

Issue Summary: CDC Eviction Moratorium Litigation

Alabama Association of REALTORS®, Georgia Association of REALTORS®, *et al.* v. HHS, *et al.* (U.S. Dist. Ct. D.C., Case No. 1:20-cv-03377-DLF, filed November 20, 2020)

NAR has always maintained that the best solution for all parties whose housing was impacted by COVID-19 was rental assistance to cover the rent, taxes, and utility bills for tenants struggling during the pandemic. This prevents two crises—one for tenants, and one for mom-and-pop housing providers who do not have a reprieve from their bills. With rental assistance secured, the economy strengthening, and unemployment rates falling, there is no need to continue a blanket, nationwide eviction ban. Our focus now is on the swift and full implementation of rental assistance as we aim to regain stability and normalcy in America's housing market.

Ruling in favor of the Alabama and Georgia Associations of REALTORS®, two housing providers, and their property management companies (the plaintiffs), on August 26, 2021, the Supreme Court [vacated the stay](#) allowing the D.C. District Court's decision to take effect that held the moratorium exceeds the Centers for Disease Control and Prevention's (CDC's) authority.

In the ruling, the Supreme Court held that specific Congressional authorization was necessary for a federal eviction moratorium to continue. However, housing providers should still proceed carefully with eviction proceedings, as state courts may not be processing these actions right away, and [in some areas, state and local moratoria remain in place.](#)

Prior to the Supreme Court order, on August 3, 2021, the CDC issued a [fourth extension of the eviction moratorium](#), effective through October 3, 2021, after the previous CDC eviction moratorium expired on July 31, 2021. With NAR's support, the plaintiffs, who originally filed a lawsuit against the CDC in November 2020 on behalf of housing providers nationwide, again challenged the latest extension of the eviction moratorium that eventually resulted in the Supreme Court's August 26 ruling effectively ending that latest extension.

SUPREME COURT ORDER DETAILS:

On August 26, 2021, six justices on the U.S. Supreme Court agreed that specific Congressional authorization was necessary for a federal eviction moratorium to continue, providing much needed relief to the nation's small housing providers who have faced financial hardship for more than a year.

The CDC relied on §361(a) of the *Public Health Services Act* for authority to promulgate and extend the eviction moratorium, which the Supreme Court rejected as a "stretch" and that Congress would have specified authorizing an agency to "exercise powers of [such] 'vast 'economic and political significance.'" The Supreme Court also agreed with the D.C. District Court that the government was unlikely to succeed on the merits, where the stay was no longer justified based on the four traditional stay factors: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.



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The Justices wrote that “careful review of that record makes clear that the applicants are virtually certain to succeed on the merits of their argument that the CDC has exceeded its authority. ... the CDC has imposed a nationwide moratorium on evictions in reliance on a decades-old statute that authorizes it to implement measures like fumigation and pest extermination. **It strains credulity to believe that this statute grants the CDC the sweeping authority that it asserts.**”

Furthermore, the ruling stated that “[t]he moratorium has put the applicants, along with millions of landlords across the country, at risk of irreparable harm by depriving them of rent payments with no guarantee of eventual recovery.”

See below for the full procedural history of the case, where there is still an appeal pending before the D.C. Circuit Court.

LITIGATION BACKGROUND:

The Alabama and Georgia Associations of REALTORS®, two housing providers, and their property management companies filed the lawsuit this past November in defense of the millions of mom-and-pop housing providers across the country whose livelihoods have been in danger of financial ruin following months of lost income due to unpaid rent as a result of the moratorium. The rental payments go toward the mortgage on the properties, paying for services, taxes, and upkeep to maintain the properties’ safety and livability. The lawsuit challenged the lawfulness of the eviction moratorium on statutory and constitutional grounds.¹

In holding for the plaintiffs on May 5, the D.C. District Court decisively rejected the CDC’s position that it has unlimited authority to regulate the nation’s economy during a pandemic. The court held that Congress never granted the CDC such unlimited power and vacated the CDC order nationwide. Following its ruling, however, the District Court granted a stay of its order pending the governments’ appeal, meaning the moratorium remained in place. The plaintiffs’ appealed then to the D.C. Circuit Court to lift the stay, which was [denied](#) on June 2, 2021. The plaintiffs then asked the Supreme Court to lift the stay.

On June 29, 2021, while five justices on the U.S. Supreme Court agreed the CDC lacked the authority to implement a nationwide eviction moratorium, the Court also determined that the order would remain in place until the end of July. In a concurring opinion, Justice Kavanaugh opined that leaving the moratorium in place would allow for “*additional and more orderly distribution of the congressionally appropriated rental assistance funds.*” Thus, a five-justice majority denied the housing providers’ request to vacate the stay, keeping the moratorium in effect until the end of July.

