

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

SUPERIOR COURT
Civil Action No. 2084-cv-01344

MITCHELL MATORIN, and
LINDA SMITH,

Plaintiffs,

v.

COMMONWEALTH OF
MASSACHUSETTS,
and its EXECUTIVE OFFICE OF HOUSING
& ECONOMIC DEVELOPMENT,

Defendants.

**AMICUS BRIEF OF MLPB (F/K/A MEDICAL LEGAL PARTNERSHIP | BOSTON), A
FISCALLY SPONSORED PROGRAM OF TSNE MISSIONWORKS IN SUPPORT OF
DEFENDANTS**

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I. INTEREST OF AMICUS

MLPB is a non-profit program with a mission to equip healthcare, public health, early childhood, and human service workforces with legal problem-solving strategies that meet people's health-related social needs and improve population-level social determinants of health. Leveraging its public interest law expertise, MLPB advances health equity for individuals, families, and communities.

After two decades of thoughtful nurturing at Boston Medical Center, in July 2012 MLPB began to operate under the auspices of TSNE MissionWorks, a 501(c)(3) incorporated in the Commonwealth of Massachusetts that seeks to create a just and democratic society. Over the last eight years, MLPB has expanded its work both within the Commonwealth and outside of Massachusetts, partnering extensively in Rhode Island and in a national demonstration project context.

A majority of MLPB's partners in Massachusetts are healthcare and public health organizations who together bear responsibility for delivery of quality care to hundreds of thousands of Massachusetts residents. While MLPB is not an agent of these organizations and therefore does not speak for them directly, our partnership network represents a community of stakeholders that understands the complex relationships between clinical, behavioral, social, and public health. We and our partners are deeply concerned about the ways in which housing instability (a) has exacerbated transmission of SARS-CoV-2, COVID-19 morbidity and mortality, and related health disparities and inequities in the Commonwealth, and (b) will continue to impact public health in the Commonwealth.

II. INTRODUCTION

Today the Commonwealth of Massachusetts, along with the rest of the country and the world, faces the greatest public health crisis in living memory. COVID-19, a previously

unknown infectious disease caused by the SARS-CoV-2 coronavirus, has in less than a year become a worldwide pandemic, spreading to almost every country on earth, with over 14,000,000 worldwide cases, and over half a million deaths.¹ In Massachusetts alone, over 100,000 cases have been recorded, and more than 8,000 residents have died from the disease.²

As bad as this pandemic has been in Massachusetts, it likely would have been unimaginably worse were it not for efforts taken by state and local public health authorities to slow down and prevent the spread of SARS-CoV-2 infections. Central to this effort was encouraging and facilitating the widespread adoption of “social distancing” – the practice of avoiding, to the extent possible, all close personal contact with other individuals who are not members of the same household. Social distancing works because it interferes with the primary known and suspected modes of transmission of the SARS-CoV-2 virus – inhalation of virus-containing water droplets exhaled by an infected person and inhalation of concentrated amounts of suspended airborne virus particles, particularly in indoor environments. As a result of widespread adoption of social distancing in Massachusetts, the peak of daily new infections

¹ As reported by the World Health Organization COVID-19 Dashboard, available at <https://covid19.who.int/> (last visited July 22, 2020); “WHO Director-General’s opening remarks at the media briefing on COVID-19 – 11 March 2020,” available at <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> (declaring the worldwide outbreak of COVID-19 cases as a “pandemic”).

² Ex. 1, Massachusetts Department of Public Health COVID-19 Dashboard (Tuesday, July 21, 2020), available at <https://www.mass.gov/doc/covid-19-dashboard-july-21-2020/download>.

ended up being much lower than originally feared,³ and daily infection rates have since declined dramatically, from 4,946 cases on April 23 to 244 cases as of July 21.⁴

The present litigation constitutes a misguided effort to roll back one of the key components of Massachusetts' successful social distancing strategy – the moratorium on non-emergency residential evictions. Evictions undermine tenants' ability to adhere to social distancing guidelines by forcing them, in myriad ways, into close and/or extended contact with individuals who are not members of their household. Evictions force tenants to search for and move into new accommodations, and in many cases to share overcrowded apartments or homeless shelters with unrelated individuals. Evictions can also force tenants to appear in housing court, often for hours at a time and on multiple occasions. By placing a temporary halt to evictions, the eviction moratorium – first in the form of an emergency judicial order and then as a legislative enactment – has prevented what would likely have been tens or hundreds of thousands of unsafe encounters and tens of thousands of new infections.

Plaintiffs' requested injunction against enforcement of the eviction moratorium would seriously undermine public health and should be rejected. Not only was the moratorium instrumental in helping Massachusetts successfully manage and suppress the first wave of

³ Ex. 2, Liz Kowalczyk, "Who gets a ventilator? New gut-wrenching state guidelines issued on rationing equipment," *Boston Globe*, dated April 7, 2020 (discussing how Massachusetts health officials issued guidelines "to help hospitals make gut-wrenching decisions about how to ration ventilators, should they become overwhelmed with coronavirus patients and run out of critical treatments"); Ex. 3, Liz Kowalczyk, "Mass. General models show flattening curve; COVID-19 patients not expected to overwhelm the system during this week's surge," *Boston Globe*, dated April 20, 2020 (discussing how Massachusetts hospitals managed the number of COVID-19 patients and how new patients were not expected to overwhelm hospital resources).

⁴ Ex. 4, Massachusetts Coronavirus Map and Case Count," *NY Times* (last accessed July 22, 2020), available at <https://www.nytimes.com/interactive/2020/us/massachusetts-coronavirus-cases.html>.

COVID-19 cases earlier this year, it remains essential to preventing a resurgence of the disease in the future. While current daily case reports in Massachusetts have dropped dramatically, the virus itself remains present in the Commonwealth, with hundreds of new infections reported daily.⁵ Because failure to adhere to social distancing restrictions can quickly lead to uncontrolled flare-ups of the disease – as recent developments in California and Florida have demonstrated – it is critical that that the moratorium remains in place until it is determined that the SARS-CoV-2 virus no longer presents a serious public health threat to the Commonwealth.

III. THE COVID-19 PANDEMIC IS A SERIOUS, ONGOING THREAT TO PUBLIC HEALTH THAT REQUIRES WIDESPREAD SOCIAL DISTANCING TO BRING IT UNDER CONTROL

A. COVID-19 is a Deadly Infectious Disease that has Already Killed Thousands of Massachusetts Residents and Threatens to Overwhelm the Healthcare System

COVID-19 represents a serious threat to public health in Massachusetts. While the severity of the disease differs from patient to patient, approximately one in five patients who experience the disease requires hospitalization,⁶ and it has been estimated that 3.6% of all affected patients die from the condition.⁷ As of July 21, 2020, 140,630 people have died in the

⁵ Ex. 1, Massachusetts Department of Public Health COVID-19 Dashboard (Tuesday, July 21, 2020), available at <https://www.mass.gov/doc/covid-19-dashboard-july-21-2020/download>; Ex. 4, Massachusetts Coronavirus Map and Case Count,” *NY Times* (last accessed July 22, 2020), available at <https://www.nytimes.com/interactive/2020/us/massachusetts-coronavirus-cases.html>.

⁶ World Health Organization, “Q&A on coronaviruses (COVID-19),” dated April 17, 2020, available at <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-coronaviruses>.

⁷ “Mortality Analyses,” Johns Hopkins University & Medicine Coronavirus Resource Center, last accessed July 22, 2020, available at <https://coronavirus.jhu.edu/data/mortality>.

