

The Rule of Threes: Three Court Cases Challenging New York's Response to COVID-19

In response to the COVID-19 pandemic, New York has placed restrictions on many facets of our daily lives. For example, as we have reported previously, under the applicable executive orders, gatherings are limited to 50 people. In addition, many sporting events can take place, but without spectators. These types of restrictions are being challenged in court. On Friday, August 7, federal Judge Glenn Suddaby of the Northern District of New York held that New York's limit of 50 attendees was "impermissibly arbitrary" when applied to a wedding in a restaurant facility. Then, on Tuesday, August 11, federal Judge Lawrence Kahn, also of the Northern District, rejected a case brought by five New York racetracks challenging the state's ban on spectators at auto racetracks. Also on the same day, federal Judge David Hurd dismissed a case brought on behalf of an Arizona woman challenging New York's travel advisory. We discuss each of the decisions and the potential impact on New York's COVID-19 restrictions below.

The Wedding Order: *DiMartile v. Cuomo*

In *DiMartile v. Cuomo*, a couple that booked a wedding venue in Erie County sued regarding the 50-person limit for gatherings in New York. Under the applicable indoor dining guidance, the venue—which is also a restaurant—may accommodate up to 200 people. The couple asserted that the activities that occur at a wedding banquet are nearly identical to that which occurs while dining at a restaurant.

Based on this argument, Judge Suddaby determined that the 50-person gathering restriction on some wedding venues should be limited. "[T]he Court can find no rational basis for this State's difference in treatment between use of the venues in question for ordinary dining and those venues for weddings... The Court is not persuaded by the State Defendants' argument that the fact that part of the purpose of a wedding is for the married couple to interact with friends and family is sufficient to justify finding that weddings are practically dissimilar from ordinary dining and thus do not merit to be treated the same as an ordinary dining use of the venue."

The *DiMartile* order is narrow in scope. It was a limited win for the couple and the venue. The ruling applies only to restaurants that are also wedding venues. Weddings—and other gatherings—must continue to follow New York COVID-19 guidance for gatherings. Face coverings must be worn when people are not seated. Food and drink may only be consumed while seated. No dancing is permitted. Tables must be at least six feet apart and may only seat up to ten people. Failure to follow this guidance could lead to the revocation of a venue's liquor license. For more information, please read this [information memo](#).

In public statements, the state has said that it intends to appeal this order.

The Racetrack Order: *Lebanon Valley Auto Racing v. Cuomo*

In *Lebanon Valley Auto Racing v. Cuomo*, five New York racetracks sued, arguing that the ban on spectators violated their constitutional rights and state law. Judge Kahn dismissed the case. Importantly, Judge Kahn deferred to Gov. Cuomo's decisions regarding public health. "The Court refuses to insert itself in the ongoing nationwide dispute regarding the proper balance to be struck between regulating for the public welfare on one hand and free enterprise on the other." Courts are required, Judge Kahn continued, "to afford politically accountable officials significant discretion in striking the appropriate balance during pandemics."

The Travel Order: *Page v. Cuomo*

In *Page v. Cuomo*, Arizona resident Cynthia Page sued, arguing that New York's travel advisory and its quarantine requirement were unconstitutional. Page asserted that New York had successfully "flattened the curve" and the additional restrictions were unnecessary.

Judge David Hurd disagreed and dismissed the case. Judge Hurd was also deferential to the state's decisions during a public health crisis. "The problem for Page is that [the law does not] require[] policymakers to enact inflexible, unchanging measures that fail to account for the facts on the ground. If anything, just the opposite is true. Under any standard of review, public health officials can and should continue calibrating their responsive measures to the situation as it unfolds."

What Does This Mean Going Forward?

Despite the chipping away at the gathering limitation in *DiMartile*, the three orders demonstrate the judiciary's largely deferential attitude towards Gov. Cuomo's decisions in this public health crisis. No judge was willing to tamper with New York's rationale behind social distancing. Even in *DiMartile*, the judge kept the 50% occupancy restrictions on restaurants in place. Instead, the court applied that restriction to a wedding reception, treating the reception as a restaurant rather than a function subject to the 50-person gathering restriction. This indicates there may be some limits to the deference that courts will give the executive orders, but that challengers face a heavy burden. Even when granting relief, courts will attempt to stay within the restrictions.

If you have questions, or want to effect the standards applicable to your industry, please contact [Hermes Fernandez](#), [Caitlin Anderson](#) or the attorney at the firm with whom you are regularly in contact.



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