

Eviction Moratorium Fiasco



By Paul Engel

- Contrary to much of the reporting, the Supreme Court did not find this moratorium unconstitutional, only not authorized by the law.
- While the courts have almost universally agreed that the CDC does not have the legal authority to issue a nationwide evictions moratorium, they have also tended stay or leave a stay in place rather than stop it.
- Each and every court has missed one very crucial and constitutional point, this moratorium is a violation of the Fifth Amendment.

There has been a fair amount of focus lately on the CDC eviction moratorium, including court findings and the fact that President Biden ignored them. By doing some research, we can find out the facts of this case, including the good, bad, and ugly when it comes to the constitutionality of the different actions taken. Let's take a look at those details, and determine for ourselves what we should do about it.

Tiger Lily, LLC

Our story starts back in March, 2020.

In March of 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security Act. ... Among other things, the CARES Act imposed a 120-day moratorium on evictions from rental properties that participated in federal assistance programs or had federally backed loans.

[TIGER LILY, LLC v US Dept. of Housing and Urban Development](#)

In March we knew relatively little about the SARS-COV-2 virus and the disease it caused, COVID-19. The models used were absolutely frightening, so many Americans were terrified of COVID-19. Did that fear mean the Constitution doesn't matter?

Did Congress have the authority to dictate how our private owners of property run their businesses because they receive federal assistance from federally backed loans? The answer to both questions is no. They could make the federal assistance contingent on voluntary moratorium standards, but unless the loan contract allows the United States to change the requirements without approval of all parties involved, the loans should be unalterable. However, in no situation does Congress have the legal authority to enact such a moratorium.

After that congressionally enacted moratorium ended, the CDC stepped in. It issued an order entitled "Temporary Halt in Residential Evictions To Prevent the Further Spread of COVID-19." ... The Halt Order imposed a broader eviction moratorium than Congress had, one that prohibited eviction of all "covered persons"—without regard to whether the rental property relied on federal funds or loans—through December 31, 2020. The CDC explained that the Order is a necessary measure to facilitate self-isolation, support state lockdown orders, and prevent congregation in settings like homeless shelters.

[TIGER LILY, LLC v US Dept. of Housing and Urban Development](#)

When Congress' illegal moratorium ended, the CDC enacted its own. Not only did the Trump administration continue this illegal act, it expanded it to all covered persons regardless of whether there was federal financial involvement or not. The CDC explained that the order was necessary to help people isolate themselves and support the illegal lockdown orders the states had been issuing. Where did the CDC claim it had received the authority to issue such an order?

The CDC found authority for its entry into the landlord-tenant relationship in the Public Health Service Act of 1944, which authorizes the Secretary of Health and Human Services to “make and enforce such regulations as in his judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases.” 42 U.S.C. § 264(a). To carry out and enforce “such regulations,” the Secretary can “provide for such inspection, fumigation, disinfection, sanitation, pest extermination, destruction of animals or articles found to be so infected or contaminated as to be sources of dangerous infection to human beings, and other measures, as in his judgment may be necessary.”

TIGER LILY, LLC v US Dept. of Housing and Urban Development

I’m wondering how does the authority to create regulations to provide for inspection, fumigation, disinfection, sanitation, pest extermination, and destruction of infected animals or articles morph into the authority to interfere with the contract between a landlord and their tenant? The answer is it’s only in the mind of petty tyrants who will use any excuse to get the outcome they want. This, the latest example of the philosophy that the ends justify the means, is not only destructive to rights and liberty, but also to the very idea of the rule of law.

It didn’t take long for people to seek a redress of this grievance. Tiger Lily, LLC, that owns and manages rental properties, filed suit in district court seeking both a declaratory judgment and a preliminary injunction barring the moratorium’s enforcement. The district court denied the injunction because it found that the loss of income was not an irreparable injury. However, after the court heard the case it found that the moratorium did exceed the statutory authority under 42 USC §264(a). Not surprisingly, the government immediately appealed and requested both the district and circuit courts issue an emergency stay pending the appeal.

The circuit court denied the request, stating they thought the government was not likely to succeed. Sure enough, after hearing the appeal, the circuit court found that 42 USC §264(a) does not authorize the CDC to implement a nationwide eviction moratorium.

Before we go on, notice the details of what both the district and circuit courts found. Not that government interfering with the rental contract is not a power delegated to the United States. And not that a blanket prevention of landlords from evicting renters who violate the contract is a deprivation of property without due process of law or a violation of the Fifth Amendment. No, they found that Congress, when it passed 42 USC §264(a), did not authorize the CDC to issue such a regulation. This mistake will be repeated as this fiasco continues.

