**The Amish Privy Case: Sugar Grove Twp. v. Byler**

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6. **Introduction**

One of the most enduring images of rural life in Pennsylvania is the Amish farm. Neat homesteads, peaceful fields of crops and livestock, and colorful barn signs all inspire visions of a long-ago lifestyle being lived in present time by a special group of people. Anyone who has driven the backroads in certain parts of Pennsylvania remembers pulling over to pass a trotting horse pulling a boxy buggy filled with quaintly-dressed Amish adults and children. Many people who visit the state make a special effort to stop at road stands or storefronts where the industrious Amish offer everything from home-grown foodstuffs to hand-crafted quilts and furniture. The Pennsylvania Dutch, as Amish people are sometimes colloquially called, have inspired books, films, and dreams for tourists who visit the state and native Pennsylvanians alike. To put it simply, the Amish are an iconic part of Pennsylvania’s commonwealth.

The Amish are members of a Christian church that traces its origins to the rise of Protestantism in Europe in the 1500s.[[1]](#footnote-1) They believe in a life of humility and obedience where faith, community, and tradition are highly valued above all.[[2]](#footnote-2) Amish are known for their simple, agrarian lifestyle that selectively uses modern technology.[[3]](#footnote-3) Most Amish people reject any utility that would physically tie their home to the outside world, such as a connection to the electrical grid or a public water supply.[[4]](#footnote-4)

Nearly 77,000 Amish are estimated to live in Pennsylvania.[[5]](#footnote-5) A little over half of this population lives in Lancaster County.[[6]](#footnote-6) Since the early 1700s, the Amish found that the rich soil of Lancaster County was a perfect place to establish their farming communities.[[7]](#footnote-7) As the population grew in these areas, a tradition was established for some members of the community to migrate to other regions.[[8]](#footnote-8) In recent years, land prices and suburban sprawl have accelerated this process.[[9]](#footnote-9) Migrated Amish are now found in many rural areas, especially in northwest Pennsylvania, where they have established new farming communities or run cottage industries and small businesses.[[10]](#footnote-10) One of these is a smaller Amish group located in the Sugar Grove area of Warren County, near the New York border.[[11]](#footnote-11)

1. **Reporting**

A clean environment is a constitutional right of all Pennsylvania citizens.[[12]](#footnote-12) Environmental concerns have sparked water quality and protection ordinances in small communities all over the state, including the vast “wilds” of Pennsylvania’s northern tier.[[13]](#footnote-13) Water quality ordinances have affected the Amish communities in many areas of the state because some Amish farming and waste disposal practices create environmental concerns.[[14]](#footnote-14)

*Sugar Grove Township v. Byler*  was one of several legal cases in Sugar Grove Township, Warren County that dealt with Amish sewage practices and water quality.[[15]](#footnote-15) The Byler family is a member of the Old Order Amish community that thrives in the Sugar Grove area.[[16]](#footnote-16) The religious beliefs of the Byler family’s order do not permit the use of electricity or water under pressure.[[17]](#footnote-17) To use these amenities would cause the family to be excommunicated from their order and shunned by the community.[[18]](#footnote-18)

The Byler family owned property on Wilson Road in Sugar Grove Township prior to March 22, 1990.[[19]](#footnote-19) It was in continuous use as a Byler family residence from that time through the proceedings in *Sugar Grove Township v. Byler*.[[20]](#footnote-20) In 1997, members of the Byler family conveyed the Wilson Road property to Iva H. and Benjamin J. Byler, husband and wife.[[21]](#footnote-21) Benjamin Byler died, leaving ownership of the property to Iva, who subsequently executed a quitclaim deed to the Little Ash Trust.[[22]](#footnote-22) As Trustee of the Little Ash Trust, Mrs. Byler continued to reside on the property with her ten children.[[23]](#footnote-23) She occupied a dwelling with a one-inch gravity-fed pipe coming into her kitchen from a nearby spring.[[24]](#footnote-24) For its sanitary facilities, the family used a privy installed near the residence, which held human waste in an underground chamber that was pumped out at regular intervals and disposed of by a waste hauler.[[25]](#footnote-25) Two “temporary” residential buildings were constructed on the property for Mrs. Byler’s married sons to occupy until they could purchase property of their own.[[26]](#footnote-26)

In the meantime, in 1993 Sugar Grove Township passed its first ordinance to regulate outdoor human waste facilities in areas of the township without an “under pressure” water supply.[[27]](#footnote-27) The ordinance defined privy as “a watertight receptacle, whether permanent or temporary, which receives and retains sewage where water under pressure or piped waste water is not available and is designed and constructed to facilitate the ultimate disposal of the sewage at another site.”[[28]](#footnote-28) The Sugar Grove Township “Privy Ordinance” required a site plan and construction standards as well as the purchase of a permit to operate a privy.[[29]](#footnote-29) Significant to this case, the ordinance prohibited use of privies on property served by “water under pressure” (including pressure by gravity).”[[30]](#footnote-30)

In 2012 the township passed a new ordinance encompassing the 1993 law and expanding it.[[31]](#footnote-31) Among its changes, the new law required owners to pump their privies annually on or before June 1 and to deliver a copy of the receipt for pumping to the township.[[32]](#footnote-32) It also provided for substantially increased fines and penalties.[[33]](#footnote-33) The ordinance required abatement of any nuisance caused by a privy and provided for the assessment of costs the township might incur in enforcing an abatement.[[34]](#footnote-34)

