CIRCUIT COURT OF BOONE COUNTY, MISSOURI

TIGER TOTS CHILD DEVELOPMENT CENTER, LLC,	)	
TIGER TOTS ACADEMY, LLC,	)	
PAUL PREVO	)	
Plaintiffs,	)	
vs.	)	**Case No.**
STEPHANIE BROWNING, DIRECTOR, COLUMBIA/BOONE COUNTY DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES, in her official capacity only,	)	
Defendant.	)	

PETITION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY AND PERMANENT INJUNCTIONS AND DECLARATORY JUDGMENT
42. U.S.C. § 1983,
§ 526.050 R.S.Mo., Mo. R. Civ. P. 92,
§ 527.010 R.S.Mo. & Mo. R. Civ. P. 87

COME NOW Plaintiffs Child Development Center, LLC, Tiger Tots Academy, LLC, and Paul Prevo, by and through counsel, and for Plaintiffs' Complaint for Temporary Restraining Order, Preliminary and Permanent Injunctions and Declaratory Judgment, pursuant to 42. U.S.C. § 1983, § 526.050 R.S.Mo., Mo. R. Civ. P. 92, § 527.010 R.S.Mo. & Mo. R. Civ. P. 87 states as follows:

PARTIES

1. Plaintiff Tiger Tots Development Center, LLC is a limited liability company in good standing to conduct business in the State of Missouri and is owned and operated by Paul Prevo, a citizen of the City of Columbia, County of Boone, State of Missouri.
2. Plaintiff Tiger Tots Academy, LLC is a limited liability company in good standing to conduct business in the State of Missouri and is owned and operated by Paul Prevo, a citizen of the County of Boone, State of Missouri.

3. Plaintiff Paul Prevo, an individual, is a resident of the Boone County, State Missouri.

4. At all times referenced herein, to the extent that Plaintiff Tiger Tots Development Center, LLC, and Plaintiff Tiger Tots Academy, LLC, were damaged, or had rights violated, Plaintiff Paul Prevo was also damaged, or had rights violated, as the owner and operator of Plaintiff Tiger Tots Development Center, LLC, and Plaintiff Tiger Tots Academy, LLC.

5. Defendant Stephanie Browning is the Director of Columbia/Boone County Department of Public Health and Human Services and is being sued in her official capacity, only.

JURISDICTION AND VENUE

6. Venue is proper pursuant to § 508.010.2 R.S.Mo.

7. The Supreme Court of Missouri judicially recognizes that the courts of Missouri are vested with concurrent jurisdiction in 42 U.S.C.S. § 1983 actions. *Robinson v. Raytown*, 606 S.W.2d 460, 462 (Mo. App. W.D. 1980) (citing *Stafford v. Muster*, 582 S.W.2d 670 (Mo. Banc 1979).

FACTS

8. At all times relevant herein, Defendant Stephanie Browning was acting under the color of state law.

9. On April 3, 2020, Randall Williams, MD, FACOG, Director of the Missouri Department of Health and Senior Services (hereinafter, "Director Williams"), issued an Order, attached hereto as Exhibit "A", and incorporated as if set for herein, verbatim.

10. The orders contained within Exhibit "A" remained in effect through Friday, April 24, 2020.

11. On April 16, 2020, Director Williams MD, FACOG, issued a second Order, attached hereto as Exhibit "B", and incorporated as if set for herein, verbatim.

12. The orders contained within Exhibit "B" remained in effect through Sunday, May 3, 2020.

13. On April 27, 2020, Director Williams issued a third Order, attached hereto as Exhibit "C", and incorporated as if set forth herein, verbatim.
14. The orders contained within Exhibit "C" remain in effect until 11:59 p.m. on Sunday, May 31, 2020.
15. On April 30, 2020, Defendant Browning, who acts as the city and county Director of Public Health and Human Services, issued Boone County Order No. 2020-05C, attached hereto as Exhibit "D", and City of Columbia Order No. 2020-05, attached hereto as Exhibit "E", and incorporated as if set forth herein, verbatim.
16. Neither the Boone County Order No. 2020-05C nor City of Columbia Order No. 2020-05 have expiration date.
17. As of May 11, 2020, the date Plaintiffs filed this Complaint, only 24 counties, out of a total of 114 counties in the State of Missouri, have issued local Orders relative to, and in the Counties' response to, Covid-19.
18. As of May 11, 2020, only one of the seven counties that border the County of Boone, State of Missouri, have issued local Orders addressing the response to Covid-19.
19. The bordering counties of Callaway, Cole, Moniteau, Cooper, Howard, and Randolph do not currently have Covid-19 orders in place.
20. According to the United States Census Bureau, Boone County, Missouri has a population of 180,463 people.
21. As of May 11, 2020, there has been one death confirmed to be related to Covid-19 in Boone County, Missouri.
22. As of May 11, 2020, there are 5 confirmed active Covid-19 cases in Boone County, Missouri.
23. The total number of confirmed active Cases of Covid-19 in Boone County, Missouri

