

# COVID-19: FEDERAL JUDGE RULES CDC NOT AUTHORIZED TO ISSUE NATIONWIDE EVICTION MORATORIUM

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## Financial Institutions and Services Litigation Alert

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A federal judge in Washington, D.C. has ruled that the Centers for Disease Control and Prevention (CDC) exceeded its authority in issuing a nationwide eviction moratorium aimed at protecting renters facing hardship in the wake of the COVID-19 pandemic.

In a twenty-page decision,<sup>1</sup> U.S. District Judge Dabney L. Friedrich recognized that COVID-19 has created a serious public health crisis with unprecedented challenges for public health officials but nonetheless found that the CDC did not have authority to impose a nationwide eviction moratorium under the Public Health Service Act (PHSA).<sup>2</sup>

## THE CDC ORDER

Former president Trump declared the COVID-19 outbreak a national emergency on 13 March 2020. He signed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)<sup>3</sup> into law two weeks later, which law included a 120-day eviction moratorium for rental properties that are part of federal assistance programs or are subject to federally backed loans. Some, but not all, states also adopted their own temporary eviction moratoria as well. The CARES Act eviction moratorium expired in July 2020.

On 4 September 2020, the CDC issued the “Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19” (the CDC Order) under § 361 of the PHSA.<sup>4</sup> The CDC determined that a temporary halt on residential evictions was “a reasonably necessary measure . . . to prevent the further spread of COVID-19.”<sup>5</sup> The CDC explained that the eviction moratorium “facilitates self-isolation” for those infected with COVID-19 or who are at a higher risk of severe illness from COVID-19 given their underlying medical conditions. The CDC further rationalized that the moratorium helps “state and local officials’ ability to implement stay-at-home orders and other social distancing measures, reduces the need for congregate housing, and helps prevent homelessness.”<sup>6</sup>

The CDC Order, which applied to all residential properties nationwide, prohibited landlords from evicting tenants that met certain criteria.<sup>7</sup>

Congress temporarily extended the CDC Order from 31 December 2020 to 31 January 2021 as part of the Consolidated Appropriations Act.<sup>8</sup> The CDC then extended its own Order to 31 March 2021 based on updated findings that conditions had worsened since issuing the original order as well as “[p]reliminary modeling projections and observational data” from states that lifted eviction moratoria “indicat[ing] that evictions substantially contribute to COVID-19 transmission.”<sup>9</sup> The CDC has since extended the Order through 30 June 2021.

## ALABAMA ASSOCIATION OF REALTORS V. UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES

Shortly after the CDC Order's initial issuance on 20 November 2020, a group of plaintiffs, which included rental property managers and trade associations, filed suit in the United States District Court for the District of Columbia to challenge its lawfulness.<sup>10</sup> The plaintiffs relied on a number of statutory and constitutional arguments, including that the nationwide eviction moratorium exceeds the CDC's statutory authority. Citing the PHSA's grant of authority to limit the spread of communicable diseases from outside the country and between the states, the CDC asserted that its nationwide moratorium was within its power.

Both sides sought a quick resolution of the dispute; the plaintiffs moved for expedited summary judgment while the Defendants filed a cross motion for summary judgment as well as a partial motion to dismiss. Judge Friedrich determined all three motions were ripe for review, addressing each one in her decision.

Judge Friedrich noted that at least six other courts have considered numerous statutory and constitutional challenges to the CDC Order, the majority of which similarly found it invalid. In this case, however, the Court defined the issue narrowly: "Does the Public Health Service Act grant the CDC the legal authority to impose a nationwide eviction moratorium?"<sup>11</sup> According to the Court, the answer is no. Simply put by Judge Friedrich, "the plain language of the PHSA unambiguously forecloses the nationwide eviction moratorium."<sup>12</sup>

Judge Friedrich determined that while the PHSA "authorizes the Department [of Health and Human Services, through the CDC] to combat the spread of disease through a range of measures, [] these measures plainly do not encompass the nationwide eviction moratorium set forth in the CDC Order."<sup>13</sup> Judge Friedrich rejected the government's interpretation of the PHSA, finding that doing so would grant "nearly unlimited" power to the CDC, which Congress clearly did not intend.<sup>14</sup>

