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IN THE COURT OF COMMON PLEAS
STATE OF OHIO, COUNTY OF WARREN
GENERAL DIVISION

SOUTHWESTERN OHIO BASKETBALL, INC., *et. al.*,	:	**CASE NO. 20-CV-93409** **Consolidated with 20-CV-93467**
Plaintiffs,	:	**JUDGE TIMOTHY N. TEPE**
v.	:	**DECISION AND ENTRY GRANTING PRELIMINARY INJUNCTION**
LANCE HIMES, in his official capacity as Director of the Ohio Department of Health, *et. al.*	:	
Defendants.	:	

WARREN COUNTY CONVENTION & VISITORS BUREAU,	:	
Plaintiff,	:	
v.	:	
LANCE HIMES, in his official capacity as Director of the Ohio Department of Health, *et. al.*	:	
Defendants.	:	

Pending before the Court is the motion of Plaintiffs to preliminarily enjoin Defendants from imposing penalties against their organizations for non-compliance with Paragraph 2 and 10 of the August 1, 2020 Director's Corrected Third Order to Extend the Expiration date of Second Amended Order that Provides Guidance for Contact Sport Practices and Non-Contact Sport Competitions, and Contact Competitions, with Exceptions ("August 1st Director's Order") as it relates to *contact* sport competitions, so long as Plaintiffs otherwise operate their businesses in compliance with all of the safety regulations set forth in the Director's Order for *non-contact* sport competitions. For the following reasons, this motion is GRANTED and Defendants are preliminarily enjoined from imposing penalties on Plaintiffs until a decision can be issued on the merits of this case.

Factual and Procedural Background

This is a consolidated action brought by plaintiffs Southwestern Ohio Basketball, Inc. Kingdom Sports Center, Inc., and Warren County Convention Center and Visitor's Bureau (collectively, "Plaintiffs"; individually, "Southwestern," "Kingdom," and "WCCVB") against defendants Lance Himes, Director of the Ohio Department of Health, Amy Acton, former Director of the Ohio Department of Health, and the Warren County Health District (collectively, "Defendants"; individually, "Mr. Himes," "Dr. Acton," and "WCHD"). Southwestern is an organization that operates youth basketball leagues and basketball tournaments at indoor facilities within Warren County, serving youth from kindergarten through 12th grade. Kingdom operates an indoor sports facility in Warren County and hosts year-round soccer and basketball leagues and tournaments, among other services it provides to the local youth community. WCCVB is an organization that co-owns the Warren County Sports Park, which stages or hosts a variety of outdoor sporting tournaments, including soccer, baseball, and lacrosse. The lawsuit filed by WCCVB was consolidated with the lawsuit filed by Southwest and Kingdom because of the significant overlap of common questions of law and fact between the two cases.

Plaintiffs seek a preliminary injunction to prevent penalties from being imposed against them during the pendency of this action. Ultimately, Plaintiffs seek to have this Court issue a declaratory judgment that R.C. 3701.352 and R.C. 3701.99, when used to enforce R.C. 3701.13 or R.C. 3701.56, are facially unconstitutional and as applied to Plaintiffs, for the reason that both the statutes and the August 1st Director's Order issued pursuant the statutes' authority: (1) fail to provide procedural due process, (2) fail to afford equal protection of the law to similarly situated

parties, (3) violate the doctrine of separation of powers, and (4) delegate "unfettered and unbridled vague power to unelected officials."

(1) *Emergence of COVID-19 Generally and the Director's Orders*

In early March, the global spread of a novel coronavirus known as COVID-19 began to impact the United States. COVID-19 is a respiratory disease that has not previously been identified in humans and can result in serious illness or death. On March 11, 2020, the World Health Organization officially declared COVID-19 to be a pandemic, meaning a global outbreak of disease.

