Regarding Recent "Anti-Squatter" Legislation

Residential landlords and real estate interests are now pushing state legislatures to enact new measures not only to criminalize squatting in real property but also creating procedures to facilitate immediate, mandatory police intervention. Some of these laws even direct police to disregard lease documents that occupants may present to substantiate their rights to possession. Already new legislation has passed in multiple southern states, with similar bills pending or anticipated in many other states.[1]

While nominally targeted at squatters—i.e., people who unlawfully enter into properties as trespassers and declare a right to occupy that is not derived from any deed or other conveyance)—these proposals pose, in reality, an indirect attack on basic housing rights and protections. New laws against squatting are not necessary because substantially every state criminalizes trespassing and has long had summary judicial procedures by which landowners can quickly evict genuine squatters. Eliminating requirements for judicial hearings, and calling upon police to instantly remove alleged squatters, places legitimate tenants and other lawful occupants at risk. Key dangers include the improper removal of rightful occupants from their homes, the potential for arrest or violent interaction between tenants and police, and a heightened ability of landlords to intimidate tenants by threats of non-judicial police eviction.

This memo discusses the types of legislation states have recently passed or taken under consideration, the lack of evidentiary support for new anti-squatting measures, the perils these laws raise for lawful occupants, and strategies for resisting passage of anti-squatting legislation or, where necessary, mitigating the impacts on legitimate tenants.

1. Examples of new anti-squatting laws

One example of a new anti-squatting law is Georgia HB 1017 of 2024, which made it a crime to enter and reside in premises "knowingly acting without the knowledge or consent of the owner, rightful occupant, or [their] authorized representative."[2] Under the Georgia scheme, an alleged squatter is to be served a citation requiring them to present "properly executed documentation that authorizes the person's entry" to the head of the relevant law enforcement agency.[3] "Such documentation may include

[1] According to the National Apartment Association, five states had passed anti-squatting legislation by May 2024 (Alabama, Tennessee, Florida, Georgia, and West Virginia) with proposals under consideration in 11 others (Michigan (MI HB 5634), Mississippi (MS HB 1508), New Hampshire (NH SB 563), New Jersey (NJ SB 725), New York (NY A.9897), North Carolina (NC HB 966), Ohio (OH HB 478), Oklahoma (OK SB 1994), Pennsylvania (Homeowner Protection and Squatter Eviction Act) and South Carolina (SC H 5468)). Isa Wilson, "Squatters Legislation on the Rise," National Apartment Association (May 22, 2024), https://www.naahq.org/squatters-legislation-rise.

[2] Ga. Code § 16-7-21.1(1) ("A person commits the offense of unlawful squatting when he or she enters upon the land or premises of another and resides on such land or premises for any period of time knowingly acting without the knowledge or consent of the owner, rightful occupant, or an authorized representative of the owner. For purposes of this Code section, the term "resides" means to inhabit or live on or within any land or premises.").

[3] Ga. Code § 16-7-21.1(2) (

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a properly executed lease or rental agreement or proof of rental payments."[4] An alleged squatter who fails to present satisfactory documentation is subject to immediate arrest; even if the alleged squatter does present adequate documentation, they must still appear for a hearing within seven days and face additional criminal penalties–-as well as eviction from the premises—if "the submitted documentation was not properly executed or is not meritorious[.]"[5]

An even more aggressive anti-squatting law is Florida House Bill 621, which took effect on July 1, 2024.[6] HB 621 created a three-step process for the "expedited removal" of squatters. In step one, the owner of a residential dwelling may present a form complaint to the sheriff requesting "immediate removal of an unlawful occupant of a residential dwelling."[7] The owner must certify that "unauthorized person/s have unlawfully entered and are remaining or residing unlawfully" and have remained despite the owner's demand to vacate, that the property was not open to the public, that the occupants are not owners, co-owners, tenants, former tenants, or immediate family members, and that there is no pending litigation between the landlord and the occupants.[8] An especially troubling provision of the form affidavit provides "[t]he person or persons are not current or former tenants pursuant to any valid lease authorized by the property owner, and any lease that may be produced by an occupant is fraudulent," implying that law enforcement should not rely on any such lease an alleged squatter may present in corroboration of their right to possession.[9]

Upon receiving a complaint form, the sheriff must "verify that the person submitting the complaint is the record owner of the property (or authorized agent of the owner) "and appears otherwise entitled to relief under this section."[10] If so, then "the sheriff shall, without delay, serve a notice to immediately vacate on all the unlawful occupants and shall put the owner in possession of the real property."[11] The statute does not specify the procedures by which the sheriff is to verify that the complainant is "entitled to relief under this section."

Alabama's HB 182 of 2024 established a substantially identical procedure for the removal of alleged squatters, expanded the state's definitions of burglary and perjury to encompass certain kinds of squatting activity, and made law enforcement immune from liability for any loss or destruction of property that occurs in ejecting an alleged squatter.[12]

Laws such as these, while nominally aimed at unlawful trespassers who enter by force and occupy premises without any colorable right or title, pose a significant threat to actual tenants and other legitimate occupants. Merely being accused of squatting can result in a law enforcement officer appearing at one's door and demanding proof of lawful occupancy. Some of these confrontations are bound to end in improper evictions and displacements when tenants do not present satisfactory proof, or when police disregard perfectly sufficient documents. Others cases may end in violence or other bad outcomes independent of housing concerns. And the mere prospect of such police encounters empowers abusive landlords to intimidate tenants apprehensive about law enforcement interaction.

