

A20-1561

**STATE OF MINNESOTA
IN SUPREME COURT**

Carvin Buzzell, Jr.,

Appellant,

vs.

Tim Walz, Governor of Minnesota, et al.,

Respondent.

**AMICUS BRIEF OF HOUSING JUSTICE CENTER, HOME LINE,
VOLUNTEER LAWYERS NETWORK, AND MID-MINNESOTA LEGAL AID
IN SUPPORT OF RESPONDENT**

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IDENTITY AND INTEREST OF *AMICI CURIAE*

The *amici curiae* are public interest organizations that advocate for and assist disadvantaged Minnesotans adversely impacted by evictions, homelessness, and the COVID-19 pandemic.¹

Housing Justice Center (HJC). HJC is a nonprofit public interest and legal organization whose primary mission is to preserve and expand the supply of affordable housing for low-income individuals and families. Website: <https://www.hjcmn.org/>.

HOME Line. HOME Line is a statewide, nonprofit organization that provides free legal advice to residential tenants on all landlord-tenant issues regardless of income and works to improve public and private policies relating to rental housing. Website: <https://homelinemn.org/>.

Volunteer Lawyers Network (VLN). VLN provides civil legal services to low-income people through volunteer attorneys. Its mission is to protect and promote the basic human needs of people in poverty through the power of legal volunteers. Website: <https://www.vlnmn.org/>.

Mid-Minnesota Legal Aid (MMLA). MMLA provides free lawyers to those who cannot afford them in a broad range of civil cases in thirty counties throughout Minnesota, including more than 2,000 families facing eviction from their homes per year. Website: <https://mylegalaid.org/>.

¹ Counsel for amicus authored this brief in whole.

Amici have a strong interest in ensuring that the Governor’s emergency authority under the Minnesota Emergency Management Act (“MEMA”) is not improperly limited by the expansive definition of “commandeer” urged by Appellant. The Governor’s emergency power under MEMA was essential to his ability to issue emergency eviction moratoria to protect the public health of Minnesota renters and contain the spread of the COVID-19 virus during the most perilous months of the pandemic. Appellant’s proposed interpretation of “commandeer” would severely threaten the health and safety of Minnesotan renters in any future public health crisis.

STATEMENT OF FACTS

Amici adopt and incorporate the entire Statement of Facts contained in Respondent’s Brief.

ARGUMENT

A. Appellant’s proposed interpretation fatally undermines the emergency public health protection purpose of MEMA and thus violates basic canons of construction under Minnesota law.

This appeal is a misguided effort to convince this Court to interpret MEMA in way that would make it practically impossible for the law to fulfill its stated purpose of “preserv[ing] the lives” “of the people of the state” in the face of “the occurrence of natural and other disasters of major size and destructiveness.” Minn. Stat. § 12.02, subd. 1. The reality is that a definition of “commandeer” that expands MEMA’s compensation requirements beyond the government’s direct and active use of private property would make it untenable for the Governor to employ the kind of emergency public health powers that prevented the spread of COVID-19 to hundreds of thousands of Minnesotans

during the pandemic. Of particular concern to *amici*, Appellant’s interpretation would fatally impair the ability of the Governor to issue eviction moratoria to protect the public health because the State would be faced with an uncertain and potentially enormous bill for compensation to Minnesota landlords. Such an interpretation violates multiple “basic canons of construction” that presume (1) “the legislature does not intend a result that is absurd, impossible of execution, or unreasonable;” (2) “the legislature intends the entire statute to be effective and certain”; and (3) “the legislature intends to favor the public interest against any private interest.” Minn. Stat. Ann. § 645.17; *Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999) (employing § 645.17 in interpreting statute).

B. Appellant’s proposed interpretation would make it practically impossible in the future to issue emergency eviction moratoria that saved thousands of Minnesotan lives during the current pandemic.

The life-saving benefits of Minnesota’s recent eviction moratoria highlight why Appellant’s proposed interpretation contradicts the emergency public health purposes of MEMA and thus violates basic canons of construction under Minnesota law. The government’s robust emergency authority under MEMA was essential to its ability to issue emergency eviction moratoria to protect the public health of Minnesota renters and contain the spread of the COVID-19 virus during the most perilous months of the pandemic. No less an authority than the Centers for Disease Control and Prevention (“CDC”)—the country’s leading health protection agency—concluded in September 2020 that absent “state and local protections” such as Minnesota’s eviction moratorium “as many as 30-40 million people in America” would be forced from their homes by “a wave of evictions” that would multiply the spread of COVID-19 because a “large portion

of those who are evicted may move into close quarters in shared housing or . . . become homeless.”² As the Governor’s initial eviction moratorium (Executive Order 20-14) stated: “Restricting evictions is a vital tool to keep Minnesotans in their homes to mitigate the community spread of COVID-19 in Minnesota and nationwide.”

