

Practice Update

Supreme Court Maintains CDC Eviction Moratorium

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On June 29, 2021 the Supreme Court issued its decision in *Alabama Association of Realtors, et al. v. United States Department Of Health And Human Services, et al.*, 594 U.S. ___ (2021). The Court denied the D.C. District Court’s stay of the Centers for Disease Control and Prevention’s (CDC) nationwide moratorium on evictions during the COVID-19 pandemic. Justices Thomas, Alito, Gorsuch, and Barrett would have granted the application. Justice Kavanaugh concurred in the judgment. He agreed with the applicant and the District Court, which held that the CDC exceeded its existing statutory authority by issuing a nationwide eviction moratorium. But because the CDC plans to end the moratorium on July 31, 2021, he voted to deny the application. Kavanaugh wrote separately to clarify his view that new legislation would be required to extend the moratorium beyond July 31. Kavanaugh agreed with the district court that the eviction moratorium is unlawful but refused to disturb the district court’s stay of its own order. The takeaway is that there would be five votes to undo a future, similar regulation without Congressional action.

As explained in our [previous client alert](#) on the case, the district court concluded the Public Health Service Act, 42 U.S.C. §§ 201 – 300mm-61, does not grant the CDC the legal authority to impose a nationwide eviction moratorium. The Court

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explained that the first clause of section 264(a) grants the CDC, with approval of the Secretary of the Department of Health and Human Services, authority to make and enforce regulations to prevent the interstate or international spread of disease. But the Court interpreted this authority as being tethered to, and narrowed by, the second clause authorizing the CDC to regulate “sources of dangerous infection to human beings.”

The CDC moratorium went into effect on September 4, 2020 and, earlier this year, the CDC extended its expiration date to July 31, 2021. The CDC moratorium declared “a landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory action shall not evict any covered person.” To qualify for protection under the moratorium, tenants were required to submit a declaration to their landlord affirming, among other things, they (1) expect to earn less than \$99,000 in annual income and (2) are “unable to pay the full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, a lay-off, or extraordinary out-of-pocket medical expenses.” The CDC moratorium applied to all residential properties nationwide. Violators of the moratorium faced potential criminal penalties, including a fine of up to \$250,000, one year in jail, or both, and a maximum fine of \$500,000 for organizations. The moratorium will expire July 31, 2021.

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