

The Court notes that ‘covered businesses’ of the Interim Director’s Order include governmental entities regardless of the nature of the service and/or the function it performs. Previous orders exempted ‘essential government functions’ such as first responders, legislators, judges, court personnel, jurors, etc. The current order still contains some of these exclusions, but not for judges, jurors, witnesses or other court participants. A strict reading of the Interim Director’s Order would seem to require all participants in a courtroom proceeding to wear a mask, including the judge, without giving the judge the ability to have a witness or litigant remove that mask as necessary for the efficient conduct of the proceedings.

HOLDING

The Interim Director’s Order is unconstitutional as applied to the Court and the Courthouse.¹

Even assuming the Interim Director’s Order was constitutional, it is overbroad and unnecessary given the Courts’ respective facilities orders already in place.

ANALYSIS

The Interim Director lacks the authority to issue orders with regard to the Courthouse – particularly where these orders conflict with the orders of the Court. It is the judges, not the executive branch of government, who are vested with the inherent power to control the courthouse by judicial order. *See State ex rel. Greene County Board of Commissioners v. O’Diam*, 156 Ohio St.3d 458 (2019); *State ex rel. Bittikofer v. Babst*, 97 Ohio St. 64, 119 N.E. 136 (1917). The Interim Director’s Order claims it is not intended to encroach or interfere with the separation of powers under the Ohio Constitution. However, by not exempting the judges, court personnel, jurors, etc. as was done in the previous orders, the Interim Director has overstepped the authority of the executive branch of government. The elected judges of Warren County have carefully considered, crafted and implemented a plan to continue operations in the current public health crisis. It is not perfect. History may ultimately prove it was unwise. However, a majority of the judges believe it is the best way to proceed. It is not for the Governor, nor his Interim Director, to issue orders that conflict with this plan. Therefore, the Interim Director’s Order is unconstitutional as applied to the Court and the Courthouse.

Additionally, the Court in no way wishes to diminish the significance of the current public health crisis. It is a challenge to the judicial system that has not been seen in the modern era. The precautions taken by the Court are reasonable and proportional to the current situation. Therefore, the Interim Director’s Order is unnecessary and overbroad as it applies to the Court and the Courthouse.

Based on the foregoing, **IT IS HEREBY ORDERED** that while the wearing of masks, face coverings or other personal protective equipment is permitted, perhaps even recommended, in the Courthouse, it is not required unless ordered by the judge or

¹ The Court makes no determination as to the general constitutionality of the Interim Director’s Order as applied to any individual or businesses, as these matters are not before the Court at this time.

magistrate for a specific purpose or for a specific hearing or unless the Court issues a subsequent facilities order making such masks mandatory.

All orders previously issued regarding restrictions for the Court and Courthouse shall remain in full force and effect, unchanged by the Interim Director's Order. Each division of the Court shall continue to issue facilities orders in response to the public health crisis.

This Entry and Order in no way restricts each individual judge or magistrate from making specific orders relative to his or her courtroom or specific proceeding.

IT IS SO ORDERED.



Joseph W. Kirby
Probate/Juvenile Judge



Donald E. Oda II
General Division Judge



Timothy N. Tepe
General Division Judge