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NCLA Brief to Mass. Supreme Judicial Court Rebuts Governor Baker's Defenses

Dawn Desrosiers, et al. v. Governor Charles D. Baker

Washington, DC (September 3, 2020) – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed a [reply brief](#) shortly before midnight refuting Governor Baker's defense of his declaration of a Civil Defense Act State of Emergency to address the COVID-19 health crisis. NCLA asked the Massachusetts Supreme Judicial Court to declare Governor Baker's COVID-19 orders unconstitutional. The plaintiffs, consisting of business owners, businesses, schools, and churches across the state, contend that Gov. Baker cannot define the limits of his own authority or use a pandemic to set himself up as a single-branch lawmaker. A chief executive also may not pick winners and losers by dispensing with the law to benefit certain groups and disfavor others. Further, Governor Baker's interpretation of the Civil Defense Act (CDA) disregards the Public Health Act.

The Massachusetts legislature adopted the Public Health Act over a century ago to empower health authorities to control and prevent transmission of infectious diseases dangerous to public health. It never intended for the CDA to supersede it. The CDA is a 1950's-era statute designed to protect the Commonwealth from foreign invasions, armed insurrections, and civil unrest and destruction associated with natural disasters such as fires and earthquakes. In his response brief filed last week, Governor Baker asserts that the phrase "other natural causes" under the CDA effectively means "*all* natural causes"—not so.

NCLA points out that neither the Massachusetts Constitution nor the CDA authorizes the governor to enact, amend or dispense with the law under any circumstance. His authority is limited to implementing the details of legislative policy. But many of the governor's COVID-19 orders cross the line—instead of effectuating legislative policy, he is enacting his own laws.

Governor Baker offers no authority to support his assertion that a pandemic is a Civil Defense Emergency, and his assertion that he may define the limits of his own authority due to the pandemic is counter-constitutional. The Massachusetts Supreme Judicial Court cannot defer to the Governor's definition of the scope of his own authority—which he claims to be "any and all authority over persons and property[.]"

NCLA released the following statement:

"Governor Baker's defenses offer the Justices absolutely no limiting principle as to the scope of his power. If every natural disaster and every man-made disaster justify a Civil Defense Act state of emergency, when *can't* the governor rule Massachusetts by decree? It's time to restore the legislature's lawmaking authority and return democracy to the Commonwealth."

— **Michael P. DeGrandis, Senior 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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