

Office of Governor of Ohio :
:
Riffe Center, 30th Floor :
77 South Hight Street :
Columbus, Ohio 43215 :
:
Defendants. :

**COMPLAINT FOR DECLARATORY
JUDGMENT AND IMMEDIATE INJUNCTIVE RELIEF**

On March 9, 2020, Defendant Governor Mike DeWine (the “Governor”) Declared a State of Emergency due to the Covid-19 Pandemic. Nine months after the Governor’s Emergency Declaration, the Ohio Legislature has still not passed any laws addressing the operation of businesses, the wearing of masks or any other restrictions on individuals or businesses during the Covid-19 Pandemic. Rather, contrary to the Ohio Constitution, the Governor has directed all of the many Covid-19 regulations (the “Covid-19 Orders”) over the past nine months through Ohio’s executive branch including, but not limited to, Defendants Stephanie McCloud, in her official capacity as Director of the Ohio Department of Health (the “Department of Health”) and the Ohio Liquor Control Commission (the “Commission”) (the Governor, the Department of Health and the Commission are collectively, “Defendants”).

The various Covid-19 Orders issued by Defendants have been issued without advance notice, published guidelines, or transparency. Rather, the Covid-19 Orders have been issued at the sole discretion of the Governor and his non-elected advisors. The Covid-19 Orders impact every facet of life for Ohioans while causing high unemployment, the loss of business profits, and the loss of Ohio businesses. Despite the obvious negative impact of the Covid-19 Orders, Defendants have provided no compensation to the many Ohioans impacted. Most importantly, the Covid-19 Orders are contrary to Ohio statutory law and were invalidly issued by Defendants.

The Ohio Legislature, in Ohio Revised Code Section 119.03, set forth the statutory authority for the executive branch, including the Department of Health and the Commission, to issue lawful orders. The first statutory permitted method to issue executive branch orders is to follow O.R.C. §119.03(A) and provide the public with advance notice, a hearing, and a right to comment on the proposed order. The second statutory permitted method is through an emergency order issued pursuant to O.R.C. §119.03(G). In both cases, O.R.C. §119.03 requires the lawfully issued order to be published in the Register of Ohio operated by the Ohio Legislative Service Commission.

The Department of Health has issued seventy-eight (78) orders without any public notice, legislative authorization, or emergency declaration. The Department of Health has not issued its orders pursuant to Section 119.03(G). The simple reason for this decision is that the Ohio Legislature would have taken control of the Covid-19 restrictions from the Governor in July, 2020 had the Governor followed Section 119.03(G) -- one-hundred and twenty days after the Department of Health's first order issued on March 14, 2020. O.R.C. §119.03(G). Rather, the Department of Health has acted pursuant to its claimed authority under Section 3701.13. Ohio's legislature never granted the Department of Health authority to issue seventy-eight orders severely impacting Ohio businesses. The best evidence of this fact -- none of the Department of Health's 2020 orders have been filed with the Ohio Legislative Services Commission, a requirement for any agency rule implemented pursuant to O.R.C. §119.03.

Most recently, the Department issued a quarantine order for "all individuals currently residing within the State of Ohio stay at home or at their place of residence during the hours of 10:00 p.m. until 5:00 a.m. except as otherwise expressly permitted by this Order." As with the Department's prior Covid Orders, the Department's November 19, 2020 Order is not on the

Register of Ohio. However, more than 100 validly issued Department orders issued in 2020 are listed on the Register of Ohio. None of these validly issued Department orders relate to Covid-19.

As evidence of the unlawful nature of the Department of Health's Covid-19 Orders, the Governor has taken an entirely different route with the Commission. As to the Commission, the Governor issued an emergency order in April, 2020 pursuant to O.R.C. §119.03(G). The Commission's power to act on liquor permits through emergency orders, however, ended no later than 120 days after the April Covid-19 Order was issued. Neither the Governor nor the Attorney General have explained why the Commission needs an emergency order to act without public notice, but the Department of Health does not need such an emergency order.

In July, 2020, facing litigation across the state, the Governor made the decision to follow other states and ban alcohol sales after 10:00 p.m. The Governor did not issue another Department of Health Order as he did in March. Rather, the Governor sought to implement the ban through local government. However, in late July, the Franklin County Court of Common Pleas enjoined the City of Columbus' 10:00 ban. Due to this action, the Governor again sought to utilize O.R.C. §119.03(G) to grant the Commission the power to act. The Governor's action, and the Commission's subsequent action, violate Ohio law. No emergent situation existed in July, 2020 – seven months after the Governor was notified of Covid-19. In addition, the action violated the plain terms of O.R.C. §119.03(G).

Rule 4301:1-1-80 was effective July 31, 2020. Pursuant to O.R.C. §119.03(G) and the Governor's Executive Order, Rule 4301:1-1-80 expired on November 28, 2020. O.R.C. §119.03(G) does not permit the Governor to amend or extend Rule 4301:1-1-80. This lawsuit seeks a declaration that prohibits the Department of Health, the Commission or the Governor

from further violating O.R.C. §119.03(G) by seeking to prohibit liquor sales or criminalizing social distancing after November 28, 2020. However, in violation of Section 119.03, the Governor simply extended the Commission's rule by implementing a 10:00 p.m. curfew through the Department of Health. This Order, as with the prior Department of Health Covid-19 Orders, is unlawful.

This lawsuit arises out of the drastic, prolonged and pointed impact that Ohio's restaurants and bars have felt due to the Defendants' Covid-19 Orders. With no medical evidence supporting their actions, Defendants have focused the Covid-19 Orders on the most local of Ohio's business community – restaurants and bars. On March 15, 2020, days after the Emergency Declaration was issued, without any advance notice, the Department of Health limited bars and restaurants to carry-out and delivery sales. On May 14, 2020, nearly two months later, onsite dining was permitted by a Department of Health order. On June 5, 2020, nearly three months after the emergency was declared by the Governor, Ohio bars were permitted to reopen. However, not satisfied with social distancing, masks and other safety measures, the Governor issued an executive order that limits liquor sales to no later than 10:00 p.m. on July 31, 2020. The current restrictions – no liquor sales after 10:00 p.m., masks for employees and patrons, six foot distancing, and other Covid-19 restrictions – stayed in place until November 28, 2020. However, not willing to follow O.R.C. §119.03, the Governor issued a new Department of Health order that imposes a 10:00 p.m. curfew that further impacts Ohio's bars and restaurants. The Department of Health order – as with other similar orders – was not issued through an emergency declaration or public notice. Most importantly, no Ohioan – aside from the Governor – will have a say in when the Emergency will be revoked or what factors the Governor will consider when revoking the Emergency.

