

No. \_\_\_\_\_

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**In the Supreme Court of Wisconsin**

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GYMFINITY, LTD., JEFFREY BECKER, and ANDREA  
KLEIN  
PETITIONERS,

*v.*

DANE COUNTY, CITY OF MADISON, JANEL HEINRICH, in  
her official capacity as Public Health Officer and Director of  
Public Health of Madison & Dane County, and PUBLIC  
HEALTH OF MADISON & DANE COUNTY,  
RESPONDENTS.

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**EMERGENCY MOTION FOR A  
TEMPORARY INJUNCTION**

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Petitioners hereby move this Court pursuant to Wis. Stat. §§ 813.02 and 809.14 and this Court's inherent authority for an immediate order enjoining enforcement Emergency Order #10 to the extent that it bans all indoor gatherings among anyone not in the same immediate family, including in private homes, and to the extent that it bans all indoor sports-related activities, regardless of the nature of those activities, the size of the facility, or precautions taken, effectively shutting down many sports-related businesses.

Petitioners have also filed, simultaneous with this motion, an Emergency Petition for an Original Action and a Memorandum in Support of Emergency Petition for an Original Action and Emergency Motion for a Temporary Injunction, along with supporting affidavits, which are attached to this Motion.

Dated: November 23, 2020.

Respectfully submitted,

RICK ESENBERG  
State Bar #1005622  
rick@will-law.org



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LUKE N. BERG  
State Bar #1095644  
luke@will-law.org

ANTHONY F. LOCOCO  
State Bar #1101773  
alococo@will-law.org

WISCONSIN INSTITUTE FOR  
LAW & LIBERTY  
330 E. Kilbourn Ave., Suite 725  
Milwaukee, WI 53202  
Phone: (414) 727-7361

**CERTIFICATE OF SERVICE**

A copy of this Motion is being served on all opposing parties via first-class mail and electronic mail.

Dated: November 23, 2020.

  
\_\_\_\_\_  
LUKE N. BERG



5. I and my business, Gymfinity, are subject to the provisions of Emergency Order #10 issued by Janel Heinrich, a Public Health Officer of Madison and Dane County.

6. Gymfinity opened in 1999 and provides sports education and gymnastics training and classes for students from the ages of 15 months through 18 years old.

7. Gymfinity has curricula designed to improve the gymnastic skills of children ranging from toddlers through college preparation and international competition.

8. To date, Gymfinity has provided gymnastic training for numerous talented young gymnists who have gone on to have successful collegiate careers.

9. Presently, Gymfinity is providing movement education and gymnastics training to four young women who are all considering and competing for scholarship opportunities: a high school senior, a high school junior, a high school sophomore, and a high school freshman.

10. Emergency Order #10 has prevented these young women from continuing their training regime which, in turn,

jeopardizes their participation in the 2020-21 gymnastics season and threatens their college recruitment and scholarship opportunities.

11. Since the outbreak of Covid-19, I have implemented extensive efforts to keep Gymfinity's staff and students healthy and safe. These policies include implementing a rigorous Covid-19 screening protocol, taking measures to enforce social distancing, and adopting a robust sanitation regime in order to limit the chances of infection due to Covid-19.

12. As for our screening protocols, before entering the building, every person is questioned by a Gymfinity employee (the "screener") about his or her current health status and whether they have been potentially exposed to anyone displaying symptoms of Covid-19, and for younger children who may not understand such questions, the screener presents them with an infographic poster asking these same screening questions in a pictorial form.

13. Additionally, all persons must have their temperature checked prior to entering the building, and after entering, everyone is directed to our hand washing room and is required to thoroughly wash their hands.

14. If a person has an abnormally high temperature or is displaying symptoms of Covid-19 they are not allowed to enter the building.

15. If a person leaves the building and attempts to reenter it, they are required to be re-screened and re-wash their hands.

16. These screening policies apply to students, staff, parents, and anyone who wishes to enter the building.

17. Students are required to carry everything they will need for their class into the gymnasium including tape, chalk, and water bottles (our water fountain is off-limits except for refilling purposes).