represents approximately 0.000028% of the entire population of Boone County, Missouri.

24. Defendant Browning contends that her authority to issue the orders referenced herein is derived from Columbia City Code 11-98, which states:

> Whenever the director shall declare that any malignant, infectious or contagious disease is or may become epidemic in the city, or any part thereof, he shall immediately, or as soon thereafter as possible, give notice to that effect to the citizens of the city and the country surrounding the same, and shall also give notice of the rules and regulations adopted by him for the enforcement of **quarantine** in the within the city....he shall take such steps and adopt such measures as he may deem necessary to prevent the introduction and spreading of such disease, and to this end shall have the power to **quarantine** the city against persons **coming into or leaving** the city....Whenever he shall deem it necessary, he shall have the power to **prevent the assembling of congregations of persons within the city and to order and enforce the closing of places of business and amusements.**

25. Under 19 CSR § 20-20.010(34), quarantine is defined as follows:

> (34) Quarantine is a restriction of movement of persons or animals that have been exposed to a communicable disease. The period of quarantine will not be longer than the entire incubation period of the disease. The purpose of quarantine is to prevent effective contact with the general population.

26. Columbia City Code § 11-98 authorized Defendant Browning to make "rules and regulations" for the "enforcement of quarantine" but does not authorize Defendant Browning to implement regulations that restrict business, and thus exceeds Defendant Browning's authority.

27. Under § 11-98 of the City Code, Defendant is authorized only to make rules and regulations for enforcement of quarantine. Ordering the closure of businesses or ordering healthy people to stay at home is not within her authority to make rules for quarantines.

28. To the extent that § 11-98 of the City Code is interpreted to give Defendant the power to make rules for quarantine, including the closing of businesses, that provision does not under any reading authorize Defendant to restrict the operation of or place limitations on open

businesses with her quarantine powers.

29. Defendant Browning's Orders referenced herein do not meet the definition of quarantine under Missouri's Code of State Regulations in that they do not restrict the movement of persons known to have been exposed to a communicable disease but, rather, impose restrictions on healthy individuals.

30. Defendant Browning's Orders also violate 19 CSR § 20-20.010(34), in that they are not limited in time to the incubation period of the disease (estimated at 14 days) but, rather, is unlimited in time.

31. The Code of State Regulations regarding the Rules of the Department of Health and Senior Services relating to Communicable Diseases, 19 CSR § 20-20.050 reads, in part:

> PURPOSE: This rule provides for the isolation or quarantine of persons and animals with a communicable disease and their contacts; it also authorizes the closing of schools and places of public and private assembly.
>
> (1) The local health authority, the director of the Department of Health and Senior Services or the director's designated representative shall require isolation of a patient or animal with a communicable disease, quarantine of contacts, concurrent and terminal disinfection, or modified forms of these procedures necessary for the public health. The isolation of a patient, or animal or contact should be carried out according to the methods of control in 19 CSR § 20-20.040(1).
>
> ...
>
> (3) The local health authority, the director of the Department of Health and Senior Services or the director's designated representative is empowered to **close** any public or private school or other place of public or private assembly when, in the opinion of the local health authority, the director of the Department of Health and Senior Services or the director's designated representative, the closing is necessary to protect the public health. However, in a statewide **pandemic**, as established by the director of the

> Department of Health and Senior Services or the director's designated representative, such individual shall have the authority to close a public or private school or other place of public or private assembly. The director or designated representative shall consult with the local health authorities prior to any such closing. Any school or other place of public or private assembly that is ordered closed shall not reopen until permitted by whomever ordered the closure.

