



The Our American States podcast—produced by the National Conference of State Legislatures—is where you hear compelling conversations that tell the story of America’s state legislatures, the people in them, and the policies, process and politics that shape them.

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Evictions and the Pandemic | April 12, 2021 | OAS Episode 127

Ed: Hello and welcome to “Our American States,” a podcast from the National Conference of State Legislatures. This podcast is all about legislatures: the people in them, the policies, process and politics that shape them. I’m your host, Ed Smith.

“We entered the pandemic in a state of housing crisis across the country and the pandemic only accelerated and magnified that because of the withholding of financial support and legal protections at the outset of the pandemic. So, many renters who were already at the edge of that cliff, when they suffered job and wage loss, it disproportionately pushed them over the edge.”

That was Emily Benfer, a visiting professor of law at Wake Forest University, and an expert on housing and health law. She is my guest on the podcast.

While poverty in America has been studied extensively, much less is known about evictions, an issue that government does little to track. In the last 20 years, the Eviction Lab at Princeton University has gathered records on more than 80 million evictions. Matt Desmond, who created the Eviction Lab and authored the Pulitzer Prize winning book, *Evicted*, was interviewed on an earlier episode of “Our American States.”

Benfer is the cocreator of the COVID-19 Housing Policy Scorecard with the Eviction Lab and principal investigator in a study of nationwide COVID-19 eviction moratoriums and housing policies. She also chairs the American Bar Association’s COVID-19 Task Force Committee on Eviction.

Benfer explains how the pandemic has exacerbated the eviction problem, who’s being evicted, and how the recently extended federal eviction moratorium factors into the situation. She also explains the role state policymakers can play in implementing state eviction moratoriums and how some legal procedures can help people facing eviction.

Emily, welcome to the podcast.

Emily: Thank you so much for having me.

Time Marker (TM): 02:16

Ed: Emily, thanks for taking the time to come on the show. Can you start by giving us an overview of the evictions landscape in the U.S. and how COVID-19 has affected it?

Emily: The COVID-19 pandemic struck when millions of Americans were already living perilously close to eviction. The United States was facing a severe affordable housing crisis, and this was due in part because incomes have remained stagnant over the past 20 years and even reduced for the lowest income workers.

At the outset of the pandemic, 20.8 million, so that's nearly half of total rental households, were rent burdened. This means that they were paying over 30% of their income toward the rent. And at the same time, only one in four eligible renters actually received federal financial assistance and most of them had waited years on waitlists just for that type of assistance. And couple that with the loss of over 4 million affordable housing units over the last decade.

So, we entered the pandemic in a state of housing crisis across the country, and the pandemic only accelerated and magnified that because of the withholding of financial support and legal protections at the outset of the pandemic. So, many renters who were already at the edge of that cliff, when they suffered job and wage loss, it disproportionately pushed them over the edge and into nonpayment of rent situations, into struggling to provide necessities for their families, and heightening their risk of displacement.

TM: 03:54

Ed: Tell us a little bit about the folks who are being evicted. What are the main factors preventing them from being able to pay their rent?

Emily: The vast majority of people who are being evicted right now are the hardest-hit people during the pandemic. These are the low-wage workers whose jobs were cut at the outset of the pandemic in response to pandemic mitigation strategies that resulted in business closures and wage cuts and other measures that really trickled down onto the backs of low-income renters. And so, at that moment these families experienced acute hardship and were unable to make ends meet.

The population at the highest risk – this affected overwhelmingly Black and Hispanic renters. And a big part of that is due to this longstanding, sordid history of racial discrimination in the housing market that led to over 70% of Black and Hispanic renters entering the pandemic lacking the emergency funds to cover three months of expenses.

So, for those families, when crisis strikes, the fall is immediate, it's precipitous and it's impossible to climb back from.

TM: 05:10

Ed: Well, that sounds as though it's consistent with what's happened to people of color in other areas affected by the pandemic. They've been disproportionately affected in areas like

education and healthcare, as well as simply contracting COVID in higher numbers. Can you talk a little more about that?

Emily: Exactly. This is exactly right. And this was entirely predictable entering the pandemic because those are the same populations that already had a disproportionate impact in all of those areas. Housing, education, healthcare – these are pillars of resiliency and they were already unstable when the pandemic started, and over the course of the pandemic have completely crumbled especially for people of color, Black households and Hispanic households.

