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NCLA Files Third Circuit Appeal to Stop Gov. Murphy’s Rental Security Deposits Executive Order

Matthew Johnson, et al. v. Governor of New Jersey, et al.

Washington, DC (June 16, 2021) – New Jersey Governor Phil Murphy chose economic winners and losers with [Executive Order No. 128](#) (EO 128), an unconstitutional mandate that forces residential housing providers to credit tenants’ security deposits toward rent payments. The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed its [opening brief](#) today in the U.S. Court of Appeals for the Third Circuit, seeking a reversal of the trial court’s [decision](#) to grant the Governor’s motion to dismiss. NCLA urges the Third Circuit to restore the rule of law for all New Jerseyans by ruling that EO 128 violates the Contracts Clause of the U.S. Constitution.

EO 128 nullifies the rights and obligations of housing providers and tenants who had mutually and voluntarily entered into contracts that explicitly prohibited the use of security deposits to pay rent. By waiving nonwaivable provisions of the Rent Security Deposit Act, a law governing security deposits for residential leases in New Jersey, the Governor violated the Contracts Clause of the U.S. Constitution. If the Contracts Clause is to retain any meaning at all, it must prevent state actions like EO 128 that significantly alter contractual terms.

NCLA argues that the U.S. District Court for the District of New Jersey erred in its decision when it forbid itself from considering the unconstitutional process through which Governor Murphy adopted EO 128 and by granting “substantial deference” to Governor Murphy’s unilateral decision to issue the order. Under Supreme Court precedent, federal courts should defer to a state’s decision to impair private contracts only if that decision is based on the considered and empirical judgment of a state legislature. The trial court erred by granting “substantial deference” to Governor Murphy’s ill-considered decision to circumvent the legislative process based on his own unsubstantiated conclusion that EO 128 was “plainly in the public interest.”

The Governor’s order has altered the express terms of housing providers’ contracts, changed the incentive structure that those contracts put in place, lessened the value of the contracts, and diminished housing providers’ rights. On behalf of Margarita Johnson and its other clients, NCLA asks the Court of Appeals to reverse the damage the trial court inflicted on the Contracts Clause and on the federal judiciary’s role in protecting private contracts against undue state influence. Despite New Jersey’s claim, this case is not moot. Housing providers are still suffering under this EO, and they need to know whether this kind of order might happen again.

NCLA released the following statements:

“The trial court’s decision set a dangerous precedent that would allow states to nullify basically any private contract in any industry that has been subject to any regulation (so, basically every industry). Unless federal courts fulfill their constitutional duty and enforce the Contracts Clause, everyone will suffer. The result of EO 128 and the trial court’s decision is that rents will go up and more people will struggle to make ends meet.”

— **Jared McClain, Litigation Counsel, NCLA**

“Both contractual and private property rights have been under attack by the Murphy administration since early in the pandemic. It is imperative for the Court to step in to reinstate the rule of law and constitutional order.”

— **Harriet Hageman, 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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