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SENT VIA E-MAIL

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Chief Justice Bridget Mary McCormack
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Dear Governor Whitmer and Chief Justice McCormack:

The American Civil Liberties Union (ACLU) and the ACLU of Michigan urge you to immediately expand the statewide moratoriums on evictions and utility shut-offs in Michigan and commit to prevention of mass evictions after the moratorium ends.

Across the nation, the COVID-19 pandemic has already resulted in widespread and devastating economic consequences, as the number of unemployment claims filed has reached over 22 million, and more than 1.2 million filed in Michigan alone. In the face of staggering unemployment numbers and climbing medical costs, millions of people living in the United States—and 29% of households who rent in Michigan—face the imminent threat of losing their homes or access to utility service. These consequences risk further spread of COVID-19 throughout Michigan and undermine efforts to protect public health and well-being. Moreover, the nearly guaranteed wave of evictions and utility shut-offs would inflict far-reaching and significant economic and social harm on millions of Michigan residents—particularly on women, people of color, low-income residents, and other vulnerable communities.

We commend the Governor and Supreme Court's efforts thus far in providing relief to Michigan residents through a statewide ban on removing renters from homes and for pausing eviction filings. Yet it is critical that Michigan immediately implement complete moratoriums on eviction proceedings, utility shutoffs, and foreclosures; implement a grace period to make rent and other payments after the emergency declaration ends; and provide tenancy preservation measures such as banning the collection of late fees and rent raises, in advance of May 15.

Currently, the Governor's executive orders on evictions, foreclosures and water shutoffs only go part of the way. While the eviction order prevents the removal of persons from a rental property,

it does not prevent landlords from threatening eviction or pursuing already-filed eviction cases. Likewise, the Supreme Court's order pausing notices to quit and filings of new cases does not stop proceedings in which landlords may obtain judgments of possession. Some district courts have paused all proceedings, but others have not. And while the Governor's executive order on tax foreclosures extends the statutory redemption period, it does not cover mortgage foreclosures or land contract forfeitures or foreclosures. We need complete moratoriums on mortgage, property tax, and land contract foreclosures, and a complete suspension of all redemption periods and deadlines that could lead to someone losing their home.

Additionally, without built-in grace periods for individuals to cure delinquencies, the expiration of the Governor and Supreme Court's orders would mean huge waves of evictions, foreclosures and forfeitures, potentially displacing hundreds of thousands of Michiganders. To prevent such a calamity, the Governor and Supreme Court should immediately extend all current moratoriums and deadlines until 60 days past the end of Michigan's state of emergency.

While the measures taken to date have slowed evictions, the need for [Attorney General Nessel to issue a cease and desist letter](#) to stop the threatened eviction of 80 residents at Jeffersonian Apartments, underscores the necessity for a comprehensive moratorium on evictions and the implementation of tenant protections. This incident is far from isolated. Despite the Governor's order, we are hearing about regular incidents of landlords threatening low-income and undocumented tenants with eviction. Without greater clarity and stronger tenant protections, malicious landlords will continue to take advantage of gaps in the executive and administrative orders to exploit renters in our community.

Lastly, we implore the Governor to ensure that all public water authorities are complying with her water shutoff executive order. If evidence demonstrates that a water authority is out of compliance, the Governor should compel the local authority to restore water immediately. As evidenced by [yet another account of a family without water in Detroit](#) in a news story from the BBC published on April 24, many households are still without running water, despite the Governor's order and Detroit's public statements. Further, many Michigan utility companies have declared their own moratorium on shutoffs but the response and consumer obligations are inconsistent. The Governor should immediately implement a complete moratorium on utility shutoffs that extends beyond the state of emergency. As COVID-19 continues to spread and target our most vulnerable communities, it becomes increasingly apparent that more needs to be done.

Evictions and Utility Shut-Offs Will Disproportionately Harm Communities of Color— And Particularly Women of Color.

The ACLU's Data Analytics team [analyzed national eviction data from 2012 to 2016](#), provided by the Eviction Lab at Princeton University, and found that on average, Black renters had evictions filed against them by landlords at nearly twice the rate of white renters.¹ Women of

¹ Sophie Beiers et al., *Clearing the Record: How Eviction Sealing Laws Can Advance Housing Access for Women of Color* (Jan. 10, 2020), <https://www.aclu.org/news/racial-justice/clearing-the-record-how-eviction-sealing-laws-can-advance-housing-access-for-women-of-color/>.

color, and particularly Black women, [bear the burden of eviction](#).² The harmful impact of eviction is further compounded by other racial, gender, and socioeconomic barriers—such as wealth gaps, pay disparities, and inequities in our healthcare system.

Critically, the aftermath of an eviction persists for decades, as tenants with prior eviction records face major obstacles to accessing future housing opportunities. Landlords routinely employ screening policies that deny housing to any renter previously named in an eviction case, regardless of whether the case was dismissed, occurred many years ago, or was filed on unlawful grounds.³ As a result, eviction often exacerbates and reproduces conditions of economic insecurity for low-income women and communities of color.

