IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

SHANNON ROBINSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	20AC-CC00515
	)	
MISSOURI DEPARTMENT OF HEALTH AND SENIOR SERVICES,	)	
	)	
	)	
Defendant.	)	

JUDGMENT

This case is about whether Missouri's Department of Health and Senior Services regulations can abolish representative government in the creation of public health laws, and whether it can authorize closure of a school or assembly based on the unfettered opinion of an unelected official. This Court finds it cannot.

Plaintiffs Shannon Robinson, B&R STL, and Church of the Word (a benevolent corporation) filed this action seeking a declaratory judgment pursuant to Mo. Rev. Stat. § 536.050 that rules issued by the Department of Health and Senior Services ("DHSS"), codified at 19 CSR 20-20.010 et seq., which authorize the Director of DHSS or a local health agency director to exercise personal discretion to (1) implement discretionary "control measures" including the "creation and enforcement of orders" affecting individuals, schools, organizations, businesses and other entities, and (2) close schools and places of public assembly based solely on his/her opinion, are invalid. 19 CSR 20-20.010(26); 19 CSR 20-20.040(2)(G)-(I); 19 CSR 20-20.040(6); 19 CSR 20-20.050(3) (collectively "DHSS regulations"). This matter comes to this court as a Motion for Summary/Declaratory Judgment. The Court concludes that the DHSS regulations (1) violate separation of powers principles of art. II, § 1 of the Missouri Constitution;

(2) violate the Missouri Administrative Procedure Act, Mo. Rev. Stat. § 536.010 et seq.; (3) are inconsistent with the public health law framework established by Missouri statutes; and (4) violate the equal protection clause of the Missouri Constitution, MO. CONST. art. II, § 1.

1. The DHSS regulations violate separation of powers principles of art. II, § 1 of the Missouri Constitution.

Separation of powers among the three branches of government – legislative, administrative, judicial – is fundamental to the preservation of liberty. DHSS regulations break our three-branch system of government in ways that a middle school civics student would recognize because they place the creation of orders or laws, and enforcement of those laws, into the hands of an unelected administrative official.

"When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner." Baron de Montesquieu, The Spirit of the Laws (London: J. Nourse and P. Vaillant, 1758), Book XI, ch. 6, p. 16. "One of the settled maxims in constitutional law is that the power conferred upon the legislature to make laws cannot be delegated by that department to any other body or authority." Cooley, Constitutional Limitations (1886), pp. 116-117. "It is incumbent on the courts to ensure decisions are made according to the rule of law, not hysteria. . . . One hopes that this great principle—essential to any free society, including ours—will not itself become yet another casualty of COVID-19." *Dept. of Health and Human Services v. Manke*, CC: 20-004700-CZ (Mich. 2020, Justice Viviano, concurring).

The Missouri Constitution provides as follows:

> The powers of government shall be divided into three distinct departments—the legislative, executive and judicial—each of which shall be confided to a separate magistracy, and no person, or collection of persons, charged with the exercise of

powers properly belonging to one of those departments, shall exercise any power properly belonging to either of the others, except in the instances in this constitution expressly directed or permitted.

MO. CONST. art. II, § 1.

Thus, absent express direction or express permission in the Missouri Constitution for one of three departments of government to exercise powers belonging to either of the other two departments, acts done "must incontinently be condemned as unwarranted by the constitution. . . .Each department of the government is essentially and necessarily distinct from the others, and neither can lawfully trench upon or interfere with the powers of the other; and our safety, both as to national and state governments, is largely dependent upon the preservation of the distribution of power and authority made by the constitution, and the laws made in pursuance thereof." *Missouri Coalition for Environment v. Joint Committee on Administrative Rules,* 948 S.W.2d 125 (Mo. 1997), *citing Albright v. Fisher,* 164 Mo. 56, 64 S.W. 106, 108–09 (1901).