On August 13, 2015, action was instituted against Iva H. Byler individually and as Trustee of the Little Ash Trust, alleging a violation of the Sewage Facilities Act due to the unlawful use of privies.[[35]](#footnote-35) Because Mrs. Byler’s home was served by a one-inch gravity-fed pipe running from a nearby spring, Sugar Grove Township deemed it to have “water under pressure.”[[36]](#footnote-36) The Township declared a nuisance and sought relief in the form of having Mrs. Byler and her family removed from their home.[[37]](#footnote-37) An alternative, sought by the Township in other Amish privy cases, would be for the Byler family to remove their privy and connect to the township’s high-pressure sewer system.[[38]](#footnote-38) This would necessitate the use of an electric grinder pump to move the sewage.[[39]](#footnote-39)

In the first three counts of its complaint, the Township sought injunctive relief from the nuisance caused by Mrs. Byler’s failure to obtain the permit and inspection the ordinance required for the privy or privies on her property.[[40]](#footnote-40) The second count would require her to get the permits and inspection for her property.[[41]](#footnote-41) Count three would require her to abate the nuisance under the Sewage Facilities Act, likely by either leaving the property or hooking up to the sanitary sewer system and installing the electric grinder pump necessary to do so.[[42]](#footnote-42) Count four alleged that the temporary structures on the property were in violation of the Uniform Construction Code, and count five sought to remove Mrs. Byler and her family from their residences until all alleged violations had been corrected.[[43]](#footnote-43) A trial began on October 27, 2016 before the Honorable Maureen A. Skerda, President Judge of the 37th Judicial District of Pennsylvania, Warren County Branch.[[44]](#footnote-44) The trial was adjourned and reconvened on December 1, 2016.[[45]](#footnote-45)

Mrs. Byler argued that her privy was acceptable under the ordinance because the spring water that entered her home was not “under pressure.”[[46]](#footnote-46) She also argued that the Privy Ordinance should not be applied retroactively to her property because her privy was installed and in use for years before the ordinance was passed.[[47]](#footnote-47) Mrs. Byler and her late husband Benjamin purchased their home from Mr. Byler’s brother Andrew and his wife Jemima on November 20, 1997.[[48]](#footnote-48) Andrew and Jemima Byler had purchased the home from Jonas Byler, father of Andrew and Benjamin, on March 22, 1990.[[49]](#footnote-49) Thus, the Byler home had been continuously occupied with the privy in use for over three years before the first Sugar Grove Township Privy Ordinance took effect in October, 1993.[[50]](#footnote-50)

Mrs. Byler argued that the Pennsylvania’s Statutory Construction Act and its presumption against retroactive effect provides that “no law shall be construed to be retroactive unless clearly and manifestly so contended by the General Assembly.”[[51]](#footnote-51) Retroactive lawmaking is also highly frowned upon by courts in Pennsylvania.[[52]](#footnote-52) Mrs. Byler pointed to *Appeal of Sawdey,* where construction for a new hotel was about half completed when a local ordinance was passed that would outlaw its liquor license, making the hotel unprofitable before it was ever opened.[[53]](#footnote-53) In *Sawdey,* the Pennsylvania Supreme Court concluded that, “[r]etroactive legislation is so offensive to the Anglo-Saxon sense of justice that it is never favored.”[[54]](#footnote-54)

Perhaps most importantly, Mrs. Byler argued that the nature of relief requested by the Township would force her to go against the deeply-held religious beliefs.[[55]](#footnote-55) She asserted that a requirement for sewer line hook-up created “a substantial burden on the free exercise of the individual Amish person’s religion by requiring the use of an electric grinder pumps.”[[56]](#footnote-56)

The trial court issued an Order and Memorandum Opinion on April 13, 2017.[[57]](#footnote-57) It held that public health and safety overrode religious beliefs in this case.[[58]](#footnote-58) It ruled that Mrs. Byler’s home was subject to Sugar Grove Township’s Privy Ordinance even though it was occupied and its privy was in use long before that law was passed.[[59]](#footnote-59) The trial court agreed with the Township that the gravity-fed water in her kitchen spigot gave Mrs. Byler “water under pressure,” and thus she was not permitted to have a privy at all.[[60]](#footnote-60) Instead, she would need to comply with the state Sewage Facilities Act.[[61]](#footnote-61) In addition, the temporary structures built for Mrs. Byler’s sons were deemed incompatible with the Uniform Construction Code.[[62]](#footnote-62) Mrs. Byler was given thirty days to comply with all code violations or face the eviction of her entire family.[[63]](#footnote-63) Further, as a widow with an eighth-grade education and no employment, she was ordered to pay $100 per month toward fines that the township claimed were $160,000 as of late October.[[64]](#footnote-64)

Following unsuccessful post-trial motions, Mrs. Byler appealed this case to the Commonwealth Court.[[65]](#footnote-65) She raised four issues in her appeal.[[66]](#footnote-66) First, she argued that the trial court’s ruling was excessively burdensome and in violation of the First Amendment to the U.S. Constitution, the Pennsylvania Constitution Article I, Section 3, and Pennsylvania’s Religious Freedom Act, 71 P.S. §2401-2406.[[67]](#footnote-67) Her second argument was that the trial court erred by retroactively applying the Privy Ordinance to her property.[[68]](#footnote-68) Third, she claimed that the trial court misapplied the building code to the temporary structures on her property.[[69]](#footnote-69) Finally, she argued that the trial court “committed a clear error of law” by not determining a specific amount of fine or penalty that she was being required to pay because of the alleged violations.[[70]](#footnote-70) She claimed that as ordered, the outcome was absurd because the alleged fines and penalties had reached $172,500 as of the date of the appeal, a sum that would have taken Mrs. Byler 146 years to pay at the rate of $100 per month.[[71]](#footnote-71)

