

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
NORTH COUNTY
MINUTE ORDER**

DATE: 02/19/2021

TIME: 04:42:00 PM

DEPT: N-28

JUDICIAL OFFICER PRESIDING: Earl H. Maas, III

CLERK: Esperanza Fernandez

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: **37-2021-00004087-CU-CR-NC** CASE INIT.DATE: 01/28/2021

CASE TITLE: **Gardinera vs County of San Diego [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Civil Rights

EVENT TYPE: Ex Parte

APPEARANCES

The Court having taken the above-entitled matter under submission on February 19, 2021, and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

This matter came regularly for hearing in D28 of the above entitled court, in consideration of Petitioners Application for a Temporary Restraining Order precluding Respondents from enforcing orders that prevent Plaintiffs, or other youth in the County of San Diego from being allowed to participate in high school or youth sports under the same or similar COVID-19 protocols allowing for competition in professional and/or collegiate sports. For the reasons set forth below, the Temporary Restraining Order is granted. An Order to Show Cause why a Preliminary Injunction should not be issued on the same grounds shall be heard on 3/5/21 at 2:30pm.

The first question posed to the Court is whether the Petitioners are similarly situated to the collegiate and professional players of the same sports. While there are obvious differences in size and age, the Court focuses on the similarities of the risks of the game (related to COVID) and the risks to the community. Respondents argue that because there are fewer professional and collegiate teams, the risks to the community are lower in allowing them to play sports. Were this the test, the government could single out any group for preferential treatment. This argument is unpersuasive. Respondents also argue, alleging common sense, that older athletes are more mature. This Court is not persuaded that is accurate, and in any event, no persuasive evidence was presented to support this contention.

The persuasive evidence is provided by Dr. Gandhi, MD from Harvard, currently Professor of Medicine at UCSF, and her writings on immunology, AIDS and COVID. She states to a reasonable degree of medical certainty, the rate of virus transmission in high school sports is equal to or less than that observed in Major League Baseball and National Football League studies. Indeed, Respondents own evidence, while secondary and derivative (Respondents provided no declaration from any expert)

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supports that less than 10% of COVID cases in the US have been among children ages 5-17 years. Children are less likely to develop severe illness or die from COVID and are less commonly infected with SARS-COV-2 than adults (Respondents Exhibit A).

Youth being similarly situated, or even less likely to contract COVID, the analysis then turns to whether there was a rational basis to distinguish between professional, college and youth sports. This Court finds, based upon the evidence submitted for this hearing, that there is not. The Game is the same, the risk of spread is similar, the youth are already practicing, and with School closures or limitations on attendance, youth are isolated.

The Court then turns to the issue of irreparable harm. While adults may minimize the importance of youth sports, our youth do not. Dr. Gahndhi states that the "Continued isolation and detachment pose a serious risk to our children and is something that must be accounted for...". The respondents provided no persuasive evidence in opposition to Dr. Gahndhi's declaration and the Court is persuaded that at this stage, more than half way through the school year (and the final school year for many) the continued prohibition on competitive sports will cause irreparable harm to the Petitioners.

Numerous arguments were raised regarding the status of State wide orders and changes to high school sports anticipated during the next week. However, competent evidence was not provided to the Court in this regard, and the Court declines to anticipate what the Respondents "may" do in the coming week. These issues can be more fully presented at the Preliminary Injunction hearing.

The Court therefore grants the TRO as prayed allowing Petitioners or other youth in the County to participate in high school or youth sports as long as the follow the same or similar COVID-19 protocols imposed for competition in professional and/or collegiate sports within the County.

IT IS SO ORDERED