

***U.S. Supreme Court ruling leaves the constitutionality of eviction moratoriums undecided***

(August 27, 2021) Austin, Texas: Several weeks ago, the U.S. Centers for Disease Control & Prevention (CDC) [extended and expanded](#) its nationwide eviction moratorium in direct defiance of numerous federal courts that have declared it illegal and unconstitutional. Recognizing that defiance, the United States Supreme Court vacated the stay in [Alabama Association of Realtors v. HHS](#), effectively halting the CDC's eviction moratorium nationwide.

Although significant, the issue before the Supreme Court was whether the CDC exceeded the authority Congress granted it. The Supreme Court did not reach the larger question: Whether the federal government - the executive or legislative branch - has the constitutional authority to stop state court eviction proceedings in the first place.

The looming question was answered six months ago: it does not. Judge Campbell Barker of the Eastern District of Texas held the CDC's ban was unconstitutional in [Terkel v. CDC](#). In his [opinion](#), Judge Barker explained that "the federal government's Article I power to regulate interstate commerce and enact laws necessary and proper to that end does not include the power to impose the challenged eviction moratorium." In other words, neither the CDC nor Congress has the authority to control state eviction proceedings.

SLF's general counsel [Kimberly Hermann](#) weighed in on the remaining constitutional issue:

"The CDC is an arm of the government. In example after example, the CDC and the Biden administration have thrown aside the Constitution to grab unfettered power. The check on its power is in the courtroom. And the federal courts have been clear—the federal government lacks the constitutional authority to impose any moratorium on evictions. It is just flat-out unconstitutional."

The federal government has appealed the Eastern District of Texas ruling and the U.S. Court of Appeals for the Fifth Circuit will hear argument in early October.

TPPF's general counsel and SLF co-counsel [Robert Henneke](#) explains:

"While the Supreme Court was correct to strike down the CDC's eviction order, the underlying question of constitutionality must still be resolved. TPPF's *Terkel* lawsuit on appeal at the Fifth Circuit Court of Appeals squarely challenges the federal government's power to do this under the Commerce Clause, which the trial court held the government could not. TPPF's case continues to resolve this important question of limits to the federal government's power so that this disastrous eviction moratorium policy never happens again."

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