The Commonwealth Court reached a mixed decision on July 20, 2018.[[72]](#footnote-72) The Court agreed with Ms. Byler’s argument regarding the retroactive enactment of the Privy Ordinance because her privy predated the ordinance.[[73]](#footnote-73) The Court upheld the determination that the temporary buildings needed building permits because they were in violation of the Uniform Construction Code.[[74]](#footnote-74) The Court’s analysis of Section 104(b)(8) of the Pennsylvania Construction Code Act made it obvious that the homes were constructed for Mrs. Byler’s sons and did not meet the definition of “temporary” structures.[[75]](#footnote-75)

In respect to the fines and penalties, the Court held that the trial court erred by *sua sponte* awarding relief that the township had not requested.[[76]](#footnote-76) The Court vacated the trial court’s directive ordering Mrs. Byler to pay $100.00 per month to the Township because “. . . the Township merely asked for injunctive relief to correct any purported violations and abate any nuisances, as well as any charges or costs incurred by the Township in this abatement.”[[77]](#footnote-77) The Township had not asked for the actual payment of any fines and penalties.[[78]](#footnote-78) Discussing this payment order in dicta, the Court expressed “serious” concern over the reasonableness of the $100 monthly amount in light of the widowed Mrs. Byler’s limited education and resources.[[79]](#footnote-79)

Most significantly, the Court remanded the issue of balancing of the Byler family’s right to religious freedom with the state’s environmental concerns back to the Warren County court for further proceedings.[[80]](#footnote-80)

1. **History**

Thou shalt have a place also without the camp, whither thou shalt go forth abroad: and thou shalt have a paddle among thy weapons; and it shall be, when thou sittest down abroad, thou shalt dig therewith, and shalt turn back and cover that which cometh from thee:  for Jehovah thy God walketh in the midst of thy camp, to deliver thee, and to give up thine enemies before thee; therefore shall thy camp be holy, that he may not see an unclean thing in thee, and turn away from thee.[[81]](#footnote-81)

The above passage from Deuteronomy may be the earliest written account of sewage disposal.[[82]](#footnote-82) Since the days of the earliest human settlements, it seems that most societies have had an instinctive knowledge that proper disposal of human waste is important.[[83]](#footnote-83) Some early Greek and Roman societies had elaborate sewer systems, but with the fall of these empires, technology in this area dwindled.[[84]](#footnote-84) By the Middle Ages, people frequently used simple in-house containers or “potties” that they would either empty into the street or dump in the nearest water supply.[[85]](#footnote-85) Eventually, small outside structures or “privies” came into use.[[86]](#footnote-86) These privies utilized an open-holed seat over some sort of container or pit.[[87]](#footnote-87) In polite company, privies were often known by allegorical names including “temple,” “house of convenience,” and the more down-to-earth “necessary house.”[[88]](#footnote-88) Eventually, the flush toilet was widely used and became the standard in most developed areas.[[89]](#footnote-89) In urban and suburban areas, sanitary sewers became the norm.[[90]](#footnote-90) People dwelling in rural areas often needed to dispose their waste by way of on-lot septic systems, a practice that continues today.[[91]](#footnote-91)

In the mid-twentieth century, Pennsylvanians became increasingly aware of the need to conserve natural resources.[[92]](#footnote-92) No longer would rampant dumping of mining waste and sewage into the waters of the Commonwealth be tolerated.[[93]](#footnote-93) Clean stream laws came into being after decades of abuse.[[94]](#footnote-94) In 1966, the Pennsylvania General Assembly passed the Sewer Facilities Act “to protect the public health, safety and welfare of its citizens through the development and implementation of plans for the sanitary disposal of sewage waste.”[[95]](#footnote-95) It required all municipalities to participate in sewage disposal planning and provided the authority local communities required to enforce sewage violations.[[96]](#footnote-96) Through this planning and enforcement program, municipalities began to develop local regulations like Sugar Grove Township’s Privy Ordinance.[[97]](#footnote-97)

In May of 1971, the Environmental Rights Amendment was added to the Constitution of Pennsylvania:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.[[98]](#footnote-98)

The growing environmental movement began to attack the old Amish ways of waste disposal.[[99]](#footnote-99) Some Amish found themselves at the center of cases where the Sewage Facilities Act requirements clashed with their deep religious beliefs against connecting themselves to the outside world through electric wires and sewage lines.[[100]](#footnote-100)

*Sugar Grove Twp. v. Byler* was one of several cases in which the religious beliefs of the Amish community of Warren County clashed with increasing environmental and health concerns related to the use of privies in that area.[[101]](#footnote-101) These cases pitted the Free Exercise Clause of the United States Constitution against protection of the environment, clean water, and public health.

