



State Preemption of Local Housing Protections

Lessons from a Pandemic

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September 2020

Cities and counties across the country face significant rental housing affordability challenges as more households with low and moderate incomes compete for a shrinking number of affordable units. In recent years, housing production has not kept up with demand, putting pressure on home prices and rents and eroding affordability (Joint Center for Housing Studies 2019). Lower-income households feel the squeeze most severely and face the fewest options for affordable housing. According to the National Low Income Housing Coalition, 71 percent of US households that make less than 30 percent of their area's median income pay more than half their income on housing costs (Aurand et al. 2020). Growing affordability challenges also contribute to housing instability and homelessness. Since 2016, after several years of steady decline, the number of people experiencing homelessness in the United States has been creeping up.¹

That was the situation before the COVID-19 pandemic, a global crisis that has led to unprecedented job losses. And in the months ahead, more than 30 million renters in the US could face eviction.² Keeping people in their homes is crucial for protecting public health, especially during a pandemic. Evictions and inadequate housing conditions make tenants more vulnerable to health problems, and access to safe, stable, and affordable housing is one of the strongest predictors of long-term health and well-being for children (Theodos, McTarnaghan, and Coulton 2018).³ Also, when people are evicted, they face greater risk of exposure to the virus.⁴

State governments can play important roles in helping meet the growing demands for stable and affordable housing (Greene and Shroyer 2020; McFarland et al. 2019). States administer funds from several federal sources to build and preserve affordable housing, and many states have set up housing trust funds to support new affordable housing (Center for Community Change 2016). States can also lift or ease local regulatory barriers that limit housing production and drive up housing costs, and they can support local planning to meet housing needs with data, resources, and guidance (Gray and Sage

Computing staff 2018; Infranca 2019). In addition, states can adopt laws that regulate rent increases, protect tenants from discrimination, and reduce evictions (Greene and Shroyer 2020).

But some state laws make addressing residents' needs for stable and affordable housing more difficult for cities and counties. Thirty-three states have passed preemption laws that prevent local governments from adopting some type of affordable housing policy or tenant protection.⁵ The two most common forms of state preemption related to housing restrict the ability of local governments to adopt rent regulations or inclusionary zoning ordinances (Rajasekaran, Treskon, and Greene 2019; Ramakrishnan, Treskon, and Greene 2019).

Early in the COVID-19 pandemic, many state and local governments realized that massive job losses could lead to an unprecedented rise in evictions, especially among renters who were already cost-burdened or did not have savings to offset their lost income. They also realized that surging evictions would exacerbate the public health crisis and prolong a recession. In response, most states and hundreds of localities across the country adopted temporary moratoriums on evictions to help keep people in their homes through the pandemic. Often, state and local governments offered different and competing protections, creating uncertainty about who was covered and where. Meanwhile, in most states, housing preemption laws remained in effect, threatening to limit the ability of some local governments to adopt needed protections.

For this brief, we examine how state preemption of local housing policies and protections has affected crisis response and recovery efforts. We identified two states (Florida and Illinois) that preserved state preemption laws that limit local governments' ability to regulate rents and one (California) that eased preemption rules related to evictions. In each state, we also identified a city or county that either adopted or sought to adopt renter protections stronger than those provided by the state in an effort to stabilize housing for renters who had lost their jobs or otherwise were facing hardship because of COVID-19. In each state, we interviewed policymakers and advocates at both the state and local levels to learn about the effect of state preemption rules and to identify ways that states and localities could work together more effectively to keep at-risk renters stably housed. We also reviewed the relevant laws in each jurisdiction and media coverage of state and local actions to prevent evictions related to the pandemic and its economic fallout.

We find that state preemption constrained local housing policy responses to COVID-19 across all three states in our case studies. Local governments did not consider adopting local protections that would flout state preemption laws even if such protections could help stabilize housing for at-risk renters. Even local actions that were not directly covered by state preemption laws were "chilled" by concerns that acting would spark legal challenges or new preemption efforts at the state level.

