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US Supreme Ct Validates NCLA Argument that CDC’s Eviction Moratorium Lacks Statutory Authority

Brown, et al. v. Centers for Disease Control and Prevention, et al. (U.S. Court of Appeals, 11th Circuit)
Mossman, et al. v. Centers for Disease Control and Prevention, et al. (Northern District of Iowa)

Washington, DC (August 27, 2021) – The New Civil Liberties Alliance represented the very first plaintiffs to file a [complaint](#) against the U.S. Centers for Disease Control and Prevention (CDC) over the agency’s nationwide eviction moratorium. In the *Brown v. CDC* lawsuit, filed on September 8, 2020, NCLA argued that agencies have no inherent power to make law and that CDC has no statutory authority to order an eviction moratorium. On Thursday, the U.S. Supreme Court agreed with the merits of our arguments. In a case based on legal arguments NCLA first advanced, the high court handed down a 6-3 [decision](#) to lift the stay of a federal district judge’s decision setting aside CDC’s unlawful nationwide moratorium order.

Housing providers across the country have been vindicated by the Supreme Court’s decision. In the per curiam opinion, the Court stated, “It strains credulity to believe that this statute grants the CDC the sweeping authority that it asserts.” The statute invoked by CDC was a “wafer-thin reed on which” the agency based a “breathtaking amount of authority.” The Court added, “If a federally imposed eviction moratorium is to continue, Congress must specifically authorize it.” NCLA commends the Supreme Court for its belated decision to uphold the rule of law but warns that there is work left to be done in the lower courts.

In *Brown v. CDC* (and *Mossman v. CDC*, which is a class-action lawsuit), NCLA represents independent, mom-and-pop housing providers who are financially in the red as a result of the eviction moratorium. NCLA’s clients accrued economic damages every day the unlawful eviction moratorium remained in effect. They are owed tens of thousands of dollars in unpaid rent, not to mention the monthly maintenance costs, the damage to property, and the lost opportunity to use the property or rent it to a different tenant. Addressing these economic damages, the Supreme Court said, “The moratorium has put the applicants, along with millions of landlords across the country, at risk of irreparable harm by depriving them of rent payments with no guarantee of eventual recovery. Despite the CDC’s determination that landlords should bear a significant financial cost of the pandemic, many landlords have modest means.”

The Supreme Court’s decision was preceded by several federal court rulings against CDC’s order, none of which had a nationwide effect. The Supreme Court recognized that the district court “produced a comprehensive opinion concluding that the statute on which the CDC relies does not grant it the authority it claims.” In *Brown* and *Mossman*, NCLA likewise argues that nothing in the relevant statutes or regulations gives CDC the authority to issue an eviction moratorium order. In light of the Supreme Court’s ruling, NCLA is moving to advance our client’s interests. NCLA filed a [28\(j\) letter](#) today with the Eleventh Circuit in *Brown*, where our motion for rehearing *en banc* is still pending, and we will file new motions in the *Mossman* case early next week.

NCLA released the following statements:

“It’s hard to imagine anyone truly thought CDC had the authority to issue a nationwide eviction moratorium—a point the Court barely had to explain. But it should never have taken this long for the federal judiciary to intercede. NCLA’s clients have been fighting for nearly a year, since day one of the moratorium, and have been harmed all along. NCLA will continue to push courts to do their duty and stop such lawless agency abuse.”

— **Caleb Kruckenberg, NCLA Litigation Counsel and lead counsel in *Brown, et al. v. CDC, et al.***

“It has been shockingly obvious for some time that the CDC moratorium was illegal for a host of reasons. The Supreme Court just picked the most obvious one. This ruling will allow housing providers the benefit of their property rights and light a fire under tenants to access, and the government to disperse, the Congressionally authorized solution to this problem, which was rent support. CDC’s unlawful order not only injured thousands of mom-and-pop housing providers, and disrupted state landlord-tenant courts across the country, but it also undermined the actual policy Congress chose to address Covid-related rental-market disruptions.”

— **John Vecchione, NCLA Senior Litigation Counsel and lead counsel in *Mossman, et al. v. CDC, et al.***

For more information visit the case pages for [Brown v. CDC](#) and [Mossman v. CDC](#).

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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