It is now clear that eviction moratoria were enormously successful in saving lives and preventing the spread of COVID-19 in Minnesota and across the country. One academic study found a connection between eviction and health outcomes, and concluded that eviction prevention is a key component of a pandemic control strategy to mitigate COVID-19 spread and death.³ The authors include professors from Wake Forest University School of Law, Yale University Law School, School of Public Health and School of Nursing, and Columbia University Mailman School of Public Health, to be published in the *Journal of Urban Health*.

Another study concluded that “[l]ifting eviction moratoriums was associated with significant increases in COVID-19 incidence and mortality in U.S. states, supporting the public health rationale for use of eviction moratoriums to prevent the spread of COVID-19. Lifting moratoriums amounted to an estimated 433,700 excess cases and 10,700

² CDC, *Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19*, 85 Fed. Reg. 55,292 (Sept. 4, 2020), available at <https://www.federalregister.gov/documents/2020/09/04/2020-19654/temporary-halt-in-residential-evictions-to-prevent-the-further-spread-of-covid-19>.

³ Emily Benfer et al., J. URBAN HEALTH, *Pandemic Housing Policy: Examining the Relationship Among Eviction, Housing Instability, Health Inequity, and COVID-19 Transmission* (November 2020), available at <https://ssrn.com/abstract=3736457>.

excess deaths during the study period (March 13-September 3).”⁴ The authors include professors from University of California, Los Angeles (UCLA), Johns Hopkins University Bloomberg School of Public Health, Boston University, University of California, San Francisco (UCSF) Institute for Health Policy Studies, and Wake Forest University School of Law.

Notably, this study includes a table of estimated infections and deaths in states that ended their eviction suspensions.⁵ The data for states with population totals close to Minnesota’s show the dire health and safety consequences that would have impacted Minnesota if the government had not maintained the eviction moratorium throughout the height of the pandemic:

⁴ Kathryn Leifheit et al., AM. J. EPIDEMIOLOGY, *Expiring Eviction Moratoriums and COVID-19 Incidence and Mortality* (November 30, 2020), available at <https://ssrn.com/abstract=3739576>.

⁵ *Id.* at 14

State⁶	Date Eviction Suspension Ended	Weeks from End of Suspension to September 3, 2020	Estimated Excess Virus Cases after Date Eviction Suspension Ended	Estimated Excess Virus Deaths after Date Eviction Suspension Ended
Maryland (pop. 6,045,680)	July 25, 2020	6	2,310	37
Wisconsin (pop. 5,822,434)	May 26, 2020	14	19,840	346
Colorado (pop. 5,758,736)	June 13, 2020	12	8,620	254
Minnesota (pop. 5,639,632)	<i>Eviction suspension maintained</i>			
South Carolina (pop. 5,148,714)	May 14, 2020	16	37,590	1,090
Alabama (pop. 4,903,185)	May 31, 2020	14	26,470	621
Louisiana (pop. 4,648,794)	June 15, 2020	12	29,650	959

⁶ U.S. Dept. of Commerce, *Census Bureau State Population Totals and Components of Change: 2010-2019* (United States Census Dec. 30, 2019), Annual Estimates of Residential Populations for the United States, Regions, States, and Puerto Rico: Apr. 1, 2010 to July 1, 2019, available at <https://www.census.gov/data/tables/time-series/demo/popest/2010s-state-total.html>.

Based on the data in this study, it is estimated that Minnesota’s eviction moratoria saved 2,040 lives and prevented 111,000 positive cases from March 24, 2020 through January 4, 2021.⁷

C. The practical inability to issue emergency eviction moratoria under Appellant’s interpretation of MEMA would disproportionately impact communities of color.

Equally important, the wave of evictions and increased infections that would have occurred absent the eviction moratoria would have disproportionately impacted communities of color, who are more likely to rent than any other group. As of 2018, Minnesota has “the 5th highest homeownership disparity between white/non-Hispanic households and households of color.”⁸ Minnesota is comprised of 20% people of color,⁹ and of that group, 58% are renters.¹⁰

⁷ Larry McDonough, *Pandemic Eviction Claims and Defenses and Other Housing Claims in Minnesota*, at 24-28 (Nov. 3, 2021), available at http://povertylaw.homestead.com/files/Reading/Pandemic_Eviction_Claims_and_Defenses_and_Other_Housing_Claims_in_Minnesota.pdf. The estimate did not cover January 5, 2021 through the end of the Minnesota eviction moratorium on June 30, 2021.

⁸ Minnesota Housing, *Affordable Housing Plan: October 2018-September 2019*, at 8, available at http://www.mnhousing.gov/sites/Satellite?blobcol=urldata&blobheadername1=Content-Type&blobheadername2=Content-Disposition&blobheadername3=MDT-Type&blobheadervalue1=application%2Fpdf&blobheadervalue2=attachment%3B+filename%3DMHFA_1044198.pdf&blobheadervalue3=abinary%3B+charset%3DUTF-8&blobkey=id&blobtable=MungoBlobs&blobwhere=1533150601602&ssbinary=true.