However, preemption was generally not seen as the main barrier to local action; rather, the stakeholders we spoke with suggested that a lack of resources and political will was the major obstacle to stronger local laws and policies to protect vulnerable renters. But state preemption can also influence the amount of available resources by limiting local governments' ability to raise revenue to address affordable housing challenges, both during the pandemic and beyond. And lifting housing preemption

can give advocates new opportunities to push for local housing policies, removing an excuse often cited by policymakers for not acting more swiftly and aggressively to protect renters and limit rent increases.

In the next section, we briefly describe the landscape of state preemption of local housing laws before the pandemic, how COVID-19 is affecting housing instability, and how state and local governments are responding. We then provide case studies of Los Angeles, Miami-Dade County in Florida, and Chicago. We conclude by offering key lessons and takeaways from across the case studies that can help guide state and local housing policy responses to the pandemic and lay the foundation for an equitable recovery.

Background

Before the COVID-19 pandemic, many states had passed preemption laws to prevent local governments from enacting certain types of housing policies. Preemption is a legal doctrine that states use to limit the ability of local governments to regulate or take action on an issue (ChangeLab Solutions 2019). Housing policies such as rent control, inclusionary zoning, source-of-income discrimination protections, and short-term rental regulations have been subject to state preemption.⁶ Thirty-three states have preempted local governments from regulating or adopting one or more of these policies, and in some states, multiple housing policies are preempted.⁷

State preemption that existed before the pandemic affects how local governments can respond to it and what policies they can enact to protect at-risk renters. For example, if a state preempts local governments from adopting rent control, cities and counties in the state may not be able to limit rent increases during the pandemic. And although some states have adopted temporary protections to help renters during the pandemic, local governments may not be able to extend these policies once statewide orders are lifted where preemption laws are in place.⁸

The COVID-19 pandemic has had a particularly severe impact on renters. By June 2020, approximately 20 percent of renter households included at least one person who had lost a job because of the pandemic (Strochak et al. 2020). Recent estimates suggest that more than 30 million renters are at risk of eviction because of the pandemic and its economic fallout.⁹ Black and Latino renters, who already faced higher cost burdens and had fewer savings before the pandemic, have been hardest hit by job losses and are at greater risk of eviction.¹⁰ By mid-July 2020, 14 percent of white renters reported being behind on rent compared with 26 percent of Latino renters and 31 percent of Black renters (Acosta, Bailey, and Bailey 2020).

Federal, state, and local governments have responded to the threat of evictions related to the pandemic with a patchwork of policies (Cowin, Martin, and Stevens 2020). Until recently, the federal government's response was limited to an eviction moratorium on properties that receive federal funds or have mortgages backed by the federal government, appropriations for key housing programs through the CARES (Coronavirus Aid, Relief, and Economic Security) Act, and waivers granted to allow affordable housing providers more flexibility to adjust rents and help renters in assisted housing facing economic hardship. On September 4, 2020, the Centers for Disease Control and Prevention issued a

national order to temporarily halt residential evictions for nonpayment of rent because of economic hardship.¹¹ Notably, the order did not preempt state and local eviction moratoriums that have stronger protections in place or are set to outlast the national moratorium, which expires at the end of 2020. However, without rental assistance, renters face mounting rent arrears and debts that will be due when moratoriums expire, and small landlords may face default and foreclosure from unpaid rents.¹²

Despite the fragmented and complicated nature of the federal housing assistance system, with capacity varying by program and by state,¹³ states and localities were generally quick to respond with measures to protect tenants (Galvez et al. 2020).¹⁴ In addition to eviction moratoriums of their own, many states and local governments instituted emergency rental assistance programs even before receiving funds from the CARES Act.¹⁵ These programs either leveraged existing housing assistance infrastructure or were created through diverse funding sources and with varying applicant eligibility and permitted uses for the funding. However, given the depth of the need, many programs ran out of funds, some even in hours.¹⁶ Some states have extended their statewide moratoriums, but as of September 2020, 30 states lacked protections for renters against evictions.¹⁷

Case Studies

California and Los Angeles

When the COVID-19 pandemic struck California, the state was already facing an extreme affordable housing crisis. The gap between housing production and population growth had been steadily widening. Since 2005, California has added fewer new units of housing per capita than any other state (Woetzel et al. 2016). The housing shortage has led to a sharp increase in prices relative to incomes, especially for renters with low incomes. In 2019, most low-income households in the state spent more than half their income on housing (Kimberlin 2019). High housing costs have also contributed to dramatic increases in homelessness in California: between 2014 and 2018, the number of people experiencing unsheltered homelessness grew 25 percent (Joint Center for Housing Studies 2019).