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[4] Ga. Code § 16-7-21.1(2).
[5] Ga. Code § 16-7-21.1(3-4).
[6] *See* Fl. Stat. § 82.036(2).
[7] Fl. Stat. § 82.036(2).
[8] *See* Fl. Stat. § 82.036(2).
[9] Fla. Stat. § 82.036(7).
[10] Fl. Stat. § 82.036(4).
[11] Fl. Stat. § 82.036(4).
[12] Ala. HB 182 of 2024, https://alison.legislature.state.al.us/files/pdf/SearchableInstruments/2024RS/TENZ595-1.pdf.

Still other states have made less extensive changes to their laws which were intended facilitate the non-judicial eviction of alleged squatters. Louisiana, for instance, amended its criminal trespassing statutes to include entering in or remaining "upon immovable property owned by another without express, legal, or implied authorization."[13] West Virginia enacted HB 4940 of 2024, which expressly excludes squatters from the state's landlord-tenant code and provides that "[n]o Court of this state shall require the utilization of eviction, or a similar procedure such as those found under the provisions of this chapter, by an owner in any instance involving the removal of a squatter from possession of a property, and such removal shall not be unduly hindered."[14] The impacts of these lesser changes is more difficult to anticipate. While a law that does no more than clarify or re-criminalize that the unlawful entry and occupancy of premises constitutes trespassing (as it already does at common law) may have little impact, the context and purpose of these acts may see them used to more aggressively confront and remove alleged squatters—particularly where a statute expressly makes a court order unnecessary.

In any event, no new laws are truly necessary to address squatting, as substantially all U.S. states already have adequate civil mechanisms to quickly adjudicate cases of alleged squatting and remove unlawful occupants after affording due process. Hence the harms these new measures are destined to inflict upon tenants and other legitimate occupants will surely outweigh whatever minimal benefits these laws provide in hastening the removal of genuine squatters.

2. Not all persons alleged to be occupying property unlawfully are squatters.

To "squat" on land means to engage in "[t]he unlawful occupation and use of a building or land as one's own without permission or ownership rights."[15] "A 'squatter' is a person entering upon lands, not claiming in good faith the right to do so by virtue of some agreement with another whom he believes to hold the title."[16]

Squatting in the United States has a long and complex history in other contexts, such as homesteading in the 19th century West. But the form of squatting with which present-day laws and legislative efforts are concerned tends to involve the unlawful entry and occupation of real property—especially in vacant residential homes. Some jurisdictions have specifically criminalized the act of squatting in residential property—albeit without necessarily establishing the accompanying procedures to encourage and facilitate immediate police removal.[17]

Even absent a specific anti-squatting statute, intentionally entering real property unlawfully was unlawful at common law[18] and has long been statutorily criminalized across the United States.[19] Hence squatting in residential premises almost certainly implies the commission of at minimum a trespassing

[13] 14 La. Rev. Stat. 14:63.
[14] West Virginia Code §37-6-31.
[15] SQUATTING, Black's Law Dictionary (12th ed. 2024).
[16] *Conway v. Shuck,* 157 S.W.2d 777, 778 (Ark. 1942), *quoting Mayor v. Hooks,* 184 S.E. 724 (Ga. 1936).
[17] *See, e.g.,* Michigan Comp. Laws 750.553.
[18] *See, e.g., Medeika v. Watts,* 957 A.2d 980, 982 (Me. 2008) ("A person is liable for common law trespass "irrespective of whether he thereby causes harm to any legally protected interest of the other, if he intentionally enters land in the possession of the other, or causes a thing or a third person to do so."), citing Restatement (2d) of Torts § 158(a) (1965).
[19] *See* 75 Am. Jur. 2d Trespass § 126 (Aug. 2024 update) ("In some jurisdictions, statutes provide for the award of multiple damages for trespasses to property occurring under certain circumstances.").

offense, and possibly even burglary[20] or other, more serious statutorily-defined crimes such as home invasion.[21] A person who violates such a criminal statute is potentially subject to arrest and criminal prosecution—as well as removal through summary forcible detainer or other expedited civil eviction proceedings. [22]

By definition, then, a person who occupies land *with* permission of the owner, or who *does* have a good faith belief in having obtained ownership or other possessory right is not a squatter.[23] This naturally would include an owner or person who believes to be an owner (even if that person's title may be flawed), or a residential tenant (who obtains possession through a rental agreement with the owner). A "tenant at will," which means a person who occupies with permission of the owner but without a fixed term or a promise to pay rent,[24] is not a squatter either; this may include friends or family members of the owner, resident managers or other workers who received housing in connection with employment, and so on.

Critically, a legitimate occupant does not become a squatter simply because a lease expires, a home is foreclosed, or an owner revokes permission. Persons who came into possession under a deed, lease, or other authorization but whose right to possession has since elapsed are "tenants at sufferance."[25] A "holdover tenant," which means a residential tenant whose lease has expired or been terminated by the landlord, is probably the most common variety of tenant-at-sufferance.[26] Holdover tenants and other tenants-at-sufferance occupy without a legal right to possession and may be expelled if the landlord so chooses.[27] But holding over on rental property or otherwise become a tenant-at-sufferance was not a criminal act at common law; with one limited exception,[28] no state has criminalized holdovers and the practice has not traditionally carried the cultural opprobrium applicable to burglary and like offenses.