Free exercise of religion is one of the core rights under the First Amendment of the United States Constitution.[[102]](#footnote-102) Additionally, Article I, Section 3 of the Pennsylvania Constitution declares that religious freedom is one of the inherent rights of mankind.[[103]](#footnote-103) It states as follows:

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; no human authority can, in any case whatever, control or interfere with the rights of conscience, and no preference shall ever be given by law to any religious establishments or modes of worship.[[104]](#footnote-104)

As pacifists, Amish people have rarely taken to the courts to assert their religious rights because litigation is deemed as the use of force against others.[[105]](#footnote-105) Peaceful resolution of conflict is preferable to them.[[106]](#footnote-106) The Amish have, however, sometimes used the courts to stand up for themselves in cases where their conscience dictates, especially when they believe they were unjustly sued or prosecuted for their religious beliefs.[[107]](#footnote-107)

In the 1972 *Wisconsin v. Yoder* case, three Amish fathers were convicted of violating their state’s compulsory school-attendance laws by refusing to send their teen-aged children to public high school.[[108]](#footnote-108) They appealed those convictions all the way to the U.S. Supreme Court.[[109]](#footnote-109) This case marked the first time that “conflicts between the technology-shunning Amish and the government have been argued before the nation's highest court.[[110]](#footnote-110) The fathers argued that under their deeply-held Amish religious beliefs, sending their children to public high school would cause their families to be censured by their church community and would “endanger their own salvation and that of their children”.[[111]](#footnote-111)

In its landmark decision, the Supreme Court ruled that the Amish had a right to school their children in a manner consistent with their beliefs, as “the First and Fourteenth Amendments prevent the State from compelling [the fathers] to cause their children to attend formal high school to age 16.”[[112]](#footnote-112) In reaching this decision, the Court noted the need for careful balancing of state interests against the free exercise of religion clause of the First Amendment. Chief Justice Burger wrote: “. . . courts must move with great circumspection in performing the sensitive and delicate task of weighing a State's legitimate social concern when faced with religious claims for exemption from generally applicable educational requirements.”[[113]](#footnote-113)

Balancing state concern with religious freedom, the Pennsylvania General Assembly enacted the Religious Freedom Protection Act to protect “the free exercise of religion; and prescrib[e] the conditions under which government may substantially burden a person’s free exercise of religion.[[114]](#footnote-114) This act stated that “neither State nor local government should substantially burden religious exercise without compelling justification.”[[115]](#footnote-115) It further stated,

The General Assembly intends that all laws which it has heretofore enacted or will hereafter enact or which have been or will be adopted by political subdivisions and executive agencies acting pursuant to authority asserted to be conferred by statutes enacted by the General Assembly shall be construed so as to avoid the imposition of substantial burdens upon the free exercise of religion without compelling justification.[[116]](#footnote-116)

The Religious Freedom Protection Act of Pennsylvania applies to “any State or local law or ordinance and the implementation of that law or ordinance, whether statutory or otherwise, and whether adopted or effective prior to or after the effective date of this act.”[[117]](#footnote-117) It provides that “Government may substantially burden a person’s exercise of religion only if the government demonstrates that application of the burden to the person: (1) is in furtherance of a compelling interest of the government; and (2) is the least restrictive means of furthering that compelling interest.”[[118]](#footnote-118)

In *Sugar Grove Twp. v. Byler*, the Warren County trial court alluded to a compelling Township interest in preventing disease and pollution that overrode Mrs. Byler’s religious interests preventing her from complying with the Privy Ordinance.[[119]](#footnote-119) On appeal, Mrs. Byler countered by stating that sealed, self-contained Amish privies in the Sugar Grove area have never malfunctioned or polluted the waters of their neighbors or the Commonwealth.[[120]](#footnote-120) She argued that being forced to hook up to the public sewage system and install an electric grinder pump would be a substantial burden on her freedom to practice her Amish religious beliefs.[[121]](#footnote-121)

Using Pennsylvania’s Religious Freedom Protection Act as a guide, the Commonwealth Court revisited the trial court’s ruling that the Bylers’ religious freedom was outweighed by the purpose of protecting the health, safety, and welfare of the public in the Sewage Facilities Act.[[122]](#footnote-122) It found that the trial court needed to review the environmental concerns with the prohibitions against legislation placing substantial burdens on the free exercise of religion in Pennsylvania’s Religious Freedom Protection Act.[[123]](#footnote-123) This issue was remanded back to the Warren County court for further proceedings consistent with the Commonwealth Court’s opinion.[[124]](#footnote-124)

As of this writing, Warren County’s Prothonotary indicates that no additional proceedings have been scheduled to re-visit the issue of balancing Mrs. Byler’s religious freedom with Sugar Grove Township’s public environmental concerns.[[125]](#footnote-125) It remains to be seen if these trial court proceedings will materialize as the Commonwealth Court directed, if another solution is reached, or if the Byler family will leave their home in Sugar Grove Township and migrate to another Amish community where they feel less pressure on their religion and lifestyle.

1. **Analysis**

*Sugar Grove Twp. v. Byler* was based on a conflict between several human rights that have long been part of Pennsylvania’s core values. In this case, the Court was required to balance the right to a clean environment shared by all citizens of the Commonwealth with the individual right to religious freedom and personal liberty that dates back to William Penn and the founding of his “holy experiment” in his Pennsylvania Colony of the seventeenth century.[[126]](#footnote-126) The mixed decision of the Commonwealth Court showed how difficult it is for courts to weigh these issues, especially in our current era when it sometimes seems that people and interests are becoming more competitive by the day.

The “Declaration of Rights” that is Article I of the Constitution of Pennsylvania is strong in its protection of the human rights it enumerates. Section 25 guarantees that “everything in this article is excepted out of the general powers of government *and shall forever remain inviolate.”*[[127]](#footnote-127)

In a perfect world, Pennsylvanians would find that all the rights in Article I of their state’s Constitution would work in harmony to improve the lives of everyone in the Commonwealth. In reality, tensions often flare between these protected rights as people assert them. When there is need to settle a conflict between competing rights, as there was in this case, the courts of the Commonwealth must resolve the issue regardless of the “forever remain inviolate” language of Section 25. It is appropriate and indeed necessary for the courts to balance the competing interests, as was done in *Sugar Grove Township v. Byler*.