In response to the housing crisis, the state legislature has taken important steps in recent years to unleash housing supply and stabilize housing for vulnerable renters. Since 2017, the state has adopted some of the nation's strongest laws to promote new housing development, often relying on state preemption or overrides of local regulatory hurdles to boost supply (Infranca 2019).¹⁸ For example, the California Housing Crisis Act of 2019 limits the ability of local governments to delay approvals for new housing, reduce density, or impose fees that raise the costs of development for five years.¹⁹

On the other hand, several state laws in California prevent local governments from adopting stronger measures to respond to the housing crisis, particularly in the areas of rent control and eviction prevention. The Costa-Hawkins Rental Housing Act limits the ability of cities and counties to adopt rent regulation for certain properties and prevents local governments from limiting rent increases after a tenant moves out.²⁰ The Ellis Act allows landlords to evict renters without cause when they remove units from the rental market, such as by converting rental units into condominiums.²¹ State courts have

interpreted the Ellis Act to preempt local laws that make exiting the rental market more difficult for landlords (for example, by requiring high relocation payments to tenants).²²

Early in the pandemic, the state acted to prevent evictions that resulted from job losses related to COVID-19 and stay-at-home orders. On March 16, 2020, Governor Gavin Newsom signed an executive order that suspended state preemption of some local eviction protections. With this order, California became the first state in the nation to suspend housing-related preemption laws during the pandemic.²³ On March 27, Newsom signed an executive order that temporarily restricted the ability of landlords to evict residential tenants for nonpayment of rent because of economic hardship related to the pandemic.²⁴ On April 6, the state's Judicial Council halted most evictions statewide by prohibiting courts from issuing a summons or entering a default judgment on an unlawful detainer action during the state of emergency.²⁵

The executive order that suspended some state preemption of local eviction laws made clear that local governments could adopt stronger protections than the statewide moratoriums. Local governments across the state quickly took advantage of these changes, adopting not only eviction moratoriums but also bans on utility shutoffs, temporary rent freezes, and grace periods for tenants to pay back rent. Between March 16 (when the preemption suspension order was signed) and March 27 (when the governor temporarily limited enforcement of pandemic-related evictions statewide), more than 30 cities and counties across the state adopted local moratoriums.²⁶

In Los Angeles, Mayor Eric Garcetti issued an emergency order that halted residential evictions on March 15, even before the state acted, citing his authority to do so under the city's emergency statute.²⁷ After Newsom issued the executive order that lifted state preemption, the Los Angeles City Council adopted an ordinance that prohibited evictions because of income lost from COVID-19, "no fault" reasons (including Ellis Act evictions), and other causes related to the pandemic.²⁸ The ordinance gave renters one year from the end of the emergency order to pay back arrears. The city council referred to the governor's executive order that lifted preemption on local eviction laws in the ordinance.

On March 30, Garcetti issued another emergency order; it paused rent increases in rent-stabilized housing in Los Angeles for 60 days.²⁹ On May 6, the city council adopted an ordinance that extended the rent freeze for rent-stabilized units for one year after the end of the emergency declaration.³⁰ Advocates and some council members also pushed to extend a rent freeze to all residential units in the city, but proposed legislation failed. The Los Angeles city attorney's office advised the council that a rent freeze that extended beyond rent-regulated units was preempted by the Costa-Hawkins Act.³¹

Although the governor's executive order that suspended state preemption of local eviction laws clearly emboldened local legislatures to adopt eviction moratoriums and other tenant protections, whether the order was necessary to empower local action is unclear. Housing advocates in Los Angeles and across the state suggest that earlier state court decisions gave wide discretion to local governments to regulate the substantive causes for eviction, including nonpayment of rent.³² However, according to several stakeholders we interviewed, the order that suspended preemption "gave confidence" to local

officials to adopt eviction protections and provided additional clarity (and cover) for some jurisdictions that were concerned or uncertain about preemption.

