

SARS-CoV-2, which causes Coronavirus disease 2019 (COVID-19), is a highly contagious virus that is a serious threat to public health and that has impacted every part of the globe. Pennsylvania has seen a similar unprecedented impact of COVID-19 and has taken equally unprecedented measures to save lives and reduce morbidity of COVID-19. This response has included Orders issued by the Secretary of the Department of Health that, *inter alia*, limit the size of public gatherings to reduce the spread of this virus. And these efforts are succeeding. This decision to respond aggressively has proven to be an essential and effective measure to reduce the spread of COVID-19.

Now, despite a Department of Health Order prohibiting gatherings of greater than 250 people, Respondent plans to begin an event on *June 17, 2020*, in which it expects to draw 100,000 people to the Carlisle, Pennsylvania fairgrounds over the four day event. As a result, the Department seeks an immediate, *ex parte* order requiring Respondent to comply with the Department's Orders, including the 250-individual limitation.

Background

1. Contemporaneously with this Application, the Department of Health has filed a verified Petition for Review asserting claims for an injunction. The Department of Health incorporates by reference its Petition for Review.

2. The Department is an executive agency of the Commonwealth that is charged by the General Assembly with the responsibility to “protect the health of the people of this Commonwealth, and to determine and employ the most efficient and practical means for the prevention and suppression of disease.” 71 P.S. § 532 (a).

3. The Secretary of Health, is the head of the Department of Health. 71 P.S. § 1401(b).

COVID-19 CRISIS

4. SARS-CoV-2, which causes Coronavirus disease 2019 (COVID-19), is a highly contagious virus that is a serious threat to public health.¹

5. SARS-Cov-2 is spread mainly from person to person from respiratory droplets produced when an infected person coughs or sneezes.

6. Due to the manner of transmission, spread of the SARS-CoV-2 is more likely to occur when people are in close contact with one another, such as within about 6 feet.

7. Current CDC guidelines state that the size of an event or gathering should be determined based on state, local, territorial or tribal safety laws and regulations.

¹ A declaration from the Secretary is attached to the Petition for Review as Exhibit 1.

8. Current CDC guidelines state that large-in person gatherings where it is difficult for individuals to remain spaced at least 6 feet apart and attendees travel from outside the local area are the highest risk of spreading COVID-19.

9. As of June 16, 2020, the number of positive or probable cases of COVID-19 is 79,483 and the number of deaths is 6,276.

ORDERS OF THE SECRETARY OF HEALTH

10. As a result of COVID-19, the Secretary of Health issued a series of orders to protect the public health. The Governor and Secretary of Health issued orders on March 19, 2020, April 1, 2020, and May 7, 2020.

11. By Order dated May 27, 2020 (“May 27 Order”), the Secretary issued an order to continue the phased reopening of the Commonwealth. Declaration, Exhibit A.

12. The May 27 Order lifted certain prior restrictions for counties identified in Section 1(A) of the order and provided a variety of restrictions necessary to continue to protect public health of citizens of the Commonwealth.

13. As part of the May 27 Order, in Section 1(G) the Secretary prohibited:

Any gathering for a planned or spontaneous event of greater than 250 individuals is prohibited. This includes, but is not limited to, a concert, fair, festival, conference, sporting event, movie showing, or theater performance.

14. The Secretary amended the May 27 Order on June 11, 2020 (“June 11 Order”) identifying additional counties, including Cumberland County, that would be considered part of Section 1(A) of the May 27 Order but maintain the prohibition on gatherings of greater than 250 individuals.

CARLISLE EVENTS ANTICIPATES 100,000 VISITORS

15. Respondent advertises Spring Carlisle as being its “biggest draw of the year with nearly 100,000 enthusiasts converging on the region.”

16. Respondent further advertises that Spring Carlisle has “8,100 spaces of vendors selling a vast array of automotive parts.”

17. The Cumberland Valley Visitors Bureau, which is the tourism arm of Cumberland Area Economic Development Corporation, states on its website that “Spring Carlisle plays host to 100,000 collector and classic automotive enthusiasts from around the world who traverse the Carlisle PA Fairgrounds to buy, sell and celebrate all things automotive.”

18. On June 9, 2020, Respondent inquired to the Pennsylvania Department of Community & Economic Development about a waiver for Spring Carlisle to exceed the 250 person limit in favor of permitting a crowd of 100,000 people to attend this gathering.

19. The Pennsylvania Department of Community and Economic Development (“DCED”) informed Respondent that it must follow all green phase

guidance issued by the Department of Health, including the limit of no gatherings larger than 250 people at a time.

