

Supreme Court Holds That in Applying COVID-Related Stays of Eviction Proceedings, Landlords Must Be Given the Opportunity to Challenge a Tenant's Claim of COVID-Related Hardship

By [Michael Flynn](#)

On August 12, in a 6-3 decision, the U.S. Supreme Court issued an order enjoining the portion of a New York State statute which provided that tenants could establish that they had suffered COVID-related economic hardship by means of self-certification. Under the New York law, eviction actions based on non-payment of rent could not go forward if a tenant submitted such a self-certification. Under the law, landlords could not contest the tenant's declaration in court.

The Supreme Court held that such an inability to contest the tenant's declaration of hardship was a due process violation because an independent court, not the litigant, should be the judge of the litigant's claims of hardship. The Supreme Court's order can be found here:

https://www.supremecourt.gov/opinions/20pdf/21a8_3fb4.pdf

The ruling did not address the constitutionality of the portion of New York's law providing that evictions could not proceed if the tenant had suffered COVID-related hardship; it simply said that a landlord must have the right to contest such a claim.

The impact of the Supreme Court's reasoning will likely depend on the particular structure of any other state's laws limiting evictions. Presumably, a state law which allows a landlord sufficient and real opportunity to contest a tenant's claim of COVID-related hardship would withstand such a due process challenge.

The Supreme Court did not consider the constitutionality of the New York law's hold on evictions. It is not known how the court might analyze such a broader challenge. This makes analysis of laws in certain states, such as California, more difficult. California's law forbids evictions if a tenant files a hardship declaration. The only recourse a landlord has is if it has proof of income already on file that shows that the tenant makes at least 130 percent of the median income in the county. In that instance only, the landlord can ask for more specific proof from the borrower. It is unclear if giving the landlord the ability to seek further hardship information only if it has existing proof of the tenant

having income equal to 130 percent of the county's median income provides the landlord with sufficient ability to challenge a tenant's claim of hardship.

If states continue with these types of eviction restrictions, aspects of more states' eviction moratorium laws will likely see constitutional challenges. Of course, the Centers for Disease Control's eviction moratorium order separately restricts most evictions until October 3, 2021. The CDC's moratorium order may also face more constitutional challenges.

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