Despite the governor's executive order, state preemption in California continued to constrain local action to prevent evictions and did not immunize local governments from legal challenges. The executive order was limited to local laws related to the direct regulation of evictions, not rents and rent increases. The Costa-Hawkins Act continued to restrict local action on rent freezes, and most local governments (including the City of Los Angeles) limited rent freezes to units already rent-regulated. In addition, even with the governor's suspension of preemption of local eviction laws, landlord groups in Los Angeles challenged the city council's measures to limit evictions during the pandemic, originally arguing that the local moratorium "goes far beyond what was contemplated by the executive order."³³

Going forward, advocates and policymakers alike see the need for stronger state action in California, both in the near and long term. The Judicial Council moratorium on evictions expired September 1, and even though local moratoriums like the one in Los Angeles continue, they constitute a patchwork of protections across the state, leaving many renters unprotected and creating confusion among landlords and renters alike. According to Melissa Morris at the Public Interest Law Project, the state urgently "needs to create a backstop" against evictions while "allowing local governments to go further to protect tenants."

On August 31, 2020, the California legislature passed the Tenant, Homeowner, and Small Landlord Relief and Stabilization Act of 2020 (AB 3088), which extended eviction protections for residential tenants experiencing a financial hardship related to COVID-19 beyond the expiration of the Judicial Council rule.³⁴ AB 3088 prohibits evictions for missed payments from the beginning of the pandemic and converts back rent to debt that landlords can take tenants to small claims court to collect. It also creates new rules for handling missed rent going forward, requiring tenants to pay at least a quarter of their rent by the end of January to avoid eviction.³⁵ AB 3088 does not preempt most provisions of existing local government eviction ordinances and moratoriums, which can remain in place until they expire; however, the law does preempt any provisions in local ordinances that defer rent obligations beyond March 1, 2021. Any future local ordinances must comply with the repayment schedule in the act.³⁶

Florida and Miami-Dade County

Like California, Florida has faced increasing affordability challenges and renter cost burdens in recent years. Among states, Florida tops the nation in households moving into the state, but housing supply has not kept up with rising demand, leading to a growing housing shortage (Freddie Mac 2020; Joint Center for Housing Studies 2019). Renters with low incomes feel the squeeze most severely: the National Low Income Housing Coalition reports that, among states, Florida has the nation's second-highest share of renters who have extremely low incomes (less than 30 percent of their area's median income) and are cost-burdened (spending more than 30 percent of their monthly income on housing costs), just behind Nevada (Aurand et al. 2020).

The housing shortage has also put pressure on local governments to stem rent increases, and several—most notably Orlando and Miami—have proposed rent stabilization or inclusionary zoning ordinances.³⁷ State laws that impede local action have stymied these efforts, however. Under current state laws, cities and counties in Florida may regulate rents only when they identify a “housing emergency so grave as to constitute a serious menace to the general public.”³⁸ In addition, these state laws require public hearings and voter approval for emergency rent regulations, and any measures must be renewed annually. These requirements are so burdensome that even though rent control is not completely preempted, local officials treat it as an issue that can be addressed only at the state level.

Historically, Florida has limited tenant protections and emergency relief programs both at the state and the local level. State law prevents local governments from enacting many affordable housing policies, both through express preemption, as with mandatory inclusionary zoning, or through strict regulations, as with rent control.³⁹ Furthermore, the Florida Constitution requires that any taxes or funding sources other than ad valorem taxes that are proposed by local governments get authorization from the state legislature (Office of Economic and Demographic Research 2019).⁴⁰ In Miami-Dade County, local policymakers have learned to think strategically about passing affordable housing legislation and to find work-arounds. According to Jason T. Smith from the office of Miami-Dade County Commissioner Daniella Levine Cava, “We’ve learned to work around or work within the parameters that the state has set because we have been fighting for these issues for a very long time.”