Alabama Association of Realtors

Alongside the Tiger Lily case, the Alabama Association of Realtors filed suit against HUD. The District Judge for the District for the District of Columbia vacated the order. Why?

The Court recognizes that the COVID-19 pandemic is a serious public health crisis that has presented unprecedented challenges for public health officials and the nation as a whole. The pandemic has triggered difficult policy decisions that have had enormous real-world consequences. The nationwide eviction moratorium is one such decision.

It is the role of the political branches, and not the courts, to assess the merits of policy measures designed to combat the spread of disease, even during a global pandemic.

The question for the Court is a narrow one: Does the Public Health Service Act grant the CDC the legal authority to impose a nationwide eviction moratorium? It does not. Because the plain language of the Public Health Service Act, 42 U.S.C. § 264(a), unambiguously forecloses the nationwide eviction

moratorium, the Court must set aside the CDC Order, consistent with the Administrative Procedure Act, see 5 U.S.C. § 706(2)(C), and D.C. Circuit precedent, see National Mining Ass'n, 145 F.3d at 1409.

Alabama Association of Realtors v. U.S. Dept. of Health and Human Services

Yes, COVID-19 has become a crisis. As the evidence mounts that not only is COVID not a generally deadly disease, but that the data that has been used to scare the world into serfdom is suspect at best. Even taking for granted the courts statement that COVID-19 is a serious public health crisis, the law is the law, and the law does not authorize the CDC to issue a nationwide eviction moratorium. Once again, nothing is mentioned about the Fifth Amendment's prohibition on taking property without due process of law, but only that Congress did not authorize the CDC to issue the moratorium. This decision was appealed to the circuit court, with a request that the court issue an emergency stay, pending appeal., which was granted by the judge, meaning the eviction moratorium remained in place. The Alabama Association of Realtors filed an emergency motion to vacate the stay, but that was denied. This request made its way to the Chief Justice of the Supreme Court, who referred it to the court. This request was denied, but this is also where the reporting gets extremely questionable.

News media and pundits alike have claimed that the Supreme Court "ruled" that the moratorium was unconstitutional. Not only did the Court issue no such opinion, no court record I've found even questioned the constitutionality of the moratorium, but only whether the CDC had been granted the authority by Congress. If fact, when the court denied the application to vacate the stay, they left the moratorium in place. While the court did not publish an opinion on its decision, Justice Kavanaugh did publish a concurrence.

I agree with the District Court and the applicants that the Centers for Disease Control and Prevention exceeded its existing statutory authority by issuing a nationwide eviction moratorium.

Alabama Association of Realtors v. U.S. Dept. of Health and Human Services – Kavanaugh Concurrence

So, if Justice Kavanaugh agrees with District Court that the CDC exceeded its legal authority in issuing a nationwide moratorium, why did he vote to deny the motion?

Because the CDC plans to end the moratorium in only a few weeks, on July 31, and because those few weeks will allow for additional and more orderly distribution of the congressionally appropriated rental assistance funds, I vote at this time to deny the application to vacate the District Court's stay of its order.

Alabama Association of Realtors v. U.S. Dept. of Health and Human Services – Kavanaugh Concurrence

Because the moratorium was scheduled to end in a few weeks, Justice Kavanaugh “punted” both his responsibility and his oath to support the Constitution of the United States. We don't know why the other justices who voted to deny the motion did so, only that justices Thomas, Alito, Gorsuch, and Barrett would have granted it. As if this dereliction of duty were not bad enough, Justice Kavanaugh went on...

In my view, clear and specific congressional authorization (via new legislation) would be necessary for the CDC to extend the moratorium past July 31.

Alabama Association of Realtors v. U.S. Dept. of Health and Human Services – Kavanaugh Concurrence

If these “legal eagles”, supposedly the best legal minds in the nation, cannot see the blatant violation of the supreme

law of the land in this moratorium, who can? Justice Kavanaugh admitted in his concurrence that he believes Congress has the authority to authorize this type of moratorium. We are being led by idiots.

I've heard "experts" claim that this is a violation of the Taking Clause, but it's not. Not only is the property not taken, it's not being used for public purposes.

nor shall private property be taken for public use, without just compensation.

[U.S. Constitution, Amendment V](#)

What I have not heard is a single lawyer, judge, constitutional professor, or anyone that participates in the judicial system, point out that this is a violation of the Fifth Amendment's due process clause.

