

**IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS  
STATE OF MISSOURI**

PAUL BERRY, III, Individually and as	)	
Biological Father and Next Friend of L.B.	)	
	)	
Plaintiffs,	)	Division No.
	)	
v.	)	Cause No.
	)	
COUNTY OF ST. LOUIS,	)	
	)	
&	)	
	)	
SAM PAGE,	)	
	)	
Defendants.	)	

**PLAINTIFF'S VERIFIED APPLICATION FOR TEMPORARY RESTRAINING ORDER,  
PRELIMINARY INJUNCTION AND PERMANENT INJUNCTION.**

COMES NOW Plaintiff, Paul Berry III ("Plaintiff"), individually, as biological and lawful father of L.B. ("Minor"), and by and through his undersigned counsel, and for his Verified Application for a Temporary Restraining Order, Preliminary Injunction and Permanent Injunction, and corresponding count-at-law, states to the Court as follows:

1. Plaintiff is and at all times pertinent hereto was a resident of the County of St. Louis, Missouri; and
2. Plaintiff's daughter, L.B., is and at all times pertinent hereto was a minor, the biological and legal daughter of Plaintiff ("Minor Youth Athlete"), a high school student and youth athlete affiliated as a member with a high school athletic team ("Team").
3. Defendant, St. Louis County, Missouri ("County") is and at all times pertinent hereto bounded to the east by the County of the City of St. St. Louis ("City"), to the west by the County of St. Charles ("St. Charles"), to the north by the Missouri River

and bounded to the south by the Meramec River, comprised of approximately one million (1,000,000) residents populating an area of 508 square miles of land.

4. Defendant, Sam Page ("Page"), is and at all times pertinent hereto was a resident of the City of Creve Coeur in the County and the unelected occupant of the County Executive position of the County and, as such, is the chief executive officer of the County having been appointed to serve as such by the County Council following the indictment and resignation of Page's elected predecessor, Steve Stenger ("Stenger").

5. Defendant, County, is and at all times pertinent hereto was a County in the State of Missouri ("Missouri") operating and existing as a lawfully recognized county by Missouri.

6. Commencing in March, 2020, the State has issued COVID-19 Response Orders which, as a matter of record, set forth Missouri policies and directives vis-à-vis COVID-19, its containment and spread.

7. The Missouri COVID-19 Response Orders were updated from time-to-time to comport with increasing scientific and medical knowledge of, about and surrounding COVID-19, its spread, containment, and effect.

8. At no time did Missouri, by edict, Response Order or other mandate issue directives or mandates to counties or any school district or school to permit, disallow, encumber or otherwise cease permitting youth athletes to play or not play in competitive high school youth athletic endeavors.

9. Notwithstanding same, the County, by and through Page, purporting to act in his capacity as a non-elected holder of the County Executive position, issued

Restrictions on the 9<sup>th</sup> day of September, 2020, effective September 11, 2020 (“Page Restrictions”).

10. A true and correct copy of the Restrictions are attached hereto, incorporated herein by reference, and marked Exhibit A.

11. St. Louis County Ordinance Section 703.070 (attached as Exhibit B) includes duties of County Executive during declared emergency. In exercising his powers, the County Executive shall be guided by regulations and orders issued by Missouri relating to civil defense and shall take no action contrary to orders issued by the Governor under similar emergency powers. At all times in this regard, the County Executive is required to act under the provisions of Chapter 44 of the Revised Statutes of Missouri or as an agent of the Governor. Chapter 44 RSMo does not empower the County Executive.

12. Although the State of Missouri did declare an emergency for COVID, it did not ban or establish Youth Sports encumbrances of the nature imposed in the Restrictions issued by the Defendant Page.

13. The Restrictions result in the wholesale holding in abeyance of high school athletic endeavors involving youth athletes age 14 and older participating in, among other sports, football, soccer, basketball, boxing, ice hockey, water polo, wrestling, baseball, cheerleading, crew, rowing, dance team, fencing, racquetball, soccer, softball, team handball, ultimate frisbee, lacrosse, field hockey and presumably squash (“Sports”).

14. The Page Restrictions affect in excess 100,000 youth athletes participating in any one or more of the Sports (“Affected Athletes”).

15. The Page Restrictions affect not simply the 100,000 plus Affected Athletes, but also the immediate and extended family members of Affect Athletes who number in excess of 200,000.

16. As a direct and proximate result of the Page Restrictions, over thirty percent (30%) of the County population is directly and adversely affected ("Affected Population")

17. The Affected Population is comprised of a racially, culturally and socio-economically diverse mix.

18. Of the Affected Athletes, however, there is a smaller but significant percentage who historically have been the recipient of a disproportionately large share of scholarships and financial aid of all kids attributable to the athletic prowess of scholastically qualified Youth Athletes of color ("Youth Athletes of Color").

