FOR IMMEDIATE RELEASE **Media Inquiries:** Judy Pino, 202-869-5218

Mass. High Court Ruling Disregards Civil Liberties, Gives Governor Virtual Free Pass to Violate Them During a Civil Defense State of Emergency

Dawn Desrosiers v. Governor Charlie Baker

Washington, DC (December 10, 2020) – The Massachusetts Supreme Judicial Court rendered its **decision** in the *Desrosiers v. Baker* case this morning upholding Governor Baker's pandemic orders as consistent with the Civil Defense Act (CDA). The order delivers a blow to the plaintiffs who include mom-and-pop businesses, two church pastors; the head of a religious academy, and others. The constitutional rights to due process of law and to be governed only by laws passed by the state legislature have been denied by the Court, causing incalculable harm to every Commonwealth resident.

The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, points to numerous flaws in the decision and questions whether the Commonwealth still enjoys a republican form of government after this ruling. If the Massachusetts and United States Constitutions can be suspended in whole or in part during times of crisis, permitting a governor to make law by decree and dispense with the law as he sees fit, the government guaranteed to Massachusetts' residents in Article IV of the United States Constitution is gone.

Gov. Baker's efforts to classify some businesses as essential and others as non-essential violate the longstanding rule against "dispensing with" the law. Legislatures may "suspend" the law from time to time as it applies to everyone, but they may not—and certainly, the governor has no power to—apply the laws to some people but not others. The notion that the governor may do so without hearings or due process is absurd and dangerous.

SJC says that the CDA is important to allow the Governor to take swift, coordinated efforts to protect public health. But the SJC never explains why, ten months after the Civil Defense State of Emergency declaration, executive-made law is consistent with the Massachusetts Constitution or why it is even the swiftest, most desired outcome during a second pandemic wave. SJC didn't properly employ established tools of statutory interpretation, finding instead that the CDA covers COVID-19 because of its severity rather than the nature of the threat. Relying heavily upon superseded U.S. Supreme Court precedent to justify its rejection of the plaintiffs' First and Fourteenth Amendment claims, the decision is fundamentally flawed and ripe for review by the U.S. Supreme Court.

NCLA released the following statement:

"Massachusetts has now shepherded the liberty-loving principles of the American Revolution from cradle to grave. John Adams must be spinning in his tomb at the news that the colony that he and his fellow patriots fought so hard to liberate from arbitrary royal decrees, and establish as a republic grounded in a government of laws and the consent of the governed, has become what Adams feared most."

— **Michael P. DeGrandis, NCLA Senior Litigation Counsel**

"Among other problems, it defies belief that the Massachusetts Supreme Judicial Court would rely so heavily in its decision today on a U.S. Supreme Court opinion that was superseded last month. What are the justices thinking? *South Bay* is no longer the law of the land. NCLA will closely examine the strongest grounds for appeal of this decision, which is remarkable in its cavalier disregard for Americans' civil liberties."

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

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.

###