Part of this through-line has occurred prior to the pandemic and gone through. Eviction has always disproportionately affected Black Americans. Black households are twice as likely to be evicted than any other group. Eighty percent of people facing eviction in one study were Black. And Black women are evicted at the highest rates.

So, while we have Black men entering the criminal justice system, Black women are, as Matthew Desmond likes to say, “locked out” of housing. And so, this ends up creating health inequity because at the same time, the people who are most vulnerable to eviction are also the most likely to suffer high-risk conditions that would put them at risk of complications or death if they were to contract COVID-19.

So, for example, pulmonary disease, high blood pressure, diabetes, chronic liver disease, respiratory disease – all of those are much more prevalent among the people at the highest risk of eviction. And many of these people are minorities and people of color.

So, what this means is that during COVID-19, eviction is actually furthering that cycle of despair and advancing health inequity among people of color and having a differential impact in COVID-19. And we see that play out in part in the hospitalization rates among Black and Hispanic adults, which are 4.7 and 4.6 times higher than among whites, and death rates are extraordinarily high, as high as 2.3 times higher than whites.

A particularly sobering statistic: Black and Hispanic adults are dying at rates of white people a decade or more older. Over the course of the pandemic, we’ve had a chance to really study the effects of housing on COVID-19 transmission, mortality and infection and we studied the link between housing stability and eviction moratoriums in particular and what happens when you lift them. We determined that in states that lifted their moratoriums, people were much more likely to suffer COVID-19 and they had excess cases and deaths in those states.

TM: 08:13

Ed: Well, those numbers are really eye opening. You mentioned a study that came up with these figures. Can you talk more about that?

Emily: It really is incredibly devastating and the need to prevent eviction is so crucial in this moment and urgent. In a study of lifting moratoriums, we looked at the states that maintained moratoriums during the study period and compared it to those that lifted them, and we controlled for things like mask mandates, school closures, stay-at-home orders, testing rates in those states. And what we found was that there were 433,700 excess COVID-19 cases and

10,700 excess deaths just over the summer associated with lifting eviction moratoriums prematurely.

All of those cases and deaths were entirely preventable with moratoriums, with federal assistance, with state financial assistance to cover that gap in rent, the back rent owed and the rent burden going forward so that we could keep people stable during the pandemic and increase our odds of recovery. But instead, we've perpetuated the pandemic and the severe harm that results from eviction for all of these households.

In contrast, we were also able to take a look at states that maintained their moratoriums. New York, just during the study period, prevented 10,230 deaths. And in places like California, they prevented 6,500 deaths and in Florida around 6,000 as well. So, all of these interventions are public health interventions designed to mitigate the crisis.

TM: 10:03

Ed: Well, I don't think many of us connect evictions with increased deaths, so I think that study makes us look at the problem in a different light.

Let me switch to a slightly different aspect of the problem. While our focus has been on renters, policymakers also must consider the predicament of landlords who are not receiving rent payments. Who are those landlords and property owners?

Emily: I think the landlords and property owners that we really need to be concerned about in this moment are the small property owners. So, these are the mom-and-pop landlords who own single family or small multifamily units and don't have the equity to cover unexpected expenses like missed rental payments or have access to wage insurance or otherwise.

They are at the highest risk of leaving the rental market and not being able to cover their other expenses like mortgages and property taxes when the rental payments aren't made.

The housing market is a house of cards, so when you remove the rent, property owners aren't able to pay their taxes and those taxes are used predominantly to pay for our community services, for our school systems. And so, you see this cascade of harms happen very quickly in our communities and we really need to sustain that rental market and all the members of it, especially these smaller property owners.

We know statistically from the Urban Institute that landlords in forbearance are disproportionately Black and Hispanic landlords. So, that disproportionate impact of this entire eviction crisis is affecting people of color across the board. This really reflects the less stable financial situation that they have compared to white landlords.

We know that about 20% of Black landlords and 14% of Hispanic landlords have at least one mortgage in forbearance compared to 9% of white landlords. And, at the same time, landlords of color are also the most likely to provide assistance to their tenants, so really stretching themselves thin and in need of this assistance during this time.

TM: 12:21

Ed: The federal eviction moratorium was recently extended. I wonder if you could talk about the ways in which the moratorium has worked well and areas where it has not worked so well.