No person shall ... be deprived of life, liberty, or property, without due process of law;

[U.S. Constitution, Amendment V](#)

This should be an open and shut case. Any judge with the slightest knowledge of the Constitution shouldn't need more than 30 seconds to decide it. The CDC's eviction moratorium deprives the landlords of this country their property (specifically the control of their property), without due process of law. No one has shown that these landlords violated any law. No evidence has been provided showing a widespread right to occupy rental property without paying rent. Only the concern by those at the CDC that should people be evicted, they may go to a homeless shelter, creating an overcrowding condition. Of course, that situation only exists because governments, starting with state and local governments, shut down their economies, preventing people from working to earn the money to pay the rent. And nowhere has anyone made any accommodation for the landlords, who are still expected to pay

mortgages, utilities, and yes, taxes on the properties they can no longer generate income from.

And the atrocities did not stop with the Supreme Court's decision.

Executive vs Judicial

When the moratorium expired on July 31st, guess what happened? President Biden's CDC simply extended it yet again. Not only has Justice Kavanaugh been shown to be a fool for thinking this would not happen, but District Court judge Dabney Freidrich has shown herself to be one as well. According to the opinion memorandum for her stay, she notes the "substantial economic hardships as a result of the CDC's nationwide moratorium on evictions." However, she states that "given the public health consequences cited by the CDC, a stay is warranted." Even if the CDC used a study that has not been peer reviewed, they made claims about cases and deaths which seem more like wild guesses than actual scientific data. How big was this tremendous spike that should crush the rights of the American people? The wild guess from the CDC expected about a 1 to 1.5% increase in cases and deaths nationwide. Based on the CDC's recent history of exaggerating numbers, I don't have much trust in those numbers.

People far and wide cried "foul", claiming that President Biden was violating the rule of law by ignoring the opinion of the Supreme Court. Lost in the hew and cry was the fact that the court itself decided not to vacate the stay of the District Court's opinion. Or the fact that, as a separate branch of government, the court has no authority to order the executive to do anything.

The authority, therefore, given to the Supreme Court by the act establishing the judicial courts of the United States to issue writs of mandamus to public officers appears not to be warranted by the Constitution,

Marbury v. Madison Opinion

There were two questions the Marbury v. Madison court had to decide. First, did Mr. Marbury deserve the commission to the position he had been appointed to by the previous administration? And second, did the court have the authority to order the President to issue the commission, in legal terms a writ of mandamus. Issuing this writ would have effectively placed that court and Congress above the President, something not authorized by the Constitution. Since the courts in this case did not find the moratorium unconstitutional, only not authorized by statute, the claims that the President's actions were unconstitutional seem somewhat hyperbolic. Yes, the President was not faithfully executing the laws of the United States, but that is not what was being claimed. The fact that the President disagreed with the court, and acted based on his opinion, is not a violation of the Constitution, even if the eviction moratorium is.

Conclusion

It's not just that the court trusted the questionable expected outcome from the CDC, but that they put it above the law.

Thus, the particular phraseology of the Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written Constitutions, that a law repugnant to the Constitution is void, and that courts, as well as other departments, are bound by that instrument.

Marbury v. Madison Opinion

Here we have an executive department claiming powers not included in their statutory charter. Powers that, even if Congress had authorized them, would violate the Constitution of the United States and therefore be illegal. What truly disturbs me though, is the absolute disregard for the oath of so many in both the executive and judicial branches of our government. When those we have hired to protect our rights

abuse them so badly, how can we trust them at all?

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.—That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, —That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it,

[Declaration of Independence](#)

What do we do when governments created to protect our rights not only fail to do so, but actively subvert them? Yes, we have the right to alter or abolish such government. It is not insurrection to attempt to restore the Constitution to its rightful place as the supreme law of the land. As Abraham Lincoln said:

The people – the people – are the rightful masters of both Congresses, and courts – not to overthrow the Constitution, but to overthrow the men who pervert it

[Abraham Lincoln, \[September 16-17, 1859\] \(Notes for Speech in Kansas and Ohio\)](#)

Ultimately, it is up to us to overthrow those who are perverting the Constitution. That includes the judges and justices of the courts, the members of Congress, and those in the President's administration who are betraying their oaths. The future of America rests in the hands of its people.

But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security.

Declaration of Independence

Will our future be secure? Or will we fall under the absolute despotism of those in the federal government?

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[BIO: Paul Engel founded The Constitution Study in 2014 to help everyday Americans read and study the Constitution. Author and speaker, Paul has spent more than 20 years studying and teaching about both the Bible and the U.S. Constitution. Freely admitting that he “learned more about our Constitution from School House Rock than in 12 years of public school” he proves that anyone can be a constitutional scholar. You can find his books on Amazon and Apple Books. You can also find his books, classes and other products at the Constitution Study website (<https://constitutionstudy.com>). You can reach him at paul@constitutionstudy.com]