IN THE CIRCUIT COURT FOR THE FOURTH JUDICIAL CIRCUIT
MONTGOMERY COUNTY, HILLSBORO, ILLINOIS

THOMAS DEVORE and KATYA KING, as the parents and guardians of A.D. and M.D. on their behalf, and on behalf of parents and and guardians of minor children similarly situated in the State of Illinois	)	
PLAINTIFFS,	)	No. 2020-MR-98
vs.	)	
ILLINOIS HIGH SCHOOL ASSOC. BOARD OF DIRECTORS, CRAIG ANDERSON, in his Individual capacity, HILLSBORO COMMUNITY SCHOOL DISTRICT #3 BOARD OF EDUCATION,	)	
DEFENDANTS.	)	

ORDER ON PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER

THIS MATTER coming on for hearing on July 23, 2020 via ZOOM, on the Plaintiffs' Verified Motion For Temporary Injunction filed July 13, 2020 the Plaintiff Thomas Devore (Attorney at Law) appearing in person Pro Se, the Plaintiff Katya King appearing by her attorney and Co- Plaintiff, Thomas Devore, the Defendant Illinois High School Association, (hereinafter referred to as "IHSA") and Craig Anderson, its Director, by their attorney Matthew S. Hefflefinger of Heyl, Royster, Voelker & Allen, and the Defendant Hillsboro Community School District #3 Board of Education, (hereinafter referred to as "HCSD #3) appearing by its attorney, S. Jeffrey Funk of Miller, Tracy, Braun, Funk & Miller; the Court having considered the Plaintiffs' Verified Complaint and Motion For Temporary Injunction (hereinafter referred to as "motion"), the Plaintiffs' supporting affidavit; the Defendants' Verified Response to Plaintiffs' said Motion For Temporary Restraining Order; the applicable statute namely 735 ILCS 5/11-101 et. seq.; the oral and written arguments of counsel together with cited authorities; and being fully advised in the premises,

THE COURT FINDS AND RULE AS FOLLOWS:

1. The Court has jurisdiction of the parties and subject matter;

2. This action was commenced with the Plaintiffs' filing of a Verified Complaint in two counts seeking a Declaratory Judgment and a Permanent Injunction; the Plaintiffs seek to enjoin the Defendants from enforcing the IHSA's guidelines for restoring high school interscholastic competition in light of the "Covid-19 pandemic." Specifically, the Plaintiffs challenge what is referred to as the "Amended Plan" which imposes the following three mandates to wit:
    a. There cannot be any contact drills/physical contact among athletes.
    b. All persons must wear masks at all times; and
    c. There must be a strict 50-person limit to all indoor activities and that would include any spectators (people in those groups should also socially distance.

3. The description of the parties and factual background are clearly stated in both the Plaintiffs' Verified pleadings and the Defendant IHSA's Verified Response and, for that reason, will not be repeated in this Order;

4. Notably, while neither the Illinois Department of Public Health (hereinafter referred to as the "IDPH") nor the Office of the Illinois Governor are named parties to this action, it is abundantly clear that it is the mandates of the state agencies together with the office of the Governor, imposed upon and acquiesced by the named Defendants through the "Amended Plan" that has prompted the Plaintiffs' instant action;

5. With respect to the Plaintiffs' Motion For Temporary Restraining Order, both of the Defendants were provided due notice and a reasonable opportunity to be heard;

6. The hearing was conducted in summary fashion and not evidentiary with the Court considering the verified pleadings, supporting affidavit and oral and written arguments of counsel. See Passon v. TCR, Inc. 242 Ill. App3d 259 (2d Dist. 1993);

7. A party seeking injunctive relief, temporary or permanent, must establish that (i) a clearly ascertained right in need of protection exists, (ii) irreparable harm will occur without the injunction, (iii) there is not an adequate remedy at law for the injury, and (iv) there is a likelihood of success on the merits. Callis, Papa, Mackstadt & Halloran, P.C. vs. Norfolk & W. Ry. Co., 195 Ill.2d 356 (2001).

