



Written by [Bob Adelman](#) on May 24, 2020

Ohio Gyms Reopen After Judge Rules Their Closing Was Unconstitutional

Within hours of a court's ruling on Wednesday that Ohio's Public Health Director Amy Acton had reached way beyond her authority in closing various businesses, including gyms and fitness centers, those businesses [reopened](#).

And none too soon, according to Tim Cassell, the owner of Pinnacle Performance in Columbus: "I've got \$250,000 worth of equipment sitting out there collecting dust ... every day [we're closed] means dollars [lost], especially when you've got none."



The temporary injunction against enforcement came from a suit filed by the Cincinnati-based Finney Law Firm and assisted by the 1851 Center for Constitutional Law, representing 35 independent gyms statewide. The suit claimed that the series of orders from Acton violated numerous sections of the Ohio Constitution and constituted an illegal taking of private property.

Judge Eugene Lucci, in the Court of Common Pleas in Lake County, Ohio, didn't mince words. As a result of Acton's various orders, beginning in March and repeatedly amended since then, "The director has quarantined the entire people of the state of Ohio, for much more than 14 days [the normal incubation period for the COVID virus]. The director has no statutory authority to close all businesses, including the plaintiffs' gyms, which she deems non-essential for a period of two months. She has acted in an impermissibly arbitrary, unreasonable and oppressive manner, and without any procedural safeguards."

Lucci wrote that those rights being violated are fundamental in Ohio:

The rights of the plaintiffs are fundamental ... [quoting a previous case:] "Ohio has always considered the right of property to be a fundamental right. There can be no doubt that the bundle of venerable rights associated with property is strongly protected in the Ohio Constitution and must be trod upon lightly, no matter how great the weight of other forces."...

Fundamental liberties to own and use property and earn a living are at stake and are violated by the defendants' actions

The defendant has criminalized lawful businesses, imposing strict liability for violations, including severe criminal, civil and equitable penalties. Some of the plaintiffs' businesses will not survive the lockdown of two or more months.

The judge also noted that the arbitrary and capricious use of powers not granted erodes confidence in the rule of law:

The general public would be harmed if an injunction were not granted. There would be a diminishment of public morale, and a feeling that one unelected individual could exercise such unfettered power to force everyone to obey impermissibly oppressive, vague, arbitrary and



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unreasonable rules that the director devised and revised, and modified and reversed, whenever and as she pleases, without any legislative guidance.

The public would be left with feelings that their government is not accountable to them.

Prolonged lockdowns have deleterious effects upon the public psyche.

Maurice Thompson, the executive director of the 1851 Center, emphasized that “Constitutions are written to prevent governments from arbitrarily interfering in citizens’ lives and businesses. On that front, the call to action is clear: the Governor and health director may no longer impose their own closures and regulations and write their own criminal penalties to enforce those regulations and closures.”

On a side note: Earlier this month the Ohio House passed an amendment that would limit orders from Acton to just 14 days. On Wednesday the Ohio Senate rejected that bill unanimously. It’s now in committee, but the governor of Ohio, Mike DeWine, has said that he will veto whatever comes out of that committee in the form of anything that restricts his health director’s powers.

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