United States due to COVID-19.⁸ Even those patients who survive the disease face the possibility of long-term or permanent lung damage or other health problems.⁹

In addition to directly killing many thousands of people, an uncontrolled COVID-19 pandemic in Massachusetts also would threaten the functioning of the state’s healthcare system. Since 20% of all infected patients require hospitalization, even a moderate level of infection could result in tens of thousands of seriously ill persons flooding the state’s hospitals, overwhelming emergency rooms, and making it impossible for the system to provide treatment – including treatment for non-COVID-19 related conditions – for all those who need it.¹⁰

⁸ “Cases in the U.S.,” Centers for Disease Control and Prevention, dated July 21, 2020, available at <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

⁹ “What coronavirus does to the lungs,” Johns Hopkins Medicine, dated April 13, 2020, available at <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/what-coronavirus-does-to-the-lungs>; Sana Selehi, “Long-term pulmonary consequences of coronavirus disease 2019 (COVID-19): What we know and what to expect,” 35 *J. Thoracic Imaging* 87, 89 (2020), available at https://journals.lww.com/thoracicimaging/FullText/2020/07000/Long_term_Pulmonary_Consequences_of_Coronavirus.11.aspx (reporting residual lung abnormalities in patients who recovered from COVID-19); “What are the long-term effects of COVID-19?,” *Miami Health News*, available at <https://news.umiamihealth.org/en/what-are-the-long-term-effects-of-covid-19/> (reporting that patients who recover from COVID-19 may suffer cardiovascular injury, kidney injury, and neurological problems, among other health issues); Pam Belluck, “Here’s what recovery from COVID-19 looks like for many survivors,” *NY Times*, dated July 1, 2020, available at <https://www.nytimes.com/2020/07/01/health/coronavirus-recovery-survivors.html> (noting that patients who recovered from COVID-19 may still face additional respiratory, neurological, cognitive, and emotional issues).

¹⁰ Massachusetts has a population of approximately 6.9 million residents. In a hypothetical scenario in which 10% of the population experienced COVID-19 (totaling approximately 690,000 patients), 20% of those patients (approximately 138,000 in total) would require hospitalization. As of April 9, 2020, Massachusetts had only 15,000 hospital beds, not all of which were suitable for treating COVID-19 patients. See “U.S. Census Bureau Quick Facts – Massachusetts,” available at <https://www.census.gov/quickfacts/MA> (listing the population of MA as 6,892,503 people); World Health Organization, “Q&A on coronaviruses (COVID-19),” (April 17, 2020), <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-coronaviruses>; “Baker-Polito Administration Provides Update on Hospital Surge Capacity,” dated April 10, 2020, available at <https://www.mass.gov/news/baker-polito-administration-provides-update-on-hospital-surge-capacity>.

B. Transmission of the Virus that Causes COVID-19 Occurs from Close Contact with Infected Persons

Although scientific understanding of the spread of SARS-CoV-2 continues to evolve, there is currently a strong scientific consensus that transmission of SARS-CoV-2 occurs primarily from close contact with infected persons.¹¹ In a study analyzing 75,465 COVID-19 cases in China, “78-85% of clusters [of COVID-19 cases] occurred within household settings, suggesting that transmission occurs during close and prolonged contact.”¹² Subsequent research

¹¹ World Health Organization, “Modes of transmission of virus causing COVID-19: Implications for IPC precaution recommendations,” dated July 9, 2020, available at <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions> (stating that “SARS-CoV-2 transmission appears to mainly be spread via droplets and close contact with infected symptomatic cases”); Jiaye Liu et al., “Community transmission of Severe Acute Respiratory Syndrome Coronavirus 2, Shenzhen, China, 2020,” 26 *Emerg. Infect. Diseases* 1320, 1322 (2020), available at https://wwwnc.cdc.gov/eid/article/26/6/20-0239_article (noting that “community transmission and intrafamily transmission have potentially become the new transmission modes in the city”); Jasper Fuk-Woo Chan et al., “A familial cluster of pneumonia associated with the 2019 novel coronavirus indicating person-to-person transmission: A study of a family cluster,” 395 *Lancet* 514, 523 (2020), available at [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30154-9/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30154-9/fulltext) (noting that “person-to-person transmission in family homes or hospital, and intercity spread of this novel coronavirus are possible”); Qun Li et al., “Early transmission dynamics in Wuhan, China, of novel coronavirus-infected pneumonia,” 382 *New England J. of Med.* 1199, 1206 (2020), available at <https://www.nejm.org/doi/full/10.1056/nejmoa2001316> (noting that “[h]uman-to-human transmission among close contacts has occurred” during the COVID-19 outbreak in Wuhan, China); Chaolin Huang et al., “Clinical features of patients infected with 2019 novel coronavirus in Wuhan, China,” 395 *Lancet* 497, 502 (2020), available at [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30183-5/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30183-5/fulltext) (noting that that “evidence so far indicates human transmission for 2019-nCoV [SARS-CoV-2]”).

¹² World Health Organization, “Modes of transmission of virus causing COVID-19: Implications for IPC precaution recommendations,” dated July 9, 2020, available at <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>.

has confirmed that the risk of transmission increases substantially when people are enclosed in indoor spaces for extended periods of time.¹³

It is well-understood that transmission of SARS-CoV-2 occurs at least via respiratory droplet transmission.¹⁴ Transmission via respiratory droplets occurs when an infected person expels saliva or other respiratory secretions or droplets, putting a person in close contact at risk of the virus reaching the uninfected person's mouth, nose, or eyes.¹⁵ However there is growing scientific concern that COVID-19 is also spread via so-called "airborne" transmission, in which the virus remains suspended in the air over extended periods of time, especially in closed indoor

¹³ See Lea Hammer et al., "High SARS-CoV-2 attack rate following exposure at a choir practice – Skagit County, Washington, March 2020," 69 *Morb. and Mortal Wkly Rep.*, 606, 609 (2020), available at <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6919e6-H.pdf> (finding that choir members who sat in close proximity to each other indoors and who had "an intense and prolonged exposure singing while sitting 6-10 inches from one another" had increased exposure to COVID-19); Allison James et al., "High COVID-19 attack rate among attendees at events at a church – Arkansas, March 2020," 69 *Morb. Mortal Wkly Rep.*, 632, 633 (2020), available at <https://www.cdc.gov/mmwr/volumes/69/wr/mm6920e2.htm> (reporting 35 cases of COVID-19 from exposure at church events that occurred over six days in March 2020); Sukbin Jang et al., "Cluster of coronavirus diseases associated with fitness dance classes, South Korea," 26 *Emerg. Infect. Dis.* 1917, 1919 (2020), available at https://wwwnc.cdc.gov/eid/article/26/8/20-0633_article (finding that small spaces over a 60-minute fitness class caused high transmission rate of COVID-19 among attendees); Shin Young Park et al., "Coronavirus disease outbreak in call center, South Korea," 26 *Emerg. Infect. Dis.* (2020), available at https://wwwnc.cdc.gov/eid/article/26/8/20-1274_article (finding that COVID-19 had an infection rate as high as 43.5% in one floor of a crowded office call center).

¹⁴ World Health Organization, "Modes of transmission of virus causing COVID-19: Implications for IPC precaution recommendations," dated July 9, 2020, available at <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>.