In response to the growing spread of COVID-19, states began to issue orders to control the spread among the United States population. Several states, including Ohio, took swift preventative measures by issuing statewide mandates – notable among these measures was the closure of non-essential businesses, orders that persons engage in "social distancing" (placing physical distance of at least six feet between persons that are not members of the same household), and instructions to stay home except for essential purposes. These measures were implemented in order to prevent an overtaxing of the healthcare system and hospitals, increase capacity for testing for the virus, allow for production of personal protective equipment ("PPE"), and curtail the spread of the disease.

The Ohio Department of Health began issuing a series of Director's Orders in March of 2020; first by Dr. Acton, in her official capacity as the Director of the Ohio Department of Health, and later by Mr. Himes, who assumed the role of Interim Director in June of 2020. Dr. Acton and Mr. Himes have issued multiple Director's Orders to regulate both the initial closure of all non-essential operations in Ohio, as well as the phased reopening of each sector.

(2) *Governing Statutes*

In Ohio, several statutes delegate authority to the Ohio Department of Health and the Director to issue these orders for the preservation of public health during a pandemic. Generally, each of Dr. Acton's and Mr. Himes' Director's Orders specifically cite to R.C. 3701.13 as the statutory authority for the orders. The relevant portion of **R.C. 3701.13** provides:

> The department may make special or standing orders or rules for preventing the use of fluoroscopes for nonmedical purposes that emit doses of radiation likely to be harmful to any person, *for preventing the spread of contagious or infectious diseases,* for governing the receipt and conveyance of remains of deceased persons, and for such other sanitary matters as are best controlled by a general rule. (emphasis added)

Further, **R.C. 3701.14(A)** charges the Director with the responsibility to control and suppress public outbreaks of disease:

> The director of health shall investigate or make inquiry as to the cause of disease or illness, including contagious, infectious, epidemic, pandemic, or endemic conditions, and take prompt action to control and suppress it.

Violations of orders issued by the Director or the Ohio Department of Health are statutorily prohibited under **R.C. 3701.352**, which provides:

> No person shall violate any rule the director of health or department of health adopts or any order the director or department of health issues under this chapter to prevent a threat to the public caused by a pandemic, epidemic, or bioterrorism event.

Further, penalties for a violation of a Director's Order are set forth in **R.C. 3701.99(C)**, which provides:

> Whoever violates section 3701.352 or 3701.81 of the Revised Code is guilty of a misdemeanor of the second degree.

And finally, local health districts (such as, in this case, WCHD) are responsible for enforcing the Director's Orders issued pursuant to **R.C. 3701.56**, which provides:

> Boards of health of a general or city health district, health authorities and officials, officers of state institutions, police officers, sheriffs, constables, and other officers and employees of the state or any county, city, or township, shall enforce quarantine and isolation orders, and the rules the department of health adopts.

As noted above, the Director's Order being challenged in this case is the August 1, 2020 Director's Corrected Third Order to Extend the Expiration date of Second Amended Order that Provides Guidance for Contact Sport Practices and Non-Contact Sport Competitions, and Contact Competitions, with Exceptions. Within the order are certain guidelines governing the resumption of contact and non-contact sports in Ohio, which had been prohibited during the initial closure of all non-essential operations. Paragraph 2 provides:

> **Contact Sports Practices and Non-Contact Sport Competitions to reopen.** Contact practice and training may resume for all sports. Competitive games and tournaments are permitted for non-contact sports, provided, however, only intra-club/team scrimmages are permitted for contact sports. Practices, and/or open gyms with another team or club, or competitive inter-club/team play are not permitted for contact sports unless all involved teams comply with the

requirements set forth in Section 10 of this Order so as to minimize the spread of COVID-19[…]

Section 3 defines which sports are deemed "contact" sports: "For this Order, contact sports are defined as football, basketball, rugby, field hockey, soccer, lacrosse, wrestling, hockey, boxing, futsal and martial arts with opponents." Section 9 is titled "Sector Specific COVID-19 Information and Checklist for Contact Sport Practices and Non-Contact Sport Competitions." Section 10 is titled "Sector Specific COVID-19 Information and Checklist for Inter-Team Contact Sport Competition." Each section sets forth guidelines to be followed by players, coaches, athletic trainers, and officials, regulations regarding practices, games, tournaments, facilities, and venues.

