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# Federal Moratorium on Residential Evictions Struck Down by Texas Court

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On February 25, 2021, the United States District Court for the Eastern District of Texas (the "Court") ruled in favor of plaintiff residential property owners/managers who contended that the Centers for Disease Control and Prevention ("CDC") nationwide eviction moratorium was unconstitutional.[1] Specifically, the Court held that the eviction moratorium exceeded the scope of Congress' power to regulate activity under the Commerce Clause of the U.S. Constitution.

The CDC first issued the nationwide moratorium—the Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19 (the "Order") [2]—on September 4, 2020, pursuant to its emergency pandemic powers under Section 361 of the Public Health Service Act, in an effort to mitigate the spread of COVID-19 by preventing displacement of individuals into living situations more susceptible to the spread of the virus and to help lessen adverse economic impacts related to the pandemic on residential tenants. The Order was originally set to expire on December 31, 2020, but was extended through March 31, 2021 by President Biden. Any landlord, owner of residential property, or other individual with a legal right to pursue eviction is barred from evicting any "covered person" from a residential property while the Order remains in effect. The Order represents the first time that the federal government has invoked its commerce power to issue a nationwide eviction moratorium.

In deciding the constitutionality of the Order, the Texas Court determined whether the Order fell within the "substantial-effects test" category of activity which may be regulated by Congress under the Commerce Clause of the U.S. Constitution. The substantial-effects test category includes "those activities that substantially affect interstate commerce" and requires courts to assess "the nexus between the local activity and the interstate commerce or federal regulation thereof." The Court noted that "real estate is inherently local" and "[r]esidential buildings do not move across state lines."

A key consideration in applying the substantial-effects test is "the economic character of the local activity." The Court concluded that "the regulated activity is not the production or use of a commodity that is traded in an interstate market[,] [r]ather, the challenged order regulates property rights in real property—specifically, whether an owner may regain possession of the property from an inhabitant." As the Order does not alter a landlord's or tenant's financial relationship, but merely regulates evictions, a recourse to a remedy under state law, the Court found that it should not be categorized as economic. The Court also noted that the government's arguments concerning the public health benefits of the Order were insufficient to establish how federal regulation of interstate commerce would be negatively impacted without the Order.

Furthermore, the Court found that the link between interstate commerce and an eviction criminalized by the Order was too "attenuated in several dimensions," because "the eviction of one person from a dwelling does not alone have a self-evident substantial effect on interstate commerce, and the government has not pointed to any findings demonstrating such a substantial effect." Accordingly, the Court found that the Order failed to adhere to "the distinction between what is national and what is local in activities of commerce." Based on these findings, the Court held that "[s]uch broad authority over state remedies begins to resemble, in operation, a prohibited federal police power" and entered summary judgment granting a declaratory judgment in favor of the plaintiffs.

It remains to be determined whether the Court's decision will be appealed to the U.S. Fifth Circuit Court of Appeals. Regardless of whether the decision is appealed, landlords and tenants must both continue to stay apprised of the quickly evolving legal landscape pertaining to residential evictions during the COVID-19 pandemic, at both the local, state, and federal level.

If you are a developer, landlord, or property owner with questions about this decision, or the impact of COVID-19 regulations on your property rights generally, please contact Mike Fox at [mfox@tuggleduggins.com](mailto:mfox@tuggleduggins.com) or (336) 271-5244, Jeff Dunham at [jdunham@tuggleduggins.com](mailto:jdunham@tuggleduggins.com) or (336) 271-5218, Bill Burgin at [atbburgin@tuggleduggins.com](mailto:atbburgin@tuggleduggins.com) or (336) 271-5241, Scott Gayle at [sgayle@tuggleduggins.com](mailto:sgayle@tuggleduggins.com) or (336) 271-5232, Nathan Duggins at [atnduggins@tuggleduggins.com](mailto:atnduggins@tuggleduggins.com) or (336) 271-5246, or Laura Krantz at [lkrantz@tuggleduggins.com](mailto:lkrantz@tuggleduggins.com) or (336) 271-5249.

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[1] See *Lauren Terkel et al. v. Centers for Disease Control and Prevention et al.* Case No. 6:20-cv-0064 in the U.S. District Court for the Eastern District of Texas.

[2] For a copy of the Order, see <https://www.cdc.gov/coronavirus/2019-ncov/more/pdf/CDC-Eviction-Moratorium-01292021.pdf>

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