Defendants' executive orders, emergency orders, and non-hearing, non-public notice Covid-19 orders are unlawful, arbitrary and capricious. Plaintiffs are restaurants and bars severely damaged by these arbitrary and unlawful executive orders. For their Complaint for Declaratory Judgment and Immediate Injunctive Relief against Defendants, Plaintiffs aver as follows:

THE PARTIES

1. West End Inn and Pizza, LLC, DBA West End Pizza ("West End Pizza") is a family-owned business located in Carroll County, Ohio.
2. West End has operated in Malvern, Ohio for fifty-five years.
3. West End has been a family-owned, Carroll County based business for its entire existence.
4. West End is a well-known for its pizza and chicken.
5. West End has a full bar and a liquor permit.
6. West End's revenue and profits have been significantly impacted by the Covid-19 Orders.
7. W.6 Restaurant Group LTD. (the "Barley House") operates the Barley House, a bar located in downtown Cleveland.
8. The Barley House has a liquor license.
9. The Barley House is the foundation of the Cleveland Warehouse District.
10. The Barley House built its reputation as being the best nightlife in Cleveland.
11. The Barley House recently was selected for the Nightclub & Bar Top 100 List in America.

12. The Barley House was the first Ohio establishment to be selected for the Nightclub & Bar Top 100 List in America.

13. The Barley House also serves food and it has been awarded for the best lunch spot in Downtown Cleveland.

14. As to the nightlife, the Barley House has received five awards as the best dance club, an award for the best spot to watch the Cleveland Browns' football games, awards for the best dance club, and a Lux hospitality award for night club of the year.

15. The Covid-19 Orders have significantly impacted the Barley House's business model.

16. The Barley House' revenue and profits have been significantly impacted by the Covid-19 Orders.

17. Barley House has also been victimized by the arbitrary and subjective social distancing rules enforced by the Commission.

18. Scale Entertainment LLC operates Vivid Cocktail Lounge ("Vivid") in Maple Heights, Ohio.

19. Vivid opened in 2018 after its owners followed their dreams to open and operate their own business.

20. Vivid is a full-service bar and restaurant offering guests a wide-array of entertainment options.

21. As with the other Plaintiffs, Vivid is a strong member of the community.

22. Vivid is offering free Thanksgiving meals to the local community despite the impact of the Covid-19 Orders.

23. Vivid's revenue and profits have been significantly impacted by the Covid-19 Orders.

24. Vivid has also been victimized by the arbitrary and subjective social distancing rules enforced by the Commission.

25. Plaintiffs have also been damaged by the impact of the Covid-19 Orders on other events and activities that drive business to the two locations.

26. Plaintiffs are similarly-situated to other Ohio bars and restaurants significantly impacted by the Covid-19 Orders.

27. The Governor is the top elected official in Ohio.

28. The Governor manages Ohio's executive branch, including the Commission and the Department of Health.

29. The Governor has the power to issue executive orders of a limited fashion pursuant to the Ohio Constitution.

30. Recognizing the limitation on his executive orders, but wanting to maintain complete control over Ohio's response to the Covid-19 Pandemic, the Governor has utilized the Executive Branch to act on his behalf.

31. The State has admitted, in prior lawsuits, that the Governor has directed and implemented all Covid-19 Orders.

32. The State has admitted, in prior lawsuits, that the input, if any, provided to the Governor when implementing the Covid-19 Orders is private and from individuals selected by the Governor.

33. In other Ohio lawsuits involving the Covid-19 Orders, the Ohio Attorney General has confirmed that all Covid-19 Orders have been implemented with the Governor's advice, direction, and consent.

34. The Department of Health has been the primary avenue for the Governor to implement his Covid-19 Orders.

35. During the course of the Covid-19 pandemic, until June 11, 2020, the Department of Health was led by Amy Acton.

36. On June 11, 2020, Amy Acton announced her resignation from the Department of Health and Governor DeWine appointed Lance Himes as Interim Director of the Ohio Department of Health.

37. Amy Acton's Covid-19 regulatory power – granted to her by the Governor – was retained when she moved to the Governor's Office.

38. Himes is not a physician, but rather an attorney who has acted as General Counsel for the Department of Health during the Covid-19 pandemic. Himes has since been replaced by Defendant Stephanie McCloud. Like Himes, McCloud is not a physician, but rather an attorney.

39. Multiple Ohio courts, including this Court, have held that the Department of Health's Covid-19 Orders have violated the law and overstepped the Department of Health's powers under Ohio law.

40. Defendants have ignored the Ohio orders except to the extent they control individual plaintiffs.

41. Defendants' Covid-19 Orders run contrary to the Ohio cases finding the Covid-19 Orders invalid.

42. The Commission is an adjudication and rulemaking agency that oversees the alcohol beverage industry.

43. The mission of the Commission is to ensure compliance with the liquor laws and regulations of the state of Ohio and to provide fair and impartial hearings for the protection of the public and liquor permit holders.

44. The Commission is comprised of three Commissioners appointed by the Governor for six-year terms.

45. Until the Covid-19 Pandemic, although appointed by the Governor, the Commission acted independently and focused on liquor permit holders.

46. During the Covid-19 Pandemic, the Governor has directed the Commission on all Covid-19 Orders and actions.

47. The Governor has utilized the Department of Health and the Commission to restrict Ohio's bars and restaurants.

48. This lawsuit arises out of the Governor's improper use of Ohio's executive branch to close and restrict Ohio businesses.

49. Despite having seven months to present medical evidence to the Ohio Legislature to support the Covid-19 restrictions, the Governor has not sought legislative action to confirm or enforce the Covid-19 Orders.

50. Rather, the Governor has sought total control and absolute discretion over all Covid-19 Orders since March 1, 2020.

51. In fact, the Governor and the Department of Health have made clear that they intend to continue their current discretionary control – without legislative involvement – into 2021 and beyond.

52. Defendant Stephanie McCloud is being sued in her official capacity.

53. The Governor is being sued in his official capacity.

JURISDICTION AND VENUE

54. This is an action for declaratory judgment, and preliminary and permanent injunction, pursuant to Ohio Revised Code Chapters 2721 and 2727, arising from Defendants' unconstitutional official conduct, policies, practices, regulations, restrictions, threats, intimidation, and harassment.

55. Defendants have knowingly acted in violation of Ohio's Constitution to implement and enforce the Covid-19 Orders.

56. Defendants have knowingly violated Ohio Revised Code Section 119.03 in issuing the Covid-19 Orders.

57. Ohio's Executive Branch has limited powers under Ohio's Constitution.

58. Defendants have focused the Covid-19 Orders to have an outweighed impact on Ohio's restaurants and bars.

59. Defendants' orders have significantly impacted Ohio's restaurants and bars.

60. Without action from Ohio's courts or legislatures, Ohio's restaurants and bars are at risk of further closure, improper oversight by the State, and operation of a business in an ever changing framework of Covid-19 Orders.

61. The Governor and the Department of Health were given notice of the Covid-19 pandemic in January, 2020.

62. Despite this advance notice, the Governor has not sought legislative action with respect to the Covid-19 Orders over the ten months since this notice.

63. Rather, the Governor has sought to have total discretion and control over all Covid-19 Orders by utilizing his office and the Executive Branch.

64. The Governor has acted as the Director of the Department of Health during the Covid-19 pandemic.

65. All Department of Health orders are reviewed, directed and approved by the Governor.

66. The Governor has authority under O.R.C. §119.03(G) to grant the Department of Health authority to issue emergency orders.

67. To date, the Governor has not exercised this authority under O.R.C. §119.03(G) with respect to the Department of Health.

68. Rather, the Department of Health and the Governor have issued over sixty-five orders that exceed the Department of Health's authority.

