

NEWS & INSIGHTS

Pennsylvania gathering limits remain in place, appeals court stays order

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

OCTOBER 2, 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.

A federal appeals court stayed the lower court order declaring Pennsylvania's COVID-19 gathering limits unconstitutional. This means that the limits will remain in place while the lower court's order is on appeal.

On September 15, 2020, a federal district court in Pittsburgh declared the gathering limits to be unconstitutional,

along with Gov. Tom Wolf's now-suspended stay-at-home and non-life-sustaining business closure orders.

[Federal court declares Pennsylvania gathering limits unconstitutional](#)

Gov. Wolf appealed and asked the district court to stay its order, which would have left the limits in place during the appeal. On September 22, 2020, the district court denied the governor's stay request.

[Federal court denies stay during appeal of ruling on gathering limits](#)

The governor then asked the United States Court of Appeals for the Third Circuit for a stay, arguing that the district court's decision misapplied Supreme Court precedent, was based on a selective review of the record, and "will undoubtedly cost lives."

The plaintiffs – four western Pennsylvania counties, four state and federal politicians, and several small business owners – opposed the stay request, arguing that other decisions upholding parts of the governor's COVID orders were not based on a full factual record like this case and that the district court correctly distinguished the Supreme Court precedent relied upon by the governor. The plaintiffs also contended that the governor was attempting to remake the record by relying upon sources not cited in the district court.

The plaintiffs were joined by eight Republican leaders of the Pennsylvania House of Representatives and the Eagle Forum Education & Legal Defense Fund, a conservative nonprofit that advocates for limits on government power, both of whom filed amicus curiae briefs in opposition to the stay request.

On October 1, 2020, the court of appeals issued an [order](#) granting the governor's motion for a stay. This means that the 25-person limit on indoor events and 250-person limit on outdoor events will remain in effect while the district court's order is on appeal. The court of appeals did not issue an opinion explaining the rationale for its order.

The appeal will now proceed with briefing on the merits and potentially oral argument. That process and a decision on the appeal are at least several months away. The gathering limits will remain in effect until the court of appeals issues a decision.

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

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