Early in the COVID-19 pandemic, state action to prevent evictions was very limited despite calls from housing advocates and policymakers for a statewide eviction moratorium.⁴¹ Before the state acted, many local governments suspended enforcement of eviction-related activities by the sheriff’s office.⁴² The Florida Supreme Court also suspended the requirement for court clerks to carry out writs of possession, one of the final steps in the eviction and foreclosure legal process, on March 24 and has extended it each month since.⁴³

On April 2, Governor Ron DeSantis instituted an eviction and foreclosure moratorium that has been renewed monthly. The governor’s moratorium suspended any statutes that enforced residential evictions or mortgage foreclosures for nonpayment related to the COVID-19 crisis.⁴⁴ However, the statewide moratorium did not specify which steps in the eviction process were affected, and circuit courts have interpreted the moratorium differently. Some circuit courts have limited their actions to stopping writs of possession, while others have taken a more expansive view—for example, by stopping the issuing of summonses for evictions.⁴⁵ In an extension that went into effect on August 1, the governor narrowed the moratorium to the “final action at the conclusion of an eviction proceeding.”⁴⁶ This wording again caused confusion within the legal community, and eviction filings rose in some counties as courts interpreted the new rule differently.⁴⁷

On March 12, before any statewide action, the Miami-Dade Police Department announced that it had suspended all eviction activities because the county mayor had declared a state of emergency.⁴⁸ Miami-Dade has a strong mayor system that gives the mayor significant control over the police department and its policies. The mayor also suspended evictions for public housing residents during the pandemic, following an existing county resolution that directs the mayor to ensure no public housing

resident is evicted during an emergency order. With these actions, Miami-Dade became the first locality in the country to halt evictions in response to the pandemic.⁴⁹

These two measures to prevent people from being evicted during the pandemic built upon Miami-Dade's history with natural disasters, particularly hurricanes. Before the pandemic, a news story about a 75-year-old woman who was evicted days before Hurricane Dorian was expected to hit the region went viral in Miami-Dade.⁵⁰ In response, the county mayor committed to halting enforcement of eviction-related activities by the Miami-Dade Police Department during an emergency declaration. County commissioners then adopted a resolution that instituted a public housing eviction moratorium during emergencies.⁵¹ The commissioners passed two other resolutions—one that urged the chief judge of the Eleventh Judicial Circuit to adopt rules that would halt issuances of writs of possessions during an emergency declaration and another that urged state legislators to pass a bill that requires a residential eviction moratorium during an emergency declaration.⁵² (Unlike ordinances, which are local law, resolutions are only formal expressions of opinion or intent by local governments.⁵³) Statewide legislative efforts to adopt an eviction moratorium during emergency declarations failed.⁵⁴

Despite reluctance by policymakers to institute tenant protections both at the state and local level, advocates and policymakers see some opportunities arising from the crisis. The pandemic has revealed the vulnerability of renters and the housing system in Florida, and housing advocates have called for the governor to lift the preemption on rent control and taxation authority to give greater flexibility to local governments to respond to the pandemic.⁵⁵ Because Florida is prone to natural disasters that are accelerating because of climate change, bipartisan action to protect the most vulnerable Floridians during emergency events may be possible.

There is also evidence of effective collaboration between the state and localities through the state housing finance agency's State Housing Initiatives Partnership, which provided greater flexibility for local governments to create rental assistance programs and tailor them to local needs.⁵⁶ Advocates and policymakers are calling for an expansion of the program and the incorporation of rules to protect tenants from facing an eviction if a landlord is receiving funds from the State Housing Initiative Partnership.

Illinois and Chicago

Before the COVID-19 pandemic, affordable housing was hard to come by in Illinois, especially for lower-income households. Many of these households spend more than half their income on rent, and the state has a shortage of homes affordable to extremely low-income renters (National Low Income Housing Coalition 2020). In Chicago, the declining supply of affordable housing has increased affordability challenges, particularly in north side neighborhoods (Institute for Housing Studies 2019). Half of all households renting in Chicago are cost-burdened, and households with extremely low incomes face severe rent burdens. In addition, market pressures have contributed to displacement of lower-income and Black households from the city.⁵⁷

