

The Supreme Court Gets It Right . . . Two-and-a-half Months Too Late

On the evening of Thursday, August 26 the United States Supreme Court issued an [order](#) that effectively ended the eviction moratorium put in place by the Centers for Disease Control (CDC), finding that the moratorium exceeded the CDC's statutory authority. In what hopefully is a first, this was the *second time* that a majority of the Justices have determined that a particular action taken by an executive agency exceeded its statutory authority. At the end of June the Court was asked to end a nearly identical eviction moratorium from the CDC. But, while five of the Justices agreed that the moratorium exceeded statutory authority, only four of them voted to end it. [Justice Kavanaugh](#) instead thought that the program should be allowed to wind down on its own terms by the expiration date of July 31, during which time the government would be able to further disburse rental assistance funds to individuals who might otherwise be evicted. He noted that any extension would have to be explicitly authorized by Congress.

Leaving aside the fact that [allowing an unconstitutional program to continue abdicated his role as judge](#), Justice Kavanaugh also underestimated the brazen disregard our current political class has for constitutional requirements. Instead of doing the hard work of getting Congress to pass a law authorizing an eviction moratorium (something that is a bad idea on the merits, including potential serious constitutional defects), Congress pressured the President to renew the eviction moratorium despite the prior Supreme Court ruling. And the President obliged. In announcing the new moratorium, the President even [admitted](#) that it was likely unconstitutional; he just didn't care. But, he reasoned, before it could be found unconstitutional the administration would be able to disburse more rental assistance (he failed at that too; the day before the Supreme Court ruled, the Treasury Department [revealed](#) that only 11% of eligible funds had been spent).

Hopefully Justice Kavanaugh (and Justice Roberts, who also changed his vote from July) have learned their lesson: politicians will not feel constrained by the constitution

unless explicitly told not to do something by the Supreme Court (and even then, they still might not listen). And, given the inherent difficulties the government has doing anything, abdicating your judicial duty to allow the political branches to pursue policy aims is never wise. They should stick to being judges: determining what the law requires, and ruling without regard to policy or politics.

Edmund Burke once wrote that “example is the school of mankind; they will learn at no other.” Craven politicians have given the Supreme Court a great example of what will happen when the judiciary abdicates its duty to faithfully and rigorously apply the limits of law to the political branches. Perhaps this time the lesson will stick.

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