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[20] 12A C.J.S. Burglary § 34 (May 2024 update) ("At common law, and under statutes declaratory thereof, the breaking and entering must be in the nighttime in order to constitute burglary, but, under statutes expressly or impliedly changing the common-law rule, burglary may be committed by a breaking and entering in the daytime.").
[21] *See* 75 Am. Jur. 2d Trespass § 165 (Aug. 2024 update) ("The gravamen of a home invasion offense is unauthorized entry.").
[22] *See* Shannon Holmberg, "Squashing the Squatting Crisis: A Proposal to Reform Summary Eviction and Improve Case Management Services to Stop the Squatter Supply, 65 Drake L. Rev. 839, 858 (2017) ("If there is a witness to the squatter's initial entry or evidence of a break-in or other property damage, police may be able to make a valid arrest based on trespass or other charges. However, in the absence of any evidence, the police are forced to make an on-the-spot determination of property ownership, a job that is reserved for a judge.").
[23] *See, e.g., Mele v. Russo,* 168 Misc. 760, 761, 9 N.Y.S.2d 203, 205 (Co. Ct. 1938) ("The respondent Mary Russo entered upon the lands in question by right as the wife of the owner. The occupancy thus commenced being lawful she cannot now be held to be a squatter or intruder.").
[24] *See* 52 C.J.S. Landlord & Tenant § 259 (May 2024 update).
[25] 68 Am. Jur. Proof of Facts 3d, § 4. Tenancy at sufferance/holdover tenancy (July 2024 update) ("In the words of Lord Coke, 'a tenant at sufferance is he that first came in by lawfull demise, and after his estate ended, continueth in possession and wrongfully holdeth over.'"), *quoting* Sir Edward Coke, First Part of the Institutes of the Laws of England; or, a Commentary Upon Littleton § 72 (1st Am. ed. 1812).
[26] Id. at § 5 ("A holdover tenant occupies the premises as more than a mere trespasser because he entered under a valid lease; however, because the tenant retains possession without the authority of that expired lease and lacks the permission of the landlord to occupy the premises, such a holdover tenant is classified at law as a tenant at sufferance.").
[27] *See* Id. at § 5.
[28] In Arkansas, under certain circumstances a tenant may become subject to arrest and prosecution for remaining in rental premises without payment of rent. *See* Ark. Code § 18-16-101.

3. Police expulsion of unwanted occupants from real property without a judicial hearing is likely violates multiple federal constitutional rights.

A critical, practical distinction between squatting and mere trespassing is that a squatter remains on the property in defiance of the owner's objection. An unlawful occupant who withdraws upon a demand to do so from the landlord or owner may have caused property damage through the unlawful entry and occupation, but no longer interferes with the owner's lawful possession. By contrast a squatter continues in possession, either claiming a possessory or ownership right of his own or at the very least insisting the landlord undertake legal procedures to remove them.

Substantially every U.S. jurisdiction has summary eviction procedures by which a landlord or other property owner may remove unwanted persons from premises. States enacted these laws in response to "'violence and quarrels and bloodshed'" that accompanied extra-judicial eviction;[29] while generally prohibiting such "self-help," states placated landlords by providing in its place a legal mechanism that was fast, inexpensive, and reliably delivered possession to the landlord.[30]

While some states differ in the procedural safeguards they afford tenants in summary eviction cases, in most jurisdictions summary eviction proceedings barely hover over the constitutional procedural due process minimums (and in some instances may not meet them at all).[31] Nevertheless the occupant has an opportunity for a hearing before a judicial officer at which to contest the landlord's claim for possession, and must be notified of that hearing—this fulfills the baseline constitutional requirements of notice, hearing, and impartial decision-maker.[32] Affording these basic procedures to a person facing expulsion from real property—especially residential property that a person is occupying as their home—is critical because the occupant may have the lawful right to possession.

Mathews v. Eldridge establishes the classical test for whether specific adjudicatory procedures satisfy due process in connection with the deprivation of property.[33] Under *Mathews*, whether a particular scheme satisfies procedural due process depends on:

(i) the nature and importance of the property at issue,
(ii) the risk of being erroneously deprived of that property through the procedures used,
(iii) the probable value additional safeguards would have in reducing that risk, and
(iv) the governmental interest and burdens the additional procedures would impose.[34]

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[29] *See Lindsey v. Normet,* 405 U.S. 56, 57 (1972), *quoting Entelman v. Hagood,* 95 Ga. 390, 392; 22 S.E. 545 (1895).
[30] *See Lindsey*, 405 U.S. at 85 ("this kind of summary procedure usually will mean in actuality no opportunity to be heard. Finding a lawyer in two days, acquainting him with the facts, and getting necessary witnesses make the theoretical opportunity to be heard and interpose a defense a promise of empty words. It is, indeed, a meaningless notice and opportunity to defend.") (Douglas, J., dissenting).
[31] *See, e.g., Lindsey*, 405 U.S. at 65 ("Of course, it is possible for this provision [requiring tenant to post double the rent as a bond to remain in possession pending trial] to be applied so as to deprive a tenant of a proper hearing in specific situations, but there is no such showing made here, and possible infirmity in other situations does not render it invalid on its face.").
[32] *See Lindsey* at 65; *see Mathews v. Eldridge,* 424 U.S. 319, 333 (1976) ("The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'"), *quoting Armstrong v. Manzo,* 380 U.S. 545, 552 (1965) *and citing Grannis v. Ordean,* 234 U.S. 385, 394 (1914); *see Marshall v. Jerrico, Inc.,* 446 U.S. 238, 242 (1980) ("The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases.").
[33] *Mathews v. Eldridge,* 424 U.S. 319 (1976).
[34] *Mathews*, 424 U.S. at 335.