The only express preemption of housing policies in Illinois is the Rent Control Preemption Act of 1997, which prohibits municipalities from passing or enforcing any ordinance that controls or restricts rents.⁵⁸ Chicago is a home rule jurisdiction and thus has expanded powers in regulating housing policy and tenant protections, but the preemption of rent control curtails any policy options that could be identified as rent control.⁵⁹ Housing advocates noted the preemption was “far-reaching” and said they were careful to avoid pushing for policies that could trigger it. For example, in recent years, banks and financial institutions have challenged the “Keep Chicago Renting” ordinance, which protects tenants in properties facing foreclosure, as a form of rent control preempted by the state statute (Chicago Bar Association 2018).⁶⁰

On April 23, 2020, Governor J.B. Pritzker issued an executive order that instituted an eviction moratorium throughout the state.⁶¹ He has extended the moratorium several times, and the current extension expires on October 17, 2020. However, neither the governor nor the state legislature has moved to repeal state preemption of rent control or any other state restrictions on local decisionmaking. Some advocates have asked the governor to suspend the preemption through an executive order. But he has said he does not have the legal authority to do so, nor has he encouraged the legislature to act.⁶² Before the crisis, several bills in the state legislature sought to repeal preemption of rent control, but none have passed.⁶³

In response to the pandemic, the City of Chicago has passed two ordinances that create additional tenant protections. The “COVID-19 Eviction Protection” ordinance institutes an extended “cooling off” period and requires landlords to make good-faith efforts to resolve nonpayment of rent before moving toward an eviction filing.⁶⁴ The “Fair Notice” ordinance requires landlords to give tenants 60 days’ notice before terminating a lease or raising rents.⁶⁵ Neither ordinance was subject to state preemption or state restrictions.

The Rent Control Preemption Act continues to restrict local action on rent freezes, although local governments themselves do not appear to be calling for the power to institute rent control. The City of Chicago has not tried to enact any type of rent freeze or rent control that would be subject to state preemption. State Representative Will Guzzardi said some aldermen in Chicago and members of other progressive city councils want to implement a rent freeze during the pandemic but are constrained by the preemption of rent control. We heard from many stakeholders that rent control was not on the table as a potential policy solution at the local level. However, the statewide Lift the Ban Coalition has been pushing for the repeal of the Rent Control Preemption Act for several years. Recently, the group has staged demonstrations to call on the governor to lift the rent control ban, expand tenant protections, and cancel rent and mortgage payments.⁶⁶

The COVID-19 pandemic has highlighted a lack of affordable housing, rental assistance, and tenant protections for people with low and moderate incomes. It has also shone a spotlight on the state preemption of rent control in Illinois as support for eviction moratoriums and just-cause eviction measures demonstrate widespread housing instability.⁶⁷ One interviewee said “the pandemic has raised awareness about the lack of affordable housing and that housing is health care” but questioned whether that would be enough to create the political will needed to repeal the state preemption of rent control.

Regardless, advocates have leveraged this moment to bring rent control preemption into the public eye in a way that it was not before the pandemic.

Several interviewees saw opportunities to strengthen local housing policy responses by giving local governments a greater ability to raise revenue and by allocating more funding to affordable housing and rental assistance programs. Several interviewees also discussed how Illinois's fiscal challenges and state constraints on local authority to raise revenue remain barriers to making progress on affordable housing challenges (Office of the Illinois Comptroller 2018). The City of Chicago and State of Illinois have a track record of aligned priorities and collaborating to stabilize housing for at-risk renters, but a lack of state and federal funding can keep them from doing more to support renters and the many households facing an affordability crisis.

Lessons and Takeaways

1. Preemption can directly affect and constrain local action to address housing challenges, particularly during a pandemic.

State preemption of local housing policies limits the ability of local governments to address ongoing housing challenges and to respond in a timely and effective manner to crises such as the COVID-19 pandemic and its economic fallout. In Illinois, local policymakers saw temporary rent freezes to protect vulnerable residents during the pandemic as essentially “off the table” because of state preemption, so they did not seriously consider adopting such laws. However, the pandemic did provide advocates who have been pushing to repeal state preemption of rent control with a new angle to raise awareness, which if successful might create new possibilities at the local level. In Illinois, stakeholders described the preemption of rent control as “far-reaching” and a “blanket prohibition.” The governor did not lift or change the state restrictions on rent control, and local governments did not pass any legislation to institute rent control or a rent freeze. According to state Representative Will Guzzardi, “a lot of potential for good legislation is being held back” because of state restrictions.

