermath of an eviction persists for decades, as tenants with prior eviction records face major obstacles to accessing future housing opportunities. Landlords routinely employ screening policies that deny housing to any renter previously named in an eviction case, regardless of whether the case was dismissed, occurred many years ago, or was filed on unlawful grounds.<sup>3</sup> As a result, eviction often exacerbates and reproduces conditions of economic insecurity for low-income women and communities of color.

Utility shut-offs also disproportionately harm communities of color. A 2017 report by the NAACP found that Black households experience utility disconnections at a higher rate than financially similar white households. For households at or below 150% of the federal poverty level, only 5.5% of white-headed households experienced shutoffs as compared to 11.3% of Black-headed households.<sup>4</sup> Similarly, another study revealed that residents in predominantly minority neighborhoods faced 27% higher energy cost burdens than those in predominantly white neighborhoods.<sup>5</sup> Research further shows that Black communities disproportionately experience higher water costs, water service terminations, and water liens, resulting in negative health and economic outcomes.<sup>6</sup>

West Virginians already experience high levels of poverty. Poverty is disproportionately experienced by racial minorities. Despite making up less than 4% of the population, 31.7% of Black West Virginians experience poverty. Women also experience poverty at a higher rate than men.<sup>7</sup>

We commend the Supreme Court of Appeals efforts thus far in providing relief to its residents through a moratorium on non-emergency court actions, including evictions. Yet it is critical that West Virginia immediately implement the following policy measures in advance of May 1.

### **West Virginia Must Issue a Comprehensive Moratorium on Evictions and Utility Shut-Offs That Will Also Prevent Mass Evictions After the Moratorium ends.**

In light of the widespread and devastating impact of eviction during the pandemic, we urge West Virginia to immediately issue a comprehensive moratorium on evictions and utility shut-offs throughout the entire state. These moratoriums should be in addition to the existing stay on court proceedings. In doing so, we must implement a moratorium that prohibits every stage of the eviction process and without exceptions for types of tenants or lease violations. It must also plan ahead for when the moratorium ends to prevent mass evictions and other enduring housing consequences for tenants hurt by the pandemic.

### ***West Virginia's Moratorium Must Halt Every Stage of the Eviction Process.***

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<sup>1</sup> Sophie Beiers et al., *Clearing the Record: How Eviction Sealing Laws Can Advance Housing Access for Women of Color* (Jan. 10, 2020), <https://www.aclu.org/news/racial-justice/clearing-the-record-how-eviction-sealing-laws-can-advance-housing-access-for-women-of-color/>.

<sup>2</sup> Matthew Desmond, *Poor Black Women Evicted at Alarming Rates, Setting Off a Chain of Hardship* (Mar. 2014), <https://www.macfound.org/media/files/HHM - Poor Black Women Are Evicted at Alarming Rates.pdf>.

<sup>3</sup> Sandra Park, *Unfair Eviction Screening Policies Are Disproportionately Blacklisting Black Women* (Mar. 30, 2017), <https://www.aclu.org/blog/womens-rights/violence-against-women/unfair-eviction-screening-policies-are-disproportionately>.

<sup>4</sup> NAACP, *Lights Out in the Cold: Reforming Utility Shut-Off Policies as if Human Rights Matter* (Mar. 2017), [https://www.naacp.org/wp-content/uploads/2017/12/Lights-Out-in-the-Cold\\_NAACP.pdf](https://www.naacp.org/wp-content/uploads/2017/12/Lights-Out-in-the-Cold_NAACP.pdf).

<sup>5</sup> Kyle Miller, *The Hidden Cost in Housing Affordability* (Feb. 20, 2020), <https://www.planning.org/blog/9195636/hidden-cost-in-housing-affordability/>.