Expulsion from one's home infringes upon a significant property interest of substantial importance.[35] Whatever risk a traditional summary eviction hearing may present of erroneously evicting a person, undoubtedly that risk would be substantially higher where the decision of whether to expel the occupant is made by an on-the-spot law enforcement officer rather than a judicial officer through an orderly court proceeding at which the occupant can present any relevant defenses and evidence to a competent and impartial judge. And convening such a judicial proceeding would not impose any drastic, costly, or impractical burdens on the government—particularly as the costs of such procedure may be recouped through filing fees.

This risk of erroneous deprivation is further exacerbated by provisions calling for police executing the removals of alleged squatters to disregard certain evidence of lawful occupation, such as lease documents or title instruments. For example, to invoke the police removal procedure under Alabama HB182, a property owner must aver that "any lease that may be produced by the unauthorized individual is fraudulent" and that such person "does not have an ownership interest in the property and is not listed on the title to the property unless the individual has engaged in title fraud[.]"[36] Without a proper judicial hearing, a tenant who produces a lease or quitclaim deed to prove their right to occupy the premises still faces potential removal by a police officer statutorily predisposed to presume such documents are fraudulent.

Another important requirement of procedural due process is that the hearing must generally be held before the deprivation occurs.[37] While in limited circumstances a post-deprivation hearing may suffice, "[i]n situations where the State feasibly can provide a pre-deprivation hearing before taking property, it generally must do so regardless of the adequacy of a post-deprivation tort remedy to compensate for the taking."[38] The need for a pre-deprivation hearing is especially strong in situations where there is no adequate post-deprivation remedy, or where the deprivation itself prejudices the individual's ability to defend.[39]

Laws like Florida HB 621 and Alabama HB 182, which mandate the removal of occupants from real property without a pre-deprivation hearing, are thus likely unconstitutional under the 14th Amendment Due Process Clause as applied to any occupant who claims a right of possession or ownership. This appears especially so given the U.S. Supreme Court's decision in *Chrysafis v. Marks,* which held that a state law entitling a tenant to protection under a Covid-19 eviction freeze by presenting a unilateral declaration of financial hardship impermissibly made such tenant "the judge in his own case."[40] If so, then allowing a landlord to present a declaration accusing an occupant of squatting (or other unlawful presence), declaring any such lease that person may present to be fraudulent, and providing no hearing

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[35] *See Greene v. Lindsey,* 456 U.S. 444, 449–50 (1982).
[36] Alabama HB182 of 2024, https://arc-sos.state.al.us/ucp/L1540462.AI1.pdf.
[37] *See Zinermon v. Burch,* 494 U.S. 113, 132 (1990).
[38] *Zinermon*, 494 U.S. at 132.
[39] *See, e.g., Goldberg v. Kelly,* 397 U.S. 254, 263–64 (1970) (in welfare context, only a pre-termination hearing affords procedural due process because the "termination of aid pending resolution of a controversy over eligibility may deprive an eligible recipient of the very means by which to live while he waits. Since he lacks independent resources, his situation becomes immediately desperate. His need to concentrate upon finding the means for daily subsistence, in turn, adversely affects his ability to seek redress from the welfare bureaucracy.).
[40] *Chrysafis v. Marks,* 141 S. Ct. 2482, 210 L. Ed. 2d 1006 (2021) ("If a tenant self-certifies financial hardship, Part A of CEEFPA generally precludes a landlord from contesting that certification and denies the landlord a hearing. This scheme violates the Court's longstanding teaching that ordinarily 'no man can be a judge in his own case' consistent with the Due Process Clause."), *quoting In re Murchison,* 349 U.S. 133, 136 (1955).

for the occupant to contest those assertions, makes the landlord the judge in its own case.[41] And while Florida authorizes a private civil action for wrongful removal,[42] this post-deprivation remedy cannot save the statute in cases where a pre-deprivation hearing would have been feasible.[43]

In addition, the U.S. Supreme Court has held that the warrantless removal of personal property from residential premises by police, where no hearing has been held and no judicial order authorizing the eviction has issued, may also amount to an unreasonable search or seizure in violation of the Fourth Amendment.[44] This is precisely what laws like Florida HB 621 and Alabama HB 182 purport to authorize, even though the current U.S. Supreme Court has held that even the hot pursuit of a misdemeanor suspect into a dwelling does not render a subsequent warrantless entry and search objectively reasonable.[45] Even where squatting is characterized as a felony (as in Florida and Alabama, if the occupant creates $1,000 in damages), mere squatting presents none of the exigent circumstances necessary to justify a warrantless search: it is a nonviolent offense that is, by its nature, stationary (unlike the "ready mobility" that justifies warrantless searches of vehicles, for example).

Whether as a violation of the Fourth Amendment or the Fourteenth, however, laws compelling police officers to remove alleged squatters are bound to result in constitutional claims, litigation, and probable liability for local governments. This is even apart from any excessive force claims, personal property deprivations, or other possible misconduct that police may commit in the course of these removals.