However, Section 10 has two key distinctions and imposes more stringent requirements on contact sport competitions, which Plaintiffs challenge here, arguing that they are so prohibitive in their scope that they cannot comply and therefore effectively cannot operate their leagues and/or facilities. Specifically, Section 10 imposes a COVID-19 testing and isolation requirement on players, coaches, athletic trainers, support staff, and officials:

a. Players, coaches, athletic trainers, support staff, and officials must:

…

iii. Receive a negative COVID-19 test result before traveling to competition; and

iv. A PCR COVID-19 test must be administered to each athlete and team staff member participating in the competition no more than 72 hours prior to the start of the competition and the results must be in hand prior to the start of the competition; any athlete or staff member testing positive and their entire team and staff are prohibited from participation in the competition; and all participants must remain in isolation with other their [sic] teammates and team staff from the time the COVID-19 test is administered until completion of the competition.

…

viii. If competition lasts more than four days, administer a second COVID-19 test, four days after the first test was administered. A negative test clears the athlete for competition; a positive test prohibits the athlete, teammates and all team staff from continued participation in the competition

ix. Be tested every two days after that for the duration of the tournament

Additionally, Section 10 prohibits spectators from being in the facility/venue for any competitive contact sports inter-club/team play. Spectators are permitted at non-contact sport inter-club team play, subject to various generally applicable health guidelines. This Director's Order's effective date was August 1, 2020 and states that it shall remain in full force and effect until the State of Emergency declared by the Governor no longer exists or until the Director of the Ohio Department of Health rescinds or modifies the Order, whichever occurs sooner.

At the injunction hearing in this matter, Plaintiffs offered testimony in support of their request to have the COVID-19 testing and spectator restrictions lifted, so long as they otherwise fully comply with the guidelines set forth in Section 9 for operation of non-contact sport competition.

Legal Standard for a Preliminary Injunction

In ruling on a motion for preliminary injunction, a trial court must consider whether (1) the moving party has shown a substantial likelihood that he or she will prevail on the merits of their underlying substantive claim; (2) the moving party will suffer irreparable harm if the injunction is not granted; (3) issuance of the injunction will not harm third parties; and (4) the public interest would be served by issuing the preliminary injunction. *AK Steel Corp. v. ArcelorMittal USA, L.L.C.*, 2016-Ohio-3285, ¶ 9, 55 N.E.3d 1152, 1155 (12th Dist.); citing *DK Prods., Inc. v. Miller,* 12th Dist. Warren No. CA2008–05–060, 2009-Ohio-436, 2009 WL 243089, ¶ 6.

The party seeking the preliminary injunction must establish each of these elements by clear and convincing evidence. *Id.* at ¶ 10; citing *Planck v. Cinergy Power Generation Servs. L.L.C.,* 12th Dist. Clermont No. CA2002–12–104, 2003-Ohio-6785, 2003 WL 22947249, ¶ 17. However, no single factor is dispositive – if there is a strong likelihood of success on the merits, an injunction may be granted even though there is little evidence of irreparable harm and vice versa. *Id.* The decision whether to grant or deny injunctive relief is within the trial court's sound discretion and its decision will not be disturbed on appeal absent a clear abuse of that discretion. *Id.*

(1) Strong Likelihood of Success on the Merits

Plaintiffs assert that they are likely to succeed on the merits of their claim for declaratory judgment on the grounds that: (1) the deprivation of their property rights denies them the equal protection of the law under the United States and Ohio Constitutions (2) the deprivation of their property rights denies them procedural due process under the United States and Ohio Constitutions, and (3) the authority delegated to Defendants is void for vagueness and/or violates the separation of powers in Article I and II of the Ohio Constitution.

