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## Judge upholds governor's power to ban large gatherings

By Kevin Landrigan New Hampshire Union Leader  
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A Merrimack County Superior Court judge rejected a lawsuit charging the ban on large gatherings due to risks from COVID-19 violates constitutional rights to free speech, free assembly and religious freedom. Here, Gov. Chris Sununu walks to the podium before speaking at a press conference on the coronavirus in Concord late last week.

DAVID LANE/UNION LEADER



**Suit challenges ban on large crowd events in NH**



**Only very sick should get tested, state says, to preserve short supplies**

CONCORD — A Superior Court judge on Friday dismissed a lawsuit challenging the governor’s authority to ban public gatherings of more than 50 people because of the risk posed by COVID-19.

After a one-hour hearing, Judge John Kissinger said a 2002 state law gave the governor broad powers to declare an emergency to protect the public.

“The bottom line here is that the court finds there is overwhelming factual and legal support in the governor’s action in declaring a state of emergency,” Kissinger said from the bench after the hearing in Merrimack County Superior Court.

Kissinger said he would issue a written opinion within the next week.

“It is clear from the factual conclusions ... that this is an extraordinary public health crisis and the danger to the citizens of New Hampshire, the country and the world is real and it is imminent,” Kissinger said.

“The court cannot imagine a more critical public objective than protecting the citizens of this state and this country from becoming sick and dying from this pandemic.”

Manchester lawyer Daniel Hynes filed the suit on behalf of three individuals who said the restrictions violated their rights of speech, assembly and religion.

In oral arguments, Hynes noted there have been 44 cases of the coronavirus in New Hampshire with two people hospitalized and no deaths.

“There are more dog bites during that time, more car accidents, certainly more people getting sick from flu than this,” Hynes said.

Kissinger noted that since the lawsuit was filed, the state’s number of COVID-19 cases has more than doubled.

The judge said the emergency restrictions are “narrowly tailored” and will expire on April 3 unless the governor extends them.

“A large portion of this effort is to prevent the harm from getting worse. Isn’t this a good use of the governor’s emergency powers?” Kissinger asked Hynes.

The three bringing suit were David W. Binford, a former Republican state legislator from Bath, and Manchester residents Eric Couture and Holly Rae Beene.

The lawsuit said Binford intends to attend several political events in the coming weeks in Grafton County.

Couture attends services three times a week at Bible Baptist church in Nashua and teaches Sunday school to teens at that church, the lawsuit said.

Beene said the bans have restricted her ability to visit local restaurants that have been closed except for takeout and delivery services.

Daniel Will, the state's solicitor general, noted the state law regarding the governor's emergency powers gives the Legislature the authority to terminate such a declaration by a majority vote.

"The governor's emergency powers are significant because they need to be," Will said.

In his legal brief, Will wrote: "The plaintiffs offer no argument as to why risking the life, health, and safety of every individual in the state so they can attend an in-person gathering of more than 50 people within the next 21 days offsets or otherwise overrides the significant public interest in combating the unmitigated spread of COVID-19."

Last Monday, Sununu's third executive order placed a ban on gatherings of more than 50 people for "societal, spiritual and recreational activities."

The ban did not apply to the Legislature or to "day-to-day operation of businesses."

Legislative leaders have since canceled all activities through April 10 and closed the State House to visitors, lawmakers and staff.

Court officials closed Friday's hearing to the press and public. At its conclusion, an audio recording of the hearing was made available to the media.

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