The Missouri Supreme Court has recognized that a legislative body generally cannot delegate its authority, but alone must exercise its legislative functions. *Automobile Club of Mo. v. City of St. Louis*, 334 S.W.2d 355 (Mo. 1960); *State ex rel. Priest v. Gunn*, 326 S.W.2d 314, 320, 321 (Mo. banc 1959). A law delegating certain authority "is constitutional if a definite standard is provided and no arbitrary discretion is involved." *State v. Bridges*, 398 S.W.2d 1, 5 (Mo. 1966); *Behnke v. City of Moberly*, 243 S.W.2d 549 (Mo. App. 1951). Any law "which attempts to clothe an administrative officer with arbitrary discretion, without a definite standard or rule for his guidance, is an unwarranted attempt to delegate legislative functions to such officer, and for that reason is unconstitutional." *Lux v. Milwaukee Mechanics Ins. Co.*, 15 S.W.2d 343 (Mo. 1929).

The Missouri Supreme Court has well developed case law on the subject of unconstitutional delegations of power to executive branch officials. Although "a legislative body cannot delegate its authority," the Court has held that "it may empower certain officers, boards and commissions to carry out in detail the legislative purposes and promulgate rules by which to put in force legislative regulations." *Auto. Club of Mo. v. City of St. Louis*, 334 S.W.2d 355, 358 (Mo.1960). This is particularly so where the executive agency possesses special expertise. *State Tax Comm'n v. Admin. Hearing Comm'n*, 641 S.W.2d 69, 74 (Mo.1982). Delegation is constitutional only when the delegating statute or ordinance "contains sufficient criteria or guidelines" to guide the executive official's decision-making. *Ruggeri v. City of St. Louis*, 441 S.W.2d 361, 363 (Mo.1969); see also *Auto. Club of Mo.*., 334 S.W.2d at 358. Conversely, an ordinance or statute is unconstitutional when it "attempts to clothe an administrative officer with arbitrary discretion, without a definite standard or rule for his guidance." *Porporis v. City of Warson Woods*, 352 S.W.2d 605, 607 (Mo.1962) (internal quotes omitted); see also *Howe v. City of St. Louis*, 512 S.W.2d 127, 133 (Mo.1974). Regarding the delegation of law-making functions in particular, the Court has recognized that "the duty and power to define crimes and ordain punishment is exclusively vested in the legislature," *State v. Brown,* 660 S.W.2d 694, 698 (Mo.1983). The requirements that the Missouri Constitution and over a century of Missouri Supreme Court precedent place on delegations of authority applies to DHSS. DHSS is limited to a definite standard for its delegated duty, and no arbitrary discretion can be or is involved. *State v. Bridges*, 398 S.W.2d at 5.

DHSS has statutory authority to "designate those diseases which are infectious, contagious, communicable or dangerous in their nature and shall make and enforce adequate orders, findings, rules and regulations to prevent the spread of such diseases and to determine the prevalence of such diseases within the state." Mo. Rev. Stat. § 192.026. DHSS regulations delegate to the DHSS Director and local health agency directors throughout Missouri the power to implement discretionary "control measures" including the "creation and enforcement of orders" within their jurisdictions. 19 CSR 20-20.040(2)(G)-(I); 19 CSR 20-20.040(6). DHSS regulations also authorize an individual health agency director to close a school or place of public assembly if "in the opinion of the [health official] the closing is necessary to protect the public health." 19 CSR 20-20.050(3). Thus, the state delegated rulemaking power to an administrative agency, and the administrative agency, has in turn, delegated broad rulemaking power to an unelected administrative official. This type of double delegation, which results in lawmaking by an administrative entity, is an impermissible combination of legislative and administrative power. *Cavanaugh v. Gerk*, 280 S.W.2d 51 (Mo. banc 1926) (rules promulgated by a traffic council pursuant to general provisions are unauthorized by law). The DHSS regulations violate the principles of separation of powers by unlawfully placing unguided and unbridled rulemaking power in the hands of a public official.

