

SUPREME COURT OF KENTUCKY

Honorable Andrew Beshear, in His Official Capacity as Governor of the Commonwealth of Kentucky, et al. v. Honorable Glenn E. Acree, Judge, Kentucky Court of Appeals, et al.

2020-SC-0313-OA · No. 2020-SC-0313-OA · Decided December 3, 2020

SUMMARY

The Supreme Court of Kentucky, in a per curiam opinion by Justice Hughes, reviewed challenges to Governor Andy Beshear's COVID-19 emergency orders and regulations. The Court held that the Governor properly declared the emergency, that KRS Chapter 39A was not an unconstitutional delegation of legislative authority, and that KRS Chapter 13A did not control the emergency actions. The Court reversed the Boone Circuit Court's injunctive relief, while concluding that one expired subpart of an order violated Section 2 of the Kentucky Constitution.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Justice Hughes
JURISDICTION	Kentucky
DECIDED	December 3, 2020
DOCKET	2020-SC-0313-OA
DISPOSITION	reversed
PROCEDURAL POSTURE	Original action in the Supreme Court of Kentucky arising from the Court of Appeals and the Boone Circuit Court. The Governor petitioned for writ relief after the Boone Circuit Court entered a restraining order and later an order granting temporary injunctive relief against enforcement of COVID-19 emergency orders and regulations.
STANDARD OF REVIEW	The court applied de novo review to statutory and constitutional questions, presumed challenged statutes constitutional, and reviewed the propriety of injunctive relief under the requirement that the movant show irreparable injury, favorable equities, and a substantial possibility of success on the merits. Constitutional challenges to economic regulation were reviewed under rational-basis principles unless a fundamental right or suspect classification was implicated.

PRECEDENTIAL VALUE	published
PARTIES	Honorable Andrew Beshear, in his official capacity as Governor of the Commonwealth of Kentucky, Eric Friedlander, in his official capacity as Secretary of the Kentucky Cabinet for Health and Family Services, Dr. Steven Stack, in his official capacity as Commissioner of the Kentucky Department for Public Health, Kentucky Cabinet for Health and Family Services, Kentucky Department for Public Health v. Honorable Glenn E. Acree, Judge, Kentucky Court of Appeals, Honorable Richard A. Brueggemann, Judge, 52nd Judicial Circuit, Boone Circuit Court

TOPICS

constitutional law separation of powers administrative law statutory interpretation equitable relief

PRACTICE AREAS

constitutional law administrative law health law statutory interpretation remedies

QUESTIONS PRESENTED

1. Whether the Governor properly declared a statewide emergency and invoked the emergency powers granted by KRS Chapter 39A in response to COVID-19.
2. Whether KRS Chapter 39A constitutes an unconstitutional delegation of legislative authority in violation of Sections 27 and 28 of the Kentucky Constitution.
3. Whether the Governor was required to proceed solely through the administrative-regulation procedures of KRS Chapter 13A.
4. Whether the challenged executive orders and emergency regulations were arbitrary or otherwise violated Sections 1 and 2 of the Kentucky Constitution.
5. Whether the Boone Circuit Court properly granted injunctive relief against enforcement of the Governor's COVID-19 orders and regulations.

HOLDINGS

1. The Governor properly declared a state of emergency under KRS 39A.100 because the COVID-19 pandemic constituted the occurrence of biological and etiological hazards identified in KRS 39A.010. The Governor was not required to obtain a determination from local emergency agencies before declaring a statewide emergency.
2. KRS Chapter 39A does not violate the separation-of-powers provisions of the Kentucky Constitution. The Governor's emergency actions are primarily executive, and to the extent the chapter delegates legislative authority, the delegation is valid because the statute supplies intelligible standards and procedural safeguards.

3. The Governor was not required to address the COVID-19 emergency solely through the ordinary administrative-regulation procedures of KRS Chapter 13A. KRS Chapter 39A specifically authorizes executive orders and emergency regulations, and controls over inconsistent provisions of KRS Chapter 13A during a declared emergency.
4. The challenged orders and regulations were not shown to be arbitrary or unconstitutional under Sections 1 and 2 of the Kentucky Constitution, except for a former social-distancing provision that failed to make an exception for household members and was no longer in effect. Economic and business restrictions were subject to rational-basis review, and the measures generally had a rational relationship to protecting public health and safety.
5. The Boone Circuit Court improperly granted injunctive relief against enforcement of the Governor's COVID-19 orders and regulations because the plaintiffs failed to establish a substantial possibility of prevailing on their principal legal claims, and the law and equities favored continued enforcement of the emergency measures.