4. New anti-squatting laws will intimidate tenants and lead to dangerous encounters with police.

Perhaps the most disturbing feature of the new squatting laws is one that will seldom show up in courtrooms. Landlords who merely threaten to report tenants as squatters will likely prompt plenty of unwanted occupants—including tenants and others with legitimate claims to possession—to vacate for fear of having the police called to their residences.

In the U.S., fear of police interaction is well-founded. In "a given year, an estimated 1 million civilians experience police threat of or use of force."[46] Of those, more than 250,000 people are injured by police, including approximately 75,000 requiring hospital treatment and more than 600 deaths.[47] Opinion polling reflects a persistent lack of confidence in U.S. police, with only 51% of the population expressing

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[41] See *Id., citing United States v. James Daniel Good Real Property,* 510 U.S. 43, 53 (1993) (due process generally requires a pre-deprivation hearing).

[42] Fl. Stat. 82.036(6) ("A person may bring a civil cause of action for wrongful removal under this section. A person harmed by a wrongful removal under this section may be restored to possession of the real property and may recover actual costs and damages incurred, statutory damages equal to triple the fair market rent of the dwelling, court costs, and reasonable attorney fees.").

[43] See *Zinermon*, 494 U.S. at 132.

[44] *See Soldal v. Cook Cnty.,* 506 U.S. 56, 62 (1992).

[45] *See Lange v. California*, 594 U.S. 295, 313 (2021) ("The flight of a suspected misdemeanant does not always justify a warrantless entry into a home. An officer must consider all the circumstances in a pursuit case to determine whether there is a law enforcement emergency. On many occasions, the officer will have good reason to enter—to prevent imminent harms of violence, destruction of evidence, or escape from the home. But when the officer has time to get a warrant, he must do so—even though the misdemeanant fled.").

[46] University of Illinois-Chicago, Law Enforcement Epidemiology Project, Facts and Figures on Injuries Caused by Law Enforcement, https://policeepi.uic.edu/data-civilian-injuries-law-enforcement/facts-figures-injuries-caused-law-enforcement/, last visited Aug. 13, 2024.

[47] Id.

at least "a great deal of confidence" in police in 2024—up from a record low 43% in 2022.[48] Note the public has even less confidence in the criminal legal system, with only 21% expressing at least a great deal of confidence in 2024.[49]

The lack of public confidence in the police is far more pronounced among people of color, only 31% of whom expressed a great deal of confidence in police in 2024.[50] In one indication of police skepticism, "Black adults are about five times as likely as whites to say they've been unfairly stopped by police because of their race or ethnicity."[51] Blacks and Latinos are "twice as likely to experience threat of or use of force during police-initiated contact," and Blacks are "more than twice as likely to be killed and almost 5-times more likely to suffer an injury requiring medical care at a hospital compared to white non-Hispanics."[52] Despite comprising just 6.1% of the total U.S. population, Black males represent 24.9% of all persons killed by law enforcement.[53]

Given the low levels of confidence police and the criminal legal system, and the significant risk of being seriously injured or killed in a police encounter, many individuals in states with anti-squatting laws will likely leave their homes—even if they have a legal right to occupy them—to avoid the risks of police interaction. Of those who remain, that some will be subjected to police violence appears to be a statistical inevitability.

5. Justifications advanced for anti-squatting legislation are substantially without merit.

One impetus behind the anti-squatting legislation is the claim by its proponents that the U.S. is supposedly undergoing a "squatting crisis." According to a *Realtor.com* article, "stories—of squatters taking over vacant properties, costing homeowners thousands to evict—are becoming shockingly common today," with "an explosion" of such squatting since 2023.[54] However, there is no reliable data on the frequency of squatting—let alone evidence of any squatting crisis.

To date, the only statistics to have appeared in the squatting discussion are a set of figures from the industry-side National Rental Home Council, which claims that about 1,200 homes in the Atlanta area have had squatters, 475 in the Dallas-Fort Worth area, and about 125 in Orlando/Orange County, Florida.[55] As those three metro areas supposedly have the greatest amount of squatting, the NRHC numbers imply that no other U.S. metro has had more than 125 squatting cases. NRHC does not appear to have released any public data or report summary, so the actual extent of their findings is unclear beyond what appears in media reports. Notably, the wording of the news reports, sweeping in homes

[48] Megan Brenan, "U.S. Confidence in Institutions Mostly Flat, but Police Up," Gallup (July 15, 2024), https://news.gallup.com/poll/647303/confidence-institutions-mostly-flat-police.aspx#:~:text=Faith%20in%20the%20police%20fell,a%20record%20low%20of%2043%25.
[49] Id.
[50] Id.
[51] Drew DeSilver, Michael Lipka, and Dalia Fahmy, "10 things we know about race and policing in the U.S.," Pew Research Center (June 3, 2020), https://www.pewresearch.org/short-reads/2020/06/03/10-things-we-know-about-race-and-policing-in-the-u-s/.
[52] UIC, Law Enforcement Epidemiology Project, Facts and Figures on Injuries Caused by Law Enforcement, *supra*.
[53] Id.
[54] Kiri Blakeley, "When Squatters Strike: Why Squatting Is On the Rise—and So Hard To Solve," Realtor.com (Feb. 19, 2024), https://www.realtor.com/news/trends/when-squatters-strike-why-squatting-is-on-the-rise-and-so-hard-to-solve/.
[55] Khaleda Rahman, "Squatting Map Shows Cities With Highest Number of Homes Taken Over," Newsweek (Apr. 3, 2024), https://www.newsweek.com/squatting-map-cities-highest-number-homes-1886005.

that "have had squatters," suggests the NRHC data may not reflect a current snapshot of squatting activity but rather includes historical squatting activity as well.

