

**RESTAURANT ASSOCIATION OF
MARYLAND, INC., *et al.*,**

Plaintiffs,

v.

**MAYOR AND CITY COUNCIL OF
BALTIMORE,**

Defendant.

IN THE

CIRCUIT COURT

FOR BALTIMORE CITY

Case No. 24-C-20-005155

**MEMORANDUM AND ORDER
DENYING TEMPORARY RESTRAINING ORDER**

Plaintiffs Restaurant Association of Maryland, Inc. and forty-seven entities that operate restaurants in the City of Baltimore have filed a Motion for *Ex Parte* Temporary Restraining Order and Preliminary Injunction (Paper No. 2). Defendant Mayor and City Council of Baltimore¹ has filed an opposition on short notice. The Court conducted a hearing today by remote electronic means as a video/audio call using Zoom for Government. All parties appeared by counsel at the hearing.

Because of the short notice to Defendant, the Court considers the motion for a temporary restraining order only and considers the facts based on the affidavits submitted by the parties. This Memorandum supplements the fuller statement of reasons given by the Court at the conclusion of the hearing held today.

Plaintiffs challenge a portion of the Mayoral Executive Order Restricting Gatherings and Indoor and Outdoor Dining (the “Mayor’s Executive Order”), issued by Mayor Brandon M. Scott on December 9, 2020 and effective December 11, 2020. They challenge the provisions that restrict them as “Foodservice Establishments” from providing on-premise indoor or outdoor

¹ The exact Defendant named is ambiguous. In the caption of their Complaint, Plaintiffs identify the Defendant as Mayor and City Council of Baltimore. In paragraph 49 of the Complaint, they identify the Defendant as “Brandon M. Scott[,] . . . the Mayor of and for Baltimore City, Maryland.” In the caption of their motion, they identify the Defendant as Brandon M. Scott, in his official capacity as the Mayor of the City of Baltimore.

dining. To justify a temporary restraining order, Plaintiffs must show “clearly . . . from specific facts . . . that immediate, substantial, and irreparable harm will result to [them] before a full adversary hearing can be held on the propriety of a preliminary or final injunction.”

Md. Rule 15-504(a). They also must satisfy the four-factor test for issuance of any interlocutory injunction. *Fuller v. Republican Central Comm. of Carroll Cty.*, 444 Md. 613, 635-36 (2015).

Those factors are weighed flexibly. *Lerner v. Lerner*, 306 Md. 771, 783-84 (1986).

Although Plaintiffs have demonstrated that they face irreparable harm as a consequence of the restrictions required by the Mayor’s Executive Order, including irreparable harm that will occur before a full adversary hearing can be completed, Plaintiffs cannot satisfy the other three requirements for injunctive relief. At the hearing, they confirmed that they do not challenge the Mayor’s abstract authority to order restrictions of this type to address the current pandemic. They rest their challenge instead on the sufficiency of the basis for the Mayor’s exercise of power. As stated on the record, the Court finds that the Mayor’s authority rests both on the Governor’s specific delegation in the Governor’s current executive orders and on the Mayor’s more general authority to act to combat communicable diseases under the Baltimore Health Code. This exercise of that authority is rationally based both on the severity of the pandemic and on the science of how the COVID-19 virus is transmitted and the almost unique status of on-premises dining in restaurants where diners must remove their masks to eat and drink. The Court does not second guess the Mayor’s discretionary exercise of executive power in these circumstances beyond reviewing the rational basis for its exercise. Plaintiffs therefore have shown no likelihood of ultimate success on the merits of their claim.

Both the balance of harms and the public interest also weigh very strongly in favor of Defendant here. Although the restaurant industry bears a disproportionate burden in this public health crisis, the Mayor is acting in the public interest to prevent illness and even death that will

result from increased transmission of the virus. That risk and the need to decrease it through these means outweighs the harm suffered by Plaintiffs and presents a powerful public interest in upholding these specific restrictions in the Mayor's Executive Order.

For the reasons stated here and more fully on the record at the hearing, it is this 23rd day of December, 2020, by the Circuit Court for Baltimore City, Part 26, hereby **ORDERED** that Plaintiffs' Motion for *Ex Parte* Temporary Restraining Order and Preliminary Injunction (Paper No. 2), considered only as a request for temporary restraining order, is **DENIED**.

It is further **ORDERED** that the Court will hear Plaintiffs' motion for preliminary injunction in an evidentiary hearing tentatively scheduled for **January 7, 2021 at 9:30 a.m.** That hearing will be conducted by remote electronic means pursuant to Maryland Rule 2-803 using Zoom for Government.

***Judge Fletcher-Hill's signature appears on
the original document in the court file.***

Judge Lawrence P. Fletcher-Hill