Emily: The federal moratorium issued by the Centers for Disease Control and Prevention effective September 4th, 2020 does not relieve the obligation to pay rent, and it also does not remove landlords' ability to file eviction cases or issue late fees and other measures.

What it does do is pause the eviction crisis if a tenant triggers their rights by producing a declaration of coverage. The federal moratorium has significant gaps in protection, and we've seen that play out across the country. It's also been really widely varying in how states have implemented it and how they've adopted it within the states, some states, finding that it doesn't apply there at all, and other courts and judges applying it the moment a tenant produces a declaration and dismissing the case.

So, there are a number of issues with that moratorium, but it has been demonstrated to protect tenants in many cases in providing an enormous public health resource in this moment.

Ed: Emily, thank you. We're going to take a short break and come back with the second half of our discussion.

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TM: 14:21

Ed: I'm back with Emily Benfer. So, when the federal moratorium does end, what will the process look like for renters facing eviction?

Emily: It largely depends on the jurisdiction. In the first few months of the pandemic, the vast majority of state supreme courts across the country gave local courts discretion on whether they wanted to hold court remotely or in person.

I fully expect once the federal eviction moratorium ends to see a spike in eviction filings and eviction orders that are executed by sheriffs across the country. This is based on the two-week period between when the Federal Cares Act, which applied to federally assisted housing, that moratorium, expired and when the CDC moratorium went into effect.

In that two-week period, eviction filings spiked as high as 495% of historic levels according to the Eviction Lab at Princeton University. During this time, people are still struggling; they still owe significant amounts of back rent that they will not be able to pay back on their own without federal and state financial assistance. And so, all of them are at high risk of eviction and the

property owners would be within their right if there is nonpayment to move forward once moratoriums are lifted.

And so, having the ability to divert these evictions to get rental assistance to high-risk households as quickly as possible, to compelling property owners to participate in those rental assistance programs is incredibly important in this moment.

I also think it's very important that in the absence of the CDC moratorium, states and local governments immediately improve existing state-level moratoriums or local moratoriums and reinstate or introduce new moratoriums going forward until we are certain that we've stabilized our communities. Otherwise, I think we're guaranteeing significant risk among community members, high rates of housing displacement, and all of the harms that come with that.

Already, during the pandemic, there are over 260,000 eviction filings in just the 27 cities and few states that the Eviction Lab is tracking right now.

TM: 16:40

Ed: With that in mind, you know our listeners are largely state legislators, legislative staff and other state policymakers. What options do those in state government have to prevent a wave of evictions and homelessness when the federal eviction moratorium ends?

Emily: The very first and most urgent response is to pause the crisis, to stop the crisis in its tracks, and that means eviction moratoriums and significant amounts of rental assistance to cover the back rent owed to ensure that we don't lose additional affordable housing, that we can protect those small property owners from forbearance and leaving the rental market altogether and meeting the communities that need it the most.

And so, once those eviction moratoriums are in place and are robust, I mean cover all renters at risk of eviction, applies to all stages of eviction, so stops that initial filing of eviction cases and stops the execution by the sheriff as well is something that's automatic, that the renter doesn't have to go to court and raise an affirmative defense in order to trigger protections.

And the reason for that type of intervention to stop it at the filing stage – we know that in one study over 30% of renters facing eviction vacated their unit before their court date. So, that first sign of risk of entering that court system was enough to trigger displacement, and that type of displacement is what results in so many poor health outcomes for the adults and children in those families.

The reason to apply it automatically to renters is that so many renters don't know how to navigate the eviction system itself, and without access to attorneys, will not likely be able to raise those affirmative defenses. And so, even though they should be protected, they won't receive those protections.

TM: 18:40

Ed: I understand that online dispute resolution is becoming a more popular option in the eviction court context. Can you give us a quick description of what that might look like?

Emily: Dispute resolution is an increasing intervention in eviction. The evidence base demonstrates that it's only effective in long-term eviction protection, so in long-term housing stability, if it's coupled with additional interventions. Having mediation, whether online or in person, attached to the court or court adjacent often just shifts the forum, so you have the same outcome. Perhaps you've delayed the eviction by a month, but as soon as that tenant falls back on rent, then the judgment goes forward, and they're still evicted.

But if you couple dispute resolution with tenant right to counsel, with rental assistance, with social supports, then you start to see real diversion taking place and tenants avoiding eviction, and property owners receiving payment. And so, you're able to really preserve that relationship in a non-litigious way and ensure the stability of the household and the community as well.

