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From: Despres, Schwartz, and Geoghegan

Re: Authority of Illinois Governor to Grant Rent Relief Through Executive Authority During a Disaster

Date: April 3, 2020

Questions Presented: Does Governor Pritzker have the authority to grant renters relief during the COVID-19 disaster?

Short Answer: Yes. Governor Pritzker's powers under the Illinois Emergency Management Agency Act and other laws grant him sufficient power to provide relief, including by either mitigating the cost of rent during the crisis directly or by empowering municipalities to do so.

Introduction

The ongoing COVID-19 pandemic has changed many basic facts of lives for Illinoisans, as they have for people worldwide. Over 240,000 Americans have contracted the disease, with more than 5,000 dead. Those who are not ill are reacclimating to lives spent almost entirely in their homes. And aside from the public health and infrastructural disasters, there is the gargantuan impact it has had on working people economically. In the last 2 weeks over 10 million Americans, including 300,000 Illinois workers, have filed for unemployment, as Governor Pritzker's Stay at Home order has shuttered nearly all brick and mortar businesses. While progressives in Congress managed to increase both the size and scope of unemployment insurance through the most recent relief package, the economic toll this crisis is taking on the working class of Illinois will be nearly unimaginable.

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In light of the crisis, there has been a renewed call for relief for renters both nationwide and in Illinois, where a coalition of community organizations and unions has been advocating for the repeal of Illinois's ban on municipalities passing rent control. These have been amplified as federal lenders like Fannie Mae and Freddie Mac have offered landlords mortgage freezes, with many banks offering relief for mortgage-holders as well. Many have called for the governor to use the emergency powers granted to him in times of emergency to provide renters relief, either by suspending the ban or by directly instituting a suspension of rent payments during the emergency. He has been resistant, stating that he does not have this authority.

Does the Governor have the emergency authority to provide tenants relief from rent during this emergency? In short, yes. Between the powers granted to him during a declared disaster and those granted to him for the protection of public health, there are a variety of ways in which the Governor, without further legislative action, could provide relief, either by suspending rent or empowering towns and cities to do so.

Illinois Governors Have Broad Authority During an Emergency to Take Necessary Actions to Grant Relief

The Illinois Emergency Management Agency Act lays out the ways in which our state government can act to protect people's safety and well-being in the face of an emergency. In addition to creating an agency to carry out emergency management, the act provides the governor broad powers to declare a disaster and to take action to deal with it. The Act empowers the governor to "utilize all available resources of the State government as reasonably necessary to cope with the disaster and of each political subdivision of the state,"¹ as well as to "suspend the provisions of any regulatory statute prescribing procedures for conduct of State business, or

¹ 20 ILCS 3305/7(2).

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the orders, rules and regulations of any State agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder or delay necessary action...in coping with the disaster.”²

These two powers grant the governor broad authority both to mobilize state bodies and resources he otherwise does not have control over, and to suspend regulatory laws that would otherwise require legislative action to interfere with, in the course of responding to a crisis like this. Combined with being explicitly empower to “make provision for the ability and use of temporary housing,”³ to “control ingress and egress to and from a disaster area...and the *occupancy of premises therein*,”⁴ the governor has a variety of tools available to provide relief.

Governor Pritzker has already used these tools, in much the same way as he could use them to provide tenants relief from rent, to put a moratorium on evictions. Citing his power to utilize the resources of the state and its subdivisions, control the occupancy of premises in a disaster zone, and make provision for temporary housing, Governor Pritzker ordered all state, county, and local law enforcement officials “to cease enforcement of orders of eviction for residential premises for the duration of the Gubernatorial Disaster Proclamation.”⁵ The Governor would not normally have the power to compel local and county law enforcement officials, such as the Cook County Sheriff’s Department, as such agencies derive their democratic legitimacy from separate sources (e.g. the Cook County Sheriff is elected by Cook County voters, and the Chicago Police Department is ultimately under the authority of the mayor and aldermen of

² 20 ILCS 3305/7(1).

³ 20 ILCS 3305/7(10).

⁴ 20 ILCS 3305/7(8) (emphasis added).

⁵ Executive Order to Expand Telehealth Services and Protect Health Care Providers in Response to COVID-19, Ill. E.O. 2020-10 (March 20, 2020) (<https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-10.aspx>).

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Chicago, elected by Chicago voters). However, during this disaster, the governor has the authority to so direct these agencies to follow specific policies in the name of disaster relief.