DHSS asserts that words such as "necessary," "adequate," and "appropriate" smattered throughout the regulations provide sufficient standards to guide agency officials in developing control measures and creating and enforcing their own rules and orders. Decades of case law consistently holds otherwise. Delegations of authority that include the phrase "in accordance with *public convenience and necessity*" are insufficient due to lack of criterion or standard. *Automobile Club*, 334 S.W.2d at 359 (emphasis supplied). Also, delegations that permit

discretionary declarations that a building is a public nuisance and allow an official to take "steps as may be *necessary* for the immediate abatement of any and all such nuisances" are also insufficient due to lack of criterion or standard for abatement. *Lux*, 15 S.W.2d at 345 (emphasis supplied); *see also Clay v. City of St. Louis*, 495 S.W.2d 672, 674 (Mo. App. 1973) (a delegation that instructed an agency to "establish a fee schedule" was insufficient because it did not set forth any standards to follow when setting the fees).

Other states, like Michigan, Wisconsin, and Pennsylvania have recently come to the same conclusion regarding administrative order-creation in connection with COVID-19. "The powers conferred by [a Michigan statute granting an executive authority to take action] simply cannot be rendered constitutional by the standards 'reasonable' and 'necessary,' either separately or in tandem." *Midwest Inst. Of Health, PLLC v. Governor of Mich. (In re Certified Questions from the United States Dist. Court)*, No. 16, 506 Mich. 332 (Mich. 2020). The Wisconsin Supreme Court also addressed this issue when it struck down a statewide "Safer at Home Order" issued by a Director of Wisconsin's department of health in response to COVID-19 concerns. *Wisconsin Legislature v. Palm*, 942 N.W.2d 900 (Wisc. 2021). The order was created by a Wisconsin administrative official pursuant to a state regulation that gave her broad authority to take "all emergency measures *necessary* to control communicable diseases." *Palm*, 942 N.W.2d at 917. The term "necessary" did not provide sufficient standards for her action. *Id.* Most recently the Pennsylvania court held: "

> The purported authority cited by the Acting Secretary in the Masking Order does not convey the authority required to promulgate a new regulation without compliance with the formal rulemaking requirements of the . . .Regulatory Review Act. Therefore, because the Acting Secretary did not comply with the requirements of the [state APA], the Masking Order is void ab initio. For this Court to rule otherwise would be tantamount to giving the Acting Secretary unbridled authority to issue orders with the effect of regulations in the absence

of. compliance with the. . . [state APA]. As this would be contrary to Pennsylvania's existing law, we decline to do so.

Corman, et.al v. Acting Secretary of the Pennsylvania Department of Health, No. 294 M.D. 2021 (Nov. 10)

Federal courts also agree. The United States Supreme Court held that a delegation authorizing an executive to take action "as he may deem necessary" is an unconstitutional delegation because it assumes positive motives with no set standards. *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1934); *see also State v. Becerra*, 2021 WL 2514138 (M.D. Fla.) (holding that Center for Disease Control ("CDC") lacked authority to issue a "conditional sailing order" to the cruise industry, rejecting the CDC's argument that a federal statute authorized the Secretary to freely employ his "judgment" about restrictions "necessary" to prevent the transmission of COVID-19).

i. Regulations that delegate unfettered and unbridled rulemaking to an administrative official based on "necessity" are invalid.

The authority that the DHSS regulations purport to grant to an administrative official to implement control measures and create and enforce orders is open-ended discretion—a catch-all to permit naked lawmaking by bureaucrats throughout Missouri. The regulations codified at 19 CSR 20-20.040(2)(G) -(I), 19 CSR 20-20.040(6) fail to set forth any standards to guide the DHSS Director or the DHSS-deputized local health agency directors in their creation of orders purporting to prevent the spread of a communicable disease into the state. The state's enabling act provides no standards for the issuance of orders. Mo. Rev. Stat. § 192.026. Orders authorized by the regulations are completely within the discretion of the agency official and are limitless, standardless, and lack adequate legislative guidance for their creation. The regulations also fail to provide any procedural safeguards for those aggrieved by the orders. The regulations create a

system of statewide health governance that enables unelected officials to become accountable to no one. Authorizing necessary, or appropriate, or adequate orders does not set forth the required standard or guideline for the administrative official.