Private property rights in America scored an early significant victory with this order, where four of the Supreme Court’s justices agreed on the merits of the case challenging the lawfulness of the eviction moratorium. These four justices stated they would have granted the request to end the eviction

¹ The plaintiffs challenged how the CDC exceeded its authority under the *Public Health Services Act* and in violation of the *Administrative Procedures Act* and *Regulatory Flexibility Act*; how the Order constituted an unconstitutional taking under the Fifth Amendment, and; how the Order violated due process rights.

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ban immediately. In addition, while Justice Kavanaugh was the deciding vote to keep the moratorium in place until the end of July, the key takeaway came from his concurring opinion, where Justice Kavanaugh expressed his belief that the CDC lacked authority to issue the nationwide ban on evictions. *"In my view, clear and specific congressional authorization (via new legislation) would be necessary for the CDC to extend the moratorium past July 31,"* Justice Kavanaugh wrote.

After the Administration let the eviction moratorium expire on July 31st, but then effectively renewed the order again on August 3, 2021, the plaintiffs again challenged the CDC's actions. An [emergency motion](#) was filed on August 4, 2021, in the U.S. District Court for the District of Columbia, seeking enforcement of the June 29th [U.S. Supreme Court Order](#) that stated the CDC could not extend the moratorium beyond July 31st, without congressional authorization via new legislation. On August 13, 2021, after holding a hearing on the motion, the D.C. District Court [denied](#) the plaintiffs' motion to lift the stay of the District Court's order pending appeal, thereby leaving the CDC's extension of the eviction moratorium in place.

In that holding, the D.C. District Court determined the most recent August 3rd extension of the eviction moratorium is a continuation of the previous orders, and thus subject to the stay issued by the court in May. While the D.C. District Court felt bound by the D.C. Circuit Court's June judgement upholding the stay, the court also recognized that the Supreme Court and other federal appellate courts *"call into the question the D.C. Circuit's conclusion that the CDC is likely to succeed on the merits . . . [and] absent the D.C. Circuit's judgement, this Court would vacate the stay."*

The plaintiffs immediately [appealed](#) the District Court's decision to keep the stay in place to the D.C. Circuit on August 14, 2021. On August 20, 2021, a three-judge panel of the D.C. Circuit Court likewise [denied](#) the plaintiffs' request to vacate the stay pending appeal. As a result, the plaintiffs [appealed](#) to the Supreme Court that resulted in the August 26 order lifting the stay, effectively striking down the eviction moratorium.

Based on the Supreme Court's order, the plaintiffs will request that the government dismiss their D.C. Circuit appeal on the merits of the case.

NEXT STEPS:

- **Housing providers should keep in mind that [some state and local governments may still have their own eviction moratoria in place that may still be in effect.](#)**
 - In addition, some state court systems adopted policies barring or disfavoring the filing of eviction proceedings in light of the CDC eviction moratorium, which may not be automatically lifted based on the recent CDC actions or judicial rulings.
- **For more information on other Federal Agency Actions related to eviction and foreclosure moratoria, for both renters and homeowners, see [NAR's latest resource.](#)**



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NAR ADVOCACY:

NAR remains focused on ensuring the effective deployment of rental assistance to protect tenants and avoid the ongoing financial burdens unfairly placed on housing providers. Housing providers want to *keep* tenants, not evict them, and hope that the rental assistance provided by Congress will help keep individuals in their homes, while preventing them from continuing to accumulate past due rent. The slow deployment of the rental assistance funding is a serious problem for housing providers that must still be addressed in order to avoid instability in the rental housing market.

NAR continues to work closely with the Administration, Congress, and a large coalition of industry partners on to prioritize rental assistance distribution so that tenants and housing providers alike can meet their financial obligations and the housing market is stabilized.

Stay tuned to nar.realtor/rental-assistance for the latest information and see NAR's extensive list of [Rental Assistance Resources](#).

ADDITIONAL RESOURCES:

[August 26, 2021 – The Supreme Court's Order Granting the Request to Vacate the Stay](#)

[August 20, 2021 – The D.C. Circuit Court's Order Denying the Motion to Vacate the Stay Pending Appeal](#)

[August 13, 2021 – The U.S. District Court for D.C.'s Order Denying the Plaintiffs' Emergency Motion to Enforce the Supreme Court's Ruling and to Vacate the Stay Pending Appeal](#)

[August 3, 2021 – CDC's Extension of the Eviction Moratorium](#)

[June 29, 2021 – The Supreme Court's Order Denying the Application to Vacate the Stay](#)

[June 2, 2021 – The D.C. Circuit Court's Order Denying the Motion to Vacate the Stay Pending Appeal](#)

[May 14, 2021 - The U.S. District Court for D.C.'s Order Granting the Emergency Motion for a Stay Pending Appeal](#)

[May 5, 2021 - The U.S. District Court for D.C.'s Decision Vacating the CDC Eviction Moratorium](#)

