

# WEST VIRGINIA

## DISMISSAL OF COMPLAINT AGAINST HEALTH INSPECTOR



**B**ailey & Wyant Member Jennifer Tully and Associate Adam Strider secured the dismissal of a Complaint filed against a Putnam County Health Inspector who was sued for enforcing COVID safety regulations, including the mask mandate. The Plaintiffs, operators of a Hurricane restaurant, filed the lawsuit in September of 2020 in Federal Court in Huntington. Governor Justice was also a Defendant in the suit.

In parts relevant to our client, the Plaintiffs alleged that the Health Inspector violated their First Amendment rights by conducting an inspection of their restaurant as a result of a social media post they had made stating that they would not enforce the statewide mask mandate in their restaurant. They contended that the inspection was in retaliation for the viewpoints expressed in their social media post. They also argued that the decision of wearing or not wearing a mask was itself political speech, and therefore enforcement of the mask mandate violated the First Amendment. Plaintiffs further claimed that the Health Inspector threatened assorted regulatory action if

they did not comply with the mask mandate order in the future.

In February of 2021, the Hon. Robert C. Chambers granted our Motion to Dismiss, holding that the Health Inspector was entitled to qualified immunity, because no First Amendment violation occurred. In his order, Judge Chambers agreed with our contention that the Plaintiffs had failed to allege any causal connection between the views expressed in the social media post and any official action taken by the Health Inspector. Rather, the threat of regulatory action was if they failed to actually comply with the law, rather than conditioned on removal of their social media posts. Thus, the Health Inspector was entitled to qualified immunity because he was merely enforcing a facially-valid law that he was tasked with enforcing.

The case is of record in the U.S. District Court for the Southern District of West Virginia as *Stewart v. Justice*, CIVIL ACTION NO. 3:20-0611, 2021 U.S. Dist. LEXIS 24664, 2021 WL 472937 (S.D.W.Va., Feb. 9, 2021).



**JENNIFER TULLY**

304.345.4222  
jtully@baileywyant.com



**ADAM STRIDER**

304.345.4222  
astrider@baileywyant.com