18. The childrens' other personal effects (e.g. gloves, coats, and, hats) are placed into separate bins to prevent contamination and these items are left in the hand washing room until class begins; once class begins, the screener moves the bins to the exit hallway to allow students and attending parents to exit through a different door than the one they entered into the building through.

19. Additionally, I implemented new policies in order to ensure proper social distancing to the best extent possible.

20. For example, I ask parents not to observe student training more than once a month, and if a parent chooses to observe, the parent must pass our screening protocols and is asked to remain seated in pre-arranged chairs placed six-feet apart; to prevent them from violating the social distancing rules, I do not allow parents to stand and observe while in the gymnasium.

21. Additionally, the class schedules have been amended to avoid overlapping classes, to prevent an overcrowded lobby, and to allow cleaning between classes.

22. Between classes, a staff member disinfects all door handles, wipe down chairs (regardless of whether or not they have been used), cleans all sink areas, and spot cleans all the bathrooms.

23. I also fitted the bathroom and gym entry doors with custom-made foot pulls so they are hands free.

24. As for the gymnasium, it is now divided into discrete stations marked off by velcro lines; coaches are instructed to remain at their station and students are not permitted to cross into different stations until it is their turn to do so.



25. The gymnasium is equipped with four disinfectant stations containing a mop, towels, disinfectant, rubber gloves, hand sanitizer, and basic first aid equipment; and all training stations are thoroughly cleaned with disinfectant once a group of students has completed its training session at that particular station.

26. I instruct coaches to sanitize their hands everytime they touch a student.

27. I also provide separate classes for students who reside in the same household as a person with compromised health or high risk health status. These students, who are otherwise uncomfortable training in a group, train a minimum of 30 feet away from any other classes or private lessons.

28. After all the classes are completed for the day, the gymnasium is fogged with a disinfectant spray and every week the gymnasium is "bombed" with an antiviral chemical spray which is advertised to kill 99.9% of viruses.

29. Additionally, we apply PlayTec, a product designed to prevent viruses from living on playgrounds and other surfaces, to all

training surfaces every 60 days even though the product's effects are said to last up to 90 days.

30. Finally, I have implemented a universal face covering policy where everyone inside the building is required to wear an appropriate face covering; I only recognize medical exemptions upon a written doctor's note.

31. To date, I am unaware of any cases of Covid-19 or outbreaks of Covid-19 originating from Gymfinity.

32. If I become aware of a staff or student being exposed to Covid-19, I require those exposed to not participate in Gymfinity activities for 14 days.

33. Additionally, my staff is very cognizant of the danger posed by Covid-19 and they self-report potential exposures and will self-quarantine, if necessary.

34. Due to the restrictions imposed by Emergency Order #10, most of the programs offered at Gymfinity will be cancelled until January 4th (while I acknowledge the order expires December 16th, 2020, it would be too logistically difficult to reopen for a week only to just close again for the holidays).

35. In lieu of most in-person classes, Gymfinity will now offer virtual training at no-cost (although I do suggest a \$30 donation), nonetheless, I estimate that Emergency Order #10 will still cost Gymfinity \$40,000 in revenue.

36. The trainings and classes that are prohibited by Emergency Order #10 represent the vast majority of my business.

Dated this 20<sup>th</sup> day of November, 2020.

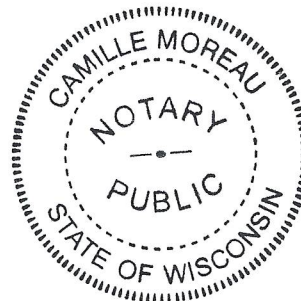


Jason J. Orkowski

Subscribed to and sworn before me  
this 20<sup>th</sup> day of November, 2020.