69. The Department of Health's orders are contrary to Ohio law.

70. The Department of Health's orders are contrary to the Ohio and federal constitutions.

71. Unlike the Department of Health, the Governor has directed the Commission to utilize O.R.C. §119.03(G) on two occasions.

72. The Commission's utilization of O.R.C. §119.03(G) on two occasions to address liquor licenses is unlawful.

73. The Governor's second utilization of O.R.C. §119.03(G) for the Commission resulted form a decision from another Ohio court.

74. Recognizing the push from Ohio courts on his executive powers during the Covid-19 Pandemic, the Governor sought a different avenue in July, 2020 in order to follow other state's restrictions on restaurants and bars.

75. Without an emergency or request from the Commission, the Governor requested the Commission to seek authority from the Governor to implement an "emergency" rule.

76. The emergency declaration confirms the unlawful orders issued by the Department of Health.

77. The Commission's emergency declaration is contrary to its legislative powers, O.R.C. §119.03(G), the Ohio Constitution, and the federal Constitution.

78. Ohio courts have recognized the excess authority that the Governor and the Department of Health has sought to implement and enforce during the Covid-19 pandemic.

79. This Court has recognized the unlawful orders implemented by the Governor and has ordered at least one business to be permitted to reopen.

80. However, despite clear and direct orders of Ohio courts addressing the limited authority of the Department of Health, the Governor and the Department of Health have continued its efforts to destroy Ohio's economy unabated.

81. This Court has personal jurisdiction over Defendants because Defendants' various Covid-19 Orders apply to Carroll County, Ohio and to Plaintiffs.

82. Plaintiffs West End and Lakeside operate restaurants and bars in Carroll County, Ohio.

83. The Covid-19 Orders have severely impacted the operations, revenue and profits of Lakeside and West End.

84. In a prior lawsuit in this Court, the Department and the Governor conceded venue is appropriate in Carroll County, Ohio to challenge Covid-19 Orders.

85. However, it is expected that Defendants will argue that the Commission can only be sued in Franklin County, Ohio.

86. The Commission can be sued in Carroll County, Ohio because the Governor, not the Commission, has directed the Covid-19 Orders.

87. The Department presented Exhibit A-7 in the prior lawsuit that is attached to this Complaint.

88. Exhibit A-7 set forth Ohio Covid-19 Decision Making Process.

89. The Covid-19 Orders are directed by the Governor, not the Commission, the Department or any other executive branch.

90. In fact, Exhibit A-7 explicitly provides that the Governor makes the decisions on closure and reopening decisions.

91. The Governor is not permitted to take different positions in litigation addressing the same issue.

92. The Commission did not investigate the Covid-19 Pandemic and the Commission did not retain any independent experts.

93. Accordingly, if the Commission takes the position that it made the decisions on its two 2020 emergency orders, those orders fail as a matter of law because the Commission has no medical evidence or expertise to make those decisions.

94. Accordingly, venue is proper in this Court.

95. Plaintiffs are at risk of closing if the Covid-19 Orders are not lifted.

96. This Court is the proper venue for this matter because the conduct giving rise to this Lawsuit occurred in Carroll County, Defendants are regulating restaurants and bars within Carroll County, and Plaintiffs' claims for relief arose within Carroll County.

**THE SCOPE AND RIGHTS OF OHIO
LIQUOR LICENSES IS A POWER RESERVED TO THE
OHIO LEGISLATURE**

97. Ohio's Legislature has exclusive control over the issuance and rights of liquor licenses under Ohio law.

98. The mission of the Commission is to ensure compliance with the liquor laws and regulations of the state of Ohio and to provide fair and impartial hearings for the protection of the public and liquor permit holders.

99. The Commission cannot issue new liquor permits, restrict rights of liquor permits inconsistent with Ohio law, or change Ohio law applicable to liquor permits.

100. The Ohio Legislature set forth the Commission's powers in ORC §4301.03.

101. The Commission may adopt and promulgate, repeal, rescind, and amend, in the manner required by this section, rules, standards, requirements, and orders necessary to carry out this chapter and Chapter 4303.

102. In order to issue new rules, the Commission has published OAC 4301-7 Public Notice of Hearings.

103. OAC 4301-7 adopts the notice requirements of ORC §119.03.

104. During the Covid-19 Pandemic, consistent with Ohio's legislative scheme, House Bill 674 was introduced which sought to establish or expand outdoor drinking areas, permit voters to allow 24-hour liquor sales, and ban authorities from revoking the liquor license of a bar or restaurant that violated Ohio's coronavirus orders before June 1.

105. The Ohio Senate is now considering legislation to repeal the Commission's emergency Covid-19 Order because it violates Ohio Revised Code §4303.

106. The Legislature's actions with respect to the Commission during the Covid-19 Pandemic verify that liquor permits, and the rights of holders of those holding liquor permits, are under the purview of the Legislature.

107. The Governor's executive orders issued through the Commission have violated Ohio law and are inconsistent with Ohio Revised Code §4303.

108. Rule 4301:1-1-80 was effective July 31, 2020 and it expired on November 28, 2020.

109. Pursuant to O.R.C. §119.03(G) and the Governor's Executive Order, Rule 4301:1-1-80 cannot be extended or amended.

110. Without public notice, the Commission can no longer enact or enforce any new Covid-19 Orders.

**DEFENDANTS HAVE EXCEEDED THEIR
RULE-MAKING POWER AND HAVE CONTINUED TO
ISSUE ORDERS THAT RUN DIRECTLY CONTRARY TO
DECISIONS ISSUED BY OHIO COURTS**

111. The Legislative Service Commission ("LSC") is a nonpartisan agency providing the Ohio General Assembly with drafting, research, budget and fiscal analysis, training, and other services.

112. One of LSC's duties is to maintain the Register of Ohio.

113. The Register of Ohio was first published by LSC on July 3, 2000.

114. The Register of Ohio is established under the Register of Ohio Act (Ohio Revised Code sections 103.051 to 103.054 and 119.037 to 119.039) and other related Ohio statutes enacted by Am. Sub. S.B. 11 of the 123rd General Assembly. That legislation intends for the

Register to be “an electronic publication that functions as a gazette to which members of the public may readily resort for notice of and information about rule-making processes.”

115. Executive branch orders issued lawfully under O.R.C. §119.03 are required to be published in the Register of Ohio.

116. The Register of Ohio permits Ohio citizens to search orders lawfully issued by the executive branch through an online search tool.

117. Relevant to the Covid-19 Orders, the Department of Health’s power and authority is set forth in Ohio Revised Code Section 3701.13.

118. In ORC § 3701.13, the Ohio Legislature provided the Director of Health with the power to “administer the laws relating to health and sanitation and the rules of the department of health.”

119. ORC §3701.56 provides that “police officers” and other state and local agencies have the power to enforce “the rules the department of health adopts.”

120. In ORC §119.03, the Ohio Legislature set forth the process for the “adoption, amendment, or rescission of any rule” that is implemented by the Department of Health or other state administrative agencies.

121. ORC §119.03(A) requires a public notice and a hearing prior to the adoption of administrative rules.

122. ORC §119.03(G)(1) permits the emergency adoption of rules, but the Governor has to issue a proper order to give notice of the use of this emergency provision and the emergency rule becomes “invalid at the end of the one hundred twentieth day it is in effect.”

