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NCLA to Appeal NJ District Judge’s Refusal to Apply Contracts Clause to Protect Housing Providers

Matthew Johnson, et al. v. Philip D. Murphy, et al.

Washington, DC (March 24, 2021) – The U.S. District Court for the District of New Jersey [dismissed](#) a [complaint](#) this week in *Matthew Johnson, et al. v. Philip D. Murphy*, challenging Governor Murphy’s [Executive Order No. 128](#) (EO 128), which allows residential tenants to use their security deposits to offset their unpaid rent. Monday’s ruling, by U.S. District Judge Noel L. Hillman, declared that there was no substantial impairment of the Plaintiffs’ contracts because residential leases and security deposits are already heavily regulated, and ruled that the housing providers should have anticipated that the state might invalidate security deposits altogether.

The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, represents New Jersey housing providers who own one or two rental properties in South Jersey that they rent out to make a living. In no way could they have anticipated the global pandemic or the sweeping actions of Governor Murphy, who unilaterally rewrote every residential lease in the State of New Jersey overnight. The Contracts Clause of the U.S. Constitution was specifically designed by the Framers to prohibit this type of one-sided action, and the Supreme Court has historically struck down such contractual interference.

NCLA argued the order violates the U.S. Constitution, New Jersey’s Constitution, and picks winners and losers in duly established contractual relations between tenants and landlords. The decision largely ignored two centuries of precedent that NCLA laid out in its briefing, relying instead on recent decisions issued by the U.S. District Court for the District of Connecticut and District Court for the Southern District of New York in similar challenges to gubernatorial abuse of executive orders.

The district judge also shrugged off the Plaintiffs’ Due Process Clause claim, refusing to consider that these homeowners have a “property right” separate from the rights secured by their contracts—which the court oddly ruled were not protected by the Contracts Clause. This decision contradicts the Fourteenth Amendment’s guarantee of procedural due process when the state, as here, diverges from established procedures in a way that deprives an individual of a property right.

Executive Order 128 targeted residential housing providers, many of whom relied on security deposits to keep their property undamaged during the remainder of the tenancy. Without that deposit, a tenant no longer has a financial incentive to keep the property in good condition. Governor Murphy created law outside the democratic process and invalidated plaintiffs’ property interest in their contracts without an opportunity to be heard. Therefore, in issuing EO 128, Governor Murphy both unconstitutionally impaired the obligation of contracts and denied the housing providers due process of law.

NCLA has filed a similar complaint against Governor Murphy challenging Executive Order No. 128 in another case, [*Chuck Kravitz, et al. v. Philip D. Murphy, et al.*](#), which is currently pending before the Appellate Division of the New Jersey Superior Court on additional legal theories.

NCLA released the following statement:

“Today’s decision effectively ruled that the Contracts Clause no longer protects residential housing providers. The court seemed to say that whenever the state regulates an industry, a governor becomes free to tear up all the contracts in that industry. But allowing the state to pick political winners and rewrite contracts is exactly what the Contracts Clause forbids. NCLA plans to appeal the erroneous decision to the U.S. Court of Appeals for the Third Circuit.”

— **Jared McClain, Litigation Counsel, NCLA**

For more information about this case visit [here](#).

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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