



D. THOMAS LAMBETH, JR.
SENIOR RESIDENT SUPERIOR COURT JUDGE

JUDICIAL DISTRICT 15A
ALAMANCE COUNTY

CRIMINAL COURTS BUILDING
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MEMORANDUM

TO: All Counsel

FROM: Tom Lambeth

RE: Cohen v. Ace Speedway, et. al.

DATE: June 24, 2020

May God continue to bless our beloved America and our great state of North Carolina as we continue to fight the global pandemic of COVID-19.

It feels as if we have forgotten that we are all on the same team, fighting against this deadly and dangerous virus. We love and cherish our freedoms, and our human nature tends towards resistance when we are told what we can and cannot do. We resisted our government telling us that we had to wear seatbelts until it was proven with overwhelming evidence that seatbelts save lives. We don't like driving within speed limits though we know that faster driving is more dangerous. Those who enjoy smoking cigarettes do so despite the forewarned risk of cancer and we acknowledge that we cannot smoke at all places because of the risk that second-hand smoke poses to our fellow citizens.

I personally have great empathy for the owners of Ace Speedway and the thousands of business owners in North Carolina who continue to be adversely affected by COVID-19. Our state and nation continue to struggle with the delicate balance between protecting the health of our citizens and the economic wellbeing of those same citizens. My sworn oath as a judge is to follow the law. I have studied all the evidence presented by both written testimony and oral testimony, the exhibits that were admitted in evidence, the applicable case law, statutes, briefs and arguments of the parties. The court concludes that the correct legal ruling in this case is to grant the plaintiff's motion for a preliminary injunction.

The plaintiff made a clear and compelling showing that a public health emergency exists in Alamance County and that the plaintiff's action in issuing the Order of Abatement was reasonably necessary to address the public health emergency. The court concludes that the plaintiff's action is a rational means of carrying out the legitimate governmental purpose of protecting the health of the public. As Chief Justice Roberts stated less than a month ago in the South Bay United Pentecostal Church case, courts should defer to executive officials because the "precise question of when restrictions on particular social activities should be lifted during the pandemic is a dynamic and fact-intensive matter" that is "fraught with medical and scientific uncertainties." The Chief Justice further wrote that the latitude given to executive officials to respond to the pandemic "must be especially broad" and when "those broad limits are not exceeded," emergency measures "should not be subject to second-guessing by the courts."



Dr. Cohen's sworn declaration makes clear that the scientific and medical data show that large mass gatherings like those at Ace Speedway have been linked to increased spread of COVID-19. She also makes the point in her testimony that when spectators are in close proximity to one another for extended periods of time during a race or other sporting event and those spectators exert increased respiratory effort by yelling and cheering, the risk of spreading the virus is magnified. These considerations which are based in science and medicine form a sound and reasoned basis for the decision to restrict the number of spectators at events held at large entertainment and sporting venues like Ace Speedway.

Based on the facts presented at the hearing and applying the law to those facts the court hereby issues a preliminary injunction prohibiting the defendants from violating the plaintiff's Order of Abatement.

The court does once again encourage the parties to work together if possible, to try and find a way of allowing the owners of the speedway to conduct races within the current restrictions.