32. 19 CSR § 20-20.040(2) states that it "shall be the duty of the local health authority, the director of the department, or the director's designated representative on receiving a report of a disease which is infectious, contagious, communicable, or dangerous in its nature as included in 19 CSR § 20-20.020 to:..(E) establish and maintain **quarantine, isolation** or other measures as required."

33. Under19 CSR § 20-20.010 (24), isolation is defined as:

> Isolation is the separation for the period of communicability of **infected individuals** and animals from other individuals and animals, in places and under conditions as will prevent the direct or indirect transmission of the infectious agent from infected individuals or animals to other individuals or animals who are susceptible or who may spread the agent to others.

34. Under 19 CSR § 20-20.010(37), pandemic is defined as:

> Statewide pandemic is an outbreak of a particularly dangerous disease affecting a high proportion of the population, appearing in three (3) or more counties, as declared by the director of the Department of Health and Senior Services.

35. The measures adopted in Defendant Browning's Orders do not fit within her power to isolate, in that the order applies to all individuals, including those individuals who are healthy and have no known exposure to Covid-19, and thus exceed her authority.

36. Based on the small percentage of active cases of Covid-19 in Boone County, the current situation may very well not meet the definition of an emergency and this regulation only arguably authorizes Defendant Browning to order certain closures of quarantined and isolated sick people, not to impose significant restrictions on businesses allowed to operate

in the state.

37. Pursuant to § 192.300 R.S.Mo., Defendant Browning may make and promulgate orders as will tend to enhance the public health and prevent the entrance of infectious, contagious, communicable or dangerous diseases into Boone County.

38. However, Pursuant to § 192.300 R.S.Mo., any such order "shall not: (1) Be in conflict with any rules or regulations authorized and made by the department of health and senior services."

39. The prior section, § 192.290 R.S.Mo., similarly states:

> All rules and regulations authorized and made by the department of health and senior services in accordance with this chapter shall **supersede** as to those matters to which this chapter relates, all local ordinances, rules and regulations shall be observed throughout the state and enforced by all local and state health authorities. Nothing herein shall limit the right of local authorities to make such further ordinances, rules and regulations **not inconsistent with** the rules and regulations prescribed by the department of health and senior services which may be necessary for the particular locality under the jurisdiction of such local authorities. (**emphasis added**).

40. Director Williams' April 27, 2020 Order states, in part: "nothing in this Order shall prohibit daycares, child care providers, or schools from providing child care in accordance with CDC guidelines," and, thus, mandates that no orders more restrictive than the CDC guidelines should be adopted.

41. Defendant Browning's Orders, however, contain restrictions that are not contained in the CDC guidelines, including but not limited to, the following requirement:

> Childcare and day camps must be carried out in stable groups ("Stable means the **same 10 or fewer children are, to the greatest extent possible, in the same group each day**);

See attached Exhibit "F," "Guidance for Child Care Programs that Remain Open," attached hereto and incorporated by this reference as if set forth herein verbatim.

42. Defendant Browning's Orders violates § 190.300 R.S.Mo., in that they are in conflict with the rules and regulations authorized and made by Director Williams because they prohibit child care facilities that are in compliance with CDC guidelines from operating unless those facilities also comply with Ms. Browning's Orders.

43. The portions of Defendant Browning's Orders which are inconsistent with Director Williams' Order are arbitrary and capricious, without sufficient rationale, and not narrowly tailored.

44. Defendant Browning is an unelected administrative officer and is subject to the provisions contained within the Missouri Administrative Procedure Act, Chapter 536 R.S.Mo.

45. § 536.014 R.S.Mo. states, in relevant part:

> No department, agency, commission or board rule shall be valid in the event that:
> **(1)** There is an absence of statutory authority for the rule or any portion thereof; or
> **(2)** The rule is in conflict with state law; or
> **(3)** The rule is so arbitrary and capricious as to create such substantial inequity as to be unreasonably burdensome on persons affected.

46. Pursuant to §536.010 R.S.Mo.: "'Agency' means any administrative officer or body existing under the constitution or by law and authorized by law or the constitution to make rules or to adjudicate contested cases, except those in the legislative or judicial branches."

47. Defendant Browning's Orders are in violation of § 536.014(1) R.S.Mo. in that she has no statutory authority to issue the Orders.

