

IN THE COURT OF COMMON PLEAS
FOR FRANKLIN COUNTY, OHIO

MADLINE MOE, <i>et al.</i> ,	::
Plaintiffs,	:: Case No. 24 CV 002481
v.	::
DAVE YOST, <i>et al.</i> ,	:: Judge Michael J. Holbrook
Defendants.	

MOTION TO CLARIFY TEMPORARY RESTRAINING ORDER

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Defendants respectfully ask this Court to clarify the scope of its April 16, 2024 temporary restraining order to eliminate potentially inadvertent expansion of the scope of the TRO beyond what is necessary to give effect to the Court's TRO decision and beyond the limits of the Court's equitable power and the Ohio Rules of Civil Procedure.

Defendants do not file this Motion for the purpose of rearguing points already presented in their filings and in oral argument on the TRO motion. To be sure, Defendants respectfully disagree with the Court's decision to issue a TRO at all. But Defendants understand that the Court's decision to issue a TRO has been made, and Defendants are not asking this Court to "start over" and come to the opposite conclusion. Likewise, Defendants respectfully disagree with this Court's preliminary, initial prediction that Plaintiffs' single-subject claim has a chance of future success. But Defendants likewise do not ask the Court to reconsider that analysis, which should not be confused with an actual decision on the merits of the claim.

Nonetheless, the language of the TRO itself, as ordered, raises serious concerns. It raises the possibility that the Court has enjoined individuals and actions beyond what is necessary to give effect to its decision, without having had the time or opportunity to realize that such a broad scope not only is unnecessary but also would exceed the Court's equitable power and the limits of Ohio Rule of Civil Procedure 65. Further, even if the Court did not intend to unnecessarily exceed its relevant power and limits, the language of the TRO still raises the possibility that parties may disagree as to the Court's intended scope, which could lead to unnecessary and/or gratuitous allegations of contempt, along with distracting and delay-inducing hearings to resolve those allegations. Proactive clarification of the TRO can eliminate these concerns before they can create any distraction or delay.

Specifically, the attached revised TRO would eliminate two potentially serious problems.

First, to the extent it issues sweeping preliminary relief that is not limited to the parties in this case, the TRO exceeds the Court’s power in equity and under the Ohio Rules of Civil Procedure. The TRO appears to broadly “enjoin[] defendants from enforcing the Act” in *any* circumstances and as to *any* individuals or entities. TRO Order¹⁴. But Ohio Rules of Civil Procedure limit Ohio courts to providing preliminary relief that is “binding upon *the parties to the action*.” Ohio R. Civ. P. 65(D) (emphasis added). Rule 65 expressly grounds preliminary relief in “injury, loss or damage . . . to the applicant.” *Id.*; *Coleman v. Wilkinson*, 2002-Ohio-2021, ¶2 (a TRO is “intended to prevent the applicant from suffering immediate and irreparable harm”). Statutory provisions likewise limit the authority of Ohio courts to grant preliminary relief to instances in which “*the plaintiff* is entitled to the relief demanded.” R.C. 2727.02 (emphasis added); R.C. 2727.03. Ohio rules and statutes mirror equitable limitations.

Courts lack authority to grant relief for those who are not parties before it. The “judicial power exists only to redress or otherwise to protect against injury to the complaining party, even though the court’s judgment may benefit others collaterally.” *Warth v. Seldin*, 422 U.S. 490, 499 (1975). The U.S. Supreme Court reaffirmed this principle just Monday in an analogous case when it stayed a lower-court order that preliminarily enjoined *statewide* enforcement of a duly enacted state law—just like this TRO. *Labrador v. Poe, et al.*, No. 23A763. That preliminary injunction “defied” traditional principles of equity because “it did not just vindicate the plaintiffs[]” rights, but “purported to bar enforcement of any provision of the law against anyone.” 601 U. S. ____ (2024) (Gorsuch, J., concurring) (Slip Op. at 5). The TRO at issue here appears to similarly overreach. The Court should therefore clarify that the TRO does not sweep so far, because granting relief to individuals not before the Court would patently and unambiguously exceed its jurisdiction. *See State ex rel. Ford v. Ruehlman*, 149 Ohio St. 3d 34, 2016-Ohio-3529¶ 69; *State ex rel. Elec.*

Classroom of Tomorrow v. Cuyahoga Cty. Ct. of Common Pleas, 129 Ohio St. 3d 30, 2011-Ohio-626 ¶29.

Second, the TRO appears to be overbroad in the type of relief granted. The TRO seem to improperly grant relief that does not affect or benefit the Plaintiffs. Plaintiffs have shown *no* harm to them from either the sports or custody provisions. Their Complaint, affidavits, and TRO briefing make not a single allegation on this score. Because “injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs,” this Court should clarify or amend the TRO to apply only to the medical provisions that Plaintiffs allege harm them. *Sharpe v. Cureton*, 319 F.3d 259, 273 (6th Cir. 2003). Importantly, this is true regardless of the separate issue of what the proper *ultimate* remedy is if the Court were to later determine a single-subject-rule violation. Even if a single-subject-rule violation results in relief from the law in its entirety at *final judgment* (which Defendants do not concede, and which this Court has not yet been required to decide), preliminary relief must be targeted to the provisions that allegedly harm the Plaintiffs. Rule 65(A) only authorizes this Court to protect “the applicant” from “*injury*.”

Defendants thus respectfully ask the Court to clarify that the TRO enjoins only the Defendants in this lawsuit, and only to the extent necessary to prevent potential alleged harm to the specific Plaintiffs in this lawsuit. The Court should further clarify that Defendants remain free to enforce the law against others who are not parties to this suit, and that others who are not Defendants—such as potential private party plaintiffs and school districts—are not affected.

To accomplish this clarification, Defendants propose that the Court issue the attached revised TRO which would replace the original TRO. Issuing a revised TRO eliminates the possibility that a separate order attempting to clarify the meaning of the original TRO, while leaving that TRO in place, would inadvertently fail to achieve the clarification or even inadvertently introduce additional ambiguity.

Defendants respectfully request a ruling on this Motion by 4:00 p.m. on Friday, April 19, 2024.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing was filed electronically and served by e-mail on this

17th day of April, 2024, upon the following:

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