123. Consistent with ORC §119.03, the Department of Health has promulgated Section 3701-51-01 of the Administrative Code that sets forth the public notice requirements for

the Department of Health to “adopt, amend, or rescind a rule pursuant to section 119.03 of the Revised Code. . . .” OAC 3701-51-01(A).

124. OAC 3701-51-01 requires the Department of Health to issue public notices and a public hearing prior to the adoption, amendment or rescission of Department of Health rules.

125. The Ohio Administrative Code includes eighty-six chapters of regulations adopted by the Department of Health, including OAC 3701-3 that addresses Communicable Diseases.

126. The Department of Health has not provided notice pursuant to OAC 3701-51-01 with respect to any of its 2020 Covid-19 Orders.

127. The Governor issued Executive Order 2020-01D on March 9, 2020 that declares a State of Emergency relating to Covid-19.

128. In the early stages of the Covid-19 pandemic, the Governor granted requests from a variety of executive agencies to issue emergency orders pursuant to ORC §119.03(G)(1).

129. The Governor’s emergency declarations permitted the Ohio Department of Job and Family Services, the Ohio Department of Mental Health and Addiction Services, Ohio Department of Medicaid, Ohio Department of Developmental Disabilities, Ohio Department of Aging, Ohio Department of Mental Health and Addiction Services, and the Liquor Control Commission to issue emergency orders pursuant to ORC §119.03.

130. The Department of Health has never requested the Governor to permit it to issue emergency orders pursuant to ORC §119.03(G)(1).

131. The Governor has never granted the Department of Health the power to issue emergency orders pursuant to ORC §119.03(G)(1).

132. The Department of Health has not complied with OAC 3701-51-01(A) when issuing its many Covid-19 Orders.

133. The Department of Health has not complied with ORC §119.03.

134. Consistent with the Department of Health's violation of ORC §119.03 and OAC 3701-51-01(A), the Department of Health has not published any of the Covid-19 Orders in the Register of Ohio.

135. An online search of the Register of Ohio confirms that none of the many Covid-19 Orders issued by the Department of Health are included in the Register of Ohio.

136. The Department of Health's Covid-19 Orders are not included in the Register of Ohio because they were not lawfully issued by the Governor and the Department of Health.

137. The Department of Health has clearly violated its power and authority granted to it by the legislature, but Ohio's legislature and Attorney General have stood by and permitted the Department of Health to unlawfully deprive Ohioans of their property in the name of purported safety.

138. Unlike the Department of Health, the Commission's two Covid-19 Orders are published in the Register of Ohio.

139. Both of the Covid-19 Orders issued by the Commission were emergency orders issued pursuant to ORC §119.03(G)(1).

140. Emergency orders are only in effect for up to One Hundred and Twenty Days.

141. Due to the limited timeframe of emergency orders, ORC §119.03(G)(1) provides that "the emergency rule, amendment, or rescission shall become invalid at the end of the one hundred twentieth day it is in effect."

142. ORC §119.03(G)(1) further provides that prior to the 120th day, “the agency may adopt the emergency rule, amendment, or rescission as a nonemergency rule, amendment, or rescission by complying with the procedure prescribed by this section for the adoption, amendment, and rescission of nonemergency rules.”

143. However, ORC §119.03(G)(1) makes clear that “[t]he agency shall not use the procedure of division (G)(1) of this section to readopt the emergency rule, amendment, or rescission so that, upon the emergency rule, amendment, or rescission becoming invalid under division (G)(1) of this section. . . .”

144. Accordingly, once an emergency order is issued on a topic, the Governor cannot lawfully reissue, amend or rescind rules on the same topic through ORC §119.03(G)(1).

145. The first Covid-19 Order issued with respect to Ohio’s bars and restaurants was a Department of Health Order issued on March 15, 2020.

146. On March 15, 2020, Ohio’s bars and restaurants were closed or significantly limited in operation without advance notice, opportunity to be heard or compensation.

147. The March 15, 2020 Department of Health Order violated Ohio law.

148. The March 15, 2020 Department of Health Order was not published in the Register of Ohio.

149. Recognizing the Department of Health’s inability to regulate Ohio liquor licenses, the Governor issued Executive Order 2020-10D to grant the Commission emergency powers to prohibit all permit holders from selling alcohol to be consumed on-premises.

150. The Commission issued OAC 4301:1-1-13 in response to the Governor’s order.

151. OAC 4301:1-1-13 is published in the Register of Ohio.

152. OAC 4301:1-1-13 is inconsistent with Ohio law and was only issued due to legal, not emergency reasons.

153. On April 30, 2020, the Department of Health issued an Order that reopened some Ohio businesses.

154. The April 30, 2020 Department of Health order did not reopen Ohio's restaurants and bars.

155. On May 14, 2020, the Department of Health issued another order that reopened Ohio's restaurants and bars with significant restrictions.

156. The restrictions imposed on Ohio's bars and restaurants were not lawfully implemented by the Governor and the Department of Health.

157. Since May 14, 2020, the Department of Health has continued to issue orders that negatively impact Ohio's restaurants and bars.

158. In July, 2020, OAC 4301:1-1-13 had been rescinded and it would have expired under the terms of Ohio Revised Code §119.03(G).

159. In July, 2020, following the lead of other states, the Governor sought to limit the hours of Ohio's liquor sales through coordinating legislative efforts through Ohio cities.

160. The Governor understands that the Department of Health could not restrict liquor permits.

161. The Governor recognized that the Commission could not issue another emergency order due to Ohio Revised Code §119.03(G).

162. However, the Franklin County Court of Common Pleas enjoined the City of Columbus' restriction on liquor permit holders.

163. Immediately following the issuance of the Franklin County order, the Governor reversed course and again utilized ORC §119.03(G)(1).

164. The Governor asked the Commission to utilize ORC §119.03(G)(1) in violation of the plain language of ORC §119.03(G)(1).

165. No emergency existed in July, 2020.

166. The Governor and the Commission unlawfully issued 4301:1-1-80.

167. OAC 4301:1-1-80 addresses the same topic of the Commission's prior emergency Covid-19 Order.

168. OAC 4301:1-1-80 violates ORC §119.03(G)(1).

169. Defendants knowingly violated ORC §119.03(G)(1) in order to maintain the Governor's discretionary and unfettered control over Ohio's bars and restaurants.

170. The Attorney General is obligated to take action when a state agency takes actions in violation of the Ohio Constitution.

171. The Attorney General's published moto is "protecting the unprotected." However, despite the Department of Health clearly violating its powers granted to it by the legislature, the Attorney General has wholly failed to protect the unprotected.

172. The Attorney General is conflicted to support Defendants' Covid-19 Orders because the Covid-19 Orders are in clear violation of Ohio law.

173. The Attorney General should be asserting this cause of action to stop the unlawful Covid-19 Orders.

174. The only avenue for Ohio citizens and businesses to challenge the Covid-19 Orders is through Ohio Courts. Defendants have provided no review process, no administrative

ability to challenge the Defendants' taking of property, and absolutely no scientific or medical evidence to support the broad Covid-19 Orders.

175. In fact, despite months of quarantine and what seems to be an unlimited budget, the Department of Health was unable to provide any medical or scientific evidence to the Erie County Court of Common Pleas to support its Covid-19 Directives in June of 2020.