Governor Pritzker Has the Authority to Put a Moratorium on Rent During COVID-19 Disaster

Using the same powers he used to decree a moratorium on evictions, Governor Pritzker could issue a proclamation declaring it the public policy of the state of Illinois that no residential tenants should be required to pay rent for the duration of the Gubernatorial Disaster Proclamation and concurrent Stay at Home order, currently slated to run until the end of April.⁶ Such a statement of public policy would clearly follow from his power to control the movement of people within the disaster area (both in the need to make sure people have a home and keep them from needing to go to work in order to make rent), as well as the need to provide emergency housing (either by declaring all housing in the disaster area to be part of his emergency housing plan or by making clear the need to limit the need for new emergency housing by keeping people in their existing housing). He could further direct Illinois state courts, the administrative functions of which are not normally under his authority but which would constitute “resources of the state government,” to reject the filing of any forcible entry and detainer action, an eviction lawsuit, premised on a failure to pay rent during the Stay at Home order. Alternatively, he could direct Illinois courts, when faced with a rental agreement that either explicitly or impliedly requires a residential tenant to pay rent during the Stay at Home order, to apply the “blue pencil doctrine” to rewrite the contract to conform with a stated Illinois public policy against requiring residential tenants to pay rent during the emergency.

⁶ Executive Order in Response to COVID-19, Ill. E.O. 20202-18 (April 1, 2020) (<https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-18.aspx>).

Governor Pritzker Has the Authority to Empower Municipalities to Regulate Rent During COVID-19 Disaster

In addition to directly providing rent relief, the Governor could also empower municipalities to provide this relief. As stated above, there is an Illinois statute prohibiting municipalities from enacting ordinances “that would have the effect of controlling the amount of rent charged for leasing private residential or commercial property.”⁷ But also as stated above, the Governor’s powers during an emergency include the power to “suspend the provisions of any regulatory statute prescribing procedures for conduct of State business, or the orders, rules and regulations of any State agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder or delay necessary action...in coping with the disaster.”⁸

Governor Pritzker can use this power, along with the power to control the occupancy of premises in a disaster area and the need to provide temporary housing, to suspend the application of the Rent Control Preemption Act (which, notably, is codified as “Local Regulation”) as a “regulatory statute...[that] would in any way prevent, hinder or delay necessary action...in coping with the disaster.” A recent paper, posted by the National Governors Association and attached as an exhibit to this memo, lays out how the governor’s statutory authority to suspend statutes and similar statutes in other states can be used by governors to avoid legal barriers to responding to public health crises.⁹ It lays out a variety of ways other states have used these statutes to suspend regulatory laws to deal with crises. For instance, in 2018, in response to a New York flu epidemic, Andrew Cuomo used an analogous law to suspend a regulation

⁷ 50 ILCS 825/5(a).

⁸ 20 ILCS 3305/7(1).

⁹ Gregory Sunshine et al., “An Assessment of State Laws Providing Gubernatorial Authority to Remove Legal Barriers to Emergency Response,” *Health Security* 17:2 (2019).

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preventing health care providers, including municipally-operated health care providers, from having pharmacists administer vaccines to children.¹⁰ Governor Cuomo issued a similar order during a New York flu epidemic in 2013.¹¹

Like Governor Cuomo, Governor Pritzker could use his authority to suspend statutes that interfere with the ability of the municipalities, as subdivisions of the state government, to respond to the effects of the disaster, including the urgent need to keep people away from work, where they would need to go to make money to pay rent, and in their homes, where the cost of rent (even unpaid during an eviction moratorium, growing monthly until the explosion of eviction actions that would be filed once the moratorium is lifted) could drive people into the streets. Governor Pritzker has already used his authority to suspend other Illinois statutes during the emergency,¹² including statutory requirements and limits on local school districts that would prevent and hinder schools systems from responding to the crisis.¹³ By this exact same authority, applied in the same way, Governor Pritzker can suspend the Illinois statute impeding municipalities from responding to the crisis by preventing them from taking necessary action to prevent people from both leaving home to work in order to make the money needed for rent and moving from, and thus leaving, residences that leave them rent-burdened.

Conclusion

¹⁰ Id.

¹¹ Id.

¹² Executive Order in Response to COVID-19, Ill. E.O. 2020-16 (March 28, 2020) (<https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-15.aspx>); Executive Order in Response to COVID-19, Ill. E.O. 2020-14 (March 26, 2020) (<https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-14.aspx>).

¹³ Executive Order in Response to COVID-19, Ill. E.O. 2020-15 (March 27, 2020) (<https://www2.illinois.gov/Pages/Executive-Orders/ExecutiveOrder2020-16.aspx>)

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These are only a few of the legal pathways the governor could use to provide relief to residential tenants during this crisis. There are others, such as the powers arising under the Department of Public Health Act¹⁴ to implement broad measures in order to preserve public health. The fundamental point is that the Governor could, without anyone else acting, provide relief to millions of renters across the state of Illinois. The only remaining question is whether he will do so.

¹⁴ 20 ILCS 2305.