

SUPREME COURT STRIKES DOWN FEDERAL CDC EVICTION MORATORIUM

AUGUST 26, 2021



Dear Mike and other MHCW Members,

US SUPREME COURT STRIKES DOWN FEDERAL MORATORIUM

Yesterday the US Supreme Court struck down the Biden Administration's Federal CDC Eviction Moratorium as Unconstitutional. Housing providers have been the only industry in America who has been required by the Government to provide their product (housing) at no cost and with no ability to deal with tenants who are violent or pose safety risks.

This case comes to the US Supreme Court after the Alabama Association of Realtors (along with other plaintiffs) obtained a judgment from the U. S. District Court for the District of Columbia vacating the moratorium on the ground that it is unlawful. But the District Court stayed its judgment while the Government pursued an appeal. The Supreme Court agreed, thereby striking down the CDC, "We vacate that stay, rendering the judgment enforceable. The District Court produced a comprehensive opinion concluding that the statute on which the CDC relies does not grant it the authority it claims."

US SUPREME COURT RULING DOES NOT AUTOMATICALLY INVALIDATE GOV. INSLEE BRIDGE PROCLAMATION

While the Supreme Court ruling invalidates the Federal CDC Eviction Moratorium, it does not mean that Governor Inslee's Eviction Bridge Proclamation is automatically struck down; it remains entirely in place, although the foundation has been weakened. In fact, the Washington Business Properties Association (WBPA) sued Governor Inslee on the State Eviction Moratorium (<https://thelens.news/2020/11/03/landlords-sue-over-eviction-ban/>) and that case was heard in Federal District Court in Spokane on Tuesday (8/24/21). The WBPA is the broadest coalition of businesses and professional associations focused on commercial, residential, and retail real estate and property rights issues in Washington State.

UPDATE ON WBPA LAWSUIT AGAINST GOV. INSLEE'S EVICTION MORATORIUM

In the WBPA case on Tuesday, the judge ruled against small housing providers on all counts and in favor of the Governor on all counts (<https://www.thewbpa.org/news/washington-eviction-ban-to-stand>). While this ruling is frustrating for people who care about property rights, it was expected and is not surprising that this WA court ruled in favor of the Governor. But the court's ruling now allows for appeal to a higher court.

The WBPA is appealing this ruling and the appeal will head to the Federal Ninth Circuit Court of Appeals and then potentially on to the US Supreme Court. It is not unlikely that the WBPA case challenging Gov. Inslee's Eviction Moratorium will end up being considered by the US Supreme Court...the same US Supreme Court who just invalidated the Federal CDC Moratorium here. The WBPA has vowed to continue to fight this injustice on behalf of housing providers. While it is too early to know for sure whether the Governor will try to extend the current Bridge Proclamation past September 30, 2021, the US Supreme Court ruling yesterday certainly weakens his underlying claim of authority, but does not invalidate the Governor's Orders.

BIDEN ACKNOWLEDGES CDC EVICTION MORATORIUM UNCONSTITUTIONAL

After Biden introduced the CDC's latest eviction pause earlier this month, **Biden acknowledged that many legal scholars argued it was "not likely to pass constitutional muster,"** but he thought it was still worth trying. The court's three liberal justices — Stephen Breyer, Sonia Sotomayor and Elena Kagan — dissented: They argued Congress gave the government broad latitude to prevent the spread of disease, and warned striking down the moratorium could imperil public health amid a rise in Covid-19 cases.

COURT RULES ONLY CONGRESS CAN IMPOSE FEDERAL EVICTION MORATORIUM

In striking down the CDC eviction moratorium the **Supreme Court specifically ruled that only Congress can impose an eviction moratorium**, saying, "If a federally imposed eviction moratorium is to continue, Congress must specifically authorize it." The White House also maintained that the CDC "has been unable to find legal authority for a new" eviction moratorium, even as Biden called on states and localities to put in place evictions moratoriums for at least the next two months.

Attached below is a full copy of the court's ruling in the case.

GOVERNMENT SLOW TO ROLLOUT RENTAL ASSISTANCE

Congress has approved nearly \$50 billion to help people pay back rent and avoid eviction. But while in some states and counties that's been working well, in many others the help hasn't reached the vast majority of renters who need it. **Governor Inslee needs to require counties to get rental assistance out to housing providers on behalf of tenants because WA State is failing.** In fact, King County has only managed to distribute 4.5% of the funds available for King County. This has left housing providers holding the bag for the government's failure yet again.

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