STATE OF MINNESOTA | DISTRICT COURT
COUNTY OF WABASHA | THIRD JUDICIAL DISTRICT

Court File No. 79-CV-20-829

State of Minnesota, by its Attorney General,
Keith Ellison,

Plaintiff,

vs.

ORDER GRANTING TEMPORARY INJUNCTION

House of Iron, LLC d/b/a Plainview Wellness Center,

Defendant.

The above entitled matter came before District Court Judge Christopher A. Neisen for a hearing on December 1, 2020. Plaintiff was represented by Attorney Elizabeth Odette, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, Minnesota 55101. Defendant was represented by Attorney Vincent J. Fahnlander, 150 South 5th Street, Suite 3100, Minneapolis, Minnesota 55402. After hearing arguments, the Court took this matter under advisement.

Based upon the arguments of counsel and all of the files, records, and proceedings herein, the Court makes the following:

ORDER

1. The State's motion for a temporary injunction is **GRANTED**.
2. Effective from the date of this Order, until a trial on the merits of this matter or until further Order of this Court, Defendant and its officers, agents, servants, employees, and other persons in active concert or participation with Defendant who receives actual notice of this

Order are prevented, restrained, and enjoined from taking any action violating Executive Order 20-99, including but not limited to: opening to the public or any of its members, for any type of use.

3. Defendant shall fully comply with Executive Order 20-99 and any future Executive Orders by the Governor, approved by the Executive Council, and filed in the Office of the Secretary of State in accordance with Minnesota Statutes Chapter 12 that apply to gyms and/or fitness centers.
4. The attached Memorandum is incorporated herein by reference.

BY THE COURT:

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Christopher A. Neisen
Judge of District Court

MEMORANDUM

A. Procedural Posture

On November 24, 2020, Plaintiff filed a Complaint, and the next day an Ex Parte Motion for Temporary Restraining Order pursuant to Minn. R. Civ. P. 65.01, along with supporting documentation. The Court issued an Order on November 27, 2020 which required Defendant to be served with the court filings and set this matter for a hearing to consider Plaintiff's Motion for Temporary Injunction. Defendant served and filed documents in opposition to said Motion. Counsel provided oral arguments to the Court at the hearing on December 1, 2020, after which the Court took this matter under advisement.

B. Findings of Fact

Defendant, House of Iron, LLC d/b/a Plainview Wellness Center located at 240 West Broadway, Plainview, Minnesota 55964 ("the Plainview Wellness Center") operates as a 24-hour fitness center.

The COVID-19 pandemic represents one of the greatest public health emergencies Minnesota has endured in recent history. The disease is dangerous and has already killed at least 3,265 Minnesotans. The disease is also virulent and prone to community spread, with at least 276,500 cases confirmed in Minnesota since March 5, 2020. In November 2020, Minnesota endured record highs of new infections. The Minnesota Department of Health notes that preventing people from coming in close contact with one another indoors, such as visiting a gym or fitness center, is critical in stemming community spread of COVID-19.

In response to the record case numbers, Governor Tim Walz issued Executive Order 20-99 (the "Executive Order"), which among other things, temporarily prohibits gyms and fitness centers from being open to the public from November 20, 2020 at 11:59 p.m. through December 18, 2020

at 11:59 p.m. The express purpose of the Order is to slow the spread of the COVID-19 virus in order to protect public health and safety.

As rationale for closing gyms and fitness centers, the Executive Order states that "The science shows us that exercise leads to higher levels of exertion and exhalation—often by individuals who are not wearing masks—greatly increasing the amount of airborne respiratory aerosol droplets that can carry COVID-19." Affidavit of Epidemiology Program Manager and Deputy State Epidemiologist for the Minnesota Department of Health Richard Danila, who oversees all COVID-19 case investigation and contract tracing, states that surging COVID-19 cases are pushing Minnesota's hospital system to a critical point. He states that if gyms are permitted to remain open, public health will be at significant risk. He states that the Minnesota Department of Health is able to identify settings, including gyms, that are far more likely to result in transmission and community spread of COVID-19 than in other settings. He references studies that support his position. Presumably this is the science that Governor Walz references in the Executive Order.

The Executive Order closes other types of businesses besides gyms, and allows other types of businesses to remain open with various restrictions, such as retail stores. The Executive Order states:

> we see relatively fewer outbreaks in retail settings, which generally involve brief, masked, transient interactions that pose lower transmission risk. According to the CDC, an individual is not considered a "close contact" of someone with COVID-19 unless they were within 6 feet of the individual for 15 or more minutes. These extended interactions can be limited in retail environments, and MDH will provide further guidance on how to do so.

