



For economic and racial justice

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WRITTEN TESTIMONY IN SUPPORT OF HB 5574 HA 1

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My name is Emily Coffey and I am a housing justice staff attorney with the Shriver Center on Poverty Law.

The Shriver Center advocates for racial and economic justice. Everything we do is powered by communities most affected by poverty. We work to remove barriers that limit people's ability to access safe and affordable housing by working with policymakers on effective and inclusionary housing policies; collaborating with community members and partner organizations to identify solutions and amplify the voices of those most impacted by housing unaffordability and residential segregation; and advocating at the local, state, and national levels to address systemic inequities in housing.

We strongly support the passage of HB 5574 HA 1, as it is a vital step in preventing an explosion of housing instability and homelessness in Illinois that will dramatically cost the state more than the investment it could make here with temporary measures and residential housing funding. It is estimated that 30% of Americans in April were unable to rent due to the pandemic and growing economic crisis. Without HB 5574 HA 1, the moratorium on evictions will expire on May 30, 2020, and potentially hundreds of thousands of households in Illinois will immediately face the threat of eviction and be at imminent risk of homelessness.

The state must act now to prevent the looming eviction cliff, where potentially hundreds of thousands of renters will end up in eviction court, lose their homes, and be rendered homeless at a time where the safest option is the ability to shelter in place in one's home. Recent estimates from the National Low-Income Housing Coalition find that over 400,000 very low and extremely low-income renters in Illinois are experiencing housing instability. Illinois also has one of the highest rates of mortgages underwater. Increased homelessness will also further challenge systems, such as continuums of care, homeless prevention agencies, and the Illinois Department of Human Services, already struggling to meet an overwhelming demand for assistance.

Overview of the Act

The Act does the following:

- Creates a residential relief fund, administered by the Illinois Housing Development Authority in cooperation with the Illinois Department of Human Services, to support tenants, homeowners, landlords, and lenders. Rent suspensions and the assistance fund that will cover those rents are subject to appropriations;
- Provides up to a year of mortgage forbearance for all homeowners who have mortgages that not already covered by the CARES Act;
- Creates a 180-day moratorium on eviction and foreclosure filings, including for small businesses;
- After the moratorium expires, provides substantial protections to renters facing eviction (including outlining what an equitable repayment plan should look like) and homeowners facing foreclosure, until the economy returns to its pre-COVID-19 level, as measured by the unemployment rate;
- Amends the Illinois Human Rights Act to protect essential workers, individuals receiving housing assistance, and citizens released from jail or prison housing discrimination, and make it explicit that the Human Rights Act protects individuals with COVID-19 or who are regarded as having COVID-19;
- Bars illegal lockouts and retaliation against tenants;
- Creates a private cause of action against anyone who violates the Act, and provides for enforcement by the Attorney General or local states attorney offices.

The Act has been drafted in compliance with all relevant provisions of the U.S. and Illinois constitutions, including the Contracts and Takings clauses.

The Contracts Clause of the U.S. Constitution provides that no state shall pass any “Law impairing the Obligation of Contracts.” U.S. Const. art. 1 § 10. The Illinois Constitution includes a very similar provision, which courts interpret as congruent with the federal provision.

The U.S. Supreme Court’s 1934 decision in *Home Building & Loan Ass’n v. Blaisdell*, 290 U.S. 398 (1934) is highly relevant to what we are trying to achieve today. *Blaisdell* is a case from the Great Depression, where a program relieving homeowners of their obligation to pay their mortgages, though they had to pay in effect a reduced rent or occupancy payment, was challenged as a violation of the Contracts Clause. The Supreme Court upheld the program, finding that it did not violate the Contracts Clause, and that states may impair the obligation of existing contracts if doing so amounts to a “reasonable exercise of the protective power of the State.” *Id.* at 444. Recent decisions from the federal courts in Illinois support the finding in *Blaisdell*, finding that a contract can be impaired as reasonable and necessary if it serves an important or legitimate public purpose. *Elliott v. Bd. of School Trustees of Madison Consol. Schools*, 876 F.3d 926, 932 (7th Cir. 2017).