20. On June 16, 2020, the Department of Health, through the Secretary, sent a letter to Carlisle Events by email reminding it of its obligation to comply with all orders, including the 250-person limitation. Declaration, Exhibit C.

21. The Secretary requested that Respondent respond in writing by 7 p.m. on June 16, to confirm that all event organizers will adhere to all orders, including the 250-person limitation. *Id.*

22. No response was received. According to Respondent's website, it plans to proceed with Spring Carlisle without complying with the attendance limits in disregard the Secretary's May 27 Order.

23. Based on the declaration of the Secretary of Health, Spring Carlisle is the highest risk of spreading COVID-19 and a public health threat.

Injunctive Relief

24. A preliminary injunction is appropriate where: (1) relief is "necessary to prevent immediate and irreparable harm"; (2) a "greater injury will result from refusing an injunction than from granting it"; (3) the injunction will restore the parties to the status quo; (4) the plaintiff is likely to succeed on the merits; (5) the injunction sought is "reasonably suited to abate the offending

activity”; and (6) the injunction “will not adversely affect the public interest.”

Warehime v. Warehime, 860 A.2d 41, 46-47 (Pa. 2004) (citation omitted); *Greater Nanticoke Area Educ. Ass’n v. Greater Nanticoke Area School Dist.*, 938 A. 2d 1177, 1183-4 (Pa. Cmwlth. Ct. 2007).

25. A preliminary injunction is necessary here, because, without it, Respondent will violate the Department’s Orders, proceed with a gathering of more than 250 individuals, and risk spreading COVID-19.

26. If a preliminary injunction is not entered, the harm will be immediate and irreparable as the May 27 Order will be violated beginning on June 17 and continue to be violated through June 20, contributing to the spread of COVID-19.

27. Therefore, a greater injury—the spread of COVID-19—would result from denying the Department of Health’s request for an injunction than it would if the Application is granted.

28. The injunction will also maintain the status quo since Spring Carlisle has not yet begun.

29. The Department of Health will likely prevail on the merits because:

a. The Department of Health has statutory and regulatory authority to “protect the health of the people of this Commonwealth, and to

determine and employ the most efficient and practical means for the prevention and suppression of disease.” 71 P.S. § 532 (a).

b. Moreover, the Department of Health has the authority to take any disease control measure appropriate to protect the public from the spread of infectious disease. *See* 35 P.S. § 521.5; 71 P.S. § 532(a); 28 Pa. Code § 27.60.

c. The May 27 Order is a valid order of the Secretary of Health and prohibits the conduct at issue.

30. The Department of Health has no adequate remedy at law, and it is impossible to quantify the harm that will result to the citizens of the Commonwealth of Pennsylvania if an event like Spring Carlisle—which is anticipated to draw 100,000 attendees—is permitted to proceed.

31. Furthermore, the requested injunction is tailored to require compliance with the Department’s Orders and no more.

32. Finally, the injunction will not adversely affect the public interest but rather will serve the public interest by helping to avoid the spread of COVID-19.

33. This Application is supported by the Memorandum of Law, which is incorporated by reference as if set forth herein.

WHEREFORE, for the foregoing reasons and those set forth more fully in the Department of Health's accompanying Memorandum of Law, the Department respectfully requests that this Court enter an order:

- a. An injunction requiring Respondent to comply with the Department's Orders, including the 250-person limit.
- b. An order awarding the Department of Health such other and further relief as this Court deems necessary and appropriate.

Respectfully submitted,



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Date: June 17, 2020

VERIFICATION

I, Dr. Rachel Levine, am the Secretary of the Department of Health of the Commonwealth of Pennsylvania, and am authorized to make this verification.

I verify that the statements made in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of perjury 18 Pa. C.S. § 4904 relating to unsworn falsification to authorities.

Handwritten signature of Rachel Levine, consisting of the letters 'R', 'L', 'V', 'E', 'I', 'N', 'E' in a cursive script, followed by 'MD'.

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

A handwritten signature in black ink, appearing to read 'B.P. Downey', with a stylized flourish at the end.

Brian P. Downey

PROOF OF SERVICE

I hereby certify that I am on June 17, 2020 serving the foregoing document upon the persons and in the manner indicated below, which service satisfies the requirement of Pa. R.A.P. 121 and 1514(c).

Service by hand delivery, addressed as follows:

Carlisle Productions, Inc.
1000 Bryn Mawr Road
Carlisle, PA 17013

Based on the nature of the relief requested, I have also served Carlisle Productions, Inc. by serving its CFO and treasurer via email:

HaroldB@carlisleevents.com



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Date: June 17, 2020

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