¹⁵ *Id.*

spaces.¹⁶ The existence of airborne transmission means that merely spending time in an enclosed space where infected persons have recently been present creates a risk of further infection.¹⁷

C. Social Distancing is a Critical Measure to Stop the Spread of COVID-19¹⁸

Social distancing – the avoidance of all unnecessary close interactions between individuals who are not household members, and in particular indoor interactions – is a critical measure to control the spread of COVID-19.¹⁹ Social distancing prevents transmission of SARS-

¹⁶ See G. Aernout Somsen et al., “Small droplet aerosols in poorly ventilated spaces and SARS-CoV-2 transmission,” 8 *Lancet Respir. Med.* 658, 659 (2020), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7255254/> (noting that COVID-19 is transmitted by aerosols and emphasizing the importance of properly ventilated spaces to “dilute and clear out potentially infectious aerosols”); Renyi Zhang et al., “Identifying airborne transmission as the dominant route for the spread of COVID-19,” 117 *PNAS* 14857, 14863 (2020), available at <https://www.pnas.org/content/117/26/14857> (identifying airborne transmission as the “dominant route for the transmission of [COVID-19]”); Lida Morawska and Donald K. Milton, “It is time to address airborne transmission of COVID-19,” *Clin. Infect. Dis.* (2020), available at <https://academic.oup.com/cid/article/doi/10.1093/cid/ciaa939/5867798> (identifying the potential for COVID-19 to be transmitted via airborne transmission and noting “[t]his problem is especially acute in indoor or enclosed environments, particularly those that are crowded and have inadequate ventilation relative to the number of occupants and extended exposure periods”); see also World Health Organization, “Q&A: How is COVID-19 transmitted?,” dated July 9, 2020, available at <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-how-is-covid-19-transmitted>.

¹⁷ See *supra* n. 16.

¹⁸ As noted above, the virus that causes COVID-19 is called SARS-CoV-2, and strictly speaking it is the transmission of SARS-CoV-2 that causes the spread of COVID-19. Because in common parlance COVID-19 is used to refer to both the virus and the disease that it causes, we will occasionally use the terms “transmitting of COVID-19” or “spreading of COVID-19” to refer to transmission of the SARS-CoV-2 that causes COVID-19.

¹⁹ Ex. 5, Charles Courtemanche et al., “Strong social distancing measures in the United States reduced the COVID-19 growth rate,” 39 *Health Affairs* 1237 (2020) (finding that “both shelter-in-place orders and other measures can be effective at averting COVID-19 cases”); Ex. 6, Arielle Lasry et al., “Timing of community mitigation and changes in reported COVID-19 and community mobility – four U.S. metropolitan areas, February 26 – April 1, 2020,” 69 *Morbidity and Mortality Weekly Report* 451, 456 (2020) (tracking the number of COVID-19 cases and the timing of public health measures and suggesting that “policies to increase social distancing when case counts are increasing can be an important tool for communities as changes in behavior result in decreased spread of COVID-19”); Ex. 7, Wei Lyu et al., “Shelter-in-place orders reduced COVID-19 mortality and reduced rate of growth in hospitalizations,” 39 *Health Affairs*

CoV-2 by keeping people far enough apart that droplets containing the virus that are expelled by an infected person will not get into the uninfected person's mouth, nose, or eyes.²⁰ Moreover, by limiting extended indoor interactions outside of the home, social distancing limits the likelihood of airborne transmission as well.²¹

While social distancing may slow the spread of any disease that is transmissible between human carriers, it is especially important in the case of COVID-19 because patients who contract COVID-19 are known to be infectious for days before presenting with symptoms.²² In addition,

1, 5 (2020) (finding evidence that shelter-in-place orders “played an important role in decelerating the growth curve for COVID-19 deaths and hospitalizations); Ex. 8, Wei Lyu et al., “Comparison of estimated rates of coronavirus disease 2019 (COVID-19) in border countries in Iowa without a stay-at-home order and border counties in Illinois with a stay-at-home order,” 3 *JAMA Network Open* 1, 5 (2020) (estimating as many as 217 excess cases in Iowa after 1 month without a stay-at-home order and finding that “issuing a stay-at-home order in Iowa while daily cases continued to increase may have helped limit the number of cases”); see also “Social Distancing, Centers for Disease Control and Prevention, dated July 15, 2020, available at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>.

²⁰ “Social Distancing, Centers for Disease Control and Prevention, dated July 15, 2020, available at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>; “How to Protect Yourself & Others,” Centers for Disease Control and Prevention, last updated April 24, 2020, available at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>; World Health Organization, “Q&A: How is COVID-19 transmitted?,” dated July 9, 2020, available at <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-how-is-covid-19-transmitted>.

²¹ See *supra* n. 16 (identifying references that show that COVID-19 is transmitted via airborne transmission, especially in indoor locations).

²² Xi He et al., “Temporal dynamics in viral shedding and transmissibility of COVID-19,” 26 *Nat. Med.* 672, 672 (2020), available at <https://www.nature.com/articles/s41591-020-0869-5> (analyzing 94 patients with laboratory-confirmed COVID-19 and finding that “substantial transmission potential” occurred before symptom onset and estimated that 44% of secondary cases were infected when the transmitting patient was presymptomatic); Seyed M. Moghadas et al., “The implications of silent transmission for the control of COVID-19 outbreaks,” *PNAS* 1, 1 (2020), available at <https://www.pnas.org/content/early/2020/07/02/2008373117> (finding that “silent disease transmission [of COVID-19] during the presymptomatic and asymptomatic stages are responsible for more than 50% of the overall attack rate in COVID-19 outbreaks” and “such silent transmission alone can sustain outbreaks even if all symptomatic cases are immediately isolated”).

it is now understood that many people become carriers of the SARS-CoV-2 virus without ever experiencing symptoms, and these asymptomatic carriers may also spread the disease to others.²³ By limiting the number of potential exposures, social distancing measures reduce the risk that an asymptomatic or pre-symptomatic COVID-19 carrier infects others.

IV. THE EVICTION MORATORIUM REMAINS NECESSARY TO PROTECT THE PUBLIC HEALTH BY FACILITATING SOCIAL DISTANCING

The Commonwealth's moratorium on evictions has been, and remains, an essential measure for protecting the public health and preventing the spread of COVID-19.

Fundamentally, evictions interfere with the ability of tenants and others to socially distance, and thus undermine what has been among the most effective measures to bring the COVID-19 pandemic under control. Moreover, the impact of resuming evictions under currently depressed economic conditions would be especially catastrophic. Almost one-third of all Massachusetts tenants are behind on their rent,²⁴ and the sudden entry of such a large number of people into summary process proceedings and the housing market would almost certainly result in massive numbers of unsafe physical encounters. The problem is especially acute among low income and racial and ethnic minority communities, who already face dramatically higher health risks from COVID-19.²⁵

²³ Seyed M. Moghadas et al., "The implications of silent transmission for the control of COVID-19 outbreaks," *PNAS* 1, 1 (2020), available at <https://www.pnas.org/content/early/2020/07/02/2008373117> (finding the transmission of COVID-19 during the presymptomatic and asymptomatic stages is responsible for more than 50% of the overall attack rate in COVID-19 outbreaks").

²⁴ Ex. 9, MassInc Polling Group, dated June 10, 2020, available at <https://www.massincpolling.com/the-topline/poll-more-renters-falling-behind-as-economic-toll-of-covid-spreads-in-massachusetts>.

