

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 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.

On June 29, 2021, five justices on the U.S. Supreme Court agreed the Centers for Disease Control and Prevention (CDC) lacked the authority to implement a nationwide eviction moratorium. However, the Court also determined that the moratorium should remain in place until its expiration date on July 31st, resulting in the request to vacate the stay brought by housing providers being denied.

In May, the U.S. District Court for the District of Columbia struck down the CDC's nationwide eviction ban, concluding the moratorium exceeds the limits Congress placed on the CDC's authority, but kept the moratorium in place pending the government's [appeal](#). The Georgia and Alabama Association of REALTORS®, who brought the lawsuit on behalf of housing providers nationwide with NAR's support, had asked the Supreme Court to lift that stay after the D.C. Circuit Court [upheld it](#) in June.

While the CDC recently extended the eviction moratorium through July 31, 2021, the Supreme Court's Order should ensure there are no further extensions or similar CDC actions without congressional authority.

SUPREME COURT ORDER DETAILS:

On June 29, 2021, while five justices on the U.S. Supreme Court agreed the Centers for Disease Control and Prevention (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 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 American still scored a 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 on a number of statutory and constitutional grounds.¹ These four justices stated they would have granted the request to end the eviction ban immediately.

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.



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)

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.

This sets the stage for the moratorium to expire at the end of July and, more importantly, sets the precedent that the CDC cannot institute a similar order or extension in the future without congressional authorization.

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.

In holding for the plaintiffs, 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.

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.

NEXT STEPS:

- **Housing providers in states following the CDC order should continue follow the eviction moratorium as it remains in effect through its expiration on July 31st.**
- **The government's appeal on the merits of the D.C. District Court's order vacating the eviction moratorium could take several more months to resolve.**
 - Note that the [CFPB's interim final rule](#) remains in effect, which requires debt collectors seeking eviction for nonpayment of rent to provide clear and conspicuous written notice to tenants of their rights under the CDC's eviction moratorium.
- **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. [Learn more.](#)**
 - 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 when the CDC order expires at the end of July.



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 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. NAR continues to work closely with the Administration and a large coalition of industry partners on these efforts so that tenants and housing providers alike can meet their financial obligations and the housing market is stabilized.

Stay tuned to nar.realtor for the latest information.

ADDITIONAL RESOURCES:

[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](#)

[State by State Eviction and Foreclosure Moratoriums](#)

[NAR’s Coronavirus Housing Providers FAQs](#)

[Emergency Rental Assistance Program](#)