<sup>6</sup> The Thurgood Marshall Institute at the NAACP Legal Defense and Educational Fund, Inc., *Water/Color: A Study of Race & the Water Affordability Crisis in America's Cities* (May 2019), [https://www.naacpldf.org/wp-content/uploads/Water\\_Report\\_Executive-Summary\\_5\\_21\\_19\\_FINAL-V2.pdf](https://www.naacpldf.org/wp-content/uploads/Water_Report_Executive-Summary_5_21_19_FINAL-V2.pdf).

<sup>7</sup> Taylor Stuck, *West Virginia's Poverty Rate Increases to 19.1 Percent*, Herald Dispatch (Sept. 14, 2018), [https://www.herald-dispatch.com/news/west-virginia-s-poverty-rate-increases-to-percent/article\\_e6d75fd2-abb1-5e9f-bc55-dc45a3673b94.html](https://www.herald-dispatch.com/news/west-virginia-s-poverty-rate-increases-to-percent/article_e6d75fd2-abb1-5e9f-bc55-dc45a3673b94.html)

An [effective eviction moratorium](#) must prohibit landlords and housing providers from proceeding with any stage of the eviction process, including, but not limited to: (1) formal or informal issuance of eviction notices; (2) service of legal process in eviction actions; (3) filing of new eviction cases; (4) eviction hearings; and (5) enforcing orders of eviction, including orders that were issued prior to the date that the moratorium went into effect.<sup>8</sup> Moreover, the moratorium should extend or toll all court deadlines for pending eviction proceedings for at least 30 days after the moratorium is lifted. Absent a clear and comprehensive moratorium, tenants still face a heightened risk of losing their homes or sustaining an eviction filing record that may unjustly act as a barrier to housing in the future. These limitations have been enacted by states such as Kentucky and South Carolina.

***West Virginia’s Moratorium Must Continue to Prevent Evictions During and Shortly After the Pandemic, with Extensions.***

Given the ongoing and unpredictable nature of the COVID-19 pandemic, the moratorium must, at a minimum, continue until at least 45 days or longer<sup>9</sup> after the following conditions are met: (1) the state of emergency and period for mandated or recommended social distancing has ended; (2) the State has determined the moratorium is no longer needed to control or limit the spread of COVID-19; and (3) there is a determination that there are no further public health, economic, or other circumstances supporting the continued need for the moratorium. Moreover, an effective eviction moratorium should allow for extensions as necessary to allow tenants reasonable time to apply for and receive financial resources and assistance following the conclusion of the pandemic. The moratorium should also guarantee that landlords and housing providers give at least 30 days’ notice to evict a tenant upon expiration of the moratorium period.<sup>10</sup>

***West Virginia’s Moratorium Should Apply to All Types of Tenants and Lease Violations.***

In light of the ongoing public health crisis and its economic consequences, all residents—regardless of their circumstances or background—must have access to safe and stable housing throughout the course of the COVID-19 pandemic. Given the extraordinary circumstances that our residents are facing, an effective eviction moratorium should not be limited to evictions for non-payment of rent. Rather, the moratorium must prohibit all evictions, regardless of the type of tenant or lease violation. Any exception to an eviction moratorium should be narrowly tailored to circumstances in which an individual’s tenancy poses a serious and imminent health of safety threat that cannot be reduced or eliminated except by eviction.

***The Moratorium Should Prohibit the Collection of Late Fees and Protect Tenants Who Assert Rights Provided by the Moratorium.***

The moratorium should prohibit landlords from imposing fees or fines associated with the late payment of rent due during the period of the moratorium, which can often be considerable. Additionally, West Virginia should prohibit landlords from retaliating against tenants who seek protections under the moratorium. Delaware has protected tenants from late fees.

***West Virginia Must Issue a Moratorium Against Utility Shut-Offs Without Exception.***

In addition to issuing a comprehensive eviction moratorium, West Virginia should protect its residents’ access to critical utility services by prohibiting utility shut-offs or disconnections for the duration of the pandemic. While Morgantown has suspended utility disconnections, that the State must issue a statewide moratorium to ensure protections for its 1.7 million residents. Similar prohibitions have been enacted by Kentucky, Texas, and Mississippi, among others . Moreover, we should commit to restoring previously disconnected utility services for residents without water or other services.