²⁵ Ex. 10, "COVID-19 in Racial and Ethnic Minority Groups," last updated June 25, 2020 (stating that "[a]mong some racial and ethnic minority groups, including non-Hispanic black persons, Hispanics and Latinos, and American Indians/Alaska Natives, evidence points to higher

A. The Commonwealth Imposed the Eviction Moratorium to Encourage and Facilitate Social Distancing

The origins of current moratorium on evictions in Massachusetts can be traced back to March 16, 2020 – shortly after it became apparent that the COVID-19 pandemic presented a threat to public health in Massachusetts – when the Chief Justice of the Housing Court issued an order postponing all non-emergency matters until after April 21, 2020.²⁶ That order effectively

rates of hospitalization or death from COVID-19 than among non-Hispanic white persons”); Rishi K. Wadhwa et al., “Variation in COVID-19 hospitalizations and deaths across New York City boroughs,” 323 *JAMA* 2192, 2194 (2020), available at <https://jamanetwork.com/journals/jama/fullarticle/2765524> (analyzing COVID-19 populations across the 5 NYC boroughs and finding that “[t]he Bronx, which has the highest proportion of racial/ethnic minorities, the most persons living in poverty, and the lowest levels of educational attainment had higher rates of hospitalization and death related to COVID-19 than the other 4 boroughs.”); Clyde W. Yancy, “COVID-19 and African Americans,” 323 *JAMA* 1891, 1891 (2020), available at <https://jamanetwork.com/journals/jama/fullarticle/2764789> (citing evidence from The Johns Hopkins University and American Community indicating that the COVID-19 infection rate in Black counties is “more than 3-fold higher than that in predominantly white counties”); Aaron van Dorn et al., “COVID-19 exacerbating inequalities in the U.S.,” 395 *Lancet* 1243, 1243 (2020), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7162639/> (noting that across the United States, “deaths due to COVID-19 are disproportionately high among African Americans compared with the population overall”); Gunness Harlem and Millheiser Lynn, “Descriptive analysis of social determinant factors in urban communities affected by COVID-19,” *J. of Public Health* 1, 2 (2020), available at <https://academic.oup.com/jpubhealth/article/doi/10.1093/pubmed/fdaa078/5856349> (observing that “[h]igh percentages of lower education (less than a high school degree) and poverty were also observed in severely affected communities reiterating that high rates of infectious diseases occur in poor and vulnerable communities as indicated in previous studies.”); Monica Webb Hooper et al., “COVID-19 and racial/ethnic disparities,” 323 *JAMA* 2466, 2466 (2020), available at <https://jamanetwork.com/journals/jama/fullarticle/2766098> (reporting that New York City (as of May 7, 2020) reported greater age-adjusted COVID-19 mortality among Latino persons (187 per 100 000) and African American individuals (184 per 100 000), compared with white (93 per 100 000) residents.”); Gregorio Millett et al., “Assessing differential impacts of COVID-19 on black communities,” 47 *Annals of Epid.* 37, 40 (2020), available at <https://www.sciencedirect.com/science/article/pii/S1047279720301769> (finding that data regarding COVID-19 “demonstrate significantly higher rates of COVID-19 diagnoses and deaths in disproportionately black counties compared with other counties”).

²⁶ “Housing Court Non-Emergency Cases will be rescheduled to after April 21, 2020,” dated March 16, 2020, available at <https://www.mass.gov/advisory/housing-court-non-emergency-cases-will-be-re-scheduled-to-after-april-21-2020>; see also “Governor Baker and state health

prevented most eviction proceedings from going forward, and was expressly intended to “promote ‘social distancing,’ thereby minimizing the risk of exposure to court staff and litigants.”²⁷ That judicial moratorium was then extended and expanded by the General Court when, on April 20, 2020, it enacted “An Act Providing for a Moratorium on Evictions and Foreclosures During the COVID-19 Emergency.”²⁸ Not only did this statute continue the suspension of all summary process eviction proceedings, it also prohibited other acts by landlords that would tend to coerce tenants into moving, including sending notices to quit and executing on previously obtained judgments for possession.²⁹ On July 21, 2020, Governor Baker exercised his authority under the statute to extend the eviction moratorium until October 17, 2020.³⁰ In doing so, he recognized that the moratorium “allowed many tenants and homeowners impacted by COVID-19 to remain in their homes during the state of emergency” and this, thus, had “helped to slow the spread of COVID-19” in Massachusetts.³¹

officials discuss community preparedness with health care, infectious disease experts and front line leaders,” dated March 4, 2020, available at <https://www.mass.gov/news/governor-baker-and-state-health-officials-discuss-community-preparedness-with-health-care> (discussing Massachusetts’ preparation and response to the COVID-19 pandemic).

²⁷ Christopher Gavin, “Mass. Housing Court has halted ‘non-emergency’ proceedings due to coronavirus,” *Boston.com*, dated March 16, 2020, available at <https://www.boston.com/news/local-news/2020/03/16/massachusetts-housing-court-evictions-coronavirus> (quoting Chief Justice Timothy Sullivan as stating “The Housing Court’s aim during this time is twofold: (1) where practicable, to reduce the number of people who come to each courthouse where Housing Court business is conducted; and (2) to promote ‘social distancing,’ thereby minimizing the risk of exposure to court staff and litigants.”)

²⁸ Ch. 65 of Acts of 2020, available at <https://malegislature.gov/Laws/SessionLaws/Acts/2020/Chapter65>.

²⁹ *See, e.g.*, Ch. 65 of Acts of 2020, at § 3, available at <https://malegislature.gov/Laws/SessionLaws/Acts/2020/Chapter65>.

³⁰ “Foreclosures and Evictions Moratorium Extension July 21 2020,” dated July 21, 2020, available at <https://www.mass.gov/doc/foreclosures-and-evictions-moratorium-extension-july-21-2020>.

³¹ *Id.*

B. Lifting the Eviction Moratorium Would Create a Serious Public Health Risk

1. Evictions Force Tenants into Unsafe Situations Where Social Distancing is Impossible

Lifting the eviction moratorium, and thus permitting evictions during the COVID-19 pandemic, would be a significant setback in the Commonwealth's efforts to suppress the COVID-19 pandemic. It would force tenants into unsafe situations, and thus undermine the Commonwealth's strategy of promoting social distancing to reduce SARS-CoV-2 transmission rates. This is so for at least three reasons.

First, evictions and foreclosures require tenants to seek alternative shelter. That means engaging in numerous face-to-face interactions with potential realtors or landlords, again often in indoor spaces.

Second, tenants who are unsuccessful in finding new housing will be forced to either live in shelters or move-in with family or friends, potentially overcrowding residences. Both options force tenants to live in close proximity with other people who are not members of their households, and thus increase the risk of both droplet and airborne SARS-CoV-2 transmission. Not surprisingly, homeless shelters throughout the country have reported high rates of COVID-19 cases.³² The Centers for Disease Control and Prevention reports that CDC teams responded

³² See Bridget Kuehn, "News from the Centers for Disease and Control: Homeless Shelters Face High COVID-19 Risk," 323 *JAMA* 2240, 2240 (2020), available at <https://jamanetwork.com/journals/jama/article-abstract/2766884> (reporting that the "transmission [of COVID-19] is prevalent at some facilities but may occur undetected in others"); Travis P. Baggett et al., "Addressing COVID-19 among people experiencing homelessness: Description, adaptation, and early findings of a multiagency response in Boston," *Public Health Reports* (2020), available ahead of print at <https://pubmed.ncbi.nlm.nih.gov/32516035/> (noting "[t]he high transmissibility of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) infection, coupled with its variable and often subtle clinical presentation, makes homeless shelters and encampments especially susceptible to large outbreaks of coronavirus diseases 2019 (COVID-19) among people with an already high likelihood of chronic heart and lung disease and accelerated aging").