48. Defendant Browning's Orders are in violation of § 536.014(2) R.S.Mo. in that they conflict with Missouri law.

49. Defendant Browning's Orders violate of § 536.014(3) R.S.Mo. in that they are so arbitrary and capricious that they create a substantial inequity as to be unreasonably burdensome on the citizens of Boone County, Missouri, including but not limited to Plaintiffs.

50. Pursuant to § 536.025 R.S.Mo. Defendant Browning may enact rules without following otherwise statutory mandated procedure **only** if she:

> **(2)** Follows procedures best calculated to assure fairness to **all interested** persons and parties under the circumstances;
> **(3)** Follows procedures which comply with the protections extended by the Missouri and United States Constitutions; …

51. The limitations imposed by Defendant Browning's Orders are not only unfair to the arbitrarily selected business owners, their clients, and employees who are being irreparably harmed, but it is also unfair to all of the citizens of Boone County to impose unreasonable and unconstitutional restrictions that will continue to devastate the Boone County economy, both in the short term, but more importantly, in the long term.
52. Defendant Browning's Orders are incapable of proper enforcement for the reasons stated herein and, in fact, are being enforced inconsistently, unfairly, and arbitrarily within Boone County.
53. On April 29, 2020 it was reported that a total of 74 of the 184 of childcare programs in Boone County had already closed doors. See Attached Exhibit "G", "COVID-19 is forcing child care providers to close. Will they be able to reopen?"
54. The arbitrary and unreasonable restrictions contained in Defendant Browning's Orders, have caused permanent closures of many childcare facilities, and place a substantial burden on Boone County childcare centers which will likely lead to additional closures.
55. The closure of childcare facilities creates a significant risk that there will be insufficient ability to meet the childcare demands of all applicable citizens of Boone County once the restrictions are lifted.
56. The availability of childcare is vital to the local economy, now more than ever as schools are

closed, in that workers who have children require childcare in order to work.

57. Childcare centers in Missouri are already subject to substantial regulation, and to impose another layer of the same is unnecessary.

58. Defendant Browning's Orders are unfair, arbitrary and capricious in that they are substantially out of proportion to the to risk present in Boone County, in particular how it relates to the operation of childcare services.

59. Plaintiffs are subject to the entirety of Defendant Browning's Orders (Exhibits "D" and "E"), including but not limited to, the Section 1.06 of each Order, related to "Childcare services and day camps," which orders Paul Prevo's child care facilities to abide by rules and regulations that are more restrictive and therefore inconsistent, and in conflict with, the orders of State Director Williams, in addition to being unfair, arbitrary, and unreasonable.

60. As a result of the above-referenced conflicting and inconsistent rules and regulations, Tiger Tots Child Development Center, LLC, Tiger Tots Academy, LLC, and Paul Prevo are currently experiencing irreparable harm and will continue to experience irreparable harm should this Court not invalidate the Defendant Browning's Orders. See attached Exhibit "H", Affidavit of Paul Prevo .

VIOLATIONS OF THE UNITED STATES CONSTITUTION

61. By banning and limiting social gatherings, Boone County Order No. 2020-05C violates the First Amendment to the U.S. Constitution both on its face and as applied to Plaintiffs.

62. Boone County Order No. 2020-05C is overly broad and therefore void as a matter of law both facially and as applied.

63. Pursuant to the First Amendment to the U.S. Constitution, the residents of the United States

of America, including the residents of the County of Boone, State of Missouri, the right to peacefully assemble.

64. The right to peacefully assemble, as guaranteed by the First Amendment to the United States Constitution is a fundamental right. *Whitney v. California*, 274 U.S. 357, 373 (1927).

65. Practices which violate fundamental rights, such as the right to assemble, are subject to strict scrutiny, and are only to be upheld if they further a compelling purpose and if no less restrictive alterative is available.

66. The imposition of Boone County Order No. 2020-05C, which imposes additional and more restrictive orders for only certain business owners in the County of Boone, State of Missouri, which limit the ability to peacefully assemble is in violation of the First Amendment to the United States Constitution.

67. Because Director Williams' Order dated April 27, 2020 is a less restrictive option that is available and viable, Defendant cannot meet the "no less restrictive" requirement to withstand strict scrutiny.

68. Boone County Order No. 2020-05C violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution, both facially and as applied to Plaintiffs.