Notary Public, State of Wisconsin *county of Dane*  
My commission expires: 6/9/24





repercussions of isolation, inactivity, and boredom, all of which lead to extremely negative thoughts and behaviors, which we've seen manifest differently in each of our four children. These devastating consequences far outweigh any health and safety benefits of keeping our children confined. Our children have the advantage of living in a resourced and safe home. I fear the severity of the consequences for other children without such advantages.

6. All four of my children participate in the Madison 56ers, a soccer club based in Dane County. The Madison 56ers' primary outdoor facility is in Verona, Wisconsin, at the Reddan Soccer Park, and their primary indoor facility is in Oregon, Wisconsin, at 155 Braun Road. The indoor facility is a large facility, roughly 30,000 square feet.

7. Prior to Emergency Order #10, the 56ers' were safely conducting practices and trainings.

8. The 56ers' have followed all of the Wisconsin Youth Soccer Association's recommended precautions to protect against the spread of COVID during practices and games.

9. I am not aware of any COVID cases linked to the 56ers' soccer games and practices.

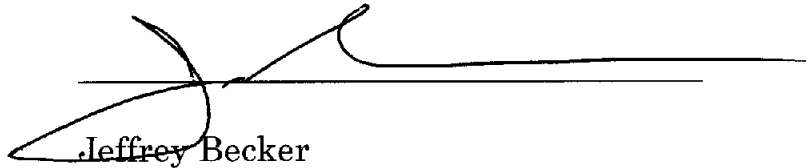
10. Immediately after the Dane County Health Department issued Emergency Order #10, the Madison 56ers announced that they would be indefinitely suspending all future activities.

11. Soccer is what keeps my children healthy and sane. The social and physical aspects of sport and routine are even more essential now given the lack of structure, sedentariness, and isolation forced on our children through virtual schooling. We have allowed our children to play soccer during the pandemic—to the extent allowed by prior mandates—because the science shows that it's safe and that transmission does not occur during practices or games. It was the one thing they looked forward to each week.


12. When I told my children that soccer was canceled indefinitely, they were visibly shaken and despondent.

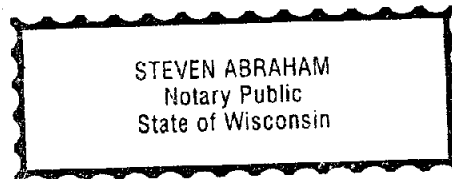
13. I am concerned that without the physical outlet of soccer, my children's mental and physical health will suffer.

Dated this 20<sup>th</sup> day of November, 2020.

  
Jeffrey Becker

Subscribed to and sworn before me  
this 20 day of November, 2020.

  
Notary Public, State of Wisconsin  
My commission expires: 04/01/2022







6. I had intended to host a small Thanksgiving gathering with my parents, my uncle, and my brother, all of whom live near me and within Dane County.

7. Thanksgiving has always been a very important and cherished holiday in our family. Growing up, I looked forward to either traveling to Iowa or Illinois to visit my grandparents, aunts, uncles and cousins. I have so many wonderful memories and continue to look forward to precious time with my family every upcoming Thanksgiving holiday.

8. The only family I see, beyond my immediate family, is my mom, dad, brother and uncle.

9. I recently lost my Grandma Sally this July. We were so close and she developed an amazing bond with my three boys and my husband. She loved my boys so much and always reminded me how proud she was of me. My boys and I would visit her three to four times every week for the past few years in an assisted living facility not far from us in Stoughton.

10. We were not allowed to see her starting at the end of March due to COVID-19 restrictions. It was beyond devastating for us, and I cannot imagine what it was like for her. Early in the summer we were given a few opportunities to see her through a window and talk to her on the phone. I think this was actually more heart breaking for her, and she did not understand why we weren't coming in to see her. Ultimately, I believe a lonely, confused and broken heart took her life.

11. This is going to be a very sad Thanksgiving for my family, but one that is even more important for us to come together to celebrate her life and give thanks together.

12. I am concerned for my boys' and my extended family's mental health and emotional well-being if we are not allowed to get together for the Thanksgiving holiday.