On one side of this case was the Township’s interest in protecting the public’s right to a clean environment. Although the Environmental Rights Amendment to the Pennsylvania Constitution proudly declares that the people are entitled to clean air and pure water,[[128]](#footnote-128) the reality is that Pennsylvania is a highly polluted state.[[129]](#footnote-129) A long history of environmental abuse by industry, mining, and the public in general has left a legacy of problems. Today, there are over 19,000 miles of impaired streams in the Commonwealth.[[130]](#footnote-130) It is crucial for Pennsylvania to take action, clean up these problems, and avoid further desecration of its natural resources. State budgets are hard-pressed, and funds are scarce for needed programs like protecting safe drinking water and cleaning up the Chesapeake Bay.[[131]](#footnote-131) Nonetheless, citizens and lawmakers have become increasingly aware that uncontrolled pollution cannot continue, even in the most rural and remote parts of Pennsylvania. Their concerns have sparked legislation such as the Sewage Facilities Act and local laws like Sugar Grove Township’s Privy Ordinance.

On Mrs. Byler’s side was her individual right to personal and religious freedom that has long been highly cherished in Pennsylvania. William Penn’s colony was founded on the ideal that all people and beliefs would be tolerated.[[132]](#footnote-132) A desire to pursue religious freedom and individual liberty without undue governmental interference remains part of Pennsylvania’s culture to this day. Landowners, even those without religious considerations, often resent being told how to manage and use their private property.[[133]](#footnote-133) Resentment may also be based on regulations that require burdensome planning or record-keeping, especially when property owners are forced to incur significant financial costs in order to comply.[[134]](#footnote-134)

There is a general issue of cost to small farms. The last Census of Agriculture, taken in 2012, reported that a little over 59,000 farms remain in Pennsylvania.[[135]](#footnote-135) While it is true that farms can create pollution, these farms also provide open space and aesthetic beauty for all Pennsylvanians to enjoy. These farms also generate over $7 billion in economic activity annually to boost Pennsylvania’s economy.[[136]](#footnote-136) Unfortunately, environmental regulations that are too costly or burdensome may drive many farm operations out of business, especially the small farms within the Commonwealth that often already operate at a loss.[[137]](#footnote-137)

Small family farms appear to be at the greatest risk for closing due to cost and burden of complying with environmental regulations.[[138]](#footnote-138) This includes Amish farms. The Amish, who hold a deep and abiding religious belief that absolutely requires them to avoid certain technologies, have even more reason to resist burdensome amounts of regulation. While the Amish believe in preserving the sanctity of God’s natural creation, the rural Amish lifestyle is rooted in long-held traditions and practices that specifically do not include hooking up to public utilities and electric grinder pumps.

Rigid over-regulation or failure to reach a solution in these matters could well cause the “Pennsylvania Dutch” to leave Pennsylvania. As Mrs. Byler stated, the Amish will “. . . abandon their homes and move to another township in Pennsylvania or across the line into New York State rather than comply with the Sugar Grove Sewer Authority ordinance which mandates the use of electricity and requires indoor plumbing and water under pressure to effectively operate the system.”[[139]](#footnote-139) The right to freely practice their religion is so profoundly important to the Amish people, they will leave rather than compromise their beliefs.

In *Sugar Grove Township v. Byler*, the Commonwealth Court effectively balanced the competing interests of the Township and Mrs. Byler, while adhering to its responsibility to protect the Pennsylvania Constitution. The Court was mindful of state and local environmental laws while seeking a viable solution that did not involve wholesale trampling of the deep religious beliefs of a devout Amish widow and her children.

The Court properly recognized that the case was about purported violations of the Sugar Grove Township Privy Ordinance by Mrs. Byler, and not directly about connecting to the Sugar Grove Township sewer system.[[140]](#footnote-140) The Court showed awareness of Mrs. Byler’s rights in its careful finding that her privy was not subject to the Privy Ordinance, thus allowing this part of the trial court holding against her to be reversed. The Court was equally attentive when it found the $100 monthly payment was relief the Township had not requested. With some issues remaining, the Court wisely remanded the case to the trial court under specific instructions that any new opinion must consider the religious freedom protections of the First Amendment; Article I, Section 3 of the Pennsylvania Constitution; and the state’s Religious Freedom Protection Act.

*Sugar Grove Township v. Byler* was not a landmark case but it did send a signal throughout Pennsylvania that strict scrutiny should be very thoroughly applied to cases where the right to freely practice religion is involved, even if another important right is in conflict. There seemed to be a message that local municipalities and county courts should proceed with great care when regulations may burden Amish religious rights. It is likely that municipalities and counties will take notice and perhaps increase efforts to work out non-judicial solutions where Amish landowners are not in compliance with local environmental ordinances and codes.

1. **Conclusion**

Pennsylvania is one of the last large northeastern states to have abundant open space remaining, but as more areas become developed, competing interests are arising. People are attracted to the state as a good place to live or visit because of its natural beauty and cultural diversity. But Pennsylvania’s natural resources are also leading to new economic activity and heavy industry, including ongoing potential for natural gas development and other energy production.

Somewhere in the middle lies Pennsylvania’s agricultural sector. Although it is an economic engine that adds billions of dollars to the state’s economy, farming also maintains open space and supports ancient cultural groups like the Amish. The farming industry not only helps encourage jobs and financial growth but also helps provide the natural beauty and diversity that make Pennsylvania so charming and welcoming.

