



Federal Court in D.C. vacates CDC Eviction moratorium nationwide, then issues stay

By Harry J. Kelly

Handing the Centers for Disease Control and Prevention (“CDC”) yet another defeat, a U.S. district court judge in the District of Columbia ruled earlier this week that the CDC does not have authority under the Public Health Services Act, 42 U.S.C §264(a) to impose a nationwide moratorium on evicting tenant for nonpayment of rent in order to fight the spread of the COVID-19 virus. *Alabama Assn. of Realtors v. U.S. Dept. of Health and Human Services*, Case No. 1:20-cv-03377-DLF (D.D.C. April 5, 2021) ([the “Opinion”](#)). Then, hours after issuing its Opinion, the judge imposed an administrative stay on its action pending appeal of the decision by the government. As a result, the CDC’s eviction moratorium remains in effect but has suffered yet another blow, which may affect decisions about further extending the moratorium beyond its current June 30, 2021, expiration date.

The Opinion falls in line with two other decisions that attacked the CDC eviction moratorium on relatively narrow textual grounds, concluding that it exceeded the grant of statutory authority given to the CDC by Congress. The D.C. court concluded that the plain language of § 264(a), which included a list of permitted actions, such as “inspection, fumigation, disinfection, sanitation . . . [and] destruction of animals or articles found to be so infected or contaminated as to be sources of dangerous infection,” did not support the eviction moratorium.¹ The court found that this list of permitted actions served to limit the scope of the CDC’s power, and even though the statute allows the CDC to implement “other measures, as in [its] judgment may be necessary,” those “other measures” had to be consistent with the ones expressly identified in the law. Given its reading of the plain text, the court concluded that it was unlikely that Congress intended to extend such a broad power to the CDC. The D.C. court also raised concerns that if Congress did intend to grant such broad authority, constitutional questions would follow, such as those a U.S. district court in Texas used to strike down the CDC eviction moratorium earlier this year. Finally, the court determined that Congress’s extension of the CDC moratorium in COVID relief legislation last year did not have the effect of ratifying CDC’s authority to extend the moratorium past the January 31, 2021, expiration date in that statute.

¹ Opinion at 11.

The Opinion concluded by setting aside the CDC moratorium nationwide, pursuant to local rules that provide that, where an agency action is deemed to be unlawful, the rule is vacated entirely. Following the filing of an appeal by the government, the D.C. court issued an administrative stay of its decision to allow time to consider the government's separate motion to stay the D.C. case pending appeal, which will be briefed over the next weeks.

The score against the CDC moratorium stands at four decisions striking it down and two upholding it. None of the negative decisions has led to a full-scale repeal of the CDC eviction moratorium, although the Opinion comes close. Of course, the CDC moratorium is set to expire on June 30, 2021, and even before the Opinion was issued, there were questions about whether it would be extended again. It will be interesting to see whether Congress and the Biden administration take any further legislative action to clarify the CDC's authority here or to adopt other measures to unwind the effect of the eviction moratoriums in an orderly way.

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