to three homeless shelters in Boston, San Francisco, and Seattle, and found that 17-66% of residents tested positive for COVID-19.³³ The alternative to shelters – moving in with friends to relatives – further exposes the evicted tenants to more potentially infectious people, thereby increasing the risk of COVID-19 transmission. Such arrangements may also result in overcrowding which also contributes to the spread of COVID-19.³⁴

Third, eviction practice in housing and district courts, typically requires tenants and landlords to appear in court, often on multiple occasions. Courthouses are crowded indoor spaces, and tenants often wait hours for hearings or mediations to go forward. Housing Court Standing Order 5-20 (as amended, effective July 1, 2020) provides: “To continue to limit the number of persons entering the courthouses after the physical, and gradual, reopening of the courthouses to the general public on July 13, 2020, all Housing Court divisions shall strive to

³³ See *supra* n. 32; see also “One in Three Among Boston Homeless Have Tested Positive for Coronavirus, City Officials Say,” dated April 7, 2020, available at <https://www.wgbh.org/news/local-news/2020/04/07/one-in-three-among-boston-homeless-have-tested-positive-for-coronavirus-city-officials-say> (reporting that “[r]oughly one in three people of Boston’s homeless community have tested positive for the COVID-19 virus”); Travis P. Baggett et al., “Addressing COVID-19 among people experiencing homelessness: Description, adaptation, and early findings of a multiagency response in Boston,” *Public Health Reports* (2020), available ahead of print at <https://pubmed.ncbi.nlm.nih.gov/32516035/> (noting that disease surveillance activities “suggested that about 10% of Boston’s estimated homeless adult population contracted COVID-19 during a 4-week period”).

³⁴ See Lida Morawska and Donald K. Milton, “It is Time to Address Airborne Transmission of COVID-19,” *Clin. Infect. Dis.* (2020), available at <https://academic.oup.com/cid/article/doi/10.1093/cid/ciaa939/5867798> (noting that airborne transmission is especially problematic in “indoor or enclosed environments, particularly those that are crowded and have inadequate ventilation relative to the number of occupants and extended exposure periods”); Guinness Harlem and Millheiser Lynn, “Descriptive analysis of social determinant factors in urban communities affected by COVID-19,” *J. of Public Health* 1, 2 (2020) (finding that increased density and overcrowding in six community districts in Queens, NY contributed to the spread of COVID-19).

continue conducting court business and proceedings virtually, to the extent possible.”³⁵ But the limits of what is “possible” to do virtually will surely be tested. For one thing, while the courts may be able to manage a virtual calendar with a handful of cases a day during the moratorium, each scheduled for a particular time, it is obvious that a flood of many hundreds of new eviction cases each week would strain the court’s capacity to manage its docket virtually. The result is likely to be increased use of in-person court sessions to handle the tidal wave of new cases that will pour over the courts once the moratorium is no longer in place.

Moreover, many tenants lack access to the technology necessary to participate virtually. This “digital divide” issue falls disproportionately on the same disparities populations that are at higher risk of COVID-19 morbidity and mortality: in particular, racial and ethnic minority groups, older adults, and persons with disabilities. Critically from a public health perspective, those who would be least able to participate virtually and most endangered by threats of eviction absent a moratorium, predictably would be the people most likely to show up at court: based on valid fear that failure to do so will result in actual eviction. Moreover, to get to court, many tenants would use public transportation, in order to spend a prolonged period of time in an indoor crowded space. As discussed above, transmission of SARS-CoV-2 has been documented in crowded indoor spaces where people spent an extended period of time.³⁶

³⁵ <https://www.mass.gov/housing-court-rules/housing-court-standing-order-5-20-further-modifications-to-housing-court>. Adding further complexity and potential confusion for tenants, the District Court, where some eviction cases are litigated, has its own Standing Order: <https://www.mass.gov/districtmunicipal-court-rules/district-court-standing-order-7-20-court-operations-under-the-exigent>.

³⁶ Lida Morawska and Donald K. Milton, “It is Time to Address Airborne Transmission of COVID-19,” *Clin. Infect. Dis.* (2020), available at <https://academic.oup.com/cid/article/doi/10.1093/cid/ciaa939/5867798>; see also *supra* at n. 16.

2. Lifting the Eviction Moratorium under Current Economic Conditions Would Be Especially Risky

Even under normal economic conditions, lifting the eviction moratorium would undermine public health policy by forcing tenants into non-socially distanced situations. Under current economic conditions, however, that negative impact on public health would be greatly magnified. In June 2020, the Massachusetts unemployment rate was reported as 17.4%, over six times the unemployment rate a year prior and the worst unemployment rate in the country.³⁷ Due to high unemployment, an estimated 29% of Massachusetts tenants – over 274,000 households³⁸ – are behind on their rent and would likely face eviction if the moratorium is lifted.³⁹

Evictions and foreclosures at such scale would result in massive homelessness, overwhelming the shelter system and making safe, socially distanced living arrangements for displaced families nearly impossible to effect in real time. In addition, this wave of evictions and foreclosures would result in overcrowded courtrooms, packed full with attorneys, landlords, bank representatives, and tenants, which is contrary to the objective of social distancing.

³⁷ Data available from “Labor and Unemployment Data,” available at <https://lmi.dua.eol.mass.gov/LMI/LaborForceAndUnemployment>; Callum Borchers, “Mass. unemployment rate rises to 17.4%, worst in the country,” *WBUR*, dated July 17, 2020, available at <https://www.wbur.org/bostonmix/2020/07/17/massachusetts-unemployment-rate-worst-country>.

³⁸ See United States Census Bureau, American Community Survey, available at https://data.census.gov/cedsci/table?d=ACS%205-Year%20Estimates%20Data%20Profiles&table=DP04&tid=ACSDP5Y2018.DP04&g=0400000US25&vintage=2018&layer=VT_2018_040_00_PP_D1&cid=DP04_0001E, last accessed July 20, 2020 (noting a five-year estimate of 946,945 occupied rental units in Massachusetts in 2018).

³⁹ Ex. 9, MassInc Polling Group, available at <https://www.massincpolling.com/the-topline/poll-more-renters-falling-behind-as-economic-toll-of-covid-spreads-in-massachusetts>.

3. Lifting the Eviction Moratorium Would Disproportionately Harm the Commonwealth's Most Vulnerable Populations

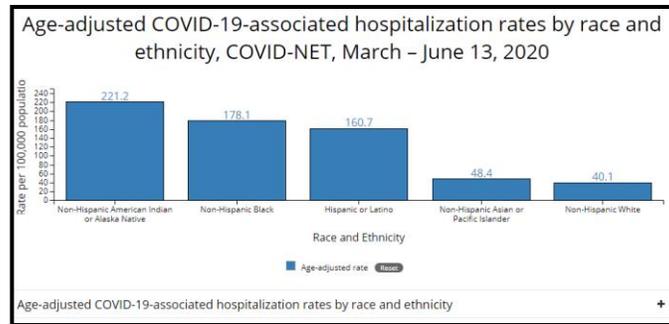
Lifting the eviction moratorium would also have a disproportionate impact on communities of color, communities that have already been disproportionately impacted by the pandemic.

