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NCLA Keeps Fighting Against Gov. Murphy's Unlawful Effort to Rewrite Every Residential Lease in NJ

Matthew Johnson, et al. v. Governor Philip D. Murphy, et al.

Washington, DC (November 18, 2020) – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, today filed a [response](#) to the State's motion to dismiss in the U.S. District Court for the District of New Jersey in the case of *Matthew Johnson, et al. v. Governor Philip D. Murphy, et al.* The lawsuit challenges [Executive Order No. 128](#) (EO 128), which violates the Contracts Clause of the U.S. Constitution, as well as New Jersey's Constitution and statutory laws, by interfering with freely negotiated contracts between tenants and housing providers.

NCLA clients like Mr. Johnson, who owns a small rental property in Cherry Hill, New Jersey, are property owners who rent out their homes to make a living. Most of them own only a single rental unit. The governor's unconstitutional order victimizes them by allowing tenants to apply their security deposits to cover rent or back rent. The problem is that once a tenant uses up the security deposit in this way, that tenant no longer has a financial incentive to keep the property nice during the remainder of the tenancy, and it leaves the housing provider without any security against damage by the tenant.

Without statutory authority to do so, Governor Murphy purported to rewrite every residential lease in the State of New Jersey unilaterally. On its face EO 128 claims to waive numerous state laws governing security deposits that were adopted by proper, constitutional legislative process. Targeting a single group (*i.e.*, residential tenants) for relief in this manner undermines freedom of contract, due process, and equal protection of the laws. It also ignores the governor's limited role and disregards the separation of powers among branches of government.

The state's move to dismiss the complaint for failure to state a claim is a feeble attempt to convince the court that the Contracts Clause, which prohibits states from adopting laws that interfere with contractual obligations, is a dead letter. New Jersey contends that once a state regulates an industry, it can then retroactively nullify any contractual provisions in that sector. Regulated businesses, even individuals who only rent out a single unit, the State argues, have no legitimate expectation against government intervention in their private contracts.

NCLA's response refutes the State's absurd argument. EO 128 rewrites the terms of NCLA's clients' contracts, impairs the housing providers' rights, and far exceeds any limited and temporary contractual interference that the Constitution might tolerate. EO 128 is precisely the type of state action the Framers designed the Contracts Clause to prohibit and is the kind that the Supreme Court has historically struck down. The security deposits for which the Plaintiffs contracted created an incentive for the tenants to comply with the terms of their leases and to maintain the condition of the housing providers' properties. EO 128 created "every incentive" for the tenants to apply their deposit toward their rent and eliminate the security for which NCLA's clients had contracted.

NCLA is asking the court to deny the State’s motion to dismiss and allow these New Jersey housing providers to continue pursuing their claims for declaratory and injunctive relief against Gov. Murphy.

NCLA released the following statements:

“It’s clear from the State’s motion to dismiss that Governor Murphy would like nothing more than to avoid judicial scrutiny of his unlawful executive order. And with good reason. EO 128 is a direct affront to the federal Contracts Clause, which exists to invalidate this sort of state interference with private contracts.”

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

“With one stroke of his pen, Governor Murphy single-handedly rewrote not only our clients’ lease agreements, but every existing residential lease in New Jersey. Governors are not dictators. He does not have the power to do this, and the U.S. Constitution specifically forbids him from doing this. Our clients are simply asking that their private contracts be respected and restored.”

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

For more information visit case summary 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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