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# United States District Court in Texas Finds CDC Eviction Moratorium Unconstitutional

3/2/2021

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Practices: Real Estate

In a case just handed down a few days ago by the United States District Court, Eastern District of Texas, *Terkel et al. v. Center for Disease Control and Prevention et al.* No. 6:20 -cv- 00564 (2021), it was determined that Article I of the U.S. Constitution does not grant, within the federal government's regulation of commerce, the right to prohibit residential evictions. It was determined that such power rests with the States, under a State's police power. The primary issue in the case was whether the CDC Order prohibiting evictions was within the legislative powers granted to Congress under Article I of the U.S. Constitution and could be delegated to an administrative agency (Centers for Disease Control and Prevention).

One major point of discussion in the case was how the regulation of a local activity may affect the broader regulation of interstate commerce. Real estate was deemed by the U.S. District Court to be an inherently local interest and so the right to evict was deemed fundamental to an owner's possessory interest. Thus, a right found by the U.S. District Court to be more properly regulated on the local (State vs Federal) level. The Court further pointed out that this is the first time the federal government has tried to invoke its commerce powers to impose a national eviction moratorium.

The bottom line is that the U.S. District Court found that such broad power of the federal government over State remedies begins to resemble the exercise of a prohibited federal police power. Note: the CDC Order did state that the Order does not apply in any State, local, territorial or tribal with a moratorium on residential evictions that provides the same or greater public health protections. However, that provision is likely unconstitutional as well. It remains to be seen if the Texas case will be appealed.

As it does appear that many residential tenants are invoking the CDC Order as a means to preempt their landlord's eviction action, a particular State's Order putting a moratorium on evictions now deserves a closer look. Note: although the CDC Order only concerned residential and not commercial tenants, restrictions on the Federal government's ability to regulate local commerce is an important decision given all the governmental regulation during COVID-19. Should you have any question on the possible impacts of the referenced decision, please contact one of the attorneys in the Real Estate Practice Group.