a) Equal Protection

As a general matter, it is fundamental that the protection and preservation of the public health is a prime governmental concern and thus a function of the state. *DeMoise v. Dowell*, 10 Ohio St. 3d 92, 93 (1984); citing *State, ex rel. Mowrer v. Underwood* (1940), 137 Ohio St. 1, 27 N.E.2d 773. It is equally well established that the state can directly exercise its police power concerning public health or it may delegate that power to other governmental agencies. *Id.* at 94. Almost every exercise of the police power interferes with the enjoyment of liberty or the acquisition, production or possession of property. *Id.* Yet the constitutional provisions against the taking of property must give way to an exercise of the police power " * * * if it bears a real and substantial relation to the public health, safety, morals or general welfare of the public and if it is not unreasonable or arbitrary." *Id.*

However, it is equally true that in Ohio the rights related to property, i.e., to acquire, use, enjoy, and dispose of property, are among the most revered in our law and traditions. *Norwood v. Horney*, 2006-Ohio-3799, ¶ 34, 110 Ohio St. 3d 353, 361, 853 N.E.2d 1115, 1128. Article I, Section 19 of the Ohio Constitution provides that "[p]rivate property shall ever be held inviolate, but subservient to the public welfare." Indeed, property rights are integral aspects of our theory of democracy and notions of liberty and Ohio has always considered the right of property to be a fundamental right. *Id.* See, e.g., *Reece v. Kyle* (1892), 49 Ohio St. 475, 484, 31 N.E. 747, overruled in part on other grounds, *Mahoning Cty. Bar Assn. v. Ruffalo* (1964), 176 Ohio St. 263, 27 O.O.2d 161, 199 N.E.2d 396; *Hatch v. Buckeye State Bldg. & Loan Co.* (P.C.1934), 32 Ohio N.P. (N.S.) 297, 16 Ohio Law Abs. 661; *In re Vine St. Congregational Church* (C.P.1910), 20 Ohio Dec. 573; Caldwell v. Baltimore & Ohio Ry. Co. (C.P.1904), 14 Ohio Dec. 375; *Kata v. Second Natl. Bank of Warren* (1971), 26 Ohio St.2d 210, 55 O.O.2d 458, 271 N.E.2d 292.

As a result, it has been held that the bundle of venerable rights associated with property is strongly protected in the Ohio Constitution and must be trod upon lightly, no matter how great the weight of other forces. *Norwood*, 2006-Ohio-3799 at ¶ 34. Though much of this case law deals with governmental physical seizure of property through its eminent domain powers, the Court finds the analogy to be useful here, inasmuch as this pandemic has resulted in such severe restrictions to an owner's property use that it can be said that an effective taking has occurred.

In balancing these important concerns in the context of this case – weighing the preservation of public health during a pandemic with the fundamental right of Ohioans to use and enjoy their private property to operate businesses that provide valuable public services to the youth community – another important constitutional consideration is also layered on in this case.

The Equal Protection Clause of the United States Constitution provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." The Equal Protection Clause in the Ohio Constitution is fundamentally equivalent to the federal guarantee and is analyzed under the same standard. *Mariemont Apartment Assn. v. Vill. of Mariemont*, 2007-Ohio-173, ¶ 27 (1st Dist.) When the government treats similarly situated individuals differently, that action implicates the Equal Protection Clause. *Id.*

However, the Equal Protection Clause does not prevent classifications; it simply forbids laws which treat differently persons who are in all relevant respects alike. *Amburgy v. Vill. of S. Lebanon*, No. CA2001-07-065, 2002 WL 1009381, at *1 (12th Dist. 2002). However, the Equal Protection Clause does not prevent classifications; it simply forbids laws which treat differently persons who are in all relevant respects alike. *Id.*