Members of communities of color are hospitalized and die from COVID-19 at substantially higher rates than non-Hispanic whites.⁴⁰ According to data from the federal Centers for Disease Control, “age-adjusted hospitalization rates are highest among non-Hispanic American Indian or Alaska Native and non-Hispanic Black persons, followed by Hispanic or Latino persons.”⁴¹ Comparison of the age-adjusted COVID-19 associated hospitalization rates shows the higher prevalence of COVID-19 in non-Hispanic and non-Hispanic black persons.⁴²

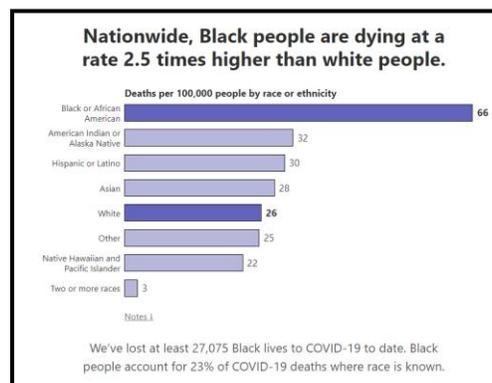
⁴⁰ Ex. 10, “COVID-19 in Racial and Ethnic Minority Groups,” last updated June 25, 2020, available at <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html> (stating that “[a]mong some racial and ethnic minority groups, including non-Hispanic black persons, Hispanics and Latinos, and American Indians/Alaska Natives, evidence points to higher rates of hospitalization or death from COVID-19 than among non-Hispanic white persons”); Rishi K. Wadhwa et al., “Variation in COVID-19 hospitalizations and deaths across New York City boroughs,” 323 *JAMA* 2192, 2194 (2020), available at <https://jamanetwork.com/journals/jama/fullarticle/2765524> (analyzing COVID-19 populations across the 5 NYC boroughs and finding that “[t]he Bronx, which has the highest proportion of racial/ethnic minorities, the most persons living in poverty, and the lowest levels of educational attainment had higher rates of hospitalization and death related to COVID-19 than the other 4 boroughs.”); Shikha Garg et al., “Hospitalization rates and characteristics of patients hospitalized with laboratory-confirmed coronavirus disease 2019 – COVID-NET, 14 states, March 1-30, 2020,” 69 *Morbidity and Mortality Weekly Report* 458, 459 (2020), available at https://www.cdc.gov/mmwr/volumes/69/wr/mm6915e3.htm?s_cid=mm6915e3_w (analyzing data on patients hospitalized with COVID-19 and finding that “black populations might be disproportionately affected by COVID-19.”)

⁴¹ Ex. 10, “COVID-19 in Racial and Ethnic Minority Groups,” available at <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html>.

⁴² Ex. 10, “COVID-19 in Racial and Ethnic Minority Groups,” available at <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html>.



Earlier this year, *The Atlantic* magazine established “The COVID Tracking Project” tracking percentage of cases and percentages of death by race and ethnicity on a state-by-state basis and comparing that data to each state’s overall population demographics. Based on its analysis, *The Atlantic* found that Black people were dying from COVID-19 at a rate 2.5 times higher than white people.⁴³



The same pattern was also found in Massachusetts. While Black or African-American people comprise 7% of the population in Massachusetts, the study found them to comprise 14% of the

⁴³ “The COVID Tracking Project: The COVID Racial Data Tracker” at *The Atlantic*, available at <https://covidtracking.com/race>.

COVID-19 cases.⁴⁴ Similarly, Hispanic or Latino people comprise 12% of the Massachusetts population yet 29% of the COVID-19 population.⁴⁵

There are a number of potential causes of this disparity.⁴⁶ Scientific research has established that certain racial and ethnic minorities have a higher incidence of having comorbidities like diabetes, heart disease, or asthma, that could impact a person’s ability to recover from COVID-19.⁴⁷ In addition, racial and ethnic minorities are disproportionately represented among the “essential workers” who, throughout the COVID-19 pandemic, have been required to report to work in, among other places, the epicenter of the pandemic – skilled nursing facilities.⁴⁸ These workers are, thus, disproportionately at risk from COVID-19 and disproportionately exposed to COVID-19.

The same populations at higher risk of contracting and being hospitalized with COVID-19 are also at elevated risk of being evicted. In a recent study by MIT and City Life/Vida

⁴⁴ “The COVID Tracking Project: The COVID Racial Data Tracker” at *The Atlantic*, available at <https://covidtracking.com/race>; see also *supra* fn. 25.

⁴⁵ “The COVID Tracking Project: The COVID Racial Data Tracker” at *The Atlantic*, available at <https://covidtracking.com/race>; see also *supra* fn. 25.

⁴⁶ See *supra* at n. 25.

⁴⁷ Ex. 10, “COVID-19 in Racial and Ethnic Minority Groups,” last updated June 25, 2020, available at <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html>; Monica Webb Hooper et al., “COVID-19 and racial/ethnic disparities,” 323 *JAMA* 2466, 2466 (2020), available at <https://jamanetwork.com/journals/jama/fullarticle/2766098> (noting that “racial/ethnic minority populations have a disproportionate burden of underlying comorbidities,” including diabetes, cardiovascular disease, and asthma, among others).

⁴⁸ Aaron van Dorn et al., “COVID-19 exacerbating inequalities in the U.S.,” 395 *Lancet* 1243, 1243 (2020), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7162639/> (noting that “[m]inority populations in the US disproportionately make up ‘essential workers’ such as retail grocery workers, public transit employees, and health-care workers and custodial staff”); Monica Webb Hooper et al., “COVID-19 and racial/ethnic disparities,” 323 *JAMA* 2466, 2466 (2020), available at <https://jamanetwork.com/journals/jama/fullarticle/2766098> (noting that “racial/ethnic minorities . . . are more likely to be employed in public-facing occupations (eg, services and transportation) that would prevent physical distancing”).

Urbana, over 70% of evictions in Boston were “in census tracts where the majority of residents are people of color (even though only half of city’s rental housing is in these areas.”⁴⁹ The study also found that “[o]ver 1/3 (37%) of market-rate eviction filings occur in neighborhoods in which a majority of residents are Black (though only 18% of rental housing is in these neighborhoods”).⁵⁰ Between March 1, 2020 and April 20, 2020, property owners filed hundreds of eviction cases – “78 percent of eviction cases in Boston that were suspended due to COVID-19 were in communities of color.”⁵¹

In short, lifting the eviction moratorium would, in addition to harming the public health in general, create a tremendous injustice and health inequity. Populations that already bear inequitable burdens of disease and material hardship due to historic systemic racism would be further damaged – deprived of the protective benefits of social distancing and exposed to even greater levels of devastation from the pandemic, with implications for further viral spread throughout the general population. While the primary purpose of the eviction moratorium is to protect the public health in general, it also advances health justice, protecting the most vulnerable populations from the inequitable impact of COVID-19.⁵² It is hard to imagine

⁴⁹ “Evictions in Boston Report,” City Life/Vida Urbana, available at <https://www.bostonevictions.org/>.

⁵⁰ *Id.*

⁵¹ “Evictions in Boston, The Disproportionate Effects of Forced Moves on Communities of Color, 2020,” Report, by City Life/Vida Urbana, pg. 14 (2020), available at <https://www.bostonevictions.org/>

⁵² *See, e.g.*, Sheila Foster et al., “Health Justice is Racial Justice: A Legal Action Agenda for Health Disparities,” dated July 2, 2020, available at <https://www.healthaffairs.org/doi/10.1377/hblog20200701.242395/full/>; *see also* Ch. 6A, Section 16AA (2018), available at <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter6A/Section16AA> (identifying the goal of the Commonwealth to address “racial and ethnic health and health care disparities,” including establishing an office of health equity within the executive office of health and human

circumstances more illustrative as a practical matter of Martin Luther King, Jr.’s admonishment that, “[in]justice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality . . . Whatever affects one directly affects all indirectly.”⁵³ Further observing, as Dr. King did, that “[o]f all the forms of inequality, injustice in health care is the most shocking and inhumane,”⁵⁴ the implications of the eviction moratorium for alleviating racial and ethnic health disparities that are severely worsened by the COVID-19 pandemic, further commend it as a strategic public health intervention. Health justice, racial justice, and public health are interconnected in urgent ways, and the eviction moratorium is impactful at a precise intersection.

