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NCLA, Gov. Baker File Petition Asking Mass. Supreme Judicial Court to Hear Civil Defense Act Case

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

Washington, DC (July 2, 2020) – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, has filed a [joint petition](#) with Governor Charlie Baker and the Attorney General’s Office to transfer the case of *Dawn Desrosiers, et al. v. Governor Charles D. Baker* from Worcester Superior Court to the Supreme Judicial Court. The petition asks the Court to decide whether Governor Baker’s March 10, 2020 Civil Defense State of Emergency declaration and the ensuing emergency orders responding to the coronavirus pandemic are lawful exercises of gubernatorial authority.

At issue is whether the Civil Defense Act provides authority for Governor Baker to declare a state of emergency and whether issuance of emergency orders violates the separation of powers. The plaintiffs, which include local entrepreneurs, church pastors, and the headmaster of a private school, contend that Governor Baker has arbitrarily categorized some businesses, organizations, and activities as “essential,” and banned others by sorting them into reopening phases. They also argue that the emergency orders violate their constitutional rights to due process and free assembly. Baker has closed schools and daycare facilities, and he has limited private gatherings in churches, beaches, and parks.

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 health 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.

There are at least six other cases currently pending in state and federal courts challenging Governor Baker’s COVID-19 pandemic response. Given the nature of the current pandemic and the rise in COVID-19 cases in other states, a decision by Massachusetts’s highest court is in the public interest because it will provide clarity regarding the validity of the process Governor Baker has used to address the health crisis.

NCLA released the following statement:

“This joint petition is an encouraging development. By finding common ground with the Attorney General’s office regarding the nature of our dispute, we were able to come to an agreement with Governor Baker that our lawsuit presents fundamental questions of constitutional law and that the Supreme Judicial Court should hear the case as soon as possible. When it does, we are confident in our chances for success.”

— **Michael P. DeGrandis, Senior Litigation Counsel, NCLA**

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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