176. Most recently, on November 19, 2020, the Department further harmed Ohio's bars and restaurants by issuing a quarantine for all Ohio residents as of 10:00 p.m.

177. The November 19, 2020 Department of Health order was issued in order to further circumvent O.R.C. §119.03.

178. As with prior Department Covid-19 Orders, the November 19, 2020 Order is not listed on the Register of Ohio.

179. As with prior Department Covid-19 Orders, the November 19, 2020 Order was not issued pursuant to an emergency declaration or public notice as required by O.R.C. §119.03.

180. One would expect that if a state agency was depriving citizens of property rights and their livelihoods that the agency would have evidence to support its decisions. The Department of Health is clearly operating for motives unrelated to the safety of Ohio residents. Rather, the Department of Health is seeking to usurp the power of parents, to pick and choose economic winners, and to hamper the Ohio economy to the detriment of Ohio's taxpayers.

181. Multiple Ohio Courts of Common Pleas have reviewed the Department of Health's Covid-19 Orders and concluded that the Department of Health has violated the Ohio Constitution.

182. The first decision, issued by the Lake County, Ohio Court of Common Pleas, addressed the issue of whether the Department of Health's Directives issued as of May 20, 2020 violated the Ohio Constitution.

183. On May 20, 2020, the Lake County Court of Common Pleas issued an injunction preventing the Department of Health "from imposing or enforcing penalties solely for non-compliance with the director's order against" gymnasiums, health clubs, fitness centers, gyms and workout facilities.

184. Relevant to this lawsuit, the Lake County Court of Common Pleas reviewed the legislation granting the Department of Health authority to respond to Covid-19 and held that the "movants have shown a strong or substantial likelihood or probability of success."

185. The Lake County Court of Common Pleas reviewed the plain language of Ohio Revised Code Section 3701.13, the statute cited by the Department of Health for the issuance of the Covid-19 Director's Orders. The Lake County Court of Common Pleas held that Ohio Revised Code Section 3701.13 does not grant the Department of Health the power to close Ohio businesses for more than fourteen days:

The director has quarantined the entire people of the state of Ohio, for much more than 14 days. The director has no statutory authority to close all businesses, including the plaintiffs' gyms, which she deems non-essential for a period of two months. She has acted in an arbitrary, unreasonable, and oppressive manner and without any procedural safeguards.

186. Despite the broad language of the Lake County order and the plain language of the statutory power of the Department of Health, the Department of Health did not change its course following the Lake County order.

187. On June 12, 2020, the Erie County, Ohio Court of Common Pleas issued a second injunction against the Department of Health.

188. The Erie County Court of Common Pleas issued a judgment entry ordering the Department of Health to permit Kalahari swim park to reopen.

189. Relevant to this lawsuit, the Erie County Court of Common Pleas also reviewed Ohio Revised Code Section 3701.13, the statutory authority that the Director's Orders are based upon. The Erie County Court of Pleas held that:

a literal reading of R.C. §3701.13 reveals that it does *not* state Defendant Acton has 'the authority to make special orders for preventing the spread of contagious or infectious disease.' Thus, her citation to that statute is misplaced, and the validity of the May 29th Order – on its face – is questionable.

190. The Erie County Court of Common Pleas held that "an unelected official, not accountable to the citizens" of Ohio has no power to close Ohio businesses for months.

191. Based on the plain language of RC. §3701.13, the Erie County Court of Common Pleas held that the plaintiffs had "shown by clear and convincing evidence that there is a likelihood or probability of success of prevailing on the merits of their underlying claim/action."

192. Despite the decisions of the Erie and Lake County Court of Common Pleas and the plain language of Ohio Revised Code Section 3701.13, the Department of Health continues to issue Directives based solely on Ohio Revised Code Section 3701.13.

193. Defendants have knowingly violated Ohio law by issuing the Covid-19 Orders.

OHIO'S BARS AND RESTAURANTS

194. Defendants' Covid-19 Orders have treated Ohio's bars and restaurants differently than other Ohio businesses without medical evidence, evaluation, or public discussion.

195. Ohio's bars and restaurants were closed before any other Ohio business.

196. Plaintiffs are two prime examples of the local nature of Ohio's bars and restaurants.

197. Plaintiffs invest in Ohio and employ Ohioans.

198. Shutting down Ohio's restaurants and bars without advance notice caused severe financial impact on Ohioans.

199. The Department of Health has never sought public input from Ohio's bars and restaurants on Covid-19.

200. The Commission has never sought public input from liquor permit holders to address Covid-19.

201. Defendants have improperly utilized their police powers to enforce the unlawful Covid-19 Orders.

202. Defendants utilize undercover activities, significant manpower, public reprimands, and extreme sanctions to improperly enforce the unlawful Covid-19 Orders.

203. The 10:00 p.m. alcohol rule set forth in OAC 4301:1-1-80 is not based on medical evidence.

204. OAC 4301:1-1-80 was not issued under emergent circumstances.

205. OAC 4301:1-1-80 has significantly impacted Ohioans and Ohio's restaurants and bars.

206. The Commission has no authority to enact and enforce rules regarding social distancing.

207. The Commission's social distancing rules are enforced in an arbitrary, capricious and subjective manner.

208. Knowing OAC 4301:1-1-80 expires on November 28, 2020, the Governor directed the Department to issue the 10:00 p.m. quarantine order on November 19, 2020.

209. The quarantine order unlawfully extends and amends OAC 4301:1-1-80.

210. Without injunctive relief, Plaintiffs will continue to suffer significant and irreparable harm.

211. Without injunctive relief, Plaintiffs are at risk of losing their liquor licenses.

212. Without injunctive relief, Plaintiffs and other restaurants and bars are at risk of closing due to the arbitrary nature of Defendants' Covid-19 Orders.

INJUNCTIVE RELIEF SHOULD BE GRANTED

213. This Court has sound discretion in determining whether to grant injunctive relief.

214. The Court of Appeals will not reverse this Court's decision on an injunction absent an abuse of discretion.

215. As the party requesting the preliminary injunction, Plaintiffs must prove, by clear and convincing evidence, that (1) there is a substantial likelihood that Plaintiffs will prevail on the merits, (2) Plaintiffs will suffer irreparable injury if the injunction is not granted, (3) no third parties will be unjustifiably harmed if the injunction is granted, and (4) the public interest will be served by the injunction.

216. Plaintiffs have a substantial likelihood of prevailing on the merits.

217. Defendants have exceeded their legislative authority by issuing the Covid-19 Orders.

218. Defendants have no medical evidence to support their significant restrictions on Ohio's bars and restaurants.

219. The various orders the Department of Health, together with their enforcement, violate the fundamental rights of Ohioans through the arbitrary imposition of excessive strict liability, together with criminal, civil, and equitable sanctions unilaterally created by just one unelected individual within the bureaucracy of the State of Ohio — without due process, equal

protection, or just compensation and *irrespective of safety*, and in violation of the doctrine of separation of powers.

220. The two orders the Commission, together with their enforcement, violate the fundamental rights of Ohioans through the arbitrary imposition of excessive strict liability, together with criminal, civil, and equitable sanctions unilaterally created by just one unelected individual within the bureaucracy of the State of Ohio — without due process, equal protection, or just compensation and *irrespective of safety*, and in violation of the doctrine of separation of powers.