Plaintiffs produced ample evidence that health agency directors throughout Missouri have used the power granted to them by 19 CSR 20-20.040 to exercise unbridled and unfettered personal authority to in effect, legislate. Local health directors have created generally applicable orders, both in writing and verbally, requiring individuals within their jurisdictions to wear masks, limiting gathering sizes in peoples' own homes, creating capacity restrictions, limiting usage of school and business facilities including tables, desks, and even lockers, mandating spacing between people, ordering students be excluded from school via quarantine and isolation rules created by health directors based on masking or other criteria not adequately set forth in either by the state legislature or by DHSS rules, among other generally applicable orders. This impermissible power to independently create new laws is purportedly delegated to them by 19 CSR 20-20.040(2)(G) -(I), 19 CSR 20-20.040(6) but MO. CONST. art. II, § 1 simply and clearly prohibits, without question, such lawmaking.

A local health agency director is constitutionally prohibited from exercising discretion to issue generally applicable rules prohibiting or requiring certain conduct and disciplinary consequences for violations of the director's unilaterally created rules. Yet, this has been happening across the state for over 18 months, thanks to unconstitutional language buried in state regulations. DHSS regulations that permit an agency health director to create and enforce orders and take other discretionary "control measures," which are predominantly set forth in 19 CSR 20-20.040(2) (G)-(I) and (6), are unconstitutional and are therefore invalid.

ii. DHSS regulation that delegates unfettered and unbridled decision-making authority to an administrative official to close a school or assembly based on the official's "opinion" is invalid.

The DHSS regulation authorizing a health agency director's discretionary closure of a school or place of public assembly based on the director's personal opinion is invalid. 19 CSR 20-20.050(3). This regulation clothes an individual health agency director with the power to "close any public or private school or other place of public or private assembly when in the opinion of the [health agency director] the closing is necessary to protect the public health." The use of the term "in the opinion of" clearly designates complete discretion in an administrative bureaucrat to determine closure. The regulation even prohibits reopening "until permitted by whomever ordered the closure." 19 CSR 20-20.050(3).

The Missouri Supreme Court has held that a bureaucrat cannot possess such broad authority. In *Lux v. Milwaukee Mechanics Ins. Co.*, 15 S.W.2d 343 (Mo. 1929), a challenged ordinance clothed an appointed city official, the superintendent of buildings, with full discretionary power to declare any building which becomes unsafe from fire to be a public nuisance, and authorized the superintendent to take immediate steps to abate such nuisance. The challenged ordinance was held unconstitutional because it gave a city official the power to condemn a building without providing guides, tests, or standards to protect the property owner from arbitrary action.

A health agency director with the authority to shut down a school or assembly wields incredible power to coerce his subjects into submission. DHSS's permissive closure regulation effectively converts the recommendations, and even whims, of a health agency director into enforceable law. If the health agency director holds the "opinion" that a school is not doing enough, he can close it. And according to the regulation, he is the only one who can permit it to

be reopened. This incredible power cannot lawfully be placed in the hands of one bureaucrat. *Lux*, 15 S.W.2d at 345. Put simply, if "as may be *necessary* for the immediate abatement of any and all such nuisances" was insufficient according to Missouri's highest court in *Lux*, then "necessary to protect the public health" based on "opinion" is definitely insufficient.

Schools and places of public assemblies should no longer fear arbitrary closure based on the whims of public health bureaucrats. This system is entirely inconsistent with representative government and separation of powers and makes a mockery of our Missouri Constitution and the concept of separation of powers. The DHSS regulation set forth at 19 CSR 20-20.050(3) is unconstitutional and is therefore invalid.