KEY QUOTATIONS

“The Governor was not required to consult with any local government, official, or agency in determining that COVID-19 was a hazard justifying declaration of a state of emergency for the entire Commonwealth.” (39)

“In short, while a state of emergency prevails the Governor can issue executive orders he or she “deem[s] necessary,” KRS 39A.090, and can also choose to promulgate regulations, all of which become effective upon filing with the LRC.” (58)

“The Governor's emergency orders and regulations, with the one exception noted, do not violate Sections 1 or 2 of our Kentucky Constitution.” (84)

FACTUAL BACKGROUND

In response to the COVID-19 pandemic, Governor Beshear declared a statewide emergency on March 6, 2020, under KRS Chapter 39A and issued executive orders and emergency regulations addressing business closures, reopening conditions, capacity limits, social distancing, childcare operations, and face coverings. Florence Speedway, Beans Cafe, and Little Links Learning challenged those measures, asserting that they exceeded the Governor's statutory authority, violated the separation of powers, failed to comply with KRS Chapter 13A, and violated Sections 1 and 2 of the Kentucky Constitution. Several challenged orders were amended or superseded during the litigation, including measures concerning racetracks, restaurants, childcare facilities, and venues.

PROCEDURAL HISTORY

Businesses filed suit in Boone Circuit Court challenging Kentucky's COVID-19 emergency orders and the Governor's authority to issue them. The Boone Circuit Court entered an emergency restraining order and later determined that the plaintiffs were entitled to temporary injunctive relief. The Court of Appeals denied the Governor's request for intermediate relief. The Supreme Court stayed lower-court injunctive orders, reviewed the full record, deconsolidated a related Scott Circuit Court matter, and reversed the Boone Circuit Court's injunction-related rulings.

DISPOSITION

reversed

REMAND INSTRUCTIONS

The Boone Circuit Court's injunctive rulings were reversed. The opinion does not state a separate remand directive beyond dissolution or reversal of the injunctive relief and continued proceedings consistent with the Supreme Court's opinion.

CASES CITED

- Stephenson v. Woodward, 182 S.W.3d 162 (Ky. 2005)
- Richardson v. Louisville/Jefferson County Metropolitan Government, 260 S.W.3d 777 (Ky. 2008)
- University of Louisville v. Rothstein, 532 S.W.3d 644 (Ky. 2017)
- Whitman v. American Trucking Associations, Inc., 531 U.S. 457 (2001)
- Layne v. Newberg, 841 S.W.2d 181 (Ky. 1992)
- Beshear v. Bevin, 575 S.W.3d 673 (Ky. 2019)
- Purnell v. Mann, 50 S.W. 264 (Ky. 1899)
- TECO Mechanical Contractor, Inc. v. Commonwealth, 366 S.W.3d 386 (Ky. 2012)
- Commonwealth v. Associated Industries of Kentucky, 370 S.W.2d 584 (Ky. 1963)
- Board of Trustees of Judicial Form Retirement System v. Attorney General, 132 S.W.3d 770 (Ky. 2003)
- Miller v. Covington Development Authority, 539 S.W.2d 1 (Ky. 1976)
- Legislative Research Commission v. Brown, 664 S.W.2d 907 (Ky. 1984)
- J.W. Hampton, Jr., & Co. v. United States, 276 U.S. 394 (1928)
- Bowling v. Department of Corrections, 301 S.W.3d 478 (Ky. 2009)
- Steven Lee Enterprises v. Varney, 36 S.W.3d 391 (Ky. 2000)
- Clark v. Jeter, 486 U.S. 456 (1988)
- San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973)
- D.F. v. Codell, 127 S.W.3d 571 (Ky. 2003)
- Adarand Constructors, Inc. v. Pena, 515 U.S. 200 (1995)
- City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432 (1985)
- Nebbia v. New York, 291 U.S. 502 (1934)
- Nourse v. City of Russellville, 78 S.W.2d 761 (Ky. 1935)
- Mansbach Scrap Iron Co. v. City of Ashland, 235 S.W.2d 968 (Ky. 1950)
- City of Louisville v. Kuhn, 145 S.W.2d 851 (Ky. 1940)
- Adams, Inc. v. Louisville & Jefferson County Board of Health, 439 S.W.2d 586 (Ky. 1969)
- Kentucky Milk Marketing & Antimonopoly Commission v. Kroger Co., 691 S.W.2d 893 (Ky. 1985)
- Price v. Paintsville Tourism Commission, 261 S.W.3d 482 (Ky. 2008)

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