8. As to the first of the four aforementioned elements, the Plaintiffs allege that their children have a protectable right to participate in sporting activities free from unauthorized rules imposed by the IHSA.

9. Unlike the right to a public education, which is clearly protected, Illinois Courts, including our own Appellate District have repeatedly held that the right to participate in extracurricular activities, including interscholastic athletics is not a property or liberty interest See Robinson v. Illinois High School Association, 45 Ill.App.2d 277 (2d Dist., 1963); Jordan, ex rel Edwards vs. O'Fallon Township High School District Board of Education, 302 Ill.App.3d 1070 (5th Dist., 1999); Clements v. Board of Education of Decatur, 133 Ill.App3d 531 (4th Dist., 1985) and Proulx v. Illinois High School Association, 125 Ill.App.3d 781 (4th Dist, 1984). In Jordan, a student athlete who as barred from participating in interscholastic activities as punishment for violating the school's zero-tolerance alcohol policy sought to enjoin the board of education from imposing the punishment claiming that to do so would violate his rights to due process. In denying the student's claims, the Fifth District Appellate Court stated:

> Students can need, want, and expect to participate in interscholastic athletics, but students are not entitled to participate in them. Football is neither an integral part of a quality education nor a requirement under any rule or regulation governing education in this State. Consequently, not every public high school in this State fields a football team. Those students who attend O'Fallon Township High School thus enjoy an opportunity that many other high school students are not permitted to enjoy. Simply put, playing high school football is a privilege rather than a right.

This Court finds this pronouncement in Jourdan persuasive. For the purpose of ruling on the Plaintiffs' Motion For a Temporary Restraining Order, this Court following the above cited cases, finds that the Plaintiffs have not shown that they or their children, student athletes, have a clearly ascertained right in need of protection.

10. Having found that no clearly ascertainable right in need of protection has been shown, the Court must still determine whether the actions of the Defendants in adopting the "Amended Plan" was "unreasonable, arbitrary and capricious." As this Court has already noted above, the instant litigation has arisen primarily due to the mandates imposed upon the Defendants IHSA and HCSD #3 by the IDPH and the Office of the Governor and the Defendants' adoption of the mandates as part of its plan and amended plan to "Return To Play Guidelines." Reviewing the arguments of counsel, there seems to be no real dispute as to that fact. Indeed, the IHSA points out that the IDPH has the "supreme authority on matters of public health, quarantine and isolation pursuant to the Department of Public Health Act, 20 ILCS 2305/1 et. seq." and therefore the IHSA and HCSD #3 can and should adopt the IDPH mandates. Citing the IHSA's Supplemental Brief in Opposition to the Plaintiff's Motion for TRO, counsel states: "Clearly, under the Department of Public Health Act, IDPH had the authority to order and direct IHSA to issue the amended plan. IDPH had the authority to approve the Amended Plan. IDPH had the authority to direct Defendant HUSD #3 in this case to follow the Amended Plan." While, this Court acknowledges the authority granted to the IDPH set forth in the various articles of the Illinois Public Health Act, due to the summary nature of the hearing held on the Plaintiff's Motion For TRO, the Court has not yet heard evidence as to the specific