221. In addition, if injunctive relief is not granted, Plaintiffs will suffer irreparable harm.

222. Plaintiffs are at risk of closing and/or losing their liquor permits through Defendants' arbitrary Covid-19 Orders.

223. Finally, because the risk of harm from Covid-19 is so slight to those utilizing Ohio's bars and restaurants, if the injunction is granted the public interest will be served by the injunction.

224. Ohioans and Ohio businesses should make decisions on how to stay safe during the Covid-19 Pandemic.

225. After seven months of Covid-19 restrictions, the Ohio Legislature, who answer directly to Ohioans, should direct the Covid-19 Orders.

226. The Governor should be directed to obtain legislative approval for the Covid-19 Orders.

227. Without injunctive relief, the Governor will continue to exercise unfettered discretion into 2021 with respect to Covid-19 Orders.

228. Without this Court's involvement, the Ohio legislature and Attorney General will continue to sit aside and permit the Department of Health to unlawfully take property and parental decisions from Ohioans.

COUNT I
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

LACK OF AUTHORITY TO ISSUE THE COVID-19 ORDERS

229. Plaintiffs incorporate paragraphs 1 through 228 of the Complaint as if fully rewritten.

230. The Department of Health has not issued its Covid-19 Orders consistent with Ohio Revised Code Section 119.03.

231. The Commission has not issued its Covid-19 Orders consistent with Ohio Revised Code Section 119.03.

232. Defendants have not issued their Covid-19 Orders consistent with Ohio Revised Code Section 119.03.

233. The Covid-19 Orders violate the Ohio Constitution.

234. The Covid-19 Orders are invalid as a matter of law because they do not comply with Ohio Revised Code Section 119.03.

235. In order to prevent the continued violation of Plaintiffs' rights by Defendants, it is appropriate and proper that a declaratory judgment be issued, declaring unconstitutional the Covid-19 Orders.

236. It is further appropriate and hereby requested that preliminary and permanent injunctions be issued prohibiting the Defendants from enforcing the Covid-19 Orders on Plaintiffs and other similarly-situated restaurants and bars.

237. It is further appropriate and hereby requested that preliminary and permanent injunctions be issued enjoining Defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction, from engaging in any further official conduct that threatens, attempts to threaten, and/or actually interferes with Plaintiffs' occupation and operation of their private property despite their disfavored identity.

COUNT II
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

**THE COMMISSION'S SOCIAL DISTANCING RULES
ARE ARBITRARILY ENFORCED**

238. Plaintiffs incorporate paragraphs 1 through 237 of the Complaint as if fully rewritten.

239. The Commission does not have authority to implement social distancing rules.

240. The Commission's social distancing rules are enforced in an arbitrary, capricious and highly subjective matter.

241. The Commission is selectively enforcing the social distancing rules.

242. The social distancing rules violate the Ohio Constitution.

243. The social distancing rules are invalid as a matter of law because they do not comply with Ohio Revised Code Section 119.03.

244. In order to prevent the continued violation of Plaintiffs' rights by Defendants, it is appropriate and proper that a declaratory judgment be issued, declaring unconstitutional the social distancing rules.

245. It is further appropriate and hereby requested that preliminary and permanent injunctions be issued prohibiting the Defendants from enforcing the social distancing rules on Plaintiffs and other similarly-situated restaurants and bars.

246. It is further appropriate and hereby requested that preliminary and permanent injunctions be issued enjoining Defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction, from engaging in any further official conduct that threatens, attempts to threaten, and/or actually interferes with Plaintiffs' occupation and operation of their private property despite their disfavored identity.

COUNT III
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

**DEFENDANTS MUST CEASE ENFORCING COVID-19 RESTRICTIONS AS OF
NOVEMBER 28, 2020 ON BARS AND RESTAURANTS AND THE DEPARTMENT
CANNOT EXTEND THE COMMISSION'S RULES, IN WHOLE OR IN PART, PAST
NOVEMBER 28, 2020**

247. Plaintiffs incorporate paragraphs 1 through 246 of the Complaint as if fully rewritten.

248. Ohio Revised Code Section 119.03 only permits the Commission's Covid-19 Order to be valid until November 28, 2020.

249. Ohio Revised Code Section 119.03 does not permit Defendants to amend or extend the Commission's Covid-19 Orders after November 28, 2020.

250. The Department of Health unlawfully extended the Commission's order past November 28, 2020 by issued a new Covid-19 Order in November, 2020.

251. As with prior Covid-19 Orders, the Department of Health's November, 2020 Order was not issued pursuant to an emergency declaration or public notice.

252. The Commission’s emergency declaration and the Department of Health’s order extending the Commission’s rule violation O.R.C. §119.03.

253. In order to prevent the continued violation of Plaintiffs’ rights by Defendants, it is appropriate and proper that a declaratory judgment be issued, declaring that Ohio’s bars and restaurants may operate at all hours normally permitted under Ohio law as of November 28, 2020.

254. It is further appropriate and hereby requested that preliminary and permanent injunctions be issued prohibiting the Defendants from enforcing the Covid-19 Orders on Plaintiffs and other similarly-situated restaurants and bars after November 28, 2020.

255. It is further appropriate and hereby requested that preliminary and permanent injunctions be issued enjoining Defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction, from engaging in any further official conduct that threatens, attempts to threaten, and/or actually interferes with Plaintiffs’ occupation and operation of their private property despite their disfavored identity.

COUNT IV
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

VAGUENESS AND SEPARATION OF POWERS
ARTICLE 1, SECTIONS 1, 2, 16, 19 AND 20 AND
ARTICLE II, SECTION I OF THE OHIO CONSTITUTION

256. Plaintiffs incorporate paragraphs 1 through 255 of the Complaint as if fully rewritten.

257. Ohio Revised Code Section 119.03 sets forth the two manners in which the Commission and the Department of Health can lawfully implement regulations.

258. Defendants have violated Ohio Revised Code Section 119.03.

259. Ohio Revised Code Section 3701.13 sets forth the powers of the Department of Health.

260. The Ohio Legislature set forth the Commission's powers in ORC §4301.03.

261. The Covid-19 Orders issued by Defendants either violate this legislative authority or, if consistent with the legislative authority, the Covid-19 Orders fail because the legislative authority is vague and, therefore, the separation of powers has been violated due to the lack of legislative authority for Defendants' actions.

262. In delegating "ultimate authority in matters of quarantine and isolation" under Ohio Revised Code Section 3701.13 to the Department of Health, the Ohio General Assembly has delegated legislative authority without an intelligible principle.

263. The vagueness concerns raised by the delegation of "ultimate authority" to the Ohio Department of Health is aggravated by the unilateral creation of strict liability crimes by the various orders issued by Amy Acton, Lance Himes, and Stephanie McCloud.

264. The Commission has no authority to amend, revise or restrict Ohio Revised Code §4303.

265. The Commission has interpreted its authority ORC §4301.03 to permit it to revise Ohio Revised Code §4303.

266. "Without sufficient limitations, the delegation of authority can be deemed void for vagueness as allowing ad hoc decisions or giving unfettered discretion." *Biener v. Calio*, 361 F.3d 206, 215-17 (3d Cir. 2004).

