



FOR IMMEDIATE RELEASE

Media Inquiries: [Judy Pino](#), 202-869-5218

Ruling by 11th Cir. Denies Mom-and-Pop Housing Providers Relief from CDC’s Unlawful Eviction Halt

Rick Brown, et al. v. Centers for Disease Control and Prevention, et al.

Washington, DC (July 14, 2021) – Today, the U.S. Court of Appeals for the Eleventh Circuit rejected the request of Rick Brown of Virginia and other hard-hit housing providers across the country to put an end to the eviction moratorium issued by the Centers for Disease Control and Prevention (CDC). In a 2-1 decision in *Brown, et al. v. CDC, et al.*, the panel [affirmed](#) the lower court’s refusal to enjoin CDC’s unlawful eviction moratorium. The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed the first lawsuit against CDC’s unconstitutional action with this case last September, arguing that CDC has no statutory authority to issue an eviction moratorium order. Although a majority of the court appeared inclined to agree that CDC lacks statutory authority, the court nonetheless decided that the plaintiffs did not show sufficient “irreparable harm” to merit a preliminary injunction.

Over the thorough and comprehensive dissent of Judge Elizabeth L. Branch, the majority concluded that the plaintiffs had not proved that their tenants will remain insolvent into the future, an effectively impossible burden of proof. According to the majority, the plaintiffs’ deprivation of their property, violations of their constitutional rights, and likely inability to recover any unpaid rent from insolvent tenants, did not constitute the type of irreparable injury to justify a preliminary injunction. This holding contradicts other courts across the country, which have recognized that being deprived of your residential property is, in fact, an intrinsically irreparable injury. In the months after the district court’s decision, several federal courts set aside CDC’s order as unlawful.

The majority suggested that the housing providers were likely right that CDC’s statutory authority to prevent the transmission of communicable diseases is limited to the means Congress specified—mainly, the inspection, fumigation, disinfection, and destruction of infected animals and articles. But “despite [the court’s] doubts” about the district court’s broad reading of that statute, the court concluded that the preliminary-injunction stage was not the proper time for it to rule that the CDC’s order was unlawful.

Judge Branch dissented from the panel’s decision, reasoning that the housing providers showed that CDC exceeded its statutory authority and that “money damages against their insolvent tenants would be an inadequate remedy for their financial harms.” Judge Branch found that neither of the statutory provisions on which CDC relied for its authority “reasonably can be interpreted to authorize the CDC order.” Because “nothing in § 264(a) indicates that Congress intended to assign the Director of the CDC sweeping authority over the national rental housing market,” Judge Branch concluded that the statute lacked any indication that Congress intended to disrupt our system of federalism and provide the CDC Director authority “to invade the traditionally State-operated arena of landlord-tenant relations.”

Plaintiffs Brown, Rondeau, Krausz, Jones, and members of the National Apartment Association are independent, mom-and-pop housing providers who are financially in the red as a result of the CDC’s foray into housing policy. NCLA’s clients are accruing economic damages every day the eviction moratorium remains in effect. So far, they are owed tens of thousands of dollars in unpaid rent, not to mention the monthly maintenance costs, the damage

to property, and the lost opportunity to use the property or rent it to someone else who would be willing and able to pay the fair market value price.

NCLA is carefully considering whether to appeal this adverse ruling to the U.S. Supreme Court or return to district court for trial.

NCLA released the following statements:

“Justice was denied today. It is unfathomable that the harm suffered by NCLA’s landlord clients and caused by CDC’s unlawful actions does not count as ‘irreparable,’ especially when at least a majority of the court appears to believe CDC lacked statutory authority to do what it did. The dissent here—which intriguingly appears to have been originally written as the majority opinion—has the better view of what ordered liberty and the rule of law require.”

— **Mark Chenoweth, Executive Director and General Counsel, NCLA**

“The court’s decision sets a dangerous precedent about what an administrative agency can get away with when it utters the word ‘emergency.’”

— **Caleb Kruckenberg, Litigation Counsel, NCLA**

For more information visit the case page [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.

###