The level of scrutiny upon review depends upon the nature of the classification made. *Id.* at *2. If no suspect class or fundamental right is involved, the classification is subject to a "rational-basis" scrutiny. *Id.* Under this standard, the classification does not violate equal protection if it bears a rational relationship to a legitimate governmental interest. *Id.* If the discrimination infringes upon a suspect class or fundamental right, it becomes the subject of strict judicial scrutiny and will be upheld only upon a showing that it is narrowly tailored and justified by a compelling state interest. *Id.*; see *Reno v. Flores* (1993), 507 U.S. 292, 302, 113 S.Ct. 1439, 123 L.Ed.2d 1. That is, once the existence of a fundamental right or a suspect class is shown to be involved, the state must assume the heavy burden of proving that the legislation is constitutional. *Id.*

In this case, Mr. Himes has instituted different operating guidelines to govern two groups of similarly situated individuals, based solely on whether their sports operations are categorized as non-contact or contact. At the injunction hearing in this matter, the Court heard extensive testimony from Mr. Himes, and he described how a sport was determined to be contact versus non-contact for the purpose of his order. He testified that the order's definition of a contact sport was not based on its common usage in sports, which is typically understood to mean full physical contact between athletes, but was instead based on the duration of time an athlete is likely to be within six feet of another athlete or athletes, because it is thought that heavy breathing and heavy exertion in close proximity to another person increases the potential for transmission of COVID-19.

However, he also testified that the duration of time is not determinative in preventing the spread of COVID-19, as the key component is being close enough to another person so as to have the ability to inhale droplets from their breathing – this could occur from even a brief period of time being within six feet of someone. When questioned about his reasoning for instituting different rules for contact and non-contact sport competitions, Mr. Himes testified that the decision was based in part on a desire to sequence sports reopening; essentially, start with non-contact first, then allow contact, in accordance with their relative risk levels. The ability to collect data from the test results also factored into the decision.

However, Plaintiffs argue that other sports where athletes are likely to be within six feet of one another for a duration of time are exempted from the definition of contact sports – for example, volleyball, baseball, cheerleading, golf, swimming, et cetera – and so the disparate treatment of the two categories is arbitrary and unreasonably burdens those in the contact sports category. The Court heard testimony from Michael Roe, Sr. (owner and president of Kingdom Sports, LLC), Thomas Sunderman, Jr. (owner and president of Southwest Ohio Basketball, Inc.), and Phillip Smith (president of WCCVB). Each one testified that the COVID-19 testing and spectator restrictions placed on contact sports were not feasible to implement for the population that they serve.

Each organization serves the youth sports population, with participants whose ages range from kindergarten through 12th grade. Testing the vast number of participants in these leagues and tournaments would be extremely cost-prohibitive, whether the cost is to be borne by the participant or the organization, as cost estimates run approximately $60-$75 per test. Mr. Roe

testified that his organization, in particular, serves a population that includes economically-disadvantaged youth for whom a testing requirement would likely mean that they cannot afford to play in a league, while those who can afford the testing could play.

An additional concern is the intrusive nature of the testing that would be required not only for contact sport athletes, but also coaches, trainers, support staff, and officials. The particular test required by the Director's Order is the PCR (polymerise chain reaction) test, which tests for an active COVID-19 infection as opposed to a serologic sample, which test for COVID-19 antibodies from a possible past infection. The PCR test utilizes nasopharyngeal swab samples gathered from deep within a person's nasal cavity and are generally thought to be quite painful, as expressed by those who have experienced the testing. Subjecting these contact sport participants to repeated painful and invasive testing procedures (while exempting others who are similarly situated) without compelling reasons to treat the two groups differently raises significant concerns for these Plaintiffs and, quite frankly, for this Court.

Next, the Director's Order also makes another key distinction between contact and non-contact sports – spectators are permitted at non-contact sport competitions but not at contact sport competitions. This is concerning because, practically speaking, parents would not be able to accompany their children, some of whom are as young as four or five, to their sports games. What if their young children are injured, become upset, sick, or even need to use the restroom and cannot do so unattended? This is burdening contact sport leagues with responsibilities that are not similarly placed on non-contact sport leagues.