13. I am also worried for my own mental health and emotional well-being if I am not allowed to celebrate the Thanksgiving holiday with my family this year. I need to be with

my family after the devastating loss of my Grandma and to find some joy in this incredibly difficult year.

14. We have all been wearing masks since March, we have cancelled travel plans, and we have significantly altered our lives out of respect for others around us. We have all been healthy and none of us have contracted COVID-19. We are all very health conscious people and I know that is why our health has not suffered this year.

15. Families and kids have already been isolated and struggling, and now being told we cannot be with loved ones for the Thanksgiving holiday feels like a knife being jabbed into an already very deep wound.

16. As a result of Emergency Order #10 and the Dane County Health Department's threats, I am concerned that I will be fined if I gather with family. I cannot even imagine how those struggling financially due to the pandemic must feel about the threat of a \$1000 fine.

17. I am also deeply concerned about the sports restrictions.

18. As a parent, it is heartbreaking to see your kids struggling, especially this year struggling through virtual learning, not being able to see friends, losing their spring sports, losing a family member, losing travel plans, and losing the ability to go most places fun for kids.

19. Fortunately, my oldest son successfully and safely completed three months of hockey training in Verona this summer. The program took significant precautions. Kids had to come in dressed and masked, family members were masked, and family members had to stay socially distant and leave the facility as soon as they helped their skater tie their skates. Drills were structured in a whole new way to allow kids more distance on the ice. The program did not experience one case of COVID-19 in three months.

20. My son was so excited to go every day and you could see and hear the excitement of kids in the parking lot waiting to

get into the rink. The kids were so grateful to be participating in a sport they love, to be socializing, to be exercising, and feeling somewhat normal again.

21. My oldest and youngest boys participate in Stoughton Youth Hockey at the Mandt Center in Stoughton. Our association's president and board members spent many hours preparing the rink to follow specific safety protocols.

22. Stoughton Youth Hockey set up pod play with four other teams. We typically play a lot more teams during the season, but created the pod for additional safety precautions. In prior years, teams would play several different teams during a weekend. Games are now limited to one a day, back to back days, and the same two teams play.

23. We have completed five games thus far, all played in Janesville. The safety precautions at the Janesville Ice Rink are very, very strict. Skaters must get dressed outside and cannot bring their hockey bag inside. Players cannot enter the rink until 10 minutes before the game starts. Family members may not

enter the rink until five minutes before the game starts and must sit spread apart in designated spaces on the bleachers. Players and family members enter masked and stay masked until they leave the rink.

24. Temperature checks are performed on everyone entering the rink and names are checked off on a registration sheet. Players and family members must exit the building (the entrance and exit doors are not the same door) within ten minutes of the game ending.

25. Immediately when the game ends, a handful of parents disinfect all bleacher space, the bench the players and coaches used, and the locker room that is briefly used.

26. For practices, everyone's temperature is immediately checked before entering. Everyone is masked when they enter and must remain masked the entire time. Players must enter the building with hockey gear already on, minus helmet, gloves and skates. Chairs are spread more than six feet apart circling the

rink and kids have to stay seated until they are told to enter the ice.

27. The Mandt Center is deeply cleaned multiple times a week and the majority of the facility is not used, as a safety measure.

28. As far as I am aware, the Stoughton Youth Hockey Association has not had a single outbreak of COVID-19 among parents, family members, or coaches.

29. My youngest boy is a U6 skater and he is absolutely loving hockey this year. He cannot wait to get his gear on at home and then head to the Mandt Center. He has struggled immensely during virtual learning. It was so hard on him. Hockey has been his primary form of relief.

30. When my boys learned that the Dane County Health Department had banned all sports, they were absolutely devastated.

31. I am deeply concerned that losing hockey will have a serious negative impact on my boys' physical and mental health.

Dated this 21th day of November, 2020.

*Andrea Klein*

Andrea Klein

Subscribed to and sworn before me  
this 21<sup>st</sup> day of November, 2020.

*[Signature]*

Notary Public, State of Wisconsin

My commission expires: 4/12/22