267. "A delegation of legislative authority offends due process when it is made to an unaccountable group of individuals and is unaccompanied by 'discernible standards,' such that the

delegatee's action cannot be 'measured for its fidelity to the legislative will.'" *Ctr. for Powell Crossing, LLC v. City of Powell, Ohio*, 173 F. Supp. 3d. 639, 675-79 (S.D. Ohio 2016).

268. "To pass muster under the void-for-vagueness doctrine, Ohio law dictates an ordinance must survive the tripartite analysis set forth in *Grayned*. The three aspects examined under *Grayned* are: (1) the ordinance must provide fair warning to the ordinary citizen of what conduct is proscribed, (2) the ordinance must preclude arbitrary, capricious, and discriminatory enforcement, and (3) the ordinance must not impinge constitutionally protected rights." *Viviano v. City of Sandusky*, 2013-Ohio-2813, 991 N.E.2d 1263 (6th Dist. 2013).

269. "Ohio has always considered the right of property to be a *fundamental right*. There can be no doubt that the bundle of venerable rights associated with property is strongly protected in the Ohio Constitution and must be trod upon lightly, no matter how great the weight of other forces." *Norwood v. Homey*, 110 Ohio St.3d 353, at 361-62 (2006) (internal citations omitted).

270. In sum, "the free use of property is guaranteed by Section 19, Article I of the Ohio Constitution." *State v. Cline*, 125 N.E.2d 222, 69 Ohio Law Abs. 305.

271. More specifically, Ohio businesses "have a constitutionally protected property interest" in freedom "from unreasonable and arbitrary interference from the government." *Mariemont Apartment Association v. Village of Mariemont*, 2007-Ohio-173. at ¶¶ 40-42.

272. In *Norwood v. Homey*, 2006-Ohio-3799, at ¶ 34, the Ohio Supreme Court held that the "rights related to property, i.e., to acquire, use, enjoy and dispose of property, . . . are among the most revered in our law and traditions." "Ohio has always considered the right of property to be a fundamental right." *Id.* at ¶35.

273. The *Norwood* Court further held that "property rights are integral aspects of our theory of democracy and notions of liberty." *Id.* at ¶34.

274. In fact, the Supreme Court has held that property rights are “[b]elieved to be derived fundamentally from a higher authority and natural law,” and, therefore, “property rights were so sacred that they could not be entrusted lightly to ‘the uncertain virtue of those who govern.’” *Id.* at ¶35 (quoting *Parham v. Justices of Decatur Cty. Inferior Court*, (Ga 1851), 9 Ga. 341. 348.

275. Due process demands that the state provide citizens with meaningful standards in its laws. To be valid, a law must give fair notice to Ohio citizens of the conduct proscribed and the penalty for violation of the law. Similarly, the law must also convey an understandable standard capable of enforcement in the courts, for judicial review is a necessary constitutional counterpoise to the broad legislative prerogative to promulgate codes of conduct.

276. Vague laws, like Ohio Revised Code Section 3701.13, offend several important values in Ohio. Initially, because we assume that man is free to steer between lawful and unlawful conduct, Ohio courts insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning.

277. Vague laws, like Ohio Revised Code Section 4301.03, offend several important values in Ohio. Initially, because we assume that man is free to steer between lawful and unlawful conduct, Ohio courts insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning.

278. Could any reasonable Ohio business owner have been aware that the Department of Health could close their business for months without an opportunity to review the decision?

279. Could any Ohio business owner have been aware that the Commission would restrict all use of the liquor permit?

280. Could any Ohio business owner have been aware that the Commission would arbitrarily restrict the hours of lawful use of a liquor permit?

281. Ohio Revised Code Section 3701.13, if consistent with the Covid-19 Directives, fails for vagueness.

282. In addition, if arbitrary and discriminatory enforcement is to be prevented, a law must provide explicit standards for those who apply them. Defendants have issued arbitrary Covid-19 Orders without guidance, public input, or a review of the Covid-19 Order's impact on Ohioans. Accordingly, if the Covid-19 Orders are consistent with Ohio Revised Code statutory authority, the statute fails for vagueness and lack of due process.

283. The two Ohio court decisions set forth above correctly hold that the Covid-19 Orders violate the Ohio Constitution.

284. The Department of Health has failed to provide any medical evidence to support the arbitrary and broad orders issued.

285. Ohio citizens have no say in the Covid-19 Orders, no opportunity to review the impact of the Covid-19 Orders, and are at risk of criminal prosecution for violating the Orders issued by unelected government officials.

286. In order to prevent the continued violation of Plaintiffs' constitutional rights by Defendants, it is appropriate and proper that a declaratory judgment be issued, declaring unconstitutional Covid-19 Orders. Such orders are imposed pursuant to vague and unfettered enforcement authority.

287. It is further appropriate and hereby requested that preliminary and permanent injunctions be issued prohibiting the Defendants from enforcing the Covid-19 Orders.

288. It is further appropriate and hereby requested that preliminary and permanent injunctions be issued enjoining Defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction, from engaging in any further official conduct that threatens, attempts to threaten, and/or actually interferes with Plaintiffs' occupation and operation of its private property despite their disfavored identity.

COUNT V
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

**DEPRIVATION OF PROPERTY RIGHTS WITHOUT EQUAL PROTECTION AND
DUE PROCESS/TAKINGS
ARTICLE 1, SECTIONS 1, 2, 16, 19 AND 20 OF THE OHIO CONSTITUTION**

289. Plaintiffs incorporate paragraphs 1 through 288 of the Complaint as if fully rewritten.

290. “[T]he Ohio Constitution is more protective of private property rights than its federal counterpart [and] the Ohio Supreme Court insists upon a more stringent Equal Protection analysis.” *Yoder v. City of Bowling Green, Ohio*, No. 3:17 CV 2321, 2019 WL 415254, at p. 4-5 (ND. Ohio Feb. 1, 2019), citing *Norwood* and Jeffrey S. Sutton, *51 Imperfect Solutions: States and the Making of American Constitutional Law* 198 (2018), at 16 (“[n]othing compels the state courts to imitate federal interpretations of the liberty and property guarantees in the U.S. Constitution when it comes to the rights guarantees in their own constitutions”).

291. On Equal Protection and Due Process, Article I, Section 2 of the Ohio Constitution provides that “[a]ll political power is inherent in the people. Government is instituted for their equal protection and benefit...”

292. In *State v. Mole*, the Ohio Supreme Court indicated that the Ohio Constitution's equal protection guarantees can be applied to provide greater protection than their federal counterparts: "Although this court previously recognized that the Equal Protection Clauses of the United States Constitution and the Ohio Constitution are substantively equivalent and that the same review is required, we also have made clear that the Ohio Constitution is a document of independent force." *State v. Mole*, 2016-Ohio-5124, ¶ 14, citing *Arnold v. Cleveland*, 67 Ohio St.3d 35, 42 (1993).

Equal Protection and Substantive Due Process

293. Under Ohio law, a regulation violates the Ohio Constitution when it is arbitrary, unduly oppressive upon individuals and not necessary for the private welfare or fails to substantially advance a legitimate interest through a substantial relationship to it.

