

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.

On August 3, 2021, the Centers for Disease Control and Prevention (CDC) issued a [fourth extension of the eviction moratorium](#), effective through October 3, 2021. The previous order expired on July 31, 2021, and the most recent order states the expiration is subject to revision based on the changing public health landscape.

With NAR's support, the Alabama and Georgia Associations of REALTORS® (Plaintiffs), who originally filed a lawsuit against the CDC in November 2020 on behalf of housing providers nationwide, again challenged the latest extension. 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. While the D.C. District Court felt bound by the D.C. Circuit Court's 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 the D.C. Circuit on August 14, 2021, and anticipate that the D.C. Circuit Court will rule quickly.

Note that this most recent activity does not change the May 5, 2021 ruling, in which the D.C. District Court [struck down](#) the CDC's nationwide eviction ban, concluding the moratorium exceeded the limits Congress placed on the CDC's authority. Following its ruling, however, the District Court granted a stay of its order pending the governments appeal, meaning the moratorium remained in place. The Georgia and Alabama Association of REALTORS® lawsuit asked the Supreme Court to lift that stay after the D.C. Circuit Court [upheld it in](#) June, which was denied. The D.C. District Court held 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 and subsequently upheld by the higher courts.

After the D.C. Circuit Court rules on plaintiffs' current motion to vacate the stay pending appeal, there will likely be more appeals. Therefore, housing providers should not take any immediate action based these initial rulings until the issue is more clearly resolved.



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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 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 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.

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.

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.

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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NEXT STEPS:

- **Housing providers in states following the CDC order should continue to follow the eviction moratorium as it remains in effect through its expiration on October 3, pending legal rulings and subsequent appeals.**
- **Housing providers should also keep in mind that some state and local governments may still have their own eviction moratoria in place that may still be in effect.** (See more [here](#).)
 - 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 [here](#).**
 - For example, the [CFPB's interim final rule](#) is still 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.

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, Congress, 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](https://www.nar.realtor) for the latest information and see NAR's extensive list of [Rental Assistance Resources](#).

ADDITIONAL RESOURCES:

[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](#)

[Rental Assistance Resources](#)