⁹ Minnesota State Demographic Center, *Age, Race, & Ethnicity April 1, 2010-July 1, 2019*, available at <https://mn.gov/admin/demography/data-by-topic/age-race-ethnicity/>.

¹⁰ Minnesota Housing Partnership, *State of the State’s Housing 2019: Biennial Report of the Minnesota Housing Partnership* (2019), at 8, available at

People of color fared poorly in the pandemic economy. In September 2020, the 6-month moving average unemployment rate for Minnesota was 7.8%, up from 2.8% in September 2019. The rate for Minnesota African Americans was 16.5%, twice the overall rate and over three times higher the 5.1% rate for African Americans in September 2019.¹¹ Moreover, Census Bureau data from October 2020 show that only 23.1% of African American renters had high confidence about ability to pay next month's rent,¹² and 63.3% of Hispanic or Latino Americans responded they were very likely or somewhat likely to leave home due to eviction in the next two months.¹³

The CDC itself concluded that COVID-19 has a disproportionate impact on racial and ethnic minorities.¹⁴ African Americans, Hispanics and Latinos contract the disease at

http://www.mhponline.org/images/stories/images/research/SOTS-2019/2019FullSOTSPrint_Final.pdf.

¹¹ Minnesota Department of Employment and Economic Development, *Alternative Measures of Unemployment*, Table 5, available at <https://mn.gov/deed/data/current-econ-highlights/alternative-unemployment.jsp>.

¹² U.S. Dept. of Commerce, *Census Bureau Pulse Survey*, Table 2b. Confidence in Ability to Make Next Month's Payment for Renter Occupied Housing Units, by Select Characteristics: Minnesota (Oct. 21, 2020), available at <https://www.census.gov/data/tables/2020/demo/hhp/hhp16.html#tables>.

¹³ *Id.*, Table 3b. *Likelihood of Having to Leave this House in Next Two Months Due to Eviction*, by Select Characteristics: Minnesota, available at <https://www.census.gov/data/tables/2020/demo/hhp/hhp16.html#tables>.

¹⁴ CDC, *Health Equity Considerations and Racial and Ethnic Minority Groups* (July 24, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html>.

over 2.5 times the rate of Whites and require hospitalization over 4.5 times as often.¹⁵

The mortality rate for African-Americans is 2.1 times higher than it is for Whites.¹⁶

Factors contributing to this disparity include: (1) jobs that require close personal contact; (2) jobs that do not provide paid sick days, so workers “cannot afford to miss work, even if they’re sick;” and (3) higher rates of COVID-related unemployment.¹⁷

In Minnesota, the *Star Tribune* reported that “African Americans account for 6% of the state population and 19% of the confirmed cases. Hispanic residents account for 5% of the state population but 17% of confirmed cases.”¹⁸ A statistical analysis conducted by the *New York Times* in June 2020 showed that in Hennepin and Ramsey Counties Black and Latino residents had infection rates over 4 times higher than infection rates among white residents.¹⁹

¹⁵ CDC, *COVID-19 Hospitalization and Death by Race/Ethnicity* (Aug. 18, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Joe Carlson, STAR TRIBUNE, *COVID Widens Racial Gap in Minnesota’s Health Care System*, (Sept. 14, 2020), available at <https://www.startribune.com/covid-widens-racial-gap-in-minnesota-s-health-care-system/572402602/>.

¹⁹ Richard A. Oppel, Jr. et al., *The Fullest Look Yet at the Racial Inequity of Coronavirus*, *N.Y. Times* (Jul. 5, 2020), available at <https://www.nytimes.com/interactive/2020/07/05/us/coronavirus-latinos-african-americans-cdc-data.html>.

In sum, Minnesota’s eviction moratorium prevented a disastrous increase in COVID-19 infections and deaths that would have disparately impacted communities of color. It is hard to imagine a governmental action more central to the emergency public health management purposes of MEMA. Appellant’s incorrect interpretation of “commandeer” would make eviction moratoria practically impossible in the future, and would lead to catastrophic public health outcomes in future pandemics. Thus, Appellant’s interpretation should be rejected under basic canons of statutory construction because it (1) leads to an “absurd” result that renders the very purpose of MEMA “impossible of execution,” (2) makes MEMA “[in]effective and [un]certain,” and (3) fails to “favor the public interest against any private interest.” Minn. Stat. § 645.17.

CONCLUSION

For the foregoing reasons, *Amici curiae* respectfully ask the Court to affirm the lower court decisions and reject Appellant’s proposed interpretation of MEMA.

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CERTIFICATION OF DOCUMENT LENGTH

We hereby certify that this Request for Leave to Participate as Amicus Curiae conforms to the requirements of the Minnesota Rules of Civil Appellate Practices, including Minn. R. Civ. App. P. 129.02(c). This document was prepared using Microsoft Word for Mac 16.52 with a proportional 13-point font. The length of this document is 1,984 words, excluding the caption, tables, and signature block.

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