The Plainview Wellness Center owner has indicated that he will not comply with Executive Order 20-99. The Attorney General's Office has made numerous requests to Defendant to temporarily shut down in accordance with the Executive Order. Defendant has rejected such requests, and has represented that he will continue to remain open.

Defendant argues that the data supporting the Executive Order is flawed. Defendant cites to a letter sent from various fitness centers to Governor Walz dated November 24, 2020 ("the Letter"). In making this argument, Defendant presents data suggesting that gyms are not a primary source of COVID-19 spread, and may account for only a .021% "virus-to-visit" ratio in Minnesota. The Letter cites to the various public health advantages to keeping gyms open.

The Plainview Wellness Center owner also has provided evidence of measures he has personally undertaken to his gym to limit the spread of COVID-19. Such measures include: the use of EPA-approved SARS-Related Coronavirus 2" cleanser, spaced out machines for increased social distancing, sanitation stations, closing down of the water fountain, routine cleaning/sanitization done by gym staff, and ceasing group classes.

The Plainview Wellness Center owner notes that the business has undergone severe financial hardship over the past several months due to the imposition of the various Executive Orders in response to the COVID-19 pandemic.

C. Legal Analysis

As a preliminary matter, this Court finds that it has jurisdiction over the parties and subject matter of this case.

The parties dispute the applicable standard for the present request for injunctive relief. Plaintiff argues a lesser factual showing is required consistent with the *Cross Country Bank* factors because the Executive Order specifically provides for injunctive relief.[1] Defendant, on the other hand, argues that because the "law" at issue here does not involve a statute, but rather an executive-level order from the Governor, that the Court should utilize the more-stringent *Dahlberg* factors.[2] The

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1 *State ex rel. Hatch v. Cross Country Bank, Inc.*, 703 N.W.2d 562, 573 (Minn. Ct. App. 2005).

2 *Dahlberg Bros., Inc. v. Ford Motor Co.*, 272 Minn. 264, 274-75, 137 N.W.2d 314, 321–22 (1965).

Court will utilize the *Dahlberg* factors to analyze the proposed injunctive relief. Under *Dahlberg*, the Court must weigh the following factors:

(1) The nature and background of the relationship between the parties preexisting the dispute giving rise to the request for relief.

(2) The harm to be suffered by plaintiff if the temporary restraint is denied as compared to that inflicted on defendant if the injunction issues pending trial.

(3) The likelihood that one party or the other will prevail on the merits when the fact situation is viewed in light of established precedents fixing the limits of equitable relief.

(4) The aspects of the fact situation, if any, which permit or require consideration of public policy expressed in the statutes, State and Federal.

(5) The administrative burdens involved in judicial supervision and enforcement of the temporary decree.[3]

The Court considers each factor in turn.

1. The Nature of the relationship between the parties.

The first *Dahlberg* factor requires the Court to consider "the nature and background of the relationship between the parties preexisting the dispute giving rise to the request for relief." 137 N.W.2d at 321. Plaintiff argues that "because the background and relationship of the parties is that of regulator and non-compliant regulated entity, the first *Dahlberg* factor heavily favors granting the State's requested relief."[4] The Defendant argues that the temporary restraining order should be granted such that it preserves the status quo relationship between the parties, i.e., the relationship prior to the imposition of the Executive Order. Gyms and Fitness Centers are not typically subject to heavy regulation at the hand of the Governor or through enforcement by the Office of the

[3] *Id.*

[4] *State ex rel. Swanson v. CashCall, Inc.*, Nos. A13-2086, A14-0028, 2014 WL 4056028, *5 (Minn. App. Aug. 18, 2014), *review denied* (Minn. Nov. 17, 2015).

Attorney General. Based upon *State ex rel. Swanson v. CashCall, Inc.*, this factor weighs in favor of Plaintiff.

2. Minnesotans will be exposed to irreparable injury absent a Temporary Injunction.

The second *Dahlberg* factor requires the Court to balance the harms to be suffered if the temporary injunction is granted with the harms to be suffered if it is denied. In reviewing this factor, it is appropriate for the Court to give injunctive relief when the possible harm is "real, substantial, and irreparable." [5]

Defendant will be harmed financially if the temporary injunction is issued. While the Defendant does not provide precise financial losses suffered from the beginning of the COVID-19 pandemic, the Court is cognizant of the fact that shutting down a small business—even temporarily—can be very significant for small businesses that get no State or Federal relief. Defendant notes that he may even be put out of business as a result of the Executive Order. The Court notes, however, that the Executive Order is not indefinite; it is in effect until December 18, 2020, which closes Defendant down for the next 17 days. (The Court understands it is possible another Order is issued that extends the period of time).