In California, the governor's order that temporarily eased preemption of certain local eviction protections opened the door for local governments to respond quickly to the pandemic. Whether the order was necessary is unclear, but it “gave confidence” to local lawmakers to adopt stronger protections, as Los Angeles did when it suspended “no fault” evictions and gave renters more time to pay back arrears. At the same time, state preemption laws not covered by the governor's executive order—such as the Costa-Hawkins Act—continue to constrain local responses, including by limiting rent freezes to already regulated units.

2. State preemption can have a “chilling effect” on local governments, limiting action.

Even when state laws do not preempt specific housing policies, they may still impede local action, and policymakers may fear that new local laws will spark preemption. Local policymakers in Florida are generally concerned about any local action being restricted by the state. According to Jason T. Smith

from the office of Miami-Dade County Commissioner Daniella Levine Cava, “Anything we pass here locally in the county, we fear preemption. We fear that once the legislature meets, whatever we’ve passed that could be considered a hot-button issue will be preempted by the state.” After Miami-Dade County passed the resolution urging the mayor to halt evictions for public housing residents during emergency orders, some county commissioners were concerned that the state would respond with a policy that would preempt their authority. In this scenario, halting evictions during hurricanes seemed like a common-sense policy with bipartisan support across jurisdictions, especially after media coverage of an older woman who was evicted from her home.

3. Advocates and policymakers are not always aligned, but lifting preemption can help advocacy efforts.

At the local level, advocates and city and county policymakers may be seeking different solutions to housing crises. In Chicago, some advocates are pushing for a repeal of state preemption and adoption of citywide rent control, but little support seems to be coming from local policymakers. One interviewee stated: “I don’t know how much local governments are calling for more flexibility. I don’t think local governments are looking for more power to ask for rent control.”

However, lifting or easing preemption does help local advocates who want stronger protections. As several advocates in California told us, the governor’s order that temporarily lifted state preemption of certain eviction measures “took away the excuse” that some local policymakers use to justify inaction. Across the cities we examined, advocates realize that lifting state preemption will not automatically lead to greater protections at the local level; however, it could create a pathway for advocates and mobilized constituents to press for stronger policies and local housing solutions.

4. Local governments can find work-arounds to state restrictions, but their effectiveness may be limited.

In Florida, the lack of statewide action coupled with no changes in state restrictions “led to a patchwork of responses that depended on the local politics of the sheriff, [court] clerk, and circuit [court],” according to Florida state Representative Anna V. Eskamani. State preemption also meant that the responsibility for protecting tenants from evictions shifted from local elected officials to law enforcement officers. Even the county governments that responded to the pandemic with stronger eviction moratoriums and more robust emergency relief programs than other localities still urged the governor to institute a baseline eviction moratorium to cover all residents. Additionally, when circuit courts stepped in to protect renters, the governor’s executive order was interpreted differently across the state. In some counties, circuit courts allowed many landlords to initiate eviction filings.

In California, several local governments adopted temporary rent freezes during the pandemic, but because of the Costa-Hawkins Act, they had to either limit the freezes to units whose rent was already regulated (as in Los Angeles) or rely on other emergency powers to justify action.

5. Money and political will are often the primary constraints on local housing solutions.

Across the cities and states we examined, preemption played a role in limiting local housing policy responses to the pandemic; however, advocates and policymakers agreed it was not the primary constraint. Most suggested that a lack of either resources or political will prevented stronger local action from occurring. In Chicago, a lack of funding is a major barrier to implementing additional rental assistance or affordable housing programs. Daniel Hertz of the Chicago Department of Housing mentioned that “by far the biggest constraint for us providing direct relief is just revenue.” Illinois restricts how local governments can raise revenue, including limiting real estate transfer taxes and placing caps on annual increases in property tax revenue (Chicago Metropolitan Agency for Planning 2013; Lav and Leachman 2018).⁶⁸ Similarly, in Florida, the state legislature must approve any new taxes proposed by local governments, which means that local governments rely heavily on state funds for affordable housing initiatives.

