

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
FILED SUPERIOR COURT DIVISION
FILE NO. _____

2020 MAY 27 P 1:18

EDWARD T. SMITH, JR. and wife,
ROBIN SMITH; RICHARD J.
HOOTON, III; NEIL STROTHER and
wife, ANN STROTHER; PAUL
HUMPHREYS, JR. and wife, KELLI
HUMPHREYS; PHILLIP HENRY and
wife, SHANNON HENRY
Plaintiffs,

v.

ROY A. COOPER, III, in his official
capacity as Governor, STATE OF
NORTH CAROLINA,
Defendants.

WAKE COUNTY, N.C.
[Handwritten signature]

MOTION FOR TEMPORARY
RESTRAINING ORDER

NOW COME the Plaintiffs, Edward T. Smith, Jr. and wife, Robin Smith, Richard J. Hooton, III, Neil Strother and wife, Ann Strother, Paul Humphreys, Jr. and wife, Kelli Humphreys, and Phillip Henry and wife, Shannon Henry, by and through their undersigned counsel pursuant to Rule 65(b) of the North Carolina Rules of Civil Procedure and say:

1. The Defendant Cooper has ordered the closing of indoor exercise facilities (including martial arts facilities), gyms, health clubs, and fitness centers in his Executive Order 141.
2. The Plaintiffs are all owners and operators of indoor exercise facilities (including martial arts facilities), gyms, health clubs, or fitness centers.
3. By ordering indoor exercise facilities (including martial arts facilities), gyms, health clubs, and fitness centers to be closed, the Defendants have prevented the Plaintiffs from pursuing their ordinary vocations, on their own property, and with their own means in violation of Art. I, sec. 1 and 19, of the North Carolina Constitution, the Fruits of Your Labor and Law of

the Lands clauses. See the verified complaint filed with this Motion for a more complete explanation of the causes of action and the injuries caused by Executive Order 141.

4. Further, as shown by the verified complaint and the affidavit of Triglia, the closing of the indoor exercise facilities (including martial arts facilities), gyms, health clubs, and fitness centers has prevented the Plaintiffs from furnishing individuals with serious medical conditions, including MS, and people with special needs, such as autism, with equipment and classes which prevents these individuals from being able to obtain exercise therapy as prescribed by their physicians.

5. Injunctive relief is proper as the actions of the Defendants in prohibiting the Defendants from engaging in ordinary occupations present a substantial encumbrance on economic activity which constitutes a manifest threat of irreparable harm sufficient to invoke the equity jurisdiction of the Court.

6. Injunctive relief is further proper in that the Plaintiffs will suffer irreparable harm due to the actions of the Defendants as it deprives the Plaintiffs of their Constitutional right to work and enjoy the fruits of their labor. The Plaintiffs have no plain, speedy, and adequate remedy at law. Damages would not fully redress any harm suffered by Plaintiffs because they are unable to engage in constitutionally protected activities.

WHEREFORE, Plaintiffs pray the Court as follows:

1. That the verified complaint filed in this action be considered as an affidavit.
2. That a temporary restraining order be issued enjoining the Defendants, their officers, officials, and employees, from enforcing Executive Order No. 141, issued by Defendant Cooper, as it applies to indoor exercise facilities (including martial arts facilities), gyms, health clubs, and

fitness centers.

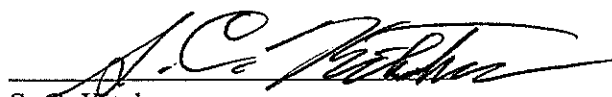
3. That a date for a hearing be set for a preliminary injunction as prayed in Plaintiffs' Complaint.

4. That the bond requirements of Rule 65 be waived, and Plaintiffs not be required to post bond.

5. For such other and further relief as the Court deems mete and proper.

This the 27th day of May, 2020.

KITCHEN & TURRENTINE, PLLC



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CERTIFICATE OF SERVICE

This is to certify that I have this date served a copy of the foregoing document on the following persons, by depositing a copy hereof with a designated delivery service authorized pursuant to 26 USC § 7502(f)(2):

Roy A. Cooper, III
c/o William C. McKinney
General Counsel
116 W. Jones Street
Raleigh, NC 27603-8001

State of North Carolina
c/o Josh Stein
Attorney General
114 West Edenton Street
Raleigh, NC 27603

This the 27th day of May, 2020.

KITCHEN & TURRENTINE, PLLC



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