As for the harm to Plaintiff, in the absence of issuing a temporary injunction, Minnesotans will be threatened with real, substantial, and irreparable harm. If Courts across Minnesota were to unravel the Executive Order by giving it no legal effect, it may lead to further COVID-19 outbreaks. Death and infection rates will continue to climb and medical facilities may be overwhelmed.

Accordingly, the Court finds that this factor weighs in favor of the State.

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[5] See *Indep. Sch. Dist. No. 35*, *Marshall County v. Engelstad*, 144 N.W.2d 245, 248 (Minn. 1966); see also *Cramond v. Am. Fed. of Labor & Congress of Indus. Organizations*, 126 N.W.2d 252, 256 (Minn. 1964) (irreparable injury may occur where the actions of an adverse party may render the relief sought by the other party "ineffectual").

3. The State is likely to prevail on the merits.

a. The Governor has acted within his executive authority.

The US Constitution "principally entrusts '[t]he safety and the health of the people' to the politically accountable officials of the States 'to guard and protect.'"[6] Minnesota's Emergency Management Act grants the Governor with authority to issue Executive Orders in response to emergencies:

> The governor (1) has general direction and control of emergency management, (2) may carry out the provisions of this chapter, and (3) during a national security emergency declared as existing under section 12.31 … may assume direct operational control over all or any part of the emergency management functions within this state.[7]

Furthermore, in accordance with Minn. Stat. § 12.32 "the orders and rules promulgated by the governor … when approved by the Executive Council and filed in the Office of the Secretary of State, have, during a … peacetime emergency … *the full force and effect of law* (emphasis added)."

Defendant argues that because the State has threatened civil penalties up to $25,000.00 for noncompliance, that the Governor has run afoul of the non-delegation principles by imposition of monetary fines and/or imprisonment.

The Court is satisfied that the Executive Order at issue here is sufficiently within the purview of what is both constitutionally-permissible and statutorily-prescribed by Minn. Stat. § 12.32. In establishing Minn. Stat. § 12.32, the legislature delegated certain emergency powers to be carried out by the executive branch. Presumably, the legislature granted this authority to the Governor to handle emergency situations for which the executive branch is more suitably-equipped to respond

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6 *South Bay United Pentecostal Church v. Newsom*, 590 U. S. ____ (2020) (citing *Jacobson v. Massachusetts*, 197 U. S. 11, 38 (1905)).

7 Minn. Stat. § 12.21, subd.1.

to rapid and evolving emergencies, such as the COVID-19 pandemic. Specifically, Executive Order 20-99 seeks to slow the spike of cases that have occurred in November 2020.

For this reason, the Court does not find that the governor has acted beyond his constitutional authority or beyond the authority which is granted to him by statute.

b. The Defendant's constitutional rights have not been violated.

Defendant argues that his constitutional right to Equal Protection has been violated. Plaintiff argues that under *Jacobson*, Defendant has no constitutional claim. Defendant argues that *Jacobson* does not apply, and even if it does, Defendant should still succeed.

Under *Jacobson*, state action is susceptible to constitutional challenge only if: (1) it has no real or substantial relation to the object of protecting the public health, safety, or morals; or (2) "is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution."[8]

As noted in the concurring opinion of Justice Gorsuch in *Roman Catholic Diocese of Brooklyn, New York v. Cuomo*, No. 20A87, 592 U.S. ____ (Nov. 25, 2020):

> Although *Jacobson* predated the modern tiers of scrutiny, this Court essentially applied rational basis review to Henning Jacobson's challenge to a state law that, in light of an ongoing smallpox pandemic, required individuals to take a vaccine, pay a $5 fine, or establish that they qualified for an exemption. [] Rational basis review is the test the Court normally applies to Fourteenth Amendment challenges, so long as they do not involve suspect classifications based on race or some other ground, or a claim of fundamental right.

In that case, the majority held that strict scrutiny applied because the Executive Order limiting religious gatherings violated the Free Exercise Clause. Here, because there have been no alleged violations of fundamental rights and because Defendant is not otherwise a member of a suspect

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[8] *Jacobson*, 197 U.S. at 31.

classification, rational basis must apply. In Minnesota, the rational basis test under the state Constitution requires:

> (1) The distinctions which separate those included within the classification from those excluded must not be manifestly arbitrary or fanciful but must be genuine and substantial, thereby providing a natural and reasonable basis to justify legislation adapted to peculiar conditions and needs;
>
> (2) the classification must be genuine or relevant to the purpose of the law; that is there must be an evident connection between the distinctive needs peculiar to the class and the prescribed remedy; and
>
> (3) the purpose of the statute must be one that the state can legitimately attempt to achieve.[9]