6. State oversight and preemption can be used to advance equity goals.

Housing equity is not always advanced by unfettered local control and an end to all state preemption. Preemption and state oversight can address systemic issues like segregation and wrongful evictions. Illinois state Representative Will Guzzardi discussed the potential to push localities toward more equitable outcomes through state provision of “resources and incentives to encourage the types of development we want to see.” In Florida, housing advocates hoped that in addition to providing more flexible rental assistance dollars through the state housing trust fund, the state would set stricter rules to ensure landlords receiving assistance were committed to not evicting their tenants.

In California, state oversight of local zoning ordinances and other land use regulations is widely seen as a crucial tool in addressing the growing housing crisis, and the state has taken some bold steps in recent years to lift some of these barriers (Infranca 2019).⁶⁹ For example, the California Housing Crisis Act of 2019 limits the ability of local governments to delay approvals for new housing, reduce density, or impose fees that raise the costs of development for five years.⁷⁰ During COVID-19, some local governments in California tried to use the pandemic and stay-at-home orders to stall project approvals for affordable housing and multifamily housing developments, which ran afoul of the Housing Crisis Act, which requires local governments to review new housing developments in a timely manner. The state continued to enforce the law and other state fair housing laws during the pandemic.

Conclusion

The COVID-19 pandemic is not the last emergency the US will experience, especially as climate change increases the threats from natural disasters. The pandemic will help shape public decisionmaking and policy responses to future crises, including those related to the economy and the climate. We have seen how states and localities have proved to be crucial and necessary actors, leading on housing policy responses to the current crisis. However, the findings across the three sites we studied reveal the

potential for more effective governance and stronger collaboration to stabilize housing for at-risk families, protect public health, reduce economic hardship, and make communities more resilient to future calamities.

Notes

- ¹ “State of Homelessness: 2020 Edition,” National Alliance to End Homelessness, accessed September 14, 2020, <https://endhomelessness.org/homelessness-in-america/homelessness-statistics/state-of-homelessness-2020/>.
- ² Emily Benfer, David Bloom Robinson, Stacy Butler, Lavar Edmonds, Sam Gilman, Katherine Lucas McKay, Zach Neumann, et al., “The COVID-19 Eviction Crisis: An Estimated 30–40 Million People in America Are at Risk,” Aspen Institute, August 7, 2020, <https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk/>.
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Acknowledgments

This brief was funded by the Local Solutions Support Center. We are grateful to them and to all our funders, who make it possible for Urban to advance its mission.

The views expressed are those of the authors and should not be attributed to the Urban Institute, its trustees, or its funders. Funders do not determine research findings or the insights and recommendations of Urban experts. Further information on the Urban Institute's funding principles is available at urban.org/fundingprinciples.

The following people generously agreed to participate in interviews for this research: Ida Eskamani, Florida Immigrant Coalition; Representative Anna Eskamani, Florida House of Representatives; Senator Jason Pizzo, Florida state Senate; Jason T. Smith, legislative director for Miami-Dade County Commissioner Daniella Levine Cava; Representative Will Guzzardi, Illinois House of Representatives; Bob Palmer, Housing Action Illinois; Mark Swartz and Frank Avellone, Lawyers' Committee for Better Housing; Stacie Young, Preservation Compact; Daniel Hertz, Chicago Department of Housing; Anna Ortega, Los Angeles Housing and Community Investment Department; Megan Kirkeby and Tyrone Buckley, California Department of Housing and Community Development; Ugochi Anaebere-Nicholson, Public Law Center; Melissa Morris, Public Interest Law Center; and Faizah Malik, Public Counsel.

Ben Winig, Kim Haddow, and Nestor Davidson offered valuable feedback on the design of this research and on earlier drafts of this brief. Meghan Ashford-Grooms provided meticulous line edits and editorial support.

We are grateful for all their insights and contributions. We also emphasize that engagement does not constitute an endorsement of the analysis or findings in the brief. All errors are the authors.



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