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Liberating Pennsylvania From Lockdown

A judge says Gov. Tom Wolf's orders violate the U.S. Constitution.

By The Editorial Board

‘The liberties protected by the Constitution are not fair-weather freedoms—in place when times are good but able to be cast aside in times of trouble.’ So federal judge William Stickman IV wrote Monday in an instructive ruling that overturned Pennsylvania Gov. Tom Wolf’s use of emergency power.

The decision comes nearly six months after Mr. Wolf invoked police powers to impose a strict lockdown as his strategy against Covid-19. Mr. Wolf argued the case is moot since he has relaxed his orders, but Judge Stickman noted that Mr. Wolf continues to assert that he can reinstate restrictions, as other governors have done amid virus flare-ups. Pennsylvanians still live under Mr. Wolf’s unilateral sword.

Republican legislators and several businesses argued the Governor’s emergency orders violate the First Amendment’s right to assemble and Fourteenth Amendment’s equal protection and due process guarantees. Mr. Wolf claims his police powers are entitled to extraordinary judicial deference under the Supreme Court’s *Jacobson* (1905) precedent, which upheld Massachusetts’s smallpox vaccine mandate.

But as Judge Stickman wrote, “*Jacobson* was decided over a century ago. Since that time, there has been substantial development of federal constitutional law in the area of civil liberties. As a general matter, this development has seen a jurisprudential shift whereby federal courts have given greater deference to considerations of individual liberties, as weighed against the exercise of state police powers.”

The judge cited Justice Samuel Alito’s dissent this year from the Supreme Court’s *Calvary Chapel Dayton Valley v. Sisolak* denial of injunctive relief: “It is a considerable stretch to read the [*Jacobson*] decision as establishing the test to be applied when statewide measures of indefinite duration are challenged under the First Amendment or other provisions not at issue in that case.”

During the 1918 Spanish flu, Judge Stickman wrote, nothing “remotely approximating lockdowns were imposed.” In Pennsylvania, movie theaters, saloons and dancing halls were closed but these restrictions were lifted within 35 days. Most cities in America at that time lifted their restrictions after about 50 days.

Most legal challenges to emergency orders this year have involved religious freedom, but Judge Stickman wrote that other individual liberties are equally important. By closing “non-life-sustaining businesses,” his ruling says, the state was “determining who could work and who could not, who could earn a paycheck and who would be unemployed—and for some—which businesses would live, and which would die.”

Mr. Wolf’s administration never bothered to define “life-sustaining,” and it turned out to mean whatever his government says it means. Walmart, Lowe’s and Home Depot remained open while a plaintiff’s furniture store had to close. The judge says these arbitrary distinctions violate due process and equal protection.

Ditto for Mr. Wolf’s restrictions on public gatherings this summer to 25 people indoors and 250 outdoors. Yet as many as 20,000 attendees were allowed to attend an auto show and flea market outdoors. Mr. Wolf even participated in a Black Lives Matter protest that violated the letter of his own emergency order. By contrast, the plaintiffs weren’t allowed to hold campaign events exceeding the order’s limits, which Judge Stickman says violates their right to assemble.

Governors had to make difficult decisions amid great uncertainty at the start of the pandemic. But six months later, too many governors have grown too comfortable with what amounts to absolute power. Mr. Wolf’s office says the state will appeal, but we’re glad the public and the courts are finally acting to protect American liberties against the arbitrary use of government power.