First, the Court does not find the Executive Order to be manifestly arbitrary. The evidence in the record shows that the Governor had a reasonable basis that justified the issuance of the Executive Order. The Executive Order was in response to a well-documented spike in COVID-19 cases occurring within Minnesota in November 2020. Defendant argues that the data provided in the Letter, and the recent Mayo Clinic Study gives evidence that gyms and fitness centers do not spread COVID-19 in any significant way. The data was provided in a letter to the Governor after the issuance of the Executive Order. The Mayo Clinic Study was conducted after the issuance of the Executive Order. It is not the role of the Court to compare studies and exercise its own independent judgment. Deference should be given to the Governor. The Eighth Circuit, for example, upheld a challenge to the Arkansas Governor's Executive Order that barred all non-medically necessary medical procedures.[10] The *Rutledge* Court relied on a holding from the Fifth Circuit in finding said Executive Order constitutional:

> [A] state may implement emergency measures that curtail constitutional rights so long as the measures have at least some "real or substantial relation" to the public health crisis and are not "beyond all question, a plain, palpable invasion of rights secured by the fundamental law." Courts may ask whether the state's emergency measures lack

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9 *State v. Russell*, 477 N.W.2d 886, 888 (Minn. 1991) (citing *Wegan v. Village of Lexington*, 309 N.W.2d 273, 280 (Minn.1981) (quoting *Guilliams v. Commissioner of Revenue*, 299 N.W.2d 138, 142 (1980)).

10 *In re Rutledge*, 956 F.3d 1018, 1027 (8th Cir. 2020).

> basic exceptions for "extreme cases," and whether the measures are pretextual—that is, arbitrary or oppressive. At the same time, however, courts may not second-guess the wisdom or efficacy of the measures.[11]

Second, the question is whether the classification is genuine or relevant to the purpose of the law. Defendant argues that because other establishments such as retail stores, tattoo parlors, tanning solons, convenience stores, liquor stores and airport food courts, are fully open or least open at partial capacity, Defendant is subject to disparate treatment. Exactly how much community spread caused by the operation of Defendant's business is unknown, especially considering the steps Defendant has taken to limit the spread of COVID-19 in his facilities. However, contrary to Defendant's contention that "the State has provided no evidence that exercise has been shown to lead to an increase in COVID-19," there is evidence in the form of the Affidavit from Epidemiologist Richard Danila, who indicates that the exercise and exertion leads to increased aerosol transmission of the virus, which matches the preamble of the Executive Order itself. While Defendant may dispute the Governor's findings that gyms pose a threat of community transmission of COVID-19, the Court must defer to the legislative branch, which has in-turn deferred to the executive branch by statute, in imposing proper business regulations during a peacetime emergency. The measures taken by Defendant in the operation of its gym might perhaps result in less spread of the COVID-19 as compared to retail stores, for example, that are allowed to remain open with certain restrictions. It is not the role of this Court to become involved with such a determination.

The final consideration for rational basis is that "the purpose of the statute must be one that the state can legitimately attempt to achieve." Here, the purpose of the Executive Order is to curb the spread of COVID-19, and in turn protect the health of its citizenry. The Court does not find that there is any reasonable argument that the pursuit of such a goal is illegitimate.

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[11] *In re Abbott*, 954 F.3d at 784–85 (quoting *Jacobson*, 197 U.S. at 31).

4. Public Policy favors the State.

The Fourth Dahlberg factor requires the Court to consider any public interest or public policy expressed in applicable statutes.[12]

Three major public policy concerns favor the State. First, as mentioned throughout, the purpose of the Executive Order is to stop spread of COVID-19 amid a spike in cases, and thereby protect the health of Minnesotans. Second, in the absence of an injunction, Defendant would be given an unfair business advantage over other gyms that are following the Executive Order. Third, it is plainly against public policy to allow a person or entity to disregard an Order that has the effect of law, simply because they disagree with it or have data that they believe support their position.

For all of these reasons, the Court finds that public policy favors granting a temporary injunction.

5. The Court will not be burdened by granting a temporary injunction.

Finally, the Court considers the administrative burdens a temporary injunction may impose upon the Court itself.[13] Here, issuing a temporary injunction will impose no administrative burdens on the Court because all the State requests is that Defendants obey the Executive Order. It does not require the Court to take any enforcement action. Therefore, the final factor favors granting the requested temporary injunctive relief.

D. Conclusion

In consideration of the *Dahlberg* factors, the weight of the evidence favors granting the State's requested injunctive relief. The State's Motion for a Temporary Injunction is therefore granted.

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[12] *Dahlberg*, 137 N.W.2d at 321–22

[13] *Id.* at 322.