19. As part of the collegiate recruiting and scholarship granting and admission process, the performance of the Youth Athletes of Color during their junior and especially senior years is vital if not the essential key to the garnering of scholarship and grant money by Youth Athletes of Color.

20. As a direct and proximate result of the Page Restrictions, a significant percentage of Youth Athletes in general and Youth Athletes of Color in particular are immediately and significantly adversely affected in that they are unfavorably postured to navigate the collegiate recruiting and financial aid aspects of college admission.

21. On the 10<sup>th</sup> day of September, 2020, the day after the release of the Page Restrictions and the day before the effective date of the Page Restrictions, counsel for Plaintiff herein issued a demand letter to Defendants, a true and correct copy of which is

attached hereto, incorporated herein by reference, and marked Exhibit C (“Plaintiff’s Demand Letter”).

22. The Plaintiff’s Demand Letter set forth in concise detail the immediate and irreparable harm that will immediately inure to the detriment of the Plaintiff, and others in like position, absent the rescinding and holding for naught of the Page Restrictions as they relate to Youth Athletes in general, and Youth Athletes of Color in disproportionately in particular.

23. As a matter of public record, Section 171.011 of the Revised States of Missouri specifically empower and grant to school boards all authority as it relates to, among other delineated and broadly described powers, all matters sports related. A true and correct copy of the above statute is attached hereto, incorporated herein by reference and marked Exhibit D. No authority is granted to Page under Chapter 171 RSMo.

24. In the case of public schools in the County, the school boards for each public school in the County have joined the Missouri State High School Activities Association (“MSHSAA”).

25. As members of the MSHAA, the County’s public schools (and all private schools who are similarly members) have agreed to the MSHAA Constitution Article IV (6)(o) (“Salient MHSAA Constitutional Provision”) which, in turn, grants the authority to the MSHAA to organize and direct high school games (for all sports). The Salient MHSAA Constitutional Provision reads as follows:

“The Board of Directors shall be the authority to organize and direct such preliminary tournaments, meets, or games as necessary to select teams

or individuals qualified to compete in state contests and shall administer such contests.”

26. Longstanding Missouri law holds and confirms that the County is without authority to interfere with the function of the MHSSA absent bad faith or bias on the part of MHSSA.

27. The State has issued zero policies, directives, or COVID-19 Response Orders which reference, much less establish or confirm, any policy relating to Youth Athletes.

28. The Page Restrictions exceed the lawful authority granted to the County Executive.

29. The Page Restrictions exceed the lawful authority granted the County DOPH.

30. The Page Restrictions are arbitrary and capricious in that they are not based on scientific evidence which would support the basis upon which Page publicly purports to rely as a basis for the Page Restrictions.

31. The Page Restrictions are arbitrary and capricious in that they are not based on medical evidence which would support the basis upon which Page publicly purports to rely as a basis for the Page Restrictions.

32. In fact, shortly after the September 11, 2020 public statement by Page to support the Page Restrictions, members of the organization comprised of medical experts (“Task Force”) upon which Page uttered reliance through ongoing communication with, input from and agreement by the Task Force comprised of medical experts to serve as a basis, in significant part, for the draconian scope of the Page

Restrictions, had not spoken to, with, or received requests for comments by Page since July, 2020 (“Page Lie to the Public”).

33. The Page Lie to the Public resulted in outrage and public outcry of significance such as to appear akin to that associated with the message of Black Lives Matter.

34. September 11, 2020 came and went and no response thereto was forthcoming from Page or any duly authorized of Page.

35. On September 13, 2020, Youth Athletes, Young Athletes of Color and members of the Affected Population congregated, marched around the neighborhood of the County Executive and protested their adamant opposition to the Page Restrictions and subsequently elsewhere, including the edifice housing this Court.

36. A significant percentage of the Affected Population have worked diligently to support and pay for the athletic endeavors and skills of their Youth Athlete children for the purpose of leverage same to garner access to college entry and financial support therefore.

37. The window of opportunity to garner performance videos and athletic accomplishments, records and recognition for Youth Athletes in their senior year of high school is closing, with most recruiting accomplished prior to the end of the fall sports season of 2020.

38. The window of opportunity to submit college applications to garner entry into and financial support for college closes for most colleges in January 2021.

39. Given the economic challenges surrounding and caused by COVID-19, an ever-growing percentage of the Affected Population are increasingly reliant on the hope

of access to financial aid for the benefit of affected Youth Athletes in general, and Youth Athletes of Color in particular.

40. The usurping of access by the Affected Youth Athletes and the Affected Population is nothing short of an unlawful taking of property without just compensation, all in direct contravention to the U.S. and Missouri Constitutions.

