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NCLA Files Joint Amicus Brief Asking Kentucky Supreme Court to Uphold Constitutional Governance

Beshear, et al. v. Goodwood Brewing Co., LLC, et al.

Washington, DC (May 20, 2021) – In a joint [amicus brief](#) filed in the Kentucky Supreme Court, the New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, criticized Kentucky Governor Andy Beshear’s attempt to bypass the Kentucky Legislature and hold onto temporary executive powers. In January 2021, the legislature voted to limit Governor Beshear’s emergency powers used to address the Covid-19 pandemic. The governor vetoed the bill to limit his powers, and the legislature overrode that veto with the required majority. The governor then resisted the legislature’s lawful withdrawal of power by filing a lawsuit to enjoin the new law as a violation of his executive powers. This lawsuit was brought to enforce the new law. Both sides won their respective lawsuits at the trial court level, which set up a conflict for the state supreme court to resolve.

Last year, the Kentucky Supreme Court held that the governor had been delegated emergency powers he could use to address the pandemic. In so holding, the Court also noted that the Kentucky Legislature, if it disagreed, could respond by withdrawing the emergency power it had delegated to the governor. The legislature did just as the Court’s order contemplated. It tried to rein in the governor’s powers so that no emergency order could last more than 30 days without further authorization or ratification by the legislature.

The Plaintiffs are a group of Kentucky restaurants and breweries that have been significantly impacted by Governor Beshear’s enforcement of executive-branch directives. In *Beshear, et al. v. Goodwood Brewing Co., LLC, et al.*, these businesses are challenging the emergency authority Governor Beshear still claims in disregard of the recent legislative changes. Specifically, they maintain that the governor’s executive orders are now unlawful because they conflict with the limiting statutes the legislature passed over the governor’s veto.

The *amici curiae*, NCLA, the Southeastern Legal Foundation, and the Mackinac Center for Public Policy, argue that the Kentucky Constitution denies the governor dictatorial power. To ensure such power does not develop in any branch, the Kentucky Constitution separates government power and vests the legislature with law-making authority, which the legislature can always reclaim once delegated. *Amici* urge the Court to rule that the executive orders and emergency administrative regulations of the executive that contravene the duly enacted laws of Kentucky’s Legislature are unlawful.

NCLA released the following statements:

“NCLA welcomes this opportunity before the highest court in Kentucky to weigh in on the important principles of separation of powers and legislative checks on administrative authority.”

— **John Vecchione, Senior Litigation Counsel, NCLA**

“It will be extremely worrisome for the condition of democracy in Kentucky if the Court allows the governor to blatantly disregard the legislature’s lawful attempts to fulfill its constitutional role as a check on executive power.”

— **Jared McClain, 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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