According to one news report, the NRHC data comes from a "survey" of the organization's members (i.e., landlords), while another article attributes the figure to an "estimate" by NRHC itself.[56] If the information indeed comes from a survey, a significant question surrounding the data could be the way in which the survey or its respondents define "squatting." While the formal legal definition is narrowly circumscribed to occupants with absolutely no legal right to occupy the property—and excludes holdover tenants, tenants delinquent in rent, authorized guests who overstay, etc.—many landlords and their advocates define squatting far more broadly. For example, one industry-side blog targeted at residential landlords explained squatting as follows:

> "What is squatting? Squatting occurs when someone occupies your property without your permission. For landlords, that means a tenant lives in your rental property without paying rent."[57]

Of course, it is fundamental that a genuine tenant does not become a squatter merely by defaulting on rent. But survey respondents who think of "squatting" in such erroneously broad terms might well report having had squatters in their rental properties when in fact a tenant simply failed to pay rent or move out after lease expiration. Yet with NRHC not having made their complete findings and methods public, it remains unknown how many persons were surveyed, what questions they were asked, when the survey was conducted, what qualifications the persons conducting the survey had or what protocols they might have employed—or even if the data is actually based on survey results at all.[58]

In summary, the NRHC data does not appear to carry any serious value and policy makers ought not rely upon it. And there does not appear to be any other meaningful data on squatting—certainly none from which the existence of a "crisis" could be ascertained. By contrast, England and Wales formally criminalized squatting in 2012[59] only after actual data showed an astounding 22,000 squatting cases and a 132% increase over the preceding 15 years.[60]

Even some of lawmakers who have advanced anti-squatting legislation acknowledge there is no reliable data suggesting an increased incidence of squatting activity in the U.S., and that they are relying solely on anecdotal evidence. Consider the remarks of New York legislator who sponsored that state's anti-squatting legislation:

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[56] *Compare* Rahmnan, *supra* ("The council surveyed its members who own single-family rental homes and found that about 1,200 homes in the Atlanta area have had squatters.") with Michael Sasso and Patrick Clark, "Atlanta's Squatter Problem Is Vexing Wall Street Landlords," Bloomberg (Jan. 25, 2024) ("Around 1,200 homes in metro Atlanta recently have had squatters — or people occupying a property illegally without a landlord-tenant relationship — according to an estimate from the National Rental Home Council trade group.").

[57] Jeff Rohde, "Squatters' Rights: What Landlords Need To Know," Stessa.com, https://www.stessa.com/blog/squatters-rights/, last visited Aug. 14, 2024.

[58] The NRHC data is not available on NRHC's website and has not been found despite the author's multiple internet searches.

[59] *See* Legal Aid, Sentencing and Punishment of Offenders Act 2012, § 144, https://www.legislation.gov.uk/ukpga/2012/10/section/144/enacted.

[60] *See* North Wales Live, "Rise in squatters in North Wales," Daily Post (Sept. 6, 2010), https://www.dailypost.co.uk/news/north-wales-news/rise-squatters-north-wales-2745311.

> "New York Democratic state Sen. Jessica Scarcella-Spanton, who represents Staten Island and southern Brooklyn, acknowledged there is little data to support claims that squatting is on the rise, or even that it happens that often.
>
> But Scarcella-Spanton told Stateline that 'once is enough' and that there needs to be a quicker way to remove squatters."[61]

The contention that "once is enough" is non-sequitur as there is also neither any evidence nor any logical reason to believe that anti-squatting legislation would actually deter squatting from happening in the first place. Furthermore, the extent to which squatting occurs is a different question from the extent to which squatters refuse to vacate properties when discovered by an owner—i.e., the only situations in which legal procedures actually become necessary; according to multiple experts, actual litigation involving alleged squatters is "extremely rare."[62] Even if anti-squatting legislation would reduce the amount of squatting and prevent there from being a single case in which a landlord needed to bring judicial proceedings to remove an actual squatter, the wisdom of undermining housing security and due process rights for all renters simply to achieve these minimal benefits is highly dubious.

Senator Scarella-Spanton's remarks also allude to another major justification advanced for the new anti-squatting laws: that summary judicial eviction procedures supposedly take too long and cost landlords too much money. Yet in most states, a court may hear a summary eviction as soon as 7-10 days after the case is filed; some states allow hearings on as little as 2-3 days' notice.[63] Though it is possible for eviction cases to continue on for weeks or even months, longer-duration eviction cases tend to involve genuine tenants who may have real defenses—not squatters occupying without color of title.[64] Filing fees range from as little as $15 for certain cases in Virginia to $285 for some Minnesota cases—though in most states the filing fees are well under $100.[65] These are not significant costs and delays, particularly measured against the potential wrongful eviction of a lawful occupant from their home with no meaningful opportunity to defend.

Proponents of anti-squatting legislation may contend that landlords are unlikely to abuse such laws. But residential landlords circumvent or violate tenants' rights with regularity at present. Overall in the U.S., an estimated 5.5 forced moves occur through informal evictions for every judicial eviction—usually

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[61] Robbie Sequeira, "Anxiety over squatters, fueled by TikTok, inspires a wave of legislation," Stateline (Apr. 26, 2024), https://stateline.org/2024/04/26/anxiety-over-squatters-fueled-by-tiktok-inspires-a-wave-of-legislation/.

