6/2/2020

STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF STEARNS	SEVENTH JUDICIAL DISTRICT

State of Minnesota, by its Attorney General, Keith Ellison, Plaintiff, vs. Kris Schiffler d/b/a Shadys Long Shots, Shady's Inc., Shadys Hometown Tavern and Event Center, Inc., Shady's of Rice, Inc., Shadys Golden Eagle, Inc., and Shady's Silver Spur, Inc., Defendants.	Court File No.: 73-CV-20-3556 **ORDER**

The above-entitled matter came before the Honorable Shan C. Wang, Judge of District Court, on May 22, 2020, for a Motion Hearing on the Plaintiff's, the State of Minnesota, by its Attorney General Keith Ellison ("the State"), motion for a Temporary Restraining Order. Keith Ellison, Minnesota Attorney General, James Canaday, Minnesota Deputy Attorney General, Assistant Attorney General Jason Pleggenkuhle, and Assistant Attorney General Michael Goodwin represented the State. Gary R. Leistico, Esq., and Alex T. Masteller, Esq., represented the Defendants Kris Schiffler d/b/a Shadys Long Shots, Shady's Inc., Shadys Hometown Tavern and Event Center, Inc., Shady's of Rice, Inc., Shadys Golden Eagle, Inc., and Shady