41. The parents and legal guardians of the Youth Athletes have primal, biological, some assert biblically based and legal rights to rear, care for, tend to, and foster development of their spawn, all of which are being wholly obviated by the Page Restrictions.

42. The Page Restrictions apply to the County whose COVID-19 spread and incidence rates have at all times salient hereto been less than that of its western abutting, nay contiguous county, St. Charles, being a County which has permitted Youth Sports unabated without adverse effect or statistically attributable spread or incidence of COVID-19 rate.

43. More counter-intuitively, Page has elected to employ his appointed political position as a pulpit from which to issue and direct jack booted, tone deaf mandates during this period of national introspection on the message of Black Lives Matter such as to more significantly and adversely impact Youth Athletes of Color and the Affected Population.

44. While simultaneously lying to the public about his discourse with and ongoing deference to a third-party organization of experts, the third-party organization of experts contradicts this assertion and, in fact, asserts that it deems the Page



Restrictions to be without support by medical and scientific knowledge and devoid of sensitivity to the mental health, safety and ongoing concern about the wellbeing of all.

45. With astounding arbitrariness, the County Executive has issued the Restrictions such as to delineate classifications of sports without touchstone to the medically established consensus that the risk of COVID-19 spread and infection has never been studied such as to determine with any degree of statistical certainty the ranking of risk associated with any one or more sports with any one or more other sports.

46. Further demonstrating otherworldly arbitrariness run amok, Page has established as part of the Page Restrictions an age based data grouping which precludes play by Youth Athletes who are ages 14 through 19; not caring to note that by including 18 and 19 year olds the data associated with true high school age range of 14-18 is skewed such as to negatively depict the risk associated with high school Youth Athletes.

47. In fact, the science and medical expertise supportive of Youth Athletics being permitted is founded in the noting of Youth Athletes being able to perform in a controlled environment with safeguards and protocols to protect against COVID-19 infection and spreading while noting the Page Restrictions effectively serve to release the Youth Athletes from a controlled COVID-19 sensitive environment to one which is not controlled, often wholly unsupervised, and gives rise to heightened COVID-19 infection and spread risks.

48. Absent the equitable relief requested herein, grave and immediate harm will inure to the detriment of Plaintiffs and others in like position.

49. Legal relief is insufficient to remedy the wholesale compromise of the state and federal Constitutional rights of the Plaintiffs herein.

50. The actions of the Defendants, jointly and severally affected both the Youth Athletes and their family members in that they are being deprived of their respective state and federal Constitutional rights, the freedom to rear, guide, lead and make decisions regarding the safety health and welfare of their children; deprivation of access to key elements of the recruiting, admission and financial aid aspects of college; and doing so while demonstrating a reckless disregard for the Youth Athletes and Affected Population.

51. In the interest of full disclosure, within the context of the case of Plaintiff, Paul Berry, III, is the opposition candidate in the November, 2020 general election, running against Defendant Page for County Executive. To obviate the risk of being accused of using the present cause for political gain, Plaintiff has made clear as a matter of record that his actions herein are solely in his capacity as a father of L.B., concerned citizen and former collegiate athlete whose access to a college education was a function of the very athletic endeavors L.B. and tens of thousands of the Affected Population who similarly seek redress and relief of the nature pursued herein.

WHEREFORE, Plaintiff pray this Honorable Court issue a temporary restraining order, preliminary injunction and permanent injunction:

1. Holding for naught the Page Restrictions as they relate to Youth Athletes in the County;
2. Mandating the immediate cessation by Page of any and all actions and statements which in any way, fashion, or manner thwarts, encumbers or

seeks to influence the actions of high schools throughout the County of Saint Louis as they relate to youth sports, teams, games, practices and participation therein by Youth Athletes;

3. Mandating the immediate release by Page to the public of empirical evidence supporting the proposition that Youth Sports and Youth Athletes are a source of COVID-19 spread;
4. Such other and further action as the Court deems just and appropriate in the circumstances.

**VERIFICATION**



PAUL BERRY, III, Individually and on behalf of his daughter, L.B., a Minor.

STATE OF MISSOURI

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COUNTY OF ST. LOUIS

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On this 17 day of September, 2020, before me, Kira Michele Wulff, a Notary Public in and for said State, personally appeared Paul Berry, III, known to me to be the person who executed the foregoing document and acknowledged to me that the statements contained in the foregoing document are true and correct to the best of his knowledge and belief.



KIRA MICHELE WULFF  
My Commission Expires  
May 27, 2024  
St. Louis County  
Commission #20875292

  
NOTARY PUBLIC

My Commission expires: \_\_\_\_\_

KODNER WATKINS, LC

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