Judge Friedrich also rejected the government's argument that Congress ratified the CDC Order through its temporary extension. Judge Friedrich found that in granting a temporary extension, Congress acknowledged that the CDC issued its Order pursuant to the PHSA, but did not expressly approve the CDC's interpretation of the law or provide the CDC with any additional statutory authority. "Instead, Congress merely extended the CDC order for a limited 30-day duration," the judge said, "[b]ecause Congress withdrew its support for the CDC order on 31 January 2021, the order now stands — and falls — on the text of the P[HSA] alone."<sup>15</sup> Ultimately, Judge Friedrich determined that "[b]ecause the plain language of the Public Health Service Act . . . unambiguously forecloses the nationwide eviction moratorium, the court must set aside the CDC order."

It is important to note that the ruling does not affect state or local eviction moratoriums.

The Department of Justice also immediately filed an appeal and requested an emergency stay on the order pending a decision from the D.C. Circuit Court of Appeals. Judge Friedrich agreed to stay her ruling until 12 May 2021 to allow the plaintiffs time to oppose the emergency stay motion.

## NEXT STEPS AND PRACTICAL CONSIDERATIONS

The CDC Order had been applauded by housing advocates as a critical measure that has allowed families to stay in their homes during the pandemic. On the other hand, property owners and landlords have criticized the Order as creating significant financial hardship and infringing on property rights. In this case, Judge Friedrich sided with the landlords' position that the CDC Order is an overreach by the federal government without proper authority.

The pending appeal will delay the impact of Judge Friedrich's decision. For now, property owners and managers should monitor the appeal while also ensuring compliance with all state and local residential eviction rules and regulations.

## FOOTNOTES

<sup>1</sup> Memorandum and Order on Plaintiff's Motion for Expedited Summary Judgment, Defendants' Motion for Summary Judgment and Partial Motion to Dismiss, Ala. Ass'n of Realtors v. U.S. Dep't of Health & Hum. Servs., 1:20-cv-03377 (D.D.C. May 5, 2021).

<sup>2</sup> 85 Fed. Reg. 55,292 (Sept. 4, 2020).

<sup>3</sup> Pub. L. No. 116-136, 134 Stat. 281 (2020).

<sup>4</sup> 85 Fed. Reg. 55,292 (Sept. 4, 2020).

<sup>5</sup> *Id.*

<sup>6</sup> 85 Fed. Reg. at 55,296.

<sup>7</sup> To qualify for protection under the CDC Order, a tenant must submit a declaration to their landlord affirming that they:

(1) have “used best efforts to obtain all available government assistance for rent or housing”; (2) expect to earn less than \$99,000 in annual income in 2020, were not required to report any income in 2019 to the Internal Revenue Service, or received a stimulus check under the CARES Act; (3) 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”; (4) are “using best efforts to make timely partial payments”; (5) would likely become homeless or be forced to move into a shared residence if evicted; (6) understand that rent obligations still apply; and (7) understand that the moratorium is scheduled to end on December 31, 2020.

*Id.* at 55,297.

<sup>8</sup> Pub. L. No. 116-260, § 502, 134 Stat. 1182 (2020).

<sup>9</sup> Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 86 Fed. Reg. 8020, 8022 (Feb. 3, 2021).

<sup>10</sup> Memorandum and Order on Plaintiff's Motion for Expedited Summary Judgment, Defendants' Motion for Summary Judgment and Partial Motion to Dismiss, Ala. Ass'n of Realtors v. U.S. Dep't of Health & Hum. Servs., 1:20-cv-03377 (D.D.C. May 5, 2021).

<sup>11</sup> *Id.* at 19.

<sup>12</sup> *Id.* at 19–20.

<sup>13</sup> *Id.* at 17.

<sup>14</sup> *Id.* at 14.

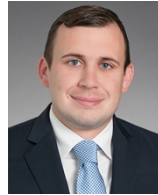
<sup>15</sup> *Id.* at 18–19.

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