These stark racial and gender disparities in eviction are even more alarming at state and local levels. Even before the onset of COVID-19, Michigan was experiencing foreclosure and eviction crisis that hit communities of color the hardest. In Wayne County, majority African American census blocks were shown to be 10 to 15 times more likely to be foreclosed upon than predominately non-African American census blocks. Black women renters in Washtenaw County are 3.25 times more likely than white renters to have an eviction filed against them based on data from 2014.⁴ In 2016, Detroit, with a population of over 80% African American, ranked 10th highest in the nation for the number of evictions.⁵ And in Lenawee County, Black women renters on average were 3.4 times more likely than white renters to have an eviction filed against them.⁶ By 2018, the eviction crisis hadn't let up – 191,512 eviction cases were filed in Michigan.⁷

Utility shut-offs also disproportionately harm communities of color. A 2017 report by the NAACP found that Black households experience utility disconnections at a higher rate than financially similar white households. For households at or below 150% of the federal poverty level, only 5.5% of white-headed households experienced shutoffs as compared to 11.3% of Black-headed households.⁸ Similarly, another study revealed that residents in predominantly minority neighborhoods faced 27% higher energy cost burdens than those in predominantly

² Matthew Desmond, *Poor Black Women Evicted at Alarming Rates, Setting Off a Chain of Hardship* (Mar. 2014), <https://www.macfound.org/media/files/HHM - Poor Black Women Are Evicted at Alarming Rates.pdf>.

³ Sandra Park, *Unfair Eviction Screening Policies Are Disproportionately Blacklisting Black Women* (Mar. 30, 2017), <https://www.aclu.org/blog/womens-rights/violence-against-women/unfair-eviction-screening-policies-are-disproportionately>.

⁴ Data were drawn from Lexis Nexis eviction court records and compiled by Eviction Lab of Princeton University. The ACLU Data Analytics Department performed the race and gender analysis of eviction court records from 2012 until 2016.

⁵ Katie Anderson, *Not at Home in the Mitten: Understanding Michigan's Eviction Numbers* (Oct. 2019), <http://www.ippsr.msu.edu/public-policy/michigan-wonk-blog/not-home-mitten-understanding-michigans-eviction-numbers>.

⁶ *Id.* at fn. 4.

⁷ *Id.* at fn. 5.

⁸ NAACP, *Lights Out in the Cold: Reforming Utility Shut-Off Policies as if Human Rights Matter* (Mar. 2017), https://www.naacp.org/wp-content/uploads/2017/12/Lights-Out-in-the-Cold_NAACP.pdf.

white neighborhoods.⁹ Research further shows that Black communities disproportionately experience higher water costs, water service terminations, and water liens, resulting in negative health and economic outcomes.¹⁰

Michigan Should Issue a Comprehensive Moratorium on Evictions and Utility Shut-Offs That Will Also Prevent Mass Evictions After the Moratorium Ends.

In light of the widespread and devastating impact of eviction during the pandemic, we urge Michigan to immediately issue a comprehensive moratorium on evictions and utility shut-offs throughout the entire state. In doing so, Michigan should implement a moratorium that prohibits every stage of the eviction process and without exceptions for types of tenants or lease violations. It must also plan ahead for when the moratorium ends to prevent mass evictions and other enduring housing consequences for tenants hurt by the pandemic.

Michigan's Moratorium Should Halt Every Stage of the Eviction Process.

An [effective eviction moratorium](#) must prohibit landlords and housing providers from proceeding with any stage of the Michigan eviction process, including, but not limited to: (1) formal or informal issuance of eviction notices; (2) service of legal process in eviction actions; (3) filing of new eviction cases; (4) eviction hearings; and (5) enforcing orders of eviction, including orders that were issued prior to the date that the moratorium went into effect.¹¹ While the current executive and administrative orders in place do some of this, there is still a lack of clarity in the community about what landlords can and cannot do during this emergency. Moreover, the moratorium should extend or toll all court deadlines for pending eviction proceedings for at least 60 days after the moratorium is lifted. Absent a clear and comprehensive moratorium, tenants still face a heightened risk of losing their homes or sustaining an eviction filing record that may unjustly act as a barrier to housing in the future.

Michigan's Moratorium Should Continue to Prevent Evictions During and Shortly After the Pandemic, with Extensions.

Given the ongoing and unpredictable nature of the COVID-19 pandemic, the Michigan moratorium should, at a minimum, continue until at least 60 days or longer¹² after the following conditions are met: (1) the period for mandated or recommended social distancing has ended; (2) the Michigan has determined the moratorium is no longer needed to control or limit the spread of COVID-19; and (3) the Michigan has determined there are no further public health, economic, or

⁹ Kyle Miller, *The Hidden Cost in Housing Affordability* (Feb. 20, 2020), <https://www.planning.org/blog/9195636/hidden-cost-in-housing-affordability/>.

¹⁰ The Thurgood Marshall Institute at the NAACP Legal Defense and Educational Fund, Inc., *Water/Color: A Study of Race & the Water Affordability Crisis in America's Cities* (May 2019), https://www.naacpldf.org/wp-content/uploads/Water_Report_Executive-Summary_5_21_19_FINAL-V2.pdf.

