New Civil Liberties Alliance

NCLA 'Bay Staters' Lawsuit Contests Validity of Gov. Baker's Civil Defense State of Emergency

Dawn Desrosiers, et al. v. Governor Charles D. Baker

Washington, DC (June 1, 2020) – In response to the serious health threat posed by the COVID-19 pandemic, Massachusetts Governor Charlie Baker declared a state of emergency under the Massachusetts Civil Defense Act to justify imposing draconian, "one-size-fits-all" measures across the Commonwealth. Under his Civil Defense State of Emergency, the Governor has arbitrarily declared which businesses are "essential" and closed those he determined were not. In addition, he has closed schools and daycare facilities, and he has limited private gatherings in churches, beaches, and parks. Because he issued his orders under a Civil Defense State of Emergency, disobedience is a criminal act.

Today, the New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group filed a complaint in Massachusetts Superior Court representing local entrepreneurs, church pastors, and the headmaster of a private school against Governor Baker's unlawful orders. The lawsuit aims to return constitutional governance to the Commonwealth by overturning the Civil Defense State of Emergency, which Baker improperly declared.

The Governor's orders are invalid because the COVID-19 pandemic is not a "civil defense emergency." The Civil Defense Act is a 1950's-era statute designed to protect the Commonwealth from foreign invasions, armed insurrections, and civil unrest associated with natural disasters. It has never before been invoked for a health emergency. On the other hand, the legislature passed the Public Health Act explicitly to empower proper authorities to control and prevent transmission of infectious diseases dangerous to public health. Under the Public Health Act, principal responsibility for disease control lies with local boards of health, not with the Governor from his perch on Beacon Hill.

What started out as a disease crisis has been aggravated by new threats to the economic, social, spiritual, and constitutional health of the Commonwealth. Governor Baker's plan to reopen the economy does little to ease the burdens of these crises. We are asking the court to declare that the Civil Defense Act does not confer any authority upon Governor Baker during a pandemic and to declare his orders null and void. This ruling would permit local boards of health to establish strategies befitting their communities to reopen businesses while still preventing the spread of COVID-19. The legislature could then take up any issue requiring broader applicability to the Commonwealth.

NCLA released the following statements:

"By applying the Civil Defense Act instead of the Public Health Act, the governor has seized extra power to which he is not entitled. Fear of a deadly virus is not a reason to abandon constitutional governance. Governor Baker doesn't have the power to make law by royal decree—lawmaking is the legislature's exclusive responsibility. Bay Staters can best protect each other's lives and livelihoods through solutions passed by their legislators—the elected officials most familiar with the needs of the local communities they serve."

–Michael P. DeGrandis, Senior Litigation Counsel, NCLA

"I don't think the Governor knows the chaos that his arbitrary orders are creating. He is picking the winners and the losers of this pandemic crisis by telling us how to run our businesses. It's time to return the business decision-making back to the business owners."

–Robert Walker, Plaintiff, Apex Entertainment LLC & Devens Common Conference Center LLC

ABOUT NCLA

NCLA is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar Philip Hamburger to protect constitutional freedoms from violations by the Administrative State. NCLA's public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans' fundamental rights.

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