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NCLA Amicus Brief Calls NYC’s Rent Stabilization Law Arbitrary and a Violation of Due Process

Community Housing Improvement Program, et al. v. City of New York, et al.

Washington, DC (January 22, 2021) – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed an [amicus brief](#) asking the U.S. Court of Appeals for the Second Circuit to reverse the judgment of the District Court for the Eastern District of New York in *Community Housing Improvement Program, et al. v. City of New York, et al.* and remand the case for further proceedings. NCLA believes that the lower court erred when it declared that the New York Rent Stabilization Law (RSL) does not violate the due process rights of the Plaintiffs-Appellants related to their property, when in fact, it does.

Plaintiffs-appellants, NCLA argues, have a fundamental right to their property under the U.S. Constitution, so the RSL should have been subjected to strict scrutiny. Violations of fundamental rights may only be upheld if the intrusions are both “narrowly tailored” to minimize the impact on the rights in question and are necessary to achieve a “compelling state interest.” New York City’s RSL is neither of those things.

Moreover, even under lesser scrutiny, standardless perpetual emergencies violate due process because they are arbitrary and irrational. Under the RSL, the City of New York is allowed to determine that there is a “public emergency requiring the regulation of residential rents” once it is established that the vacancy rate is below a 5% threshold. When an emergency is declared, the RSL places restrictions on property owners’ rights to use, possess, occupy, and sell or otherwise dispose of covered properties.

Without fail, for the last 50 years, New York City has consistently declared an emergency every three years to keep the RSL’s strictures in place. Therefore, NCLA argues, the 5% threshold is an arbitrary means to an end—the trigger that allows the City of New York to regulate under the RSL—not a standard of whether an emergency really exists in the first instance.

NCLA released the following statements:

“Property rights are fundamental rights under the Due Process Clause, so they warrant heightened protections before the courts. NCLA is hopeful that the Second Circuit may recognize the need for strict scrutiny review in cases regulating private property.”

—**Kara Rollins, Litigation Counsel, NCLA**

“Exploiting an emergency to consolidate power and deprive citizens of their fundamental rights is nothing new for municipal governments. But that doesn’t mean courts should sit idly by as New York City destroys property rights under the pretense of an emergency without a beginning—or any end in sight.”

—Caleb Kruckenberg, **Litigation Counsel, NCLA**

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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