

Gibson Dunn Argues New Eviction Protections Run Afoul of SCOTUS Ruling

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Gibson Dunn & Crutcher has filed its [challenge](#) to the New York's revised anti-eviction protections on behalf of landlords who said the measure was at odds with a U.S. Supreme Court ruling that blocked part of the law last month.

Gibson Dunn partner Randy Mastro asked a Manhattan-based federal appeals court on Thursday to stay enforcement of the new law in light of the high court's Aug. 12 decision, which held that a key provision of the state's eviction moratorium had violated landlord's due process rights.

Lawmakers reconvened in Albany last week to extend the protections into 2022, saying the measure was needed to protect an estimated 194,000 New Yorkers who would have faced eviction in the next two months.

The legislation, which was signed into law by Gov. Kathy Hochul, enacted changes after the Supreme Court scrapped a section that allowed tenants to self-certify that the pandemic had brought them financial hardship. The court found that the law generally prevented landlords from objecting to the tenant's declaration.

The Supreme Court has also blocked a federal eviction moratorium effort, removing defenses for millions of Americans and adding to the sense of urgency in Albany.

The new law outlined a process for landlords to challenge a tenant's hardship declaration. Under the bill, a judge will direct the parties to apply for rental assistance if a court finds that the hardship claim is valid and a person appears to be eligible.

Mastro, however, argued on Thursday that the latest extension made just "marginal tweaks," and left in place the substance of the eviction ban that the U.S. Supreme Court had blocked.

The new law, he said, offered only a "narrow avenue" to challenge tenants' claims, and "ignores the reality" that landlords typically don't have access to information to attest, under the penalty of perjury, that a tenant is not suffering from any hardship.

“It would, moreover, be remarkably risky for a landlord, without such personal knowledge, to swear under oath—hazarding a seven-year prison sentence—before being allowed to file a suit in the ordinary course,” Mastro wrote.

“This is, in other words, an empty procedure meant to give the State cover without meaningfully addressing the due process issue,” he said.

The lawsuit, which is currently before the U.S. Court of Appeals for the Second Circuit, will be the first major legal challenge for Hochul’s administration, after she took office last month. The governor’s press office did not immediately respond Thursday evening to a request for comment.