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Media Inquiries: Judy Pino, 202-869-5218

NCLA Petitions Supreme Court of New Jersey to Check Governor Murphy’s Emergency Powers

Chuck Kravitz, et al. v. Philip D. Murphy, et al.

Washington, DC (August 19, 2021) – New Jersey Governor Phil Murphy used the Covid-19 public-health emergency to unilaterally and unlawfully modify the rights and obligations of housing providers and tenants who had mutually entered into contracts that explicitly required security deposits. Today, the New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed a [petition for certification](#) with the Supreme Court of New Jersey in the lawsuit, *Kravitz v. Murphy*. NCLA asks the Supreme Court to reverse the Superior Court of New Jersey, Appellate Division’s [ruling](#) that Governor Murphy’s Executive Order 128 was a valid exercise of the Governor’s emergency powers under the Disaster Control Act.

Despite the New Jersey legislature being in session, on April 24, 2020, Governor Murphy [issued](#) EO 128, purporting to “waive[] provisions of statutory law that prohibit the use of security deposits for rental payments, enabling tenants to instruct landlords to use their security deposits to offset rent or back rent.” Petitioners sued to enforce their constitutional and contractual rights, challenging EO 128, which waived long-standing state law governing security deposits for residential leasehold contracts. Remarkably, Governor Murphy declared that any provision of the Security Deposit Act (SDA) that is inconsistent with EO 128 is no longer in force and effect until 60 days after the end of the Public Health Emergency.

The Appellate Division upheld EO 128’s unlawful executive overreach, wrongly permitting the Governor to rewrite duly enacted laws and contravening both existing case law and the New Jersey Constitution’s guaranteed separation of powers. The Court’s decision will have far-reaching implications beyond this current pandemic. Its reading of the Disaster Control Act extends an open-ended invitation for the current and future governors to suspend, amend, and repeal any statute by simply declaring an economic emergency under the Disaster Control Act.

NCLA represents small housing providers who have fallen victim to Governor Murphy’s unconstitutional mandate. When the petitioners leased their properties, they had every reason to rely upon the legally valid security deposits provided by their tenants and to expect that they would remain in place for the duration of their leases. Parties to residential leases in New Jersey necessarily account for and rely on these statutory provisions when crafting their contracts. By suspending them, EO 128 unlawfully stripped petitioners of their right to security deposits and substantially altered the terms of the leases and the parties’ rights and obligations. Even more troubling, Governor Murphy imposed criminal penalties not included in the SDA for any violations of EO 128.

The Appellate Division improperly blessed the concentration of unchecked power in the Executive Branch by finding that the existence of a “widespread economic emergency” was enough to permit the Governor to rewrite the SDA subject to a purported delegation of legislative power via the Disaster Control Act. The Appellate Division failed to recognize that the Governor’s power to invoke emergency authority is not boundless. The suspension of and changes to the SDA are unlawful and cannot be upheld under the Disaster Control Act’s limited legislative purposes. The Appellate Division’s contrary conclusion cannot withstand scrutiny under existing law.

NCLA released the following statements:

“It is disconcerting that the Appellate Division went to great lengths to uphold Executive Order 128. In doing so, it expanded the breadth of the Governor’s powers under the Disaster Control Act. Our challenge now is as much about the harm this Order caused our clients as it is about curbing executive overreach and abuses in future emergencies. The Governor’s power under the Disaster Control Act is not limitless, even if the Appellate Division’s opinion erroneously treats it so. We look forward to the New Jersey Supreme Court restoring constitutional limits to the Governor’s powers.”

— **Kara Rollins, Litigation Counsel, NCLA**

“The Appellate Division appeared to grant Governor Murphy the power to do literally anything he wants so long as he unilaterally decides that his executive actions are related to the pandemic and in the public’s interest. But the Governor’s emergency powers do not include the authority to waive statutory law and rewrite private contracts. Our clients simply want the Supreme Court to rule that Governor Murphy is still bound by law during an emergency.”

— **Jared McClain, 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.

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