

NEWS & INSIGHTS

Federal court declares Pennsylvania gathering limits unconstitutional - impact for funeral homes and cemeteries

BY: [JASON G. BENION](#) | [INSIGHTS](#) | [LEGAL UPDATE](#)

SEPTEMBER 15, 2020



The below information is current as of the publication date listed. Because COVID-19 response measures on all fronts are continually evolving, clients should stay alert to new developments and consult with counsel on any critical questions.

In a September 14, 2020 [opinion](#) and [order](#), a federal district court in Pittsburgh declared Pennsylvania's gathering limits, imposed as COVID-19 mitigation efforts, to be unconstitutional. Funeral homes and cemeteries may now choose to hold gatherings above the previously imposed limits, but this ruling is likely not the end of the story.

The July 15, 2020 orders of Gov. Tom Wolf and Secretary of Health Dr. Rachel Levine limited indoor events to 25 people and outdoor events to 250 people. In a suit brought by four western Pennsylvania counties, four state and federal politicians, and several small business owners, the U.S. District Court for the Western District of Pennsylvania declared that these limits violate the right of assembly guaranteed by the First Amendment.

[Funeral services again limited to 25 people \(July 16, 2020\)](#)

The court found that the limits were not narrowly tailored as required to pass constitutional muster because they place substantially more burdens on gatherings than needed to achieve their stated purpose. The court noted that while caps were placed on the number of people that may gather for political, social, cultural, educational, and other expressive purposes, commercial gatherings are limited only by a percentage of occupancy, resulting in hundreds of people gathering in malls, large restaurants, and other commercial facilities. The court also noted that the limits apply statewide, without regard to the prevalence of the virus and the resources in the vastly different areas of the state.

The court also declared that the substantive due process and equal protection clauses of the federal Constitution were violated by the governor and secretary of health's March 2020 stay-at-home and non-life-sustaining business closure orders, which have since been suspended.

The court's decision does not affect other mitigation efforts imposed by the governor, such as the mandate to wear masks in public.

In light of this decision, funeral homes and cemeteries may choose to host gatherings above the 25-person indoor limit and 250-person outdoor limit. However, the governor has indicated that he will seek a stay of the decision and file an appeal. If granted, that stay would mean the gathering limits remain in effect while the appeal is pending.

The outcome of that appeal is uncertain. The court's decision is somewhat at odds with rulings from two other federal district courts in Pennsylvania, as well as an earlier ruling from the Pennsylvania Supreme Court, which have largely upheld the governor's COVID-19 business closure orders. No other decision, however, has specifically addressed the limits on gatherings.

Saxton & Stump attorney [Jason Benion](#) is available to assist [death care](#) professionals with these and other issues regarding operations during the COVID-19 pandemic.

Related People

[Jason G. Benion](#)

Related Services and Industries

[Death Care](#)