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NCLA Asks SCOTUS to Resolve Circuit Split over Timing of Due Process Suits in Property Disputes

Philip G. Potter v. Incorporated Village of Ocean Beach, et al.

Washington, DC (November 18, 2025) – The New Civil Liberties Alliance has filed an *amicus curiae* [brief](#) urging the Supreme Court to hear *Potter v. Incorporated Village of Ocean Beach* and determine when the statute of limitations begins to run for Americans who have to sue local governments for denying them due process of law in connection with violating their property rights. The Justices should rule that the statutory time limit for filing claims of due process violations in land use disputes begins to run only once the government denies due process of law to contest property rights matters, rather than when someone is first deprived of the property interest. NCLA asks the Supreme Court to resolve the entrenched disagreement between several circuit courts of appeals on this issue, so local governments can no longer use administrative delay tactics to freely interfere with Americans’ property rights.

As early as 2011, Ocean Beach, New York began expressing intent to revoke Mr. Potter’s occupancy certificate for a house there. A hearing officer recommended revoking the certificate in 2014, but the Village Board voted to table the matter indefinitely the next year. Potter has long demanded an administrative hearing about the certificate’s revocation, but the Village did not make clear that it was refusing to grant any such hearing until after the revocation was confirmed to have occurred. Indeed, when Potter filed suit in New York state court in August 2019, seeking a declaration that his certificate of occupancy remained valid, the Village Board argued that the suit was premature because it had not yet decided whether to revoke the certificate and that a process remained available by which he could seek resolution. Ocean Beach only officially asserted that it had definitively decided to revoke the certificate in late 2020 at the earliest.

In August 2023, Potter filed a lawsuit against Ocean Beach that claimed the Village denied him the procedural due process he deserved under the Fourteenth Amendment when it revoked the certificate. The U.S. Court of Appeals for the Second Circuit affirmed a district court’s dismissal of the lawsuit for failing timely to file.

The Second Circuit wrongly found that the three-year window for filing due process claims begins to run when government “inflicts an actual, concrete injury,” deciding that this had occurred in Potter’s case when the certificate was revoked (more than three years before he filed). The Fifth, Sixth, Seventh, Ninth and Tenth Circuits all agree that the filing window only begins after the government declines to provide someone with due process of law in cases like this. The Supreme Court should agree with those circuits and decide that Potter’s lawsuit was timely filed, setting a standard for all similar disputes nationwide.

NCLA released the following statements:

“The Second Circuit’s accrual rule will often lead to unnecessary duplicative litigation. It forces property owners faced with statute-of-limitations concerns to file federal court actions while simultaneously pursuing the processes made available to them in state judicial or administrative proceedings.”

— **Rich Samp, Counsel of Record**

“The Second Circuit is among a tiny minority of circuits that makes it exceedingly difficult for people whose due process rights have been denied to figure out when to sue. The Supreme Court should hear this case, resolve this circuit split, and decide that the statute of limitations does not begin to run until due process has been denied.”

— **Mark Chenoweth, President, NCLA**

For more information visit the *amicus* 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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