

Federal Judge Declares Portions of Pennsylvania's COVID-19 Mitigation Orders Unconstitutional

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Finding the good intentions behind COVID-19-related safety orders laudable but insufficient to overcome liberty interests in the rights to free assembly, due process, and equal protection, a federal judge in Pittsburgh has declared unconstitutional portions of COVID-19 orders enacted by Pennsylvania Governor Tom Wolf. *County of Butler, et al. v. Wolf*, No. 2:20-cv-00677 (W.D. Pa. Sept. 14, 2020).

Procedural Background

The case began in May and was brought by three groups: several counties surrounding Pittsburgh, four members of the Pennsylvania House of Representatives for communities in those areas, and several Pennsylvania businesses. Judge William S. Stickman IV, a 2019 appointee to the Western District of Pennsylvania, dismissed the County Plaintiffs from the lawsuit, finding that only the Pennsylvania businesses and individual politicians could challenge the administration's orders.

Provisions Challenged

The provisions in Governor Wolf's orders challenged in the declaratory judgment action, and ultimately found to violate the U.S. Constitution, were those that closed non-life-sustaining businesses, required Pennsylvanians to stay-at-home (except for prescribed reasons), and limited indoor and outdoor gatherings to 25 and 250 individuals, respectively, which were enacted in March as COVID-19 cases began to spread across the Commonwealth.

Governor Wolf lifted the business closure and stay-at-home provisions this summer in response to slowing increase in the number of new COVID-19 cases.

Court's Decision

In support of his ruling in the plaintiffs' favor, Judge Stickman wrote that "the Constitution cannot accept the concept of a 'new normal' where the basic liberties of the people can be subordinated to open-ended emergency mitigation measures." Rather, Judge Stickman noted that "the Constitution sets certain lines that may not be crossed, even in an emergency." He found that certain of Governor Wolf's attempts to contain the COVID-19 pandemic ran afoul of Pennsylvanian's constitutional rights.

In making this ruling, Judge Stickman determined that the Wolf administration's COVID-19 mitigation efforts were entitled only to "regular" constitutional scrutiny. The administration argued that it was entitled to a more deferential review because of the pandemic's emergency nature. Judge Stickman's chief rationale for applying a stricter level of review was the "ongoing and open-ended nature of the restrictions and the need for an independent judiciary to serve as a check on the exercise of government power."

The Judge acknowledged the seriousness of the COVID-19 pandemic, but emphasized that "the solution to a national crisis can never be permitted to supersede the commitment to

individual liberty that stands as the foundation of the American experiment.”

Implications

Judge Stickman’s ruling contrasts with the Pennsylvania Supreme Court’s May 20, 2020, order declining to lift the some of the same requirements challenged in the case. Business occupancy mandates and other safety requirements, such as the obligation to wear face coverings in public and mandatory telework, were not challenged and remain in effect. The latest ruling limits the Governor’s ability to re-impose business closure and stay-at-home orders and leaves open the possibility of similar challenges to the Governor’s COVID-19 mitigation efforts in federal court.

Please contact a Jackson Lewis attorney if you have any questions about this case. Jackson Lewis attorneys are closely monitoring updates and changes to legal requirements and guidance and are available to help employers weed through the complexities involved with [state-specific or multistate-compliant plans](#).

If you have questions or need assistance, please reach out to the Jackson Lewis attorney with whom you regularly work, or any member of our [COVID-19 team](#).

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