2. DHSS regulations violate the Missouri Administrative Procedure Act, Mo. Rev. Stat. § 536.010, et seq.

The DHSS regulations are also invalid because they authorize rulemaking by state and local agency officials in violation of the Missouri Administrative Procedure Act, § 536.010, et seq. A "rule" is defined by Mo. Rev. Stat. § 536.010(6) to include "each agency statement of *general applicability* that implements, interprets, or prescribes law or policy." (emphasis supplied). "Any agency announcement of policy or interpretation of law that has future effect and acts on unnamed and unspecified facts is a 'rule.'" *Department of Social Services, Div. of Medical Services v. Little Hills Healthcare LLC*, 236 S.W.3d 637 (Mo. banc 2007), *citing NME Hospitals, Inc. v. Department of Social Servs,* 850 S.W.2d 71, 74 (Mo. banc 1993).

Rules promulgated by DHSS must comply with the procedural requirements of the Administrative Procedure Act Sections 536.021 and 536.024 prior to enactment and enforcement. Mo. Rev. Stat. § 192.006. These procedural requirements include a number of steps, including publication, notice and comment period, and approval of the Missouri Legislature prior to finality. In *Little Hills*, a state agency imposed a financial calculation related

to Medicaid reimbursement that did not proceed through the procedural safeguards set forth in Chapter 536 prior to its implementation. Because the financial calculation had general applicability to the public, it was ineffective unless and until the procedural due process set forth in Chapter 536 occurred. 236 S.W.3d at 643 ("failure to promulgate a rule as required voids the decision that should have been properly promulgated as a rule").

Although the regulations contained in 19 CSR 20-20.010 et seq. were themselves promulgated pursuant to the APA's procedural protections, the regulations specifically authorize subsequent rulemaking by administrative officers for which there are no procedural protections prior to implementation. DHSS is prohibited by the APA from giving an unelected official the power to do what DHSS itself lacks the power to do – enact rules outside the procedural protections set forth in Chapter 536, RSMo. DHSS has done *exactly that* by authorizing one person at a local agency to create and enforce orders, rules or regulations without ensuring that the procedural safeguards applicable to DHSS actions are also applicable to the bureaucrat's actions.

Plaintiffs presented evidence that these subsequent rules – those directed to prevention of COVID-19 – have been issued as "orders" by local health agency directors throughout Missouri in reliance on 19 CSR 20-20.040(2) and (6). Local health agency directors, in reliance on 19 CSR 20-20.040, have enacted rules all by themselves, with no notice, sometimes posted them on the internet by surprise, sometimes sent them by email, and sometimes provided verbal orders. They also haphazardly ordered the shutdown of businesses not in compliance with their self-imposed laws.

DHSS regulations that permit agency directors to implement discretionary control measures and create and enforce orders that fit within the definition of "rule" are invalid because

they violate the APA. Thus, regulations codified at 19 CSR 20-20.040(2)(G) -(I), (6) expressly authorize violations of the APA and are therefore invalid.

3. DHSS regulations are inconsistent with the framework established by Missouri statutes for the creation of public health law and violate Section 31 of Article I of the Constitution of Missouri.

Missouri statutes give elected legislative bodies, not individual health agency directors, authority to create county-wide laws related to communicable disease.[1] More specifically, Mo. Rev. Stat. § 192.300 provides: "County commissions [which include county councils] and the county health center boards of the several counties may make and promulgate orders, ordinances, rules or regulations, respectively as will tend to enhance the public health and prevent the entrance of infectious, contagious, communicable or dangerous diseases into such county." A "county health center board"[2] is an elected governing body established by Mo. Rev. Stat. Chapter 205.

Missouri law also provides for criminal punishment for violation of a public health law adopted by a county council or county commission. Mo. Rev. Stat. § 192.300(4) provides: "Any person, firm, corporation or association which violates any of the orders or ordinances adopted, promulgated and published by such county commission is guilty of a misdemeanor and shall be prosecuted, tried and fined as otherwise provided by law." Thus, when a county council or

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[1] No Missouri statute specifically authorizes an individual health agency official to unilaterally issue orders, rules or regulations related to communicable disease. To do so would be an unlawful delegation of authority in violation of MO. CONST. art. II, § 1. The legislature recently placed a time limit on certain orders related to communicable disease. Mo. Rev. Stat. 67.265. A time limit does not rectify the constitutionally deficient DHSS regulations because health agency officials are constitutionally prohibited from creating generally applicable laws for any length of time, no matter how brief.

