

The unintended consequences of CDC's national eviction moratorium

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https://pacificlegal.org/unintended-consequences-cdcs-eviction-moratorium/?fbclid=IwAR2uBP25LPRSSVWx3ywvpbR09vw9xpMu-zBYfLE6JLGEq_26dX9Yo47aIN8

Newton's third law of physics is that for every action in nature, there is an equal and opposite reaction. That rule also seems to apply in the business world when it comes to regulation of free enterprise.

That is to say that regulation always has unintended consequences—some predictable, others less obvious. And that rule is in play especially when it comes to the government meddling in the housing market—not least with recent federal, state, and local eviction moratoria.

For example, an obvious consequence of Draconian restrictions on new development is a corresponding increase in housing costs. A less-obvious consequence is the impact that rising housing costs tend to have on economic and social pressures driving the call for higher minimum wage—which in turn adds to inflation and has other economic impacts.

With every effort at social engineering, we create new problems. And the cycle goes on as when one gives a mouse a cookie.

That is not to say that all regulation is bad. But it does mean that before rushing to pile on more regulation, we should be **thinking carefully about the costs and benefits**. That's good government, and you would think it would be common sense.

But when it comes to the political science of rulemaking, we find that there is a certain law of inertia in play, pushing for more and more regulation—with predetermined outcomes in mind. Whether because regulators adopt a crusader-like mentality or because they are walking in line with the prevailing winds, it seems bureaucrats are too often blind to the collateral damage of regulation.

Take, for example, the national eviction moratorium pronounced by the Centers for Disease Control and Prevention last fall. Once again, there are obvious consequences. But there are also surprising implications that should have given pause—if only the agency had stopped to soberly consider the downside of a national eviction moratorium.

Whereas federal law requires agencies to seek input from the public before finalizing new regulation, CDC simply pronounced its eviction moratorium without giving the public an opportunity to comment.

The supposed rationale for the eviction moratorium was that it was necessary to prohibit evictions in order to ensure that people had a place to weather the COVID storm. That is to say that CDC thought it important that we provide adequate housing for struggling families. But of course, in its rush to pronounce this national moratorium, CDC failed to consider an important aspect of the problem. Specifically, CDC failed to consider the impact of the moratorium on the national rental market.

CDC had plenty of time to solicit public comment since the outset of the pandemic last winter. And had CDC bothered to solicit public input (as is required by the it would have heard from many landlords across the country. Had the rulemakers followed the rules, CDC would have learned not only that landlords depend on rental income to pay their mortgages and other business expenses, but also that a disproportionate number of landlords renting out single-family homes are what we might call mom-and-pop operations.

Indeed, since launching lawsuits against CDC's moratorium in November, Pacific Legal Foundation [has heard from countless individual landlords](#) who depend on rental income for their retirement income, to pay for their children's college tuition, and to cover their living expenses. We even heard from [one landlord who went without her prescription medications](#) for a time when she couldn't collect from a non-paying tenant.

But it's not just the impact on landlords that should have given CDC pause. The reality is that there is also an adverse impact on low-income families

that need to secure affordable housing. As counterintuitive as it may be, eviction moratoria threaten to exacerbate housing affordability problems in the rental market and ultimately hurt the very people they were intended to benefit. So once again, regulation has unintended consequences.

For one, with a smoking-hot real estate market, landlords have every incentive to pull out of the rental market. It's like a choice between cake or death. You *always* choose the cake.

In all seriousness, why would you continue to rent out your home when the government is imposing a moratorium that prevents you from enforcing your contractual rights as a landlord? Why run the risk of having someone squat in your home when you could sell, and at a time when the real estate market is booming? So what happens if, suddenly, landlords begin to rationally exit the rental market en masse?

It's basic economics. As the supply of rental housing declines, rents inevitably rise. And ultimately that exacerbates problems for those families already struggling to keep a roof over their head. But of course, when pressed, the CDC argues in court that it wasn't concerned with the impact on affordable housing.

There are other attendant consequences as well. If you are a landlord and you know that evictions are not on the table, you might require more stringent credit checks on tenants or require higher security deposits. Those are rational responses to eviction moratoria policies. But they ultimately make it harder for low-income families seeking to secure housing. But don't blame the landlords when it's CDC's policy at issue. Yet again, for every regulatory restriction, there is an equal and opposite (but not always anticipated) regulatory consequence.

But here is the rub. What business does a federal agency charged with monitoring and tracking contagious disease have issuing an eviction moratorium anyway? Does CDC actually have that sort of power?

Well, it depends on whom you ask. According to the Department of Justice, CDC can issue any order it thinks "necessary" to control the

spread of contagious disease—which would mean it could re-impose business closure orders in any state that has lifted restrictions, or for that matter impose orders restricting any facet of American life.

But the problem with that view of CDC's authority is that it's flat-out unconstitutional.

Federal agencies don't have inherent regulatory power. They can impose regulation only to the extent permitted by law. And three federal district courts have ruled that CDC lacks statutory authority to impose its eviction moratorium—with the first opinion coming from [PLF's lawsuit in the Northern District of Ohio](#). But if the government is right and CDC really does have an open-ended authority to impose regulatory orders at the drop of a hat, then there is a constitutional problem, because Congress can't just write a blank check to a federal agency to do whatever it thinks best. That's not the way we do law in America.

But of course, CDC's expansive view of its own regulatory powers is emblematic of a greater problem—which we might refer to as the "[rise and rise of the administrative state](#)."

To be sure, the natural tendency is for government to self-aggrandize its powers over time, which means [growing the regulatory thicket still more](#). And as we've seen, the trouble with regulation is always that it begets more problems.

So, let's at least drop this fanciful notion that regulation is always the answer to the problem of the moment. Regulation is proper only when authorized by Congress, and it's prudent only when the benefits outweigh the costs.