294. The Covid-19 Orders are inconsistent, arbitrary, and not based on medical evidence.

295. The Department of Health has no medical evidence supporting the Covid-19 Orders.

296. Moreover, the Covid-19 Orders are inconsistent and arbitrary. Alcohol sales can take place at 9:00, but not at 11:00. Patrons to restaurants must enter the restaurant in masks, but can sit at their table without a mask.

297. The Covid-19 Orders have arbitrarily applied different rules to Ohio citizens without reason or stated medical evidence.

298. Plaintiffs are willing to comply with safety regulations if permitted to operate their businesses pursuant to the liquor permits issued by the State of Ohio.

299. Ohioans should be permitted to make their own health decisions based on medical evidence published by the Department of Health.

300. Ohio businesses should be permitted to make their own safety decisions based on medical evidence published by the Department of Health.

301. The Covid-19 Orders violate the equal protection and substantive due process clauses of the Ohio Constitution.

Equal Protection and Procedural Due Process

302. Plaintiffs have had their property rights taken without procedural due process.

303. Plaintiffs were shut down without notice by the State of Ohio.

304. Plaintiffs and other Ohio restaurants and bars have faced restrictions greater than those applied to other industries.

305. Defendants provide no advance notice when issuing the Covid-19 Orders.

306. Defendants seek no public input prior to issuing the Covid-19 Orders.

307. The Department of Health has issued Directives with no medical evidence or reasoning.

308. The Commission has issued Covid-19 Orders based solely on the Governor's directions.

309. The Commission has no medical evidence supporting its Covid-19 Orders.

310. The Covid-19 Directives are inconsistent and arbitrary.

311. Plaintiffs should have the right to a hearing before losing property rights.

312. Defendants should compensate Plaintiffs and other similarly-situated restaurants and bars for the impact on revenue caused by the Covid-19 Orders. A hearing should be provided to determine the compensation.

313. The Department of Health has violated procedural due process by issuing Covid-19 Orders without complying with the Ohio Constitution.

314. The Commission has violated procedural due process by issuing Covid-19 Orders without complying with the Ohio Constitution.

Takings

315. The Department of Health has taken Plaintiffs' property and past investments without due process or justification.

316. The Commission has taken Plaintiffs' property and past investments without due process or justification.

317. Plaintiffs have made substantial investments in Ohio on the belief that they would be permitted to continue to lawfully operate pursuant to liquor permits issued by the State.

318. The Covid-19 Orders are arbitrary and inconsistent.

319. The Department of Health has willfully and intentionally violated orders of Ohio courts.

320. The Commission has willfully and intentionally violated orders of Ohio courts.

321. Despite orders finding that Ohio Revised Code Section 3701.13 does not provide the Department of Health with authority to issue the Covid-19 Directives, the Department of Health has continued unabated.

322. The Department of Health, through Acton, Himes, and McCloud, has knowingly taken Ohio property without substantive or procedural due process.

323. The Department of Health's actions are arbitrary, unlawful, and in violation of the Ohio Constitution.

324. Defendants' actions are arbitrary, unlawful, and in violation of the Ohio Constitution.

WHEREFORE, Plaintiffs demand judgment and relief against Defendants as follows:

1. Declare that R.C. 3701.352 and R.C. 3701.99, when enforcing R.C. 3701.13 and 3701.56, and the closure and criminalization of operations within the Covid-19 Orders pursuant thereto are unconstitutional on their faces and as applied to Plaintiff due to the statutes and the Covid-19 Directives: (i) failing to provide meaningful procedural due process; (ii) failing to afford equal protection of the law; (iii) violating the doctrine of separation of powers; and (iv) delegated unfettered and unbridled vague power to unelected officials;

2. Declare that Rule 4301:1-1-80 was not lawfully implemented by the Commission;

3. Declare that the Commission has unlawfully enforced Rule 4301:1-1-80 by: (i) failing to provide meaningful procedural due process; (ii) failing to afford equal protection of the law; (iii) violating the doctrine of separation of powers; and (iv) delegated unfettered and unbridled vague power to unelected officials;

4. Declare that the Covid-19 Orders are unlawful;

5. Declare that the Department of Health has violated O.R.C. §119.03 by issuing the Covid-19 Orders;

6. Declare that the Department of Health has unlawfully issued the November 19, 2020 Director's Stay at Home Tonight Order;

7. Declare that the Covid-19 Orders preventing Ohio businesses from properly utilizing their lawfully issued liquor permits are unlawful;

8. Declare that Ohio's restaurants and bars are permitted to operate, Covid-19 Order free, as of November 28, 2020;

9. Declare that the Commission has unlawfully penalized Ohio's bars and restaurants for violations of Rule 4301:1-1-80;

10. Issue a temporary restraining order, and a preliminary and permanent injunction, prohibiting Defendants and Defendants' agents from enforcing the mandate within the Covid-19 Orders;

11. Issue a temporary restraining order, and a preliminary and permanent injunction, prohibiting Defendants and Defendants' agents from enforcing Rule 4301:1-1-80;

12. Declaring all penalties, fines, suspensions and revocations pursuant to Rule 4301:1-1-80 invalid and unlawful;

13. Issue a temporary restraining order, and a preliminary and permanent injunction, prohibiting Defendants and Defendants' agents from issuing penalties to Plaintiffs or other Ohio citizens for violating the Covid-19 Orders;

14. Issue a temporary restraining order, and a preliminary and permanent injunction, prohibiting Defendants and Defendants' agents from issuing penalties to Plaintiffs or other Ohio citizens for violating Rule 4301:1-1-80;

15. Issue a temporary restraining order, and a preliminary and permanent injunction, prohibiting Defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction, from engaging in any further official conduct that threatens, attempts to threaten, and/or actually interferes with Plaintiffs' occupation and operation of its private property despite their disfavored identity;

16. Issue a temporary restraining order, and a preliminary and permanent injunction, prohibiting Defendants and their officers, agents, servants, employees, and attorneys, and those

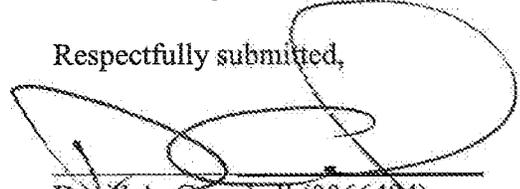
persons in active concert or participation with them who receive actual notice of the injunction, from engaging in any further official conduct that threatens, attempts to threaten, and/or actually imposes fines or sanctions for alleged violation of the Covid-19 Orders;

17. Pursuant to Ohio Revised Code Section 2335.39 and other applicable law, award Plaintiffs their costs, actual damages, nominal damages and expenses in bringing this action, including, but not limited to, reasonable attorney fees;

18. Costs incurred in prosecuting this action; and

19. Any other appropriate relief that this Court deems just and equitable.

Respectfully submitted,

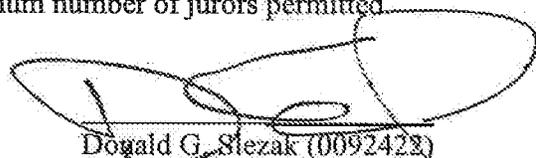


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JURY DEMAND

Plaintiffs demand a trial by jury by the maximum number of jurors permitted



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