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NCLA Petitions Supreme Court to Hear Case on Gov. Baker's Pandemic Orders Barring Free Assembly

Dawn Desrosiers, et al. v. Governor Charles D. Baker

Washington, DC (May 10, 2021) – Despite the greatly improved disease and risk environment since the COVID-19 national emergency was declared fourteen months ago, Massachusetts Governor Charlie Baker's state of emergency remains in effect today. This afternoon the New Civil Liberties Alliance filed a [petition](#) for a *writ of certiorari* with the U.S. Supreme Court in *Dawn Desrosiers, et al. v. Governor Charles D. Baker*, asking the Justices to review the Massachusetts Supreme Judicial Court's December 2020 [ruling](#) that decided the Governor's restrictions are reasonable and do not violate the plaintiffs' federal constitutional rights.

NCLA, a nonpartisan, nonprofit civil rights group, [challenged](#) Governor Baker's Civil Defense State of Emergency declaration and his ensuing emergency orders last year in Massachusetts's highest court. That court mistakenly held that the First Amendment freedom of assembly claims should be scrutinized under the relaxed standard applicable to time, place, and manner restrictions. It further erred by holding that the restrictions could pass muster under the Due Process Clause so long as they were reasonably related to a valid state interest. Closer scrutiny than that is warranted when the restrictions on personal liberty are so extreme and have been imposed by order of a single executive-branch official rather than a legislature.

NCLA represents local entrepreneurs, church pastors, and a private school headmaster, who are opposed to the Commonwealth's arbitrary and discriminatory restrictions on their rights to peaceably assemble and to receive due process. Baker has issued 67 executive orders related to the pandemic, some 40 of which implicate the assembly or due process rights of NCLA's clients.

Governor Baker seized unprecedented executive and legislative authority when he issued his Emergency Declaration. Under the state of emergency, the Governor arbitrarily declares—without a hearing or other form of due process—which “essential” businesses may remain open and which “non-essential” businesses must close. Most of Baker's orders from the last year have curtailed freedoms by banning economic, religious, educational, and cultural assembly in some form or fashion. But a health crisis does not empower the Governor to disregard the First and Fourteenth Amendments.

Petitioners assert that the severe restrictions on their civil liberties violate their due process rights. Governor Baker's capacity limitations, curfews, and other restrictions on gatherings in private homes underscore the need for judicial oversight of executive decrees, even during a pandemic. The Supreme Court has rarely seen such a brazen invasion of the sanctity of private homes and interference with personal relationships.

NCLA hopes the Supreme Court will take up this case because it presents a unique opportunity to remind state and federal courts that constitutional rights like the freedom peaceably to assemble remain relevant in times of crisis. Review is warranted to provide lower courts with much-needed direction regarding the proper standards for reviewing constitutional challenges to severe restrictions on civil liberties.

NCLA released the following statement:

“If the Governor can really choose which assemblies to ban as long as his stated purpose is neutral, and if he can choose which jobs or activities to ban just because it has a reasonable relationship to a government interest, no civil liberties are safe in this pandemic or the next. The Constitution does not lose its vitality just because there is a crisis; in fact, that’s when we need it most. The Supreme Court should review the *Desrosiers* decision and reaffirm that a crisis cannot justify abandoning civil liberties or constitutional principles.”

— **Michael P. DeGrandis, 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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