C. The COVID-19 Pandemic is Not Over and Social Distancing is Still Necessary to Protect the Public Health

While social distancing has been effective in reducing the number of COVID-19 cases in Massachusetts and in other states that were originally hard hit by the virus, the COVID-19 pandemic is far from over. At least 36 states across the country are seeing an increased number of COVID-19 cases in recent weeks.⁵⁵ Florida, for example, has reported in excess of 10,000 daily new cases in recent weeks, even though it had previously reported very low rates of

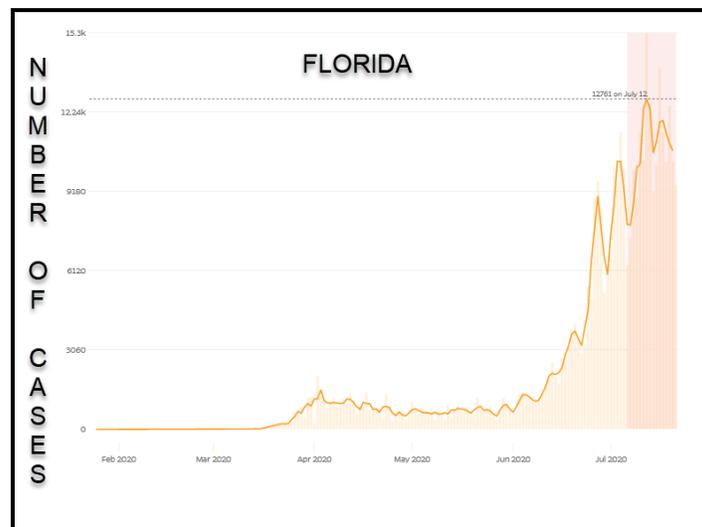
services tasked with developing interagency initiatives to address the social and economic determinants of health disparity issues including housing).

⁵³ “Letter from a Birmingham Jail,” by Martin Luther King, Jr. (April 16, 1963), at pg. 2, <https://kinginstitute.stanford.edu/king-papers/documents/letter-birmingham-jail>.

⁵⁴ Presentation at the Second National Convention of the Medical Committee for Human Rights, Chicago, by Martin Luther King, Jr. (March 25, 1966).

⁵⁵ “Coronavirus in the U.S.: Latest Map and Case Count,” *NY Times*, last accessed July 14, 2020, available at <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html#hotspots>.

infection earlier in the year.⁵⁶ After experiencing a decline in the number of COVID-19 cases between April and June, Florida began Phase 2 of its Reopening Plan, allowing businesses such as restaurants, bars, movie theaters to operate at 50% of their indoor capacity.⁵⁷ The consequences of this decision have been catastrophic, as illustrated in the graph reproduced below.⁵⁸ With an approximately ten-fold increase in daily new cases, and a healthcare system that is in danger of being overwhelmed with new patients, Florida is now experiencing the brunt of an uncontrolled COVID-19 pandemic.⁵⁹



Even states that – unlike Florida – instituted strong social distancing measures early on in the pandemic are starting to see the number of COVID-19 cases increase as the states “reopen”

⁵⁶ “America is Reopening. But have we flattened the curve,” Johns Hopkins University & Medicine Coronavirus Resource Center, last accessed July 22, 2020, available at <https://coronavirus.jhu.edu/data/new-cases-50-states/florida>.

⁵⁷ “State of Florida Office of the Governor Executive Order Number 20-139,” dated June 5, 2020, available at https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-139.pdf.

⁵⁸ “America is Reopening. But have we flattened the curve,” Johns Hopkins University & Medicine Coronavirus Resource Center, last accessed July 22, 2020, available at <https://coronavirus.jhu.edu/data/new-cases-50-states/florida> (annotations added).

⁵⁹ “America is Reopening. But have we flattened the curve,” Johns Hopkins University & Medicine Coronavirus Resource Center, last accessed July 22, 2020, available at <https://coronavirus.jhu.edu/data/new-cases-50-states/florida> (annotations added).

or ease public health measures. For example, California is facing an increasing number of COVID-19 cases, even though California initiated similar public health measures to ones implemented in Massachusetts. On March 19, 2020, Governor Newsom ordered all California residents to stay at home or at their place of residence and ordered non-essential business to close.⁶⁰ The California governor also implemented a 90-day grace period for late mortgage payments and placed a moratorium on evictions through September 2020.⁶¹ As a result of these interventions, California was able keep COVID-19 infections at a relatively low rate through May 17, 2020.⁶² However, in late June, California began its Phase 2 reopening of the state, allowing some nonessential businesses to open.⁶³ California quickly saw a surge in the number of total daily cases.⁶⁴

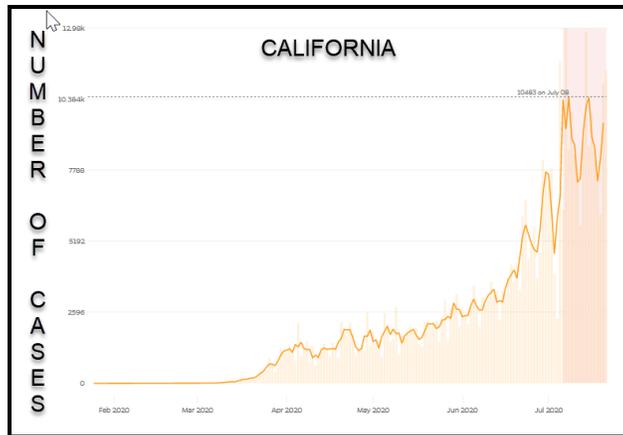
⁶⁰ Executive Order N. 33-20, dated March 19, 2020, available at <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf>.

⁶¹ “Governor Gavin Newsom Announces Major Financial Relief Package: 90-Day Mortgage Payment Relief During COVID-19 Crisis,” dated March 25, 2020, available at <https://www.gov.ca.gov/2020/03/25/governor-gavin-newsom-announces-major-financial-relief-package-90-day-mortgage-payment-relief-during-covid-19-crisis/>; “Governor Newsom Takes Executive Action to Establish a Statewide Moratorium on Eviction,” dated March 27, 2020, available at <https://www.gov.ca.gov/2020/03/27/governor-newsom-takes-executive-action-to-establish-a-statewide-moratorium-on-evictions/>; “Governor Newsom Signs Executive Order on Actions in Response to COVID-19,” dated June 30, 2020, available at <https://www.gov.ca.gov/2020/06/30/governor-newsom-signs-executive-order-on-actions-in-response-to-covid-19-6-30-20/>.

⁶² “America is Reopening. But have we flattened the curve,” Johns Hopkins University & Medicine Coronavirus Resource Center, last accessed July 22, 2020, available at <https://coronavirus.jhu.edu/data/new-cases-50-states/california>.

⁶³ “Governor Newsom Provides Update on California’s Progress Toward Stage 2 Reopening,” dated May 4, 2020, available at <https://www.gov.ca.gov/2020/05/04/governor-newsom-provides-update-on-californias-progress-toward-stage-2-reopening/>.