69. Under the Fourteenth Amendment of the United States Constitution, no state shall deprive any person of life, liberty, or property, without due process of law.

70. The use of a business license constitutes a property interest, and when a party's rights are affected, including property rights, they are entitled to be heard. *Gray v. City of Valley Park,* 2008 U.S. Dist. Lexis 7238, 85-86 (January 31, 2008).

71. Boone County Order No. 2020-05C deprives Plaintiffs of the right to liberty, property and livelihood and was imposed upon Plaintiffs without an opportunity for due process both prior

to the enactment of the order and after.

72. Boone County Order No. 2020-05C violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

73. Under the Fourteenth Amendment, states cannot deny a person equal protection under the laws.

74. The actions of Defendant draw arbitrary distinctions between the types of restriction certain businesses are subject to, and those arbitrary distinctions are arbitrary, irrational, without scientific basis, and are not narrowly tailored.

75. Boone County Order No. 2020-05C and the actions of Stephanie Browning to enact the order was the proximate cause of the violation of Plaintiffs' federally protected rights as alleged herein.

REQUEST TO WAIVE BOND

76. Plaintiffs are not seeking an injunction of private or public commercial activity.

77. If an injunction is granted, Defendant will not suffer significant or irreparable economic harm.

78. Plaintiffs have already sustained significant economic harm as a result of the actions of Defendant, which has significantly limited their ability to post bond.

79. Plaintiffs' claims are in the interest of the liberty of the general public.

80. To require a bond, and in particular a significant bond, is unnecessary to protect Defendant and instead would represent a significant and punitive deterrence to Plaintiffs in seeking relief to which they are entitled.

81. Accordingly, Plaintiffs ask that this court either waive the bond required, or, in the alternative, require a minimal bond.

COUNT I – TEMPORARY RESTRAINING ORDER

82. Plaintiffs incorporate each and every preceding paragraph as if set forth herein, verbatim.

83. Plaintiffs incorporate Exhibit "I", Motion for Temporary Restraining Order as if set forth herein, verbatim.

WHEREFORE, Plaintiffs pray that this Court issue a Temporary Restraining Order in favor of Plaintiffs' and against Defendants' and to enjoin the validity and enforceability of Exhibit "D," Boone County Order No. 2020-05C and Exhibit "E," City of Columbia Order No. 2020-05. Plaintiffs further pray for attorney's fees and expenses pursuant to 42 U.S.C. § 1988(b) and for any additional relief that this Court deems fair, just and proper.

COUNT II– PRELIMINARY INJUNCTION

84. Plaintiffs incorporate each and every preceding paragraph as if set forth herein, verbatim.

WHEREFORE, Plaintiffs pray that this Court issue a Preliminary Injunction in favor of Plaintiffs' and against Defendants' and to enjoin the validity and enforceability of Exhibit "D," Boone County Order No. 2020-05C and Exhibit "E," City of Columbia Order No. 2020-05. Plaintiffs further pray for attorney's fees and expenses pursuant to 42 U.S.C. § 1988(b) and for any additional relief that this Court deems fair, just and proper.

COUNT III – PERMANENT INJUNCTION

85. Plaintiffs incorporate each and every preceding paragraph as if set forth herein, verbatim.

WHEREFORE, Plaintiffs pray that this Court issue a Permanent Restraining in favor of Plaintiffs' and against Defendants' and to enjoin the validity and enforceability of Exhibit "D," Boone County Order No. 2020-05C and Exhibit "E," City of Columbia Order No. 2020-05. Plaintiffs

further pray for attorney's fees and expenses pursuant to 42 U.S.C. § 1988(b) and for any additional relief that this Court deems fair, just and proper.

COUNT IV – DECLARATORY JUDGMENT

86. Plaintiffs incorporate each and every preceding paragraph as if set forth herein, verbatim.

WHEREFORE, Plaintiffs pray that this Court issue a Declaratory Judgment in favor of Plaintiffs' and against Defendants' and to declare Exhibit "D," Boone County Order No. 2020-05C and Exhibit "E," City of Columbia Order No. 2020-05 unconstitutional, in violation of the laws of the State of Missouri, invalid and unenforceable. Plaintiffs further pray for any additional relief that this Court deems fair, just and proper.

/s/ Matthew B. Woods
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