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NCLA Reply Brief Continues to Question CDC’s Statutory Authority to Issue Eviction Moratorium

Brown, Rondeau, Krausz, Jones and the National Apartment Ass’n v. Centers for Disease Control & Prevention

Washington, DC (October 19, 2020) – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, has filed a [reply brief](#) in support of its motion for preliminary injunction in the U.S. District Court for the Northern District of Georgia. The brief refutes the arguments of the Centers for Disease Control and Prevention (CDC) for upholding a nationwide “eviction moratorium.”

NCLA’s lawsuit in *Brown, et al. v. CDC* challenges the authority of CDC to impose the [“Temporary Halt in Residential Evictions to Prevent Further Spread of COVID-19”](#) order, which claims stopping residential evictions will help contain COVID-19. Because the CDC has not identified any act of Congress that confers upon it the power to halt evictions or to preempt state landlord-tenant laws, the order violates the U.S. Constitution and should be enjoined and declared void by the Court. The lawsuit also argues that CDC has deprived property owners of their constitutional right to access state court eviction proceedings.

In its recent memorandum opposing a preliminary injunction, CDC has studiously avoided a claim that its order was an essential tool in the fight against COVID-19. Instead, the agency has defended itself purely through distraction, claims to unlimited power, and, in the end, a tepid argument that its order “may” provide some possible benefit to the public.

CDC also stubbornly—and mistakenly—insists that it has “broad” statutory authority to void any provision of state law so long as it merely declares the action to be “reasonably necessary” in its sole judgment—as one that “may help curb the spread of COVID-19.” CDC relies on a mere string of inferences and almost no hard data to support this assertion. According to the agency’s arguments, there is no action CDC could not take, and it could write and rewrite the substantive laws of every state at will—never facing any judicial limitation. But the text of the relevant statutory provisions does not support CDC’s claims.

NCLA urges the Court to enter a preliminary injunction against the CDC order to halt a massive unconstitutional deprivation of property rights. In this case, CDC’s lawless order wildly exceeds the agency’s statutory authority and violates the U.S. Constitution. The Court has set a hearing on NCLA’s motion for a preliminary injunction for October 20, 2020.

NCLA released the following statements:

“CDC’s defense of its nationwide eviction moratorium should terrify anyone who values their freedom. The agency has declared that it has the unlimited power to void any state law as long as it decides its actions “may” protect against COVID-19. No government actor has such unbridled power—certainly not unelected bureaucrats in an administrative agency.” — **Caleb Kruckenberg, 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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