[2] It is also commonly referred to as a "county health center board of trustees."

commission enacts a law to prevent the spread of contagious disease that is generally applicable to all individuals, schools, businesses, governments and other organizations, the legislature must determine that the order or ordinance is so necessary that a violation of the law justifies applicable criminal sanctions.

Further, the Missouri Constitution provides "that no law shall delegate to any commission, bureau, board or other administrative agency authority to make any rule fixing a fine or imprisonment as punishment for its violation." MO. CONST. art. 1, § 31. Thus, DHSS regulations that authorize a county health agency director to write a law cannot possibly be considered, within the statutory framework of Section 192.300, a county-wide law. To do so would violate the creation authority set forth in Mo. Rev. Stat. § 192.300 and the prohibition on criminal punishment set forth in Section 31 of Article I of the Missouri Constitution.

4. The DHSS regulations, as implemented, violate the equal protection clause of the Missouri Constitution.

Article I, Section II of the Missouri Constitution provides that "all persons are created equal and are entitled to equal rights and opportunity under the law." MO. CONST. art I, § 2. Equal protection of the law means "equal security or burden under the laws to everyone similarly situated; and that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or classes of persons in the same place and under like circumstances." *Kansas City v. Webb,* 484 S.W.2d 817 (Mo. banc 1972) *citing Ex Parte Wilson,* 330 Mo. 230, 48 S.W.2d 919, 921. Equal protection of the laws means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and under like circumstances. *Id., citing Missouri v. Lewis,* 101 U.S. 22, 31, 25 L.Ed. 989.

Throughout 2020 and 2021, Missouri's residents and businesses have been subjected to orders created and issued by bureaucratic edict outside the constitutionally mandatory legislative process. These orders substantially differ between counties even though COVID-19 is not a county-specific disease. Plaintiffs presented evidence that Missourians have been subjected to unconstitutionally created "health orders" that, for example, prohibit them from leaving their homes located in certain counties except for certain delineated reasons, permit worship services but prohibit Bible study, require churches in some counties to turn people away from their services if fire code capacity reaches 25%, require elementary students to wear masks indoors, even while playing basketball, and prohibited children from giving "high fives." Plaintiff Shannon Robinson was not permitted to have people over to her own home, even in masks, even socially distanced, because she has a large family and the number of people would exceed permitted attendance at her own dinner table. When she moved from St. Louis County to Franklin County, she could again have friends over. Restaurants have been unilaterally shut down even without any presence of infection and without inspection based on administratively issued "health orders" that violate the Constitution and have not been promulgated pursuant to the APA's procedural protections, while restaurants down the street in a neighboring county remain open. Children are removed from schools in some counties but not others, based on different masking rules issued by local health bureaucrats that are unconstitutionally created.

Plaintiffs presented evidence that these orders issued by health agency directors go into effect without public comment, and become effective once posted on the internet. These bureaucratic edicts are for an indefinite duration until they are removed or edited based on the opinion of the bureaucrat who wrote them.

Because DHSS permits discretionary orders on a county by county basis by bureaucrats in each respective county, Missourians have faced disparate treatment based on county lines. In a statewide pandemic as defined by 19 CSR 20-20.010(37), it is not fair or equitable for a business in one county to be arbitrarily closed down, when another business in another county experiencing the same exact pandemic situation is not also closed down for the same reasons. The DHSS regulations authorize arbitrary and capricious rulemaking that creates a substantial inequity among affected people and businesses. This is particularly true of those who live in a county with an overactive, unelected and unchecked bureaucrat intent on exerting power that is not similarly exerted in other counties by their unelected health bureaucrats.

