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U.S. Supreme Court leaves CDC eviction moratorium in place

By Harry J. Kelly

Earlier this week, the U.S. Supreme Court left the eviction moratorium issued by the Centers for Disease Control and Prevention (CDC) in place, rejecting an emergency request to lift the stay from the plaintiffs in *Alabama Assn. of Realtors v. U.S. Department of Health and Human Services*, an action pending in the U.S. District Court for the District of Columbia. Earlier this year, the plaintiffs had scored a victory when a district court judge there ruled that the CDC's eviction moratorium exceeded its statutory authority. The district court's decision could have resulted in a nationwide injunction against the eviction moratorium, but the court stayed its action pending an appeal. When the plaintiffs asked the U.S. Circuit Court of Appeals for the D.C. Circuit to lift the stay, the appellate court refused to do so, concluding that the government was likely to prevail on appeal. That left the plaintiffs with the option of asking the Supreme Court to overturn the stay on an emergency basis.

By a 5–4 vote, the Supreme Court rejected the application to lift the stay, leaving the CDC eviction moratorium in place. Four of the justices (Alito, Thomas, Gorsuch, and Barrett) would have granted the application. Justice Kavanaugh voted to leave the stay in place but suggested strong skepticism about the moratorium's future. In a statement issued with the Court's order, Justice Kavanaugh said he agreed that the CDC had exceeded its statutory authority, but given that the moratorium is set to expire on July 31 and the coming weeks would "allow for additional and more orderly distribution of the congressionally appropriated rental assistance funds," he voted to leave the stay in place. He warned, however, that "clear and specific congressional authorization (via new legislation) would be necessary for the CDC to extend the moratorium past July 31."

It appears that the future of the CDC's eviction moratorium past July 31, 2021, is very much in doubt, given that four justices would have voted to lift the stay and that Justice Kavanaugh signaled that he does not believe the CDC has authority to impose an eviction moratorium. Kavanaugh warned that "clear and specific congressional authorization" would be needed to extend the moratorium further. While Congress extended the moratorium in earlier legislation, it has not expressly authorized the CDC to issue eviction moratorium in pandemic situations. Even if it did so, another judicial decision earlier this year concluded that Congress lacks constitutional authority to enact eviction moratoriums, so it isn't clear whether new legislation would be sufficient to allow for further extensions of the CDC's moratorium.

Perhaps Justice Kavanaugh is correct and the next month will allow sufficient rental assistance to reach tenants and landlords, thereby preventing a threatened nationwide wave of evictions. For everyone involved in distributing those funds, it's going to be a busy month.

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