First, the public purpose of this Act provides substantial evidence that the COVID-19 pandemic has created an economic crisis on par with some of the worst economic disasters in American history, including the Great Depression. With the State of Illinois remaining under “shelter-in-place” for the foreseeable future, this crisis is only likely to get worse. In addition to the catastrophic effects of the economic crisis, the health risks of COVID-19 are especially acute for people without a home, and one is more likely to contract and transmit COVID-19 in a congregate setting (such as a homeless shelter). So by acting to keep people housed, the legislature is taking steps to solve the public health crisis caused by COVID-19.

Second, the Act is well-tailored to respond to the COVID-19 economic and public health crisis, by making rent cancellation and residential relief available to people who have suffered a “COVID-19 Related Hardship.” See *Blaisdell*, 290 U.S. at 445 (the relief “afforded and justified by the emergency” was “appropriate to” the emergency and could only be granted upon reasonable conditions.) The extensive renter and homeowner protections the Act provides are all crafted to ensure that people who have been impacted by this crisis are the ones who benefit. In addition, the Act will not be in effect for an arbitrary amount of time—it will expire when the unemployment rate has returned to pre-crisis levels—which is further evidence that it has been tailored to meet the demands of this crisis. This makes the law similar to the one upheld in *Blaisdell*, where the Court during the Great Depression found the “statute itself could not validly outlast the emergency[.]” *Id.* at 447.

The bill has been well-crafted to respond to this emergency, and therefore would likely be upheld as a reasonable and necessary exercise of the State’s power under the Contracts Clause.

The Takings Clause of the Fifth Amendment to the U.S. Constitution states that “...nor shall private property be taken for public use, without just compensation.” Thus, the Takings Clause provides a check against the state’s police power, not by prohibiting the government from taking private property, but by requiring payment of just compensation if the government does so.

The main question with respect whether this legislation may violate the Takings Clause is likely the rent suspension provisions. Because that provision of the legislation is specifically tied to and conditioned upon a residential relief fund, there will be compensation when tenants are unable to pay rent and cannot stay housed without relief. Because there would be compensation, this is a proper exercise of the state’s police power. This relief is also only in place during the 180-day moratorium period. Any economic impact on property owners would be minimal since they would be eligible for rent relief during that period of time. The courts have recognized that a limitation that merely reduces the economic value of a property is not a taking if it retains some economic viability, especially when the limitation is temporary. See *Tahoe-Sierra Pres. Council v. Tahoe Reg’l Planning Agency*, 535 U.S. 302, 303 (2002) (“a temporary restriction causing a diminution in value is not [a taking], for the property will recover value when the prohibition is lifted”). The courts also weigh in favor of the government any legislation aimed at limiting economic, societal, and public health harms. See *Rose Acre Farms, Inc. v. United States*, 559 F.3d 1260 (Fed. Cir. 2009) (public health and safety considerations weigh in favor of the government). This is in fact the very purpose of this bill, to ensure that Illinoisans do not lose their homes and become homeless during this international public health and economic crisis.

The Act is a necessary response to the unprecedented COVID-19 crisis

As Section 5 of the Act illustrates, the need for legislative action to protect Illinois renters and homeowners is clear. The Illinois Department of Public Health has issued necessary “social distancing” guidelines in order to prevent transmission of the highly contagious SARS-Cov-2 virus, which causes the illness known as COVID-19. In accord with these guidelines, the Governor has proposed a “Restore Illinois” plan to relax some of these guidelines as the risk of COVID-19 decreases. Under this plan, it is likely that certain guidelines restricting large gatherings and slowing down economic activity will be in place for at least another year.

These public health measures have left many people out of work, and the unemployment rate is now at levels not seen since the Great Depression, leaving residential and commercial tenants vulnerable to eviction and homeowners vulnerable to foreclosure. Even before the crisis, over half of Illinois low-income renters were already rent-burdened, and the rate of underwater mortgages in Illinois was one of the highest in the nation.

During the emergency, it is essential that people can stay in their home—as staying home saves lives. Without legislative action, the most vulnerable people in our state will lose their homes, and the consequences of this loss will last well beyond the COVID-19 crisis. Forced moves and evictions cause a substantial increased risk of homelessness, long-term negative health effects, and are associated with worse employment outcomes and lower earnings. The Act also is necessary to address the disparate harm COVID-19 is having on black and brown communities, who are disproportionately more likely to be renters or homeowners with limited to no savings to protect themselves during a crisis. A failure to act will only deepen the racial and economic disparities with our state.