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

NCLA Asks NJ Appellate Court to Halt Governor’s Unlawful Interference with Rental Contracts

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

Washington, DC (April 5, 2021) – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed its [opening brief](#) today in *Kravitz v. Murphy* in the Superior Court of New Jersey, Appellate Division. The lawsuit challenges Governor Murphy’s Executive Order No. 128 (EO 128), an unconstitutional mandate that unilaterally forces residential housing providers to use their tenants’ security deposits toward rent payments and criminalizes adherence to existing contracts. The order undermines property rights by suspending existing laws governing residential leasehold contracts and depriving property owners of security against property damage caused by tenants.

NCLA represents small property owners who have fallen victim to Governor Murphy’s unlawful order. The appellants in this case are ordinary people who are also struggling financially as a result of the pandemic. Without the contractually required security deposits, these housing providers are now forced to cover the costs of any tenant-caused property damage out of their own pockets rather than using the restitution guaranteed in the contracts they signed. In one instance, a landlord has been unable to track down former tenants who caused over \$1,800 worth of damage to his rental property.

Using powers claimed under the COVID-19 public health emergency which he declared, Governor Murphy unilaterally modified the rights and obligations of housing providers and tenants who had mutually and voluntarily entered into contracts that required deposits to secure rental properties against the risk of damage. By interfering with these executed contracts that explicitly prohibited the use of security deposits to pay rent, EO 128 violates the Contracts Clause of the New Jersey Constitution.

The Governor has exceeded the emergency powers granted to him under the New Jersey Civilian Defense and Disaster Control Acts, which vest the Governor with certain enumerated authorities related to public health and the militia, having nothing to do with residential leases or security deposits. EO 128 also violates the Due Process Clause and the Separation of Powers Clause of the New Jersey Constitution. Despite the New Jersey legislature being available, Governor Murphy chose to act on his own, pursuing an approach that is neither legal nor warranted.

Governor Murphy has interfered with the contractual rights and obligations of private citizens. NCLA urges the court to restore the rule of law, on which both New Jersey housing providers and tenants depend, by declaring EO 128 unlawful.

NCLA released the following statements:

“Governor Murphy unilaterally decided that tenants were more likely than housing providers to be suffering economic hardship. So, with the single stroke of a pen, he re-wrote all the residential leases in New Jersey,

depriving housing providers of the security they depend on. This order is exactly the kind of one-sided interference that the Contracts Clause forbids.”

— **Jared McClain, Litigation Counsel, NCLA**

“It is up to the New Jersey legislature, not the Governor, to write the State’s laws. If the Governor believes that the current emergency conditions warrant a change in state law, he should ask the legislature to change the law, not attempt to make the change unilaterally.”

— **Richard Samp, Senior Litigation Counsel, NCLA**

“It is critically important to protect both private property rights and the rule of law during times of economic and societal upheaval. Governor Murphy has admitted that he never even considered constitutional constraints when he began issuing his executive orders. EO 128 is the type of tyrannical heavy-handedness that occurs when our elected leaders ignore our constitutional framework and our individual liberties.”

— **Harriet Hageman, Senior 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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