A long history of pollution has brought a general understanding that the state can no longer allow unfettered misuse of its natural resources like clean air and water. Yet although it is important to protect the public’s right to a clean environment, it is equally important to protect the economy, including the Pennsylvania’s productive and scenic farms. The religious freedom and other rights of diverse cultures such as the Amish must also be carefully preserved. As unique citizens of the Commonwealth, these people help to create the fabric of Pennsylvania and make the state more attractive as a community.

With all of these competing interests in the state, Pennsylvania courts are aware that they must strike a balance. Pennsylvania is no longer the ruggedly-rural state it once was, not even in the “wilds” of its farthest northern tier. In coming years, as population and environmental concerns clash more frequently with property rights and religious beliefs, the future will almost certainly hold more cases like *Sugar Grove Township v. Byler.*

1. *Amish Studies*, The Young Center for Anabaptist and Pietist Studies at Elizabethtown College http://groups.etown.edu/amishstudies/ (last visited May 14, 2018). [↑](#footnote-ref-1)
2. *Id., Communal Values,* http://groups.etown.edu/amishstudies/social-organization/communal-values/ (last visited May 12, 2019). [↑](#footnote-ref-2)
3. *Id., Cultural Practices: Technology*, http://groups.etown.edu/amishstudies/cultural-practices/technology/ (last visited May 12, 2019). [↑](#footnote-ref-3)
4. *Id.* [↑](#footnote-ref-4)
5. *Id., Amish Population 2018*, http://groups.etown.edu/amishstudies/statistics/population-2018/ (last visited May 12, 2019). [↑](#footnote-ref-5)
6. *Id., Twelve Largest Settlements, 2018*, http://groups.etown.edu/amishstudies/statistics/twelve-largest-settlements-2018/ (last visited May 12, 2019). [↑](#footnote-ref-6)
7. *Amish Lifestyle Squeezed in Pennsylvania,* Washington Post (Dec. 27, 1992) https://www.washingtonpost.com/archive/politics/1992/12/27/amish-lifestyle-squeezed-in-pennsylvania/f8990bbe-4fa1-4e90-a095-fd3d3ab5420c/?utm\_term=.381aa0c1931d. [↑](#footnote-ref-7)
8. *Id.* [↑](#footnote-ref-8)
9. *Id.* [↑](#footnote-ref-9)
10. *See, e.g., Simply Authentic,* Visit Lawrence County, http://visitlawrencecounty.com/local-attractions/featured-attractions/amish-countryside/, (last visited May 13, 2019); *Smicksburg and the Amish,* Indiana County PA http://visitindianacountypa.org/things-to-do/smicksburg-the-amish/ (last visited May 13, 2019). [↑](#footnote-ref-10)
11. *Sugar Grove,* Visit PA, https://visitpa.com/pa-historic-towns/sugar-grove (last visited May 11, 2019). [↑](#footnote-ref-11)
12. Pa. Const. art. I, §27. [↑](#footnote-ref-12)
13. *See, e.g., Source Water Protection,* PA Rural Water, http://www.sourcewaterpa.org/?page\_id=139 (last visited May 13, 2019). [↑](#footnote-ref-13)
14. Daniel Walmer, *Amish targeted over environmental problems,* Lebanon Daily News (Jan. 12, 2017, last updated 1:20 PM) https://www.ldnews.com/story/news/local/2017/01/12/amish-targeted-over-environmental-problems-chesapeake-bay/96245140/. [↑](#footnote-ref-14)
15. Sugar Grove Twp. v. Byler, 191 A.3d 84 (Pa. Commw. Ct. 2018). [↑](#footnote-ref-15)
16. *Id.* at 86. [↑](#footnote-ref-16)
17. Brief for the Appellant at 12, Sugar Grove Twp. v. Byler, 191 A.3d 84 (Pa. Commw. Ct. 2018) (No. 937 of 2017). [↑](#footnote-ref-17)
18. *Id.* at 7. [↑](#footnote-ref-18)
19. *Id.* at 16. [↑](#footnote-ref-19)
20. *Id.*. [↑](#footnote-ref-20)
21. *Id.* [↑](#footnote-ref-21)
22. Memorandum Opinion and Order at 2, Sugar Grove Twp. v. Byler, 191 A.3d 84 (Pa. Commw. Ct. 2018) (No. 937 of 2017). [↑](#footnote-ref-22)
23. *Id.* at 3. [↑](#footnote-ref-23)
24. Sugar Grove Twp. v. Byler, 191 A.3d 84 at 91. [↑](#footnote-ref-24)
25. Brief for the Appellant, supra note 17, at 21. [↑](#footnote-ref-25)
26. *Id.* at 19-20. [↑](#footnote-ref-26)
27. *Sugar Grove Twp.* at 96. [↑](#footnote-ref-27)
28. Sugar Grove Twp., Warren Co., Pa., Ordinance 93-10-1, § II(a), (Oct. 18, 1993). [↑](#footnote-ref-28)