TM: 19:55

Ed: You wrote an article recently in which you explained that people facing eviction who had counsel have a much better chance of staying in their home. Does that figure into this if there's counsel involved in these mediation efforts?

Emily: There are some mediation or diversion programs, eviction diversion programs that do include right to counsel. There are models in Philadelphia, in Boston, in Michigan where they have a relationship with the court. So, prior to the filing, the property owner is directed to the diversion program and the tenant is offered an opportunity to participate in that.

Where an attorney represents that tenant, it dramatically increases the positive outcome in those cases. And the same is true in eviction court. Nationwide only 10% of tenants are able to secure representation in eviction cases, and that's compared to 90% of landlords. And where tenants are not represented, even if they have defenses, they lose their cases.

The fact that when you add legal representation, of tenants who have representation in one study in New York City, for example, 84% of tenants remained in their homes. So, these extreme variations in outcomes based exclusively on the availability of legal counsel, point to not only possibly rights violations, but also a system in urgent need of reform and the inaccessibility of our laws and policies.

TM: 21:30

Ed: I think you've made clear that the pandemic exacerbated the eviction problem, but by no means created it. So, looking beyond the pandemic, are there any policies developed throughout the pandemic that you think might be here to stay for the long term?

Emily: I hope so. We're in a stage I think of really incredible, creative policymaking right now, of innovations in response to this crisis, because it's urgent and I think that policymakers recognize the need to protect families, individuals and children from the severe outcomes that are attached to eviction, and even the consequences across the life course.

I mean, pregnant women who are evicted are more likely to have adverse birth outcomes like preterm pregnancies or low-birth-weight children, and these have consequences for that child's

entire life. And we even know that for children who are evicted, studies have demonstrated that it takes years off of their lives.

And so, the consequences of this single moment in a person's life can completely alter the trajectory of their future for the worse. The interventions that we're adopting today, where they are successful, we need to invest in them and expand. I'm seeing an increase in the adoption of right to counsel in eviction, which I think should be expanded until we can reform the system at least.

I'm seeing an increase in diversion programs that are court based or court adjacent that involve that mediation, like you mentioned, along with these other wraparound supports. And it's really exciting to see this unprecedented investment in affordable housing and in rental assistance coming from the federal government.

This gives states an opportunity to design rental assistance programs that target the highest-risk communities and infuse them with the type of financial support that they've really never seen before and that could change the makeup of those communities in a positive way and create opportunities for the people who are at the highest risk right now.

But I think going forward, once we've stabilized the crisis, it won't be over – we still have severe disparity in socioeconomic level, in health outcomes, in housing access, and that largely falls by race and along segregated community lines. It's paramount that we recognize that, that we explore that and where it's happening in our states, in our cities and communities and invest in resolving it and remediating that harm that has such historic roots that have never truly been examined or overturned.

TM: 24:23

Ed: Emily, this has been extremely informative and frankly, rather sobering. Before we wrap up, is there anything else you'd like to share with our listeners?

Emily: I've actually been thinking a lot lately about families that I used to work with when I represented homeless families and children in the early part of my career. More recently I've met a lot of people who are in communities that don't have homeless support services and so when they're evicted, they will have nowhere to go, and that will start that downward spiral.

At the beginning of my career, I met people at the bottom of that spiral and there was no ladder back up, and I met children... I met one child; she was 10 years old and prior to becoming homeless, she was the captain of her dance team, was a straight A student, was lively and joyful and had a zest for life. When I met her, she was a shell of that person, she had started pulling her hair out and wet the bed and didn't talk very much and never smiled.

We have an opportunity in this moment I think to secure equity and fairness and justice and to protect the futures of millions of people, especially children, who are just starting out and should have equal access to opportunity but don't in this moment, to make sure that they get to continue on their path and realize their fullest potential and the opportunity to succeed.

Ed: Well, thank you for leaving us with that. It's always important when talking about policy to remember the real people it affects. Again, thanks for your time and expertise. Take care.

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Ed: And that concludes this edition of our podcast. We encourage you to review and rate our episodes on iTunes, Google Play or Spotify. You may also go to Google Play, iTunes or Spotify to have these episodes downloaded directly to your mobile device when a new episode is ready. For the National Conference of State Legislatures, this is Ed Smith. Thanks for listening and being part of "Our American States."