Ultimately, the Court is cognizant of and respects the weighty responsibilities and pressures faced by Defendants during this past year. Mr. Himes (and Dr. Acton before him) and the Ohio Department of Health are statutorily charged with the responsibility to prevent and suppress the spread of contagious disease during a pandemic and this duty extends to all Ohioans, both young and old. This is no minor task. Concessions and sacrifices have been made by every Ohioan in furtherance of a common goal – mitigating and hopefully eventually eliminating the health risks posed by COVID-19.

However, this Court is also charged with a weighty responsibility – it is this Court's sworn duty to uphold the United States and Ohio constitutions and ensure that their protections blanket and cover all the citizens of Warren County. The reasons enumerated by Mr. Himes for treating contact sports differently from non-contact sports are not compelling enough to override

Plaintiffs' fundamental right to equal protection of the law. If non-contact sport competition can presumably resume safely with the health protocols for participants and spectators outlined in Section 9 of the August 1st Director's Order, there appears to be no compelling reason why contact sport competition cannot also resume with the same protocols. Plaintiffs have indicated their full intent to comply with Section 9 if allowed to do so.

The Court finds that Plaintiffs have demonstrated a likelihood of succeeding on the merits of their claim, insofar as they have presented clear and compelling evidence that they have been deprived of the equal protection guarantees of the Constitution, due to the stringent and prohibitive restrictions placed on contact sport competition.

b) Due Process

Plaintiffs also assert that the restrictions on contact sport competition deprive league operators and owners of due process of law, in that it has unreasonably restricted their operations without adequate redress. Before the state may deprive a person of a property interest, it must provide procedural due process consisting of notice and a meaningful opportunity to be heard. *Ohio Assn. of Pub. Sch. Emp., AFSCME, AFL-CIO v. Lakewood City Sch. Dist. Bd. of Edn.*, 1994-Ohio-354, 68 Ohio St. 3d 175, 176, 624 N.E.2d 1043, 1045.

The Court understands that in this shifting climate, where policy and science are evolving in tandem, that pre-deprivation notice and an opportunity to be heard would be fraught with difficulty and in many cases impossible. In some circumstances, post-deprivation review can cure the lack of a predeprivation hearing. *Mariemont Apartment Assn. v. Vill. of Mariemont*, 2007-Ohio-173, ¶ 45 (1st Dist.). But the failure to provide an avenue for prompt review of the governmental action would violate due process. *Id.* Also, the failure to provide adequate hardship relief can violate due process. *Id.*

Plaintiffs each testified that they were not only not afforded a pre-deprivation hearing prior to the closure of their businesses, but there is no avenue for post-deprivation review other than the filing of this lawsuit. Further, there is no avenue to obtain adequate hardship relief in this case. For these reasons, the Court finds that the Plaintiffs have presented clear and compelling evidence that they have been deprived of due process.

c) Void for Vagueness/Violates Separation of Powers

Because the Court finds that Plaintiffs have demonstrated a likelihood of success on the merits based on their equal protection and due process arguments, it is not necessary at this time

to consider whether the statutes and the Director's Order are either void for vagueness or violate a separation of powers. If upon review of the motions for summary judgment the Court determines that this argument should be addressed, it will be addressed in a decision on the merits.

(2) Irreparable Harm if Injunction is Not Granted

Plaintiffs also presented evidence that they will suffer irreparable harm if this injunction is not granted. Irreparable harm is an injury for which there is no plain, adequate, and complete remedy at law, and for which money damages would be impossible, difficult, or incomplete. *DK Prods., Inc. v. Miller*, 2009-Ohio-436, ¶ 13 (12th Dist.); citing *Lee v. Barber* (July 2, 2001), Butler App. No. CA2000–02–014 at 8, citing *Cleveland v. Cleveland Elec. Illum. Co.* (1996), 115 Ohio App.3d 1, 12, 684 N.E.2d 343.