¹¹ National Housing Law Project, *Protecting Renter and Homeowner Rights During Our National Health Crisis*, <https://www.nhlp.org/campaign/protecting-renter-and-homeowner-rights-during-our-national-health-crisis-2/>.

¹² See, e.g., Mass. H. 4647, *An Act Providing for a Moratorium on Evictions and Foreclosures During the COVID-19 Emergency*, <https://malegislature.gov/Bills/191/H4647>.

other circumstances supporting the continued need for the moratorium. Moreover, an effective eviction moratorium should allow for extensions as necessary to allow tenants reasonable time to apply for and receive financial resources and assistance following the conclusion of the pandemic. The moratorium should also guarantee that landlords and housing providers give at least 30 days' notice to evict a tenant upon expiration of the moratorium period.¹³

Michigan's Moratorium Should Apply to All Types of Tenants and Lease Violations.

In light of the ongoing public health crisis and its economic consequences, all residents—regardless of their circumstances or background—must have access to safe and stable housing throughout the course of the COVID-19 pandemic. Given the extraordinary circumstances that Michigan residents are facing, an effective eviction moratorium should not be limited to evictions for non-payment of rent. Rather, the moratorium should prohibit all evictions, regardless of the type of tenant or lease violation. Any exception to an eviction moratorium should be narrowly tailored to circumstances in which an individual's tenancy poses a serious and imminent health or safety threat that cannot be reduced or eliminated except by eviction.

The Moratorium Should Prohibit the Collection of Late Fees and Protect Tenants Who Assert Rights Provided by the Moratorium.

The moratorium should prohibit landlords from imposing fees or fines associated with the late payment of rent due during the period of the moratorium, which can often be considerable. Additionally, Michigan should prohibit landlords from retaliating against tenants who seek protections under the moratorium.

Michigan Should Issue a Moratorium Against Utility Shut-Offs Without Exception.

In addition to issuing a comprehensive eviction moratorium, Michigan should protect its residents' access to critical utility services by prohibiting utility shut-offs or disconnections for the duration of the pandemic. While several Michigan companies have suspended utility disconnections, Michigan should issue a statewide moratorium to ensure protections for its 10 million residents. Moreover, Michigan should commit and enforce its prior order to restore previously disconnected utility services for residents without water.

Michigan Should Also Prevent Mass Evictions After the Moratorium Ends.

The issuance of a moratorium will play an important role in mitigating the public health and economic impact of the pandemic. In addition to containing further spread of COVID-19 by ensuring residents can comply with stay-at-home orders, a moratorium will prevent the harmful aftermath of eviction, such as medical and mental health issues, financial hardship, and homelessness.¹⁴ However, permitting mass evictions to take place the moment the moratorium

¹³ See, e.g., Coronavirus Aid, Relief, and Economic Security Act (CARES Act), § 4024.

¹⁴ Matthew Desmond & Carl Gershenson, *Housing and Employment Insecurity among the Working Poor*, Oxford: Social Problems Advance Access 1–12 (Jan. 11, 2016), <http://scholar.harvard.edu/files/mdesmond/files/desmondgershenson.sp2016.pdf?m=1452638824>; see also Allison

lifts will similarly cause huge upheavals in local communities, harm public health, and threaten families. For that reason, Michigan should commit to adopting policies that would prevent mass evictions once the moratorium ends. Key policies should include requiring landlords to negotiate payment plans prior to the filing of eviction cases, creating renters' relief funds to cover back rent, providing renters with a grace period of at least 30 days to pay rent, establishing right to free legal counsel to tenants facing eviction, and exploring other creative strategies for addressing this unprecedented threat to community stability. Such policies should provide meaningful mechanisms to ensure compliance by landlords and housing providers. For example, Michigan officials should issue guidance for housing courts to require landlords and housing providers to show that they have engaged in good faith negotiation of payment plans prior to filing for eviction.

Michigan Should Also Protect Tenants from Blacklisting Because They Face Eviction After the Moratorium Ends.

The mere filing of an eviction—even where an eviction judgment is not entered—deprives tenants of housing opportunities, because landlords often will not rent to anyone who has been subject to an eviction case. This type of blacklisting is devastating, locking out families from better housing, schools, and employment for decades. Moreover, Michigan should prohibit landlords and housing providers from reporting missing or late rental payments to credit agencies or debt collection agencies to avoid future economic hardship following the pandemic.

* * *

The expiration of the Governor's orders is rapidly approaching, so it is critical that Michigan act quickly to protect its residents against eviction and utility shut-offs. Michigan's actions will provide the certainty and stability that residents need to ensure that no one is at immediate risk of losing their homes while we work to find longer-term solutions to handling unpaid rent, providing economic and financial support, and ensuring access to stable housing in the aftermath of the COVID-19 pandemic.

We encourage you to act quickly in addressing the critical issues facing the residents of Michigan. If you have any questions or concerns, please contact Bonsitu Kitaba, Deputy Legal Director at 202-290-6779 or bkitaba@aclumich.org. Thank you in advance for your time.

Sincerely,

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