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NCLA Warns About the Disturbing Trend of “Executive Lawmaking” in Biden’s First 100 Days

Washington, DC (April 29, 2021) – As President Joe Biden closes out the first 100 days of his term on Friday, the new administration has shown no restraint in issuing executive orders and in growing the Administrative State. The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, is raising the alarm on the unprecedented amount of unlawful administrative power that the White House is generating. Executive fiat has become the lawmaking method of choice, thereby trampling Americans’ civil liberties and usurping legislative power in violation of the U.S. Constitution.

Biden’s blitz of executive lawmaking means he has now signed more executive orders than any of the last three presidents had published in the Federal Register in their first 100 days. Biden has issued 41 executive orders, surpassing Trump (25), Obama (19), and Bush (11). In response to this lawless onslaught, NCLA has launched the webpage, “[Dazed and Abused: Biden’s 100-day Avalanche of Administrative Abuses](#),” a sortable database of Biden’s executive orders. While the content of the page is satirical in nature, it’s serious in pointing out the civil liberties these EOs disregard.

For example, just one day into his presidency, Biden instructed the Centers for Disease Control and Prevention (CDC) to extend its unlawful nationwide eviction moratorium. Using the pandemic emergency as an excuse, CDC has issued an eviction moratorium that far exceeds the constitutional limits on its authority and the agency’s expertise. The order, which Biden has now extended until at least the end of June, has deprived Americans across the country of their constitutional right to access the courts to regain possession of their properties from delinquent tenants. NCLA will present oral argument in early May in the U.S. Court of Appeals for the Eleventh Circuit in the case *Rick Brown, et al. v. Secretary Xavier Becerra, et al.* on behalf of home providers. We’ve also filed a [class-action](#) lawsuit in the U.S. District Court for the Northern District of Iowa on behalf of Asa Mossman of Cedar Rapids and many other blameless home providers harmed by the CDC’s lawless order.

On March 8th, Biden issued an order relating to [Title IX](#) instructing the Department of Education to take steps to repeal a Trump-era Title IX rule. This executive order directly attacks the right to due process. Biden’s Title IX order would establish an environment where a mere false allegation of sexual misconduct would suffice to destroy the educational opportunities and careers of students and professors. One such professor is NCLA client, Dr. Mukund Vengalattore, who was a tenure-track physics professor at Cornell University when a Title IX investigation launched by a false accusation ruined his promising career. Cornell’s ensuing Title IX disciplinary process was not only biased and discriminatory, but it also lacked due process. The case is currently pending before the U.S. Court of Appeals for the Second Circuit.

Biden has also issued an order [restricting](#) and suspending travel to the United States to combat COVID-19. The “Biden Travel Ban” requires American citizens flying home from overseas to take a rapid COVID test and produce a negative result before they can fly home. The CDC has no statutory or constitutional authority to burden or abridge the fundamental rights of Americans to return home. CDC could arrange to administer rapid

COVID tests to American citizens at overseas or U.S. airports, but it cannot impose such an unconstitutional condition on an American citizen's right to return home.

NCLA will be filing lawsuits in the coming weeks challenging Biden's executive orders where they violate civil liberties.

NCLA released the following statement:

“Forget the pen and phone strategy of yesteryear's executive orders; President Biden has a printing press and a call center! Other presidents have turned to executive orders when they have lost control of Congress. President Biden's party controls both houses of Congress, yet he is still trying to create new laws in the Executive Branch because it is easier. He is deliberately flouting the approved constitutional process for lawmaking.”

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

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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