



## Connecticut Federal Court rules in favor of Governor Lamont and the City of New Haven in lawsuit seeking to enjoin COVID-19 related Executive Orders

On May 19, 2020, U.S. District Court Judge Michael Shea denied the plaintiffs', Michael Amato and Joy Monsanto, temporary injunction seeking to stay "the enforcement of: (1) Mayor Elicker's ten-person order, (2) all of Governor Ned Lamont's executive orders banning non-essential gatherings of people, and (3) Governor Lamont's executive order commanding bars and restaurants to close their on-premises operations."

The plaintiffs own a restaurant in New Haven called 50's Lounge, and claimed that the orders by Governor Lamont and Mayor Elicker cut off their revenue stream and made it unsustainable to maintain business operations.

Judge Shea declined to stay Mayor Elicker's Emergency Order No. 4, which limited gatherings to less than 10 people, because it became moot by the issuance of Governor Lamont's more restrictive Executive Order 7N, which limits gatherings to less than 6 people.

Judge Shea also declined to stay Governor Lamont's Executive Order 7D, which restricted on-premises restaurant operations. The plaintiffs claimed that the order violated their Fourteenth Amendment right to "pursue an honest living." Judge Shea found that the plaintiffs lacked standing to challenge a "total revenue" loss because they voluntarily closed their doors a day before Executive Order 7D was issued and declined to reopen for take-out consumption. In addition, the court found it notable that the plaintiffs did not allege that they would reopen – or that customers would return – if the orders were lifted. These factors also showed that the plaintiffs retained an opportunity to run their business and earn money.

Even if the plaintiffs had standing, Judge Shea noted that he would not have enjoined Executive Order 7D because the plaintiffs could not prove that "irreparable harm" would result. The mere statement that the plaintiffs "may" have to shut their doors for good was insufficient. For those reasons, Judge Shea declined to address the plaintiffs' claim on the merits.

Judge Shea next declined to stay Governor Lamont’s Executive Order 7N, which limited the amount of people able to gather and therefore, according to the plaintiffs, violated their right to free assembly and association. Without specifically deciding that the plaintiffs had standing to challenge the order or that they had adequately pleaded irreparable harm, Judge Shea unequivocally found that the plaintiffs had not established a likelihood of success on the merits, which is a necessary element to grant a temporary injunction.

With respect to the plaintiffs’ First Amendment freedom of assembly claim, Judge Shea reasoned that the right to assemble is not absolute. Instead, such a right may be abrogated when states are forced to take “extraordinary measures to protect public health.” Judge Shea relied on the 1905 U.S. Supreme Court case *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905). “*Jacobson* requires that courts refrain from second-guessing state governments’ responses unless there is no real or substantial relation between the actions and the public health and safety or the action is beyond all question, a plain, palpable invasion of rights. Even constitutional rights, including First Amendment rights, are subject to ‘reasonable conditions’ to preserve public health.” Executive Order 7N, Judge Shea concluded, is reasonable and not arbitrary under the circumstances.

The Fifth Circuit and other courts around the country have relied on *Jacobson* to uphold state orders under the COVID-19 crisis. Even if *Jacobson* did not apply, however, Judge Shea clarified that the order would pass muster under traditional First Amendment analysis because its restrictions were content neutral and narrowly tailored to serve a significant government interest.

With respect to the First Amendment freedom of association claim, Judge Shea was skeptical that the right extends to “friends, customers, and like-minded people” as alleged by the plaintiffs. “Freedom of association protects two types of association: (1) choices to enter into and maintain certain intimate human relationships, and (2) association for the purpose of engaging in those activities protected by the First Amendment—speech, assembly, petition for the redress of grievances, and the exercise of religion.” Judge Shea concluded that the plaintiffs did not allege restrictions to the appropriate human relationships, and that the alleged associations were not intended to undertake First Amendment protected activities. Accordingly, Judge Shea denied the plaintiffs’ motion for a temporary injunction.

Judge Shea’s decision lends support to the position that local and state measures, including Governor Lamont’s Executive Orders limiting certain commercial activities, enacted in response to the current COVID-19 pandemic, are enforceable and do not violate the Constitution. Although state and local leaders may have received push back or complaints from special interest groups in recent weeks, leaders should feel comfortable that the orders are on firm Constitutional footing based on the reported decision to date. As a general principle, too, the Governor’s Executive Orders remain valid and enforceable until the Governor rescinds them or a Court overturns them.

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