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<sup>8</sup> National Housing Law Project, *Protecting Renter and Homeowner Rights During Our National Health Crisis*, <https://www.nhlp.org/campaign/protecting-renter-and-homeowner-rights-during-our-national-health-crisis-2/>.

<sup>9</sup> See, e.g., Mass. H. 4647, *An Act Providing for a Moratorium on Evictions and Foreclosures During the COVID-19 Emergency*, <https://malegislature.gov/Bills/191/H4647>.

<sup>10</sup> See, e.g., Coronavirus Aid, Relief, and Economic Security Act (CARES Act), § 4024.

### ***West Virginia Must Also Prevent Mass Evictions After the Moratorium Ends.***

The issuance of a moratorium specific to evictions and utilities will play an important role in mitigating the public health and economic impact of the pandemic. In addition to containing further spread of COVID-19 by ensuring residents can comply with stay-at-home orders, such a moratorium will prevent the harmful aftermath of eviction, such as medical and mental health issues, financial hardship, and homelessness.<sup>11</sup> However, permitting mass evictions to take place the moment the moratorium lifts will similarly cause huge upheavals in local communities, harm public health, and threaten families. For that reason, West Virginia should commit to adopting policies that would prevent mass evictions once the moratorium ends. Key policies should include requiring landlords to negotiate payment plans prior to the filing of eviction cases, creating renters' relief funds to cover back rent, providing renters with a grace period of at least 30 days to pay rent, establishing right to free legal counsel to tenants facing eviction, and exploring other creative strategies for addressing this unprecedented threat to community stability. Such policies should provide meaningful mechanisms to ensure compliance by landlords and housing providers. For example, State officials should issue guidance for housing courts to require landlords and housing providers to show that they have engaged in good faith negotiation of payment plans prior to filing for eviction.

### ***West Virginia Should Also Protect Tenants from Blacklisting Because They Face Eviction After the Moratorium Ends.***

The mere filing of an eviction—even where an eviction judgment is not entered—deprives tenants of housing opportunities, because landlords often will not rent to anyone who has been subject to an eviction case. This type of blacklisting is devastating, locking out families from better housing, schools, and employment for decades. We must take steps to ensure that any evictions filed during this period do not impede tenants' opportunities for the rest of their lives by preventing consideration of evictions filed during this crisis period. Moreover, West Virginia should prohibit landlords and housing providers from reporting missing or late rental payments to credit agencies or debt collection agencies to avoid future economic hardship following the pandemic.

With the first of the month rapidly approaching, it is critical that West Virginia acts quickly to protect its residents against eviction and utility shut-offs. Our actions will provide the certainty and stability that residents need to ensure that no one is at immediate risk of losing their homes while we work to find longer-term solutions to handling unpaid rent, providing economic and financial support, and ensuring access to stable housing in the aftermath of the COVID-19 pandemic.

We encourage you to act quickly in addressing the critical issues facing the residents of West Virginia. If you have any questions or concerns, please contact Eli Baumwell ([ebaumwell@acluwv.org](mailto:ebaumwell@acluwv.org)) or Loree Stark ([lstark@acluwv.org](mailto:lstark@acluwv.org)). Thank you in advance for your time.

Sincerely,

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<sup>11</sup> Matthew Desmond & Carl Gershenson, *Housing and Employment Insecurity among the Working Poor*, Oxford: Social Problems Advance Access 1–12 (Jan. 11, 2016), <http://scholar.harvard.edu/files/mdesmond/files/desmondgershenson.sp2016.pdf?m=1452638824>; see also Allison Bovell-Ammo & Megan Sandel, *The Hidden Health Crisis of Eviction*, Boston Univ. School of Public Health (Oct. 5, 2018), <https://www.bu.edu/sph/2018/10/05/the-hidden-health-crisis-of-eviction/>.