⁶⁴ “America is Reopening. But have we flattened the curve,” Johns Hopkins University & Medicine Coronavirus Resource Center, last accessed July 22, 2020, available at <https://coronavirus.jhu.edu/data/new-cases-50-states/california> (annotations added).



This surge in COVID-19 cases led California to once again close certain non-essential businesses that “encourage mixing of individuals beyond immediate households and make physical distancing and wearing face coverings difficult.”⁶⁵ California, thus, serves an example of a state that implemented social distancing public health measures but lifted some or all of them too early and is now facing a second, even greater wave of COVID-19.

Massachusetts itself is also at risk of a COVID-19 resurgence. After weathering the initial surge in cases in April, Massachusetts was successful in bringing down the daily rate of new infections from a high of 4,946 on April 24 to a low of 87 on June 15.⁶⁶ Critically, the public health restrictions imposed in March and April caused the R_0 value – the number of new infections caused by each infected person – to drop below 1.0, meaning that daily new cases would continue to drop.⁶⁷ However, in recent weeks, as certain public health restrictions have

⁶⁵ “California Orders Additional Restrictions to Slow Transmissions of COVID-19,” dated July 13, 2020, available at <https://www.cdph.ca.gov/Programs/OPA/Pages/NR20-158.aspx>.

⁶⁶ Ex. 4, “Massachusetts Coronavirus Map and Case Count,” *NY Times*, last accessed July 22, 2020, available at <https://www.nytimes.com/interactive/2020/us/massachusetts-coronavirus-cases.html>.

⁶⁷ “Massachusetts Effective Reproduction Rate,” available at <https://rt.live/us/MA>.

been lifted, the R_0 rate has once again risen above 1.0.⁶⁸ The daily infection rates have already risen from the daily low reported in June, and there is a significant risk that Massachusetts too will see a new explosive rise in infections.⁶⁹

This risk will be particularly acute this fall, since the Commonwealth has announced that it will attempt to reopen its public school system at the beginning of the new school year.⁷⁰ As students, teachers, and educational administrators head back to school this fall, the risk of person-to-person transmission of COVID-19 increases. Removing the eviction moratorium at the same time would only compound this looming elevated transmission risk.

V. THE EVICTION MORATORIUM IS A REASONABLE EMERGENCY MEASURE TO PROTECT PUBLIC HEALTH AND SHOULD BE UPHELD ON THAT BASIS

Contrary to what Plaintiffs argue in this case, the eviction moratorium is indeed a public health measure, one that falls squarely within the power of the state to enforce. The eviction moratorium aims to curb the spread of COVID-19 by allowing people to effectively socially distance and quarantine (as needed), while also reducing the large gatherings of people in homeless shelters and courthouses.

⁶⁸ “Massachusetts Effective Reproduction Rate,” available at <https://rt.live/us/MA>; *see also* “America is Reopening. But have we flattened the curve,” Johns Hopkins University & Medicine Coronavirus Resource Center, last accessed July 22, 2020, available at <https://coronavirus.jhu.edu/data/new-cases-50-states/massachusetts> (demonstrating that the number of COVID-19 cases in Massachusetts is trending upward).

⁶⁹ Ex. 4, “Massachusetts Coronavirus Map and Case Count,” *NY Times*, last accessed July 22, 2020, available at <https://www.nytimes.com/interactive/2020/us/massachusetts-coronavirus-cases.html>.

⁷⁰ “Initial Fall School Reopening Guidance,” authored by Jeffrey C. Riley, Commissioner, dated June 25, 2020, at 1, available at <https://www.mass.gov/doc/dese-fall-reopening-guidance/download>.

Plaintiffs seemingly recognize the State’s ability to protect the public health, citing in passing to *Jacobson v. Commonwealth of Massachusetts*. Pet.⁷¹ at 65 (citing *Commonwealth v. Jacobson*, 197 U.S. 11 (1905).) In *Jacobson*, the Supreme Court considered whether the Massachusetts legislature had the authority to institute a law requiring the adults to vaccinate smallpox, a public health crisis at the time. 197 U.S. at 12. Plaintiff Jacobson challenged the vaccination mandate, arguing that it violated the preamble of the Constitution and the 14th Amendment by depriving him of his freedom over his own body. *Id.* at 14. Finding that the statute was constitutional, the Court confirmed that states have “police power” to protect the public health:

The authority of the state to enact this statute is to be referred to what is commonly called the police power – a power which the state did not surrender when becoming a member of the Union under the Constitution. Although this court has refrained from any attempt to define the limits of that power, yet it has distinctly recognized the authority of a state to enact quarantine laws and ‘health laws of every description;’ indeed, all laws that relate to matters completely within its territory and which do not by their necessary operation affect the people of other states.

Id. at 24-25. This “police power” derives from the social compact that all citizens make to be governed by laws for the ““common good,”” recognizing that “government is instituted ‘for the common good, for the protection, safety, prosperity, and happiness of the people, and not for the profit, honor, or private interests of any one man, family, or class of men.’” *Id.* at 27.⁷²

⁷¹ References to “Pet.” refer to Petitioners’ Emergency Petition for Relief Pursuant to G.L. c. 211, § 3, G.L. c. 214, § 1, and G.L. c. 231A, § 1, dated May 29, 2020.

⁷² The Supreme Court that decided *Jacobson* was the same panel that issued the now discredited decision in *Lochner v. New York*, 198 U.S. 45 (1905), severely restricting the power of the states to regulate. Yet even the *Lochner* Court, with its narrow view of constitutionally permissible government regulations, recognized the state’s emergency measures in *Jacobson* were constitutional. 198 U.S. at 55-56.

Recognizing that the Commonwealth has broad authority to address public health emergencies, Plaintiffs seek to downplay the eviction moratorium’s public health protective purpose. Plaintiffs summarily conclude that “[t]he Act falls within this category of law not reasonably related to true public health impacts[.]” Pet. at 65. Plaintiffs also describe the eviction moratorium as a financial band-aid, “target[ing] the **financial impact** of the COVID-19 crisis, not the public health aspect of it.” Pet. at 64 (emphasis in original). Plaintiffs provide no evidence or citations supporting these conclusions and, as demonstrated above, the opposite is true.⁷³

VI. CONCLUSION

The COVID-19 pandemic is a public health emergency that threatens the health and well-being of every Massachusetts resident. Social distancing is a key strategy that has allowed the Commonwealth to weather the first wave of COVID-19 cases without overwhelming our healthcare system, and then to dramatically reduce the rate of COVID-19 spread and the number of new daily cases. The eviction moratorium – which has likely prevented thousands or tens of thousands of unsafe and potentially infectious interactions – is a critical element of this strategy. Lifting the moratorium at the present time would undermine the Commonwealth’s ability to protect its citizens from the pandemic, and would be a public health disaster. Plaintiffs’ motion for a preliminary injunction should be denied.

⁷³ If the true purpose of the Act was only to protect those financially impacted by the pandemic, it would only need to address the evictions of tenants who had become unable to pay their rent – so-called “non-payment” evictions. Instead, the Act prohibits all “non-essential evictions,” even non-fault and evictions for violating lease terms. Only evictions that involve criminal activity or that are necessitated by health or safety concerns are excepted.

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Dated: July 24, 2020

CERTIFICATE OF SERVICE

I hereby certify that one copy of the foregoing document was served on all counsel for Plaintiffs and Defendants in pdf form as an attachment to an email on July 24, 2020.

Dated: July 24, 2020



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