Can it be said that COVID-19 knows to stop at specific county lines and does not travel over? It is completely irrational that, at this point in time, now that COVID-19 has spread across the globe, a first grader in Wildwood is not allowed to play sports, while a first grader in Jefferson County who lives less than a mile away is allowed to do so. Individual freedoms are affected in different ways throughout Missouri relating to the same COVID-19 illness thanks to the DHSS regulations that allow one person to make and enforce laws, and close things down with no standards other than a completely unappealable and unchallengeable "opinion" regarding public health protection. The DHSS regulations permit different treatment across county lines in a manner that is completely arbitrary and violates the equal protection clause of the Missouri Constitution, MO. CONST. art. II, § 1.

Missouri's local health authorities have grown accustomed to issuing edicts and coercing compliance. It is far past time for this unconstitutional conduct to stop.

For the foregoing reasons, this court issues the following orders:

1) This court declares that 19 CSR 20-20.040(2)(G) -(I), 19 CSR 20-20.040(6), including references to discretionary control measures contained in 19 CSR 20-20.010 et seq., violate the Missouri Constitution and Missouri statutes and are therefore invalid.

2) This court declares that 19 CSR 20-20.050(3) violates the Missouri Constitution and Missouri statutes and is therefore invalid.

3) The Director of the Department of Health and Senior Services, pursuant to Mo. Rev. Stat. § 536.022, shall file a notice of this court's action with the Missouri Secretary of State in accordance with the requirements of Mo. Rev. Stat. § 536.022.

4) The Missouri Secretary of State shall take action required by Mo. Rev. Stat. § 536.022(4) regarding placing a notice in the register and removing the invalid regulations from the register.

5) Consistent with Plaintiffs' request for relief that this Court deems just and proper, DHSS and local health authorities are ordered to refrain from taking actions pursuant to 19 CSR 20-20.010 et seq. that require independent discretion in a manner inconsistent with this opinion and inconsistent with the constitution's limitation on legislative delegations and the APA's limitations on rulemaking authority. This includes discretionary verbal or written orders for which the legislature has failed to provide specific standards or guidelines, and to the extent that standards or guidelines for a particular action have been provided, they must be followed.

6) Plaintiffs presented evidence that students are being excluded from schools by discretionary written or verbal order or direction of local health authorities. Consistent with Plaintiffs' request for relief that this Court deems just and proper, and to eliminate the need for additional plaintiffs to request this Court strike invalid applications of DHSS

regulations regarding communicable disease, this Court directs DHSS to instruct local health authorities to refrain from issuing verbal or written orders regarding circumstances under which children can be excluded from school. 19 CSR 20-20.030(1) specifically provides that "persons suffering from a reportable disease or who are liable to transmit a reportable disease listed in 19 CSR 20-20.020(1)-(3) shall be barred from attending school." "Liable" means in a position to incur transmission (https://www.merriam-webster.com/dictionary/liable). Without determining whether 19 CSR 20-20.030 is constitutional, it is clear that any quarantine and isolation rules, or rules that exclude students from school, created by a local health authority outside the language of 19 CSR 20-20.030, are prohibited.

7) Consistent with Plaintiffs' request for relief that this Court deems just and proper, this Court orders that any and all discretionary orders or rules, whether written or verbal, that have been issued outside the protections of the Missouri Administrative Procedure Act and constitute a statement of general applicability that implements, interprets, or prescribes law or policy, or close a business based on the opinion or discretion of an agency official without any standards or guidance, by Director of the Department of Health and Senior Services and all local health authorities as defined by 19 CSR 20-20.010(26), are null and void.

8) Consistent with Plaintiffs' request for relief that this Court deems just and proper, this Court orders the Director of the Department of Health and Senior Services to provide a copy of this order to all local health authorities throughout Missouri, and to post it with 19 CSR 20-20.010 et seq. in locations where the same is made publicly available by DHSS.

9) This court orders payment of Plaintiffs' attorney's fees and costs pursuant to Mo. Rev. Stat. § 536.050.

Dated: 11/22/21

Daniel R. Green