article or articles under the Illinois Public Health Act, upon which the defendant IHSA relies upon in asserting this argument of "supreme authority vested in the IDPA. Moreover inasmuch as the rules imposed by the IDPH upon the defendants in the "Amended Plan" are mandates not merely recommendations, this Court has no evidence before it as to what, if any, rulemaking, general or emergency, has been taken by the IDPH in accordance with the Illinois Administrative Procedure Act 5 ILCS 100/1-1 et. seq. in promulgating mandatory rules to be imposed upon the IHSA and HCSD #3. Additionally, at this juncture, this Court has received no evidence or argument, clearly establishing authority of the Office of the Governor, by fiat, to mandate or direct the Defendants to adopt the directives of the "Amended Plan." Interestingly this Circuit's order in Clay County Case 2020-CH-6, entitled Bailey vs. Pritzker is still in full force and effect and has not been reviewed on appeal. That order, effectively, declared certain of the Governor's Executive Orders as without force or effect after April 8, 2020th and that the Governor's power to issue his 16 Executive Orders had expired after 30 days had elapsed. The Court declared that the Governor did not have the power or authority under the Illinois Constitution or by statute to issue his executive orders after those 30 days had lapsed and as such any such orders the Governor issued after those 30 days were void. The Court further declared that the Governor did not have the power, either under statute or under the Constitution, to restrict individuals' movement or activity or to close businesses and that the IDPH, not the Governor, had the authority to restrict individuals' activities or close businesses. Accordingly, nothing in this order should be construed as this Court finding that the IDPH or the Office of the Governor, both non-parties to this action, have the constitutional, legislative or administrative authority to impose such mandates upon the IHSA or the HCSD #3 as set forth in the "Amended Plan."

That said, and in the context of a request for a TRO, the Court does not find the actions of the Defendants IHSA and the HCSD to be unreasonable, arbitrary or capricious. Under the current circumstances and uncertainties surrounding the COVID-19 pandemic, which has no doubt changed life as we used to know it for the entire country, whether the "Amended Plan" is implemented as an attempt by the State to impose mandatory rules or merely recommendations for guidance, this Court is not willing at this time to find it unreasonable, arbitrary or capricious for the IHSA and HCSD #3 to consider the expertise of the IDPA to formulate and implement guidelines and procedures regulating reopening interscholastic athletic activities. Further, this Court is reluctant to substitute its judgment for that of local rule by the HCSD #3. As stated in the above-cited cases, where no deprivation of constitutional rights have been involved, it is well established that courts have been reluctant to interject the court's power into the operation of public schools. Moreover, courts are loathe to interfere with the internal affairs of the voluntary association (between the IHSA and member schools). The Proulx and Robinson cases express even stronger reluctance to intervene in the conduct of extracurricular activities.

11. In their pleadings, the Plaintiffs allege that their minor children now suffer irreparable harm every minute they are subjected to the "Amended Plan" implemented by the IHSA beyond it's authority to do so and which "Amended Plan", according to the Plaintiffs, has provisions which the medical professionals of the IHSA's own committee on sports

medicine disapprove. They further allege that irreparable harm will result if the Plaintiffs' minor children are subjected to "medically questionable" requirements without the oversight and approval of the IHSA Committee of Sports Medicine or the IHSA Board. With a request for a Temporary Restraining Order the Plaintiffs' must make a prima facie based on facts showing of irreparable harm that are neither remote nor speculative. In the context of the summary hearing conducted by this Court in which it considers only upon the pleadings, supporting affidavits and argument of counsel, without more, this Court can only find the Plaintiffs' claim of irreparable harm to be speculative, at this time.

12. Given the Court's finding stated above on the issues of a protected interest and irreparable harm, the injunctive elements of "adequate remedy at law and likelihood of success on the merits is moot for the purposes of a Temporary Injunction in this Court's opinion.

A. ACCORDINGLY, for the findings and reasons set forth above, the Plaintiffs' Motion For Temporary Restraining Order is respectfully DENIED.

B. This order denying the Plaintiffs' Motion For A Temporary Restraining Order under section 11-101 of the Code of Civil Procedure is now appealable pursuant to Supreme Court Rule 307(d).

C. The Defendants are granted 21 days to file an answer or responsive pleading to the Plaintiffs' Verified Complaint.

D. Counsel of record are directed to coordinate further hearings, if any, in the matter with the Office of the Chief Judge of the Fourth Judicial Circuit.

ENTER: 7-31-2020

Associate Judge Kevin S. Parker