

Justice Prevails for A Fourth Time: Bailey Glasser Secures Another Win for Governor's Pandemic Response

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Representing West Virginia Governor Jim Justice, Bailey Glasser defeated another motion for a preliminary injunction seeking to erase aspects of the State's response to the COVID-19 public health crisis. This time, owners of a small restaurant challenged the Governor's recent executive order directing all people to wear face coverings in public indoor spaces and requiring businesses to post and enforce the mask requirement. They also challenged the Governor's "Stay-at-Home" order, which has been amended by numerous other executive orders.

The restaurant-plaintiffs complained that the Governor's executive order requiring face coverings violated a host of rights guaranteed by the West Virginia and US Constitutions, and they sought a preliminary injunction preemptively preventing enforcement of those orders. By the time of the hearing on November 23, the restaurant was closed due to a potential covid-19 outbreak among its employees.

At the close of the hearing, the Honorable Robert C. Chambers, US District Judge for the Southern District of West Virginia, ruled from the bench denying the plaintiffs' motion for a preliminary injunction. Judge Chambers ruled "it is clear that the orders are neither arbitrary nor unreasonable," and that they "bear a substantial relation to this public health crisis." The Court also ruled that the plaintiffs' constitutional claims are likely to fail on the merits because they do not "demonstrate that the orders are beyond all question, a plain, palpable invasion of rights secured by the fundamental laws" enshrined in the Constitution. Ultimately, the Court recognized that that the "plaintiffs' concerns in conducting their business do not outweigh the severe harm West Virginians could suffer if the Court overrode the Governor's orders."

Bailey Glasser attorney Benjamin Hogan argued the case in-person. Bailey Glasser senior partner Benjamin Bailey and attorney Laura Babiak also played critical roles in the case, developing the winning strategy and writing the briefs in advance of the hearing. The case is *Stewart v. Justice*, No.

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GOVERNOR'S PANDEMIC RESPONSE

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