At the injunction hearing, Mr. Roe, Mr. Sunderman, and Mr. Smith each testified that their organizations would suffer irreparable harm if this injunction is not granted. Mr. Roe testified that although some parts of his business are able to operate currently (such as childcare), his organization has already missed out on the major revenue generators, which are spring and summer sports leagues and tournaments. More than that, however, he testified that his organization cannot operate much longer at this rate and he will have to close his business. Closure of this business would negatively impact the ability of the community to have a place to send their children to participate in sports and have a safe, positive environment for childcare.

Mr. Sunderman also testified that his sports league cannot continue to operate in a deficit for more than a few more months. He further testified regarding his personal experience witnessing the emotional struggles children are facing during this time, without many outlets for exercise and physical movement, as well as the potentially permanent impact on older children who are hoping to obtain athletic scholarships in order to go to a university or college.

Mr. Smith testified that WCCVB relies heavily on a percentage of the lodging tax collected by Warren County to be able to operate its facility and pay off the existing loan obtained to build the Warren County Sports Park, which is a newly built facility. Without the revenue generated from the sports tournaments, its funding through the lodging tax dramatically falls. The precise amount of lost revenue cannot adequately be quantified for a number of reasons. If WCCVB is not able to make payments on its loan, the property could potentially revert back to the original owners or be sold.

All together, the Court finds that Plaintiffs have presented clear and compelling evidence to support their claim that they will suffer irreparable harm if this injunction is not granted.

(3) Issuance of the Injunction Will Not Harm Third Parties

The Director's Order, by its own terms, allows non-contact sport competitions to resume with spectators, subject to a number of health regulations (including, but not limited to, social distancing among spectators, COVID-19 symptom screenings for anyone on the facilities' grounds, facial coverings for most participants aside from athletes and coaches, et cetera).

As detailed above, treating contact sport competitions differently appears to be an arbitrary and unreasonable distinction, considering the fact that several sports deemed non-contact also have athletes in close proximity for a period of time. Further, the Court has no reason to believe that spectators at a contact sport competition face any higher risk than those at a non-contact sport competition.

While the Court does not wish to substitute its own judgment for that of the Ohio Department of Health nor can it guarantee the health of all of these athletes and spectators, it can reasonably be inferred that no more harm will result from contact sport competitions being permitted to operate under the same guidelines than that which is already permitted by the Director's Order for non-contact sport competitions.

(4) Public Interest Would be Served by Issuing the Preliminary Injunction

Finally, as discussed above, there are many citizens of Warren County impacted by the Director's Order, not just the Plaintiffs – parents and children are also heavily impacted. These children could be subject to a number of detrimental impacts as a result of this order – from the most immediate (invasive, repeated testing of children from ages 4 through 12th grade, lack of structure and the physical activity provided by sports, lack of access to positive role models, not having family members present in the venue in the event of an emergency) through long-lasting (missed opportunities for scholarships, potential mental health consequences). Some of these harms are certain to occur and some may be more speculative but, taken together, the Court finds that the public interest is better served by issuing the injunction.

Conclusion

For the foregoing reasons, the Court GRANTS the preliminary injunction requested by Plaintiffs. Defendants are hereby enjoined from imposing any penalties upon Plaintiffs for non-compliance with Section 2 and 10 of the August 1st Director's Order and Plaintiffs are permitted to operate, so long as they fully comply with the restrictions set forth in Section 9 of the Order. This injunction shall last until such time as a decision is issued on the merits of this case.

Civ.R. 65 mandates that when a temporary restraining order or an injunction is obtained the party obtaining it must post a bond to secure the damages the enjoined party will suffer if it is later determined that the injunction was improvidently allowed or allowed in error. The Court hereby sets the bond at $0, as there is no evidence that Defendants will suffer damages as a result of this injunction.

IT IS SO ORDERED.

JUDGE TIMOTHY N. TEPE
Warren County Common Pleas Court

c: All counsel of record