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In NCLA Amicus Win, Sixth Circuit Affirms Decision Invalidating CDC’s Eviction Moratorium

Tiger Lily, LLC, et al. v. United States Department of Housing and Urban Development, et al.

Washington, DC (July 23, 2021) – Today, the U.S. Court of Appeals for the Sixth Circuit [affirmed](#) the March 2021 [decision](#) of the Western District of Tennessee in [Tiger Lily, LLC, et al. v. United States Department of Housing and Urban Development, et al.](#) The ruling invalidates the eviction moratorium order imposed by the Centers for Disease Control and Prevention (CDC). The Sixth Circuit held that the nationwide moratorium issued by CDC, stopping residential evictions, exceeds the agency’s statutory authority. The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed a successful [amici curiae brief](#) in the federal district court in *Tiger Lily*.

NCLA’s brief—signed by *amici* NCLA, the Beacon Center of Tennessee, the National Apartment Association, and the National Association of Residential Property Managers—argued that Congress never granted CDC the unlimited authority to take any conceivable action it deems necessary to fight infection. Congress never anticipated that CDC would intrude into the operations of state landlord-tenant courts under the pretense of protecting public health. Ultimately, the District Court—and now the Sixth Circuit—adopted NCLA’s argument. The court concluded that Congress did not authorize the CDC to “shut down evictions across the country.” Absent an exceedingly clear congressional mandate, the Sixth Circuit ruled, “the CDC cannot nationalize landlord-tenant law.”

Judge Amul Thapar agreed with the panel’s decision but wrote separately to highlight the separation-of-powers concerns that arise when an administrative agency oversteps its bounds. As Judge Thapar explained, the Founders designed Congress to be the branch that is “most responsive to the will of the people.” “By shifting responsibility to a less accountable branch, Congress protects itself from political censure—and deprives the people of the say the framers intended them to have. And yet, over the years, the guardrails have crumbled.” Judge Thapar called on the Supreme Court to “consider breathing new life” into the nondelegation doctrine. The case against CDC proves why a strong nondelegation doctrine is so important, Judge Thapar concluded: “It is not our job as judges to make legislative rules that favor one side or another. But nor should it be the job of bureaucrats embedded in the executive branch. While landlords and tenants likely disagree on much, there is one thing both deserve: for their problems to be resolved by their elected representative.”

NCLA released the following statement:

“The Sixth Circuit has rejected CDC’s view that it has unlimited power to prohibit or require anything it can imagine. CDC has taken a terrifying view of its own authority, and the court wisely understood that our constitutional protections must be protected most in times of crisis.”

— **Caleb Kruckenberg, NCLA Litigation Counsel**

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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