[62] Maham Javaid and María Luisa Paúl, "Squatters have become a right-wing talking point. What to know about the rare practice," Washington Post (April 3, 2024) ("Juan Pablo Garnham, a researcher and communications manager at Princeton University's Eviction Lab, called squatting 'an extremely rare issue.' [Eric] Dunn, who started his law career in Detroit — 'where there's more abandoned homes than the city can count' — said, 'I can probably count on one hand the number of legitimate squatting cases I've seen.' Sateesh Nori, a clinical adjunct professor of housing rights at NYU Law School, said, 'I haven't heard of a single case recently in which a homeowner says there's squatters in their home.'"), https://www.washingtonpost.com/nation/2024/04/03/squatters-rise-florida-ny-georgia/

[63] *See* Legal Services Corporation, LSC Eviction Laws Database, Q. 20 ("How many days before an eviction hearing must a tenant be served with a court summons?), , https://www.lsc.gov/initiatives/effect-state-local-laws-evictions/lsc-eviction-laws-database, last visited Aug. 9, 2024.

[64] *See generally* Melissa McCall, "Defenses to Eviction," Findlaw.com (Oct. 4, 2023), https://www.findlaw.com/realestate/landlord-tenant-law/defenses-to-eviction.html.

[65] Legal Services Corporation, LSC Eviction Laws Database, *supra*, Q. 15 ("What is the fee for filing an eviction action?").

through lawful means but often by unlawful tactics as well.[66] A 2017 study, for instance, attributed 10% of forced moves in New York City to landlord harassment.[67] A National Housing Law Project survey in July 2020, with Covid-19 eviction freezes in effect throughout the country, found that 53% of tenant advocates had observed illegal lockouts and 18% had seen tenants face landlord intimidation and eviction threats since the onset of the pandemic in the U.S. just a few months earlier.[68] There can be little question that landlords already willing to use such improper tactics to evict unwanted tenants will attempt to invoke new anti-squatting procedures against legitimate tenants as well—or will at least threaten to do so.

The inclusion (in anti-squatting legislation) of legal remedies for wrongful removals may deter some actual police calls. But lockouts, utility disconnections, and other extrajudicial means of evicting tenants are not uncommon even though similar legal remedies are available for those cases.[69] Moreover, a person who moves out in response to a landlord's *threat* to call the police (i.e., rather than risking the outcome of an actual police encounter), might not be able to invoke such statutory remedies.

6. Undermining rights and protections for legitimate tenants is the actual purpose of anti-squatting legislation.

With no credible evidence of a squatting crisis, and existing legal procedures being adequate to remove squatters in the rare cases they are needed, the impetus for new anti-squatting legislation can hardly be seriously attributed to genuine concerns about squatting. Rather, providing landlords with new tools to intimidate legitimate tenants is more likely the real motive. As Policylink's Tram Hoang explains:

> Advancing anti-squatter legislation is a slippery slope to eroding eviction protections passed during the last few years, and that's exactly what the real estate lobby wants: They themselves refer to squatter legislation as 'eviction policy.'" Clearly, they are hoping to put legislators on a path to repealing hard-fought regulations to protect tenants by inferring a false equating of squatters (who live in vacant properties without legal agreements) and tenants (who legally inhabit homes with leases).[70]

As always, a landlord's credible ability to displace tenants outside the judicial process has a chilling effect on tenants, deterring them from exercising basic rights like requesting repairs, resisting housing discrimination, or forming tenant organizations. Normalizing the police removal of occupants from residential property without a judicial order could also serve as a Trojan horse for expanding the scope of such extrajudicial removals in the future—such as to tenants delinquent on rent, or whose leases have expired, or who have committed (or allegedly committed) serious lease violations.

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[66] Sabiha Zainulbhai, Nora Daly, "Informal Evictions: Measuring Displacement Outside the Courtroom" (Jan. 20, 2022), https://www.newamerica.org/future-land-housing/reports/informal-evictions-measuring-housing-displacement-outside-the-courtroom/.

[67] Sophie Collyer and Lily Bushman-Copp, "Forced Moves and Eviction in New York City," Columbia Population Research Center and Robin Hood, Appx. 1 (May 2019), https://robinhoodorg-production.s3.amazonaws.com/uploads/2019/08/HOUSING-REPORT_8.5.pdf.

[68] National Housing Law Project, "Stopping COVID-19 Evictions Survey Results" (July 2020), https://www.nhlp.org/wp-content/uploads/Evictions-Survey-Results-2020.pdf.

[69] Legal Services Corporation, LSC Eviction Laws Database, Q. 7 ("What remedies are available to a tenant who is unlawfully evicted?), https://www.lsc.gov/initiatives/effect-state-local-laws-evictions/lsc-eviction-laws-database, last visited Aug. 13, 2024.

[70] Tram Hoag, "The US Has a Housing Crisis, Not a Squatting Crisis," Commondreams.org (Aug. 11, 2024), https://www.commondreams.org/opinion/anti-squatter-laws.

Lawmakers should have no illusions: the ancillary impact of so-called anti-squatting legislation on legitimate tenants is the real objective of industry proponents, and likely where the much greater practical effects will be felt.

7. Resisting anti-squatting legislation

If anti-squatting legislation has not already been introduced, or even passed, in a particular state, it likely will soon. Advocates looking to push back against new anti-squatting legislation should consider the following arguments, as discussed in greater detail above:

- Given the inevitable impacts on legitimate tenants and occupants, a state should not seriously consider anti-squatting measures unless and until an actual squatting crisis is shown to exist in the state (i.e., through reliable statistical data). This means data should not only establish reliable estimates for the amount of squatting activity happening in the state, but also the frequency with which squatters refuse to leave when asked and thus force owners to invoke legal procedures to remove them.

- Authorizing police to remove alleged squatters without a hearing is bound to result in constitutional rights violations. A state should not seriously consider anti-squatting measures without first arriving a reliable estimate for the number of legitimate occupants who will be expelled from their homes on false allegations of squatting. Even if the state still wishes to pass the legislation despite this eventuality, the cost of litigating and settling claims from wrongfully-dispossessed tenants should be factored into the state budget as part of the legislation. Alternatively, the legislation should require notice and an opportunity for a judicial hearing before an alleged squatter is removed.

- Some landlords will abuse the legislation by threatening to call police and reporting tenants as squatters, thus intimidating tenants and chilling them from exercising rights and protections. There is no practical way of mitigating this form of abuse.

- Authorizing police to remove alleged squatters without judicial procedures is likely to result in many contentious interactions between police and alleged squatters. These dangerous interactions will likely be even more frequent when the alleged squatters are people of color. Legislators concerned about discriminatory policing and reducing the incidence of police violence should oppose this legislation. As such encounters may be hazardous for police as well, advocates should consider attempting to enlist police advocates and municipal governments as allies in opposition to anti-squatting bills.

In situations where anti-squatting legislation is likely to pass irrespective of these considerations, advocates should look to mitigate the impacts of such measures on legitimate tenants and occupants through provisions such as:

- Prohibiting landlords from *threatening* to call police and report tenants as squatters, and providing for civil fines and a private cause of action for damages and injunctive relief against landlords who make such threats—as well as severe sanctions against owners who actually proceed with false reports of squatting.

- Authorizing police removal only of persons who admit having entered without permission of the owner or occupying without any claim of right. In case of any doubt the police should not carry out the removal.

- Requiring police to attempt contact with the alleged squatter by telephone, email, or other means of remote communication so as to minimize the potential for violent interaction. A homeless outreach worker or other appropriate professional should accompany the police when making contact with alleged squatters.

- Many, and likely the substantial majority of, persons removed from residential premises under these laws will have been living there for lack of other shelter resources. Police should not remove a person without first identifying an appropriate and available shelter where that person would be admitted.

- Imposing significant training requirements on police officers who will exercise the anti-squatting provisions, especially emphasizing that any occupant who entered with permission of the owner or in good faith under any lease or deed or other claim of right is not a squatter—even if that lease has expired or the deed or other conveyance turns out not to have been valid.

Finally, in jurisdictions where anti-squatting legislation has already passed or is later enacted, advocates should consider challenging these laws judicially. A full exploration of the legal theories by which such challenges might be mounted is beyond the scope of this memo. But a few claims appear instantly plausible:

- *Procedural due process*. As discussed above, removal without a pre-deprivation hearing would appear likely to violate the due process rights of any legitimate tenant or other occupant with a cognizable property interest in possession of the premises. This could supply grounds to secure an order prohibiting enforcement of the statute unless and until an appropriate hearing procedure is established,[71] perhaps on behalf of a tenant improperly removed under the procedure or a tenant with reason to anticipate such an attempted removal.

[71] In considering claims of this kind, advocates should pay particular attention to the nature and sufficiency of alternative adjudication procedures established by some anti-squatting bills, such as Georgia's HB 1017:

> "(2) Any person who commits or is accused of committing the offense of unlawful squatting … shall receive a citation advising that they must present to the head of the issuing law enforcement agency or their designee within three business days of receiving the citation for such alleged offense properly executed documentation that authorizes the person's entry on such land or premises. Such documentation may include a properly executed lease or rental agreement or proof of rental payments.
>
> (3) If such person is unable to provide the documentation required by paragraph (2) … such person shall be subject to arrest for unlawful squatting…
>
> (4) If such person does provide documentation that authorizes such person's entry on the land or premises, a hearing shall be set within seven days of the submission of such documentation and if the court finds that the submitted documentation was not properly executed or is not meritorious, such person shall be subject to demand for possession and removal [and] be subject to arrest and upon conviction penalties … and shall be assessed an additional fine based on the fair market monthly rental rate of the land or premises."

- *Race discrimination*. Black tenants would appear to be most vulnerable to abuses of anti-squatting laws, both because they face residential eviction at higher rates and also because they face higher levels of danger from police interaction. If empirical data bears this expectation out, then the enforcement of an anti-squatting law could potentially be shown to have a disparate impact on Black renters. Such a showing would compel the defendant (likely the state or a local government that enforced the law) to justify the disparate impact—which it likely could not do given that the law likely violates procedural due process, that there is no meaningful data establishing the need for such a law, and that a judicial summary eviction proceeding supplies a less-discriminatory alternative.

- *Bad faith or retaliation*. Tenants of landlords who have attempted in bad faith to use the anti-squatting procedure to remove legitimate tenants, or who have threatened to do so, could potentially seek injunctions to restrain that landlord from using the anti-squatting procedure in the future. While such a claim might not invalidate a law altogether, enjoining specific landlords prone to abuse the procedure may significantly mitigate its worst effects.

Georgia HB 1017 of 2024, Sec. 3 (to be codified at Georgia Code § 16-7-21.1).