29. *Id.,* §§ IV-VI. [↑](#footnote-ref-29)
30. *Id.* § VII(a). [↑](#footnote-ref-30)
31. Sugar Grove Twp., Warren Co., Pa., Ordinance 12-11-06, (Nov. 6, 2012). [↑](#footnote-ref-31)
32. *Id.,* § X(c). [↑](#footnote-ref-32)
33. *Id.,* § XIII. [↑](#footnote-ref-33)
34. *Id.,* § XIV. [↑](#footnote-ref-34)
35. Sugar Grove Twp. v. Byler, 191 A.3d 84 at 86. [↑](#footnote-ref-35)
36. *Id.* at 89. [↑](#footnote-ref-36)
37. Brief for the Appellant, supra note 17, at 12. [↑](#footnote-ref-37)
38. *Id.* at14. [↑](#footnote-ref-38)
39. *Id.* [↑](#footnote-ref-39)
40. *Sugar Grove Twp.* at 87. [↑](#footnote-ref-40)
41. *Id.* [↑](#footnote-ref-41)
42. *Id.* [↑](#footnote-ref-42)
43. *Id.* [↑](#footnote-ref-43)
44. Brief for the Appellant, supra note 17, at 8. [↑](#footnote-ref-44)
45. *Id.* [↑](#footnote-ref-45)
46. *Id.* at 17. [↑](#footnote-ref-46)
47. *Id.* at 16-18 [↑](#footnote-ref-47)
48. *Id.* at 16. [↑](#footnote-ref-48)
49. *Id.* [↑](#footnote-ref-49)
50. *Id.* [↑](#footnote-ref-50)
51. 1 Pa. Stat. and Cons. Stat. Ann. § 1926 (West). [↑](#footnote-ref-51)
52. Brief for the Appellant, supra note 17, at 17. [↑](#footnote-ref-52)
53. Appeal of Sawdey, 85 A.2d 28 (Pa. 1951). [↑](#footnote-ref-53)
54. *Id.* at 30. [↑](#footnote-ref-54)
55. Brief for the Appellant, supra note 17, at 12. [↑](#footnote-ref-55)
56. *Id.* at 7. [↑](#footnote-ref-56)
57. Memorandum Opinion and Order, supra note 57, at 1. [↑](#footnote-ref-57)
58. *Id.* at 8. [↑](#footnote-ref-58)
59. *Id.* at 7. [↑](#footnote-ref-59)
60. *Id.* at 4. [↑](#footnote-ref-60)
61. *Id*. at 6. [↑](#footnote-ref-61)
62. *Id.* at 36. [↑](#footnote-ref-62)
63. Sugar Grove Twp. v. Byler, 191 A.3d 84 at 91. [↑](#footnote-ref-63)
64. *Id.*  at 92. [↑](#footnote-ref-64)
65. *Id.* at 95. [↑](#footnote-ref-65)
66. Brief for the Appellant, supra note 17, at 11-15. [↑](#footnote-ref-66)
67. *Id.* at 15-18. [↑](#footnote-ref-67)
68. *Id.* [↑](#footnote-ref-68)
69. *Id*. at 18-20. [↑](#footnote-ref-69)
70. *Id*. at 20-25. [↑](#footnote-ref-70)
71. *Id*.at 24. [↑](#footnote-ref-71)
72. Sugar Grove Twp.,191 A.3d 84, 84. [↑](#footnote-ref-72)
73. *Id*.at 96, 97. [↑](#footnote-ref-73)
74. *Id.* at 98. [↑](#footnote-ref-74)
75. *Id*. [↑](#footnote-ref-75)
76. *Id*.at 98-99. [↑](#footnote-ref-76)
77. *Id*. [↑](#footnote-ref-77)
78. *Id*. [↑](#footnote-ref-78)
79. *Id.,* 99 n.17. [↑](#footnote-ref-79)
80. *Id.* at 96. [↑](#footnote-ref-80)
81. *Deuteronomy* 23:12-14 (King James). [↑](#footnote-ref-81)
82. *History of Sewage Disposal,* Slide 3,Maine Center for Disease Control and Prevention, (Winter-Spring 2013) https://www1.maine.gov/dhhs/mecdc/environmental-health/plumb/documents/training/2013/history\_of\_sewage\_disposal.pdf. [↑](#footnote-ref-82)
83. *Id.,* Slide 2. [↑](#footnote-ref-83)
84. Julie Beck, *Roman Plumbing: Overrated,* The Atlantic (Jan. 8, 2016) https://www.theatlantic.com/health/archive/2016/01/ancient-roman-toilets-gross/423072/. [↑](#footnote-ref-84)
85. *A Brief History of the Flush Toilet,* British Society of Urological Surgeons, https://www.baus.org.uk/museum/164/the\_flush\_toilet (last visited May 13, 2019). [↑](#footnote-ref-85)
86. Michael Olmert, *Necessary and Sufficient,* Colonial Williamsburg Journal (Autumn 2002), http://www.history.org/foundation/journal/autumn02/necessary.cfm. [↑](#footnote-ref-86)
87. *Id.* [↑](#footnote-ref-87)
88. *Id.* [↑](#footnote-ref-88)
89. *A Brief History of the Flush Toilet,* supra note 89*.* [↑](#footnote-ref-89)
90. *History of Sewage Disposal,* supra note 87, Slide 17. [↑](#footnote-ref-90)
91. *Id.,* Slide 25. [↑](#footnote-ref-91)
92. Franklin L. Kury, *Pennsylvania’s Environmental Rights Amendment,* Pennsylvania Land Trust Association, https://conserveland.org/public-policy/environmental-rights-amendment/ (last visited May 11, 2019). [↑](#footnote-ref-92)
93. *Id.* [↑](#footnote-ref-93)
94. *Id.* [↑](#footnote-ref-94)
95. 35 Pa. Stat. Ann. § 750.3 (West). [↑](#footnote-ref-95)
96. *Sewage Enforcement Officer Training Module*, Slide 613-01-11, Pa. Ass’n. of Twp. Supervisors http://www.psats.org/ckfinder/userfiles/files/613-1ASelfStudyGuide2-1-2010.pdf (retrieved March 16, 2019). [↑](#footnote-ref-96)
97. *Id.* at slides 613-01-04 through 613-10-08. [↑](#footnote-ref-97)
98. Pa. Const. art I §27. [↑](#footnote-ref-98)
99. Walmer, supra note 14. [↑](#footnote-ref-99)
100. *See, e.g.,* *Amish farmer gets jail in outhouse dispute,* Associated Press (March 17, 2009 updated at 6:43 PM), http://www.nbcnews.com/id/29742577/ns/us\_news-crime\_and\_courts/t/amish-farmer-gets-jail-outhouse-dispute/#.WHZ1gVUrIps (discussing case of Amish elder who was sentenced to jail for contempt over failure to bring Amish school outhouses into compliance with local waste disposal ordinances). [↑](#footnote-ref-100)
101. *See, e.g., Yoder v. Sugar Grove Area Sewer Auth.*, 140 A.3d 98 (Pa. Commw. Ct. 2016). [↑](#footnote-ref-101)
102. U.S. Const. amend. I. [↑](#footnote-ref-102)
103. Pa. Const. art. I, §3. [↑](#footnote-ref-103)
104. *Id.* [↑](#footnote-ref-104)
105. Daniel Walmer, *Amish use legal system rarely,* Lebanon Daily News (Jan. 12, 2017, last updated 2:12 PM). https://www.ldnews.com/story/news/local/2017/01/12/amish-legal-system-animals-traffic-insurance-schools/96349888/ [↑](#footnote-ref-105)
106. *Id.* [↑](#footnote-ref-106)
107. John A. Hostetler, *The Amish and the Law: A Religious Minority and its Legal Encounters*, 41 Wash. & Lee L. Rev. 33, 46 (1984) (retrieved at https://scholarlycommons.law.wlu.edu/wlulr/vol41/iss1/4). [↑](#footnote-ref-107)
108. Wisconsin v. Yoder,92 S. Ct. 1526 (1972). [↑](#footnote-ref-108)
109. *Id.* at 1529-30. [↑](#footnote-ref-109)
110. William R. MacKaye, *High Court Hears Amish School Case*, The Washington Post (December 9, 1971) (available at https://www.amishreligiousfreedom.com/mackaye.htm). [↑](#footnote-ref-110)
111. *Yoder* at 1530. [↑](#footnote-ref-111)
112. *Id.* at 1542. [↑](#footnote-ref-112)
113. *Id.* at 1543. [↑](#footnote-ref-113)
114. 71 Pa. Stat. Ann. § 2401-2407 (West). [↑](#footnote-ref-114)
115. *Id.,* § 2. [↑](#footnote-ref-115)
116. *Id.* [↑](#footnote-ref-116)
117. *Id.,* § 5. [↑](#footnote-ref-117)
118. *Id.,* § 3. [↑](#footnote-ref-118)
119. Brief for the Appellant, supra note 17, at 12-14. [↑](#footnote-ref-119)
120. *Id.* [↑](#footnote-ref-120)
121. *Id.,*7. [↑](#footnote-ref-121)
122. Sugar Grove Twp. v. Byler, 191 A.3d 84 at 96. [↑](#footnote-ref-122)
123. *Id.* [↑](#footnote-ref-123)
124. *Id.* [↑](#footnote-ref-124)
125. Warren County Civil Case Print, Sugar Grove Twp. v. Iva H. Byler et al., at 5 (Mar. 14, 2019 at 2:08 P.M.). [↑](#footnote-ref-125)
126. *Quakers in Colonial Pennsylvania,* Quakers in the World, http://www.quakersintheworld.org/quakers-in-action/282/Quakers-in-colonial-Pennsylvania (last visited, May 14, 2019). [↑](#footnote-ref-126)
127. Pa. Const. art. I, §25 (emphasis added). [↑](#footnote-ref-127)
128. Pa. Const. art. I, §27. [↑](#footnote-ref-128)
129. Donna Morelli, *PA Environmental Rights Amendment Grows Some Teeth,* Bay Journal, (Feb. 18, 2018) https://www.bayjournal.com/article/pa\_activists\_using\_environmental\_rights\_amendment\_with\_success. [↑](#footnote-ref-129)
130. *Id.* [↑](#footnote-ref-130)
131. *Id.* [↑](#footnote-ref-131)
132. Brief for the Appellant, supra note 17, at 13. [↑](#footnote-ref-132)
133. *See, e.g., Our Mission,* Pa. Landowners Ass’n., http://www.palandowners.org/our-mission.html (last visited May 14, 2019) (stating landowner concerns regarding Pennsylvania land regulation). [↑](#footnote-ref-133)
134. Walmer, supra note 14. [↑](#footnote-ref-134)
135. Theodore R. Alter, et al., Cntr. for Econ. and Community Dev., Penn St. U., Pennsylvania Agriculture: Where the Action Is!, 4 (May, 2017). [↑](#footnote-ref-135)
136. *Id.* at 9. [↑](#footnote-ref-136)
137. *Id.* at 11 (providing statistics that 77% of small farms report income loss and that small farms’ sales average only 29% of operating expenses). [↑](#footnote-ref-137)
138. *Id.* [↑](#footnote-ref-138)
139. Brief for the Appellant, supra note 17, at 22. [↑](#footnote-ref-139)
140. Sugar Grove Twp. v. Byler, 191 A.3d 84, 96 n.10. [↑](#footnote-ref-140)