

CLIENT ALERT

Arizona Gyms Lose Bid to Defy Governor’s Re-Closing Order

July 9, 2020

On Tuesday, an Arizona state court denied a temporary restraining order sought by two Phoenix-area gyms to enjoin enforcement of Governor Ducey’s “re-closing” order. The lawsuit, brought by plaintiffs Mountainside Fitness and EOS Fitness who together operate 40 gyms, claimed violations of constitutional due process and equal protection rights.

This decision was part of a constellation of similar lawsuits in state and federal courts across the country. On Monday, several movie theater chains sued New Jersey Governor Philip Murphy for the right to reopen. In late June, Long Island gym owners announced their intention to sue the state of New York for the right to open their doors during New York’s “Phase 4” reopening plan. And various North Carolina entities have sued Governor Roy Cooper to reopen—to mixed results. North Carolina churches and, as of yesterday, bowling alleys won their bids to reopen, but bars and gyms have not been successful.

The Executive Orders

On April 29, Governor Ducey issued an executive order that allowed fitness centers and other businesses to reopen if they enacted strict physical-distancing and sanitation protocols. In the weeks after re-opening, however, Arizona’s coronavirus cases skyrocketed. National newspapers observed that Arizona had “lost control of the epidemic” and that “the state is a coronavirus hot spot.”

On June 29, Ducey issued Executive Order 2020-43, which “paused” Arizona’s reopening and ordered all gyms, bars, and movie theaters closed until July 27. Mountainside sued the next day, and its CEO publicly stated that it would remain open until the court issued a ruling. Law enforcement cited the manager of one of Mountainside’s facilities with misdemeanor charges for flouting the order. In its Tuesday decision, the court summarized the evolving situation in this way:

There is certainly understandable frustration when the advice and directives the public gets from the government are constantly changing and inconsistent. . . . In May, Arizona officials told the public that it was safe to re-open, albeit in a measured way. The public is now being told, in essence, that what was said in May was incorrect.

The Ruling

Mountainside and EOS argued that they met established federal health standards through strict physical distancing policies, investment in sanitation equipment, extensive staff training, mandatory temperature checks, and mask requirements. Closing their facilities without consideration of those safety protocols, the gyms claimed, was arbitrary and irrational.

The court disagreed, holding that the Executive Order “clearly had a rational basis” to prevent the surge in coronavirus cases. The court continued that the “burden that Mountainside has is immense,” because the “Governor does not have to prove that his decision was correct” and the court “must give extreme deference” to the Order.

Moreover, the gyms pointed to other higher-risk businesses, like casinos, which the Order allowed to stay open. While acknowledging the merit of this argument—that “many businesses were allowed to stay open that may very well not have been ‘essential,’”—it ultimately held that “courts are in no position to second guess these types of decisions.” While denying plaintiffs’ requested relief, the court expressed empathy for their claims, stating that:

Certain people and businesses are being hurt disproportionately during this crisis, some in incredibly unfair ways. Mountainside may be one of those businesses. The Court certainly sympathizes with Mountainside, and its employees and patrons. Sympathy, however, is not a relevant consideration for the Court.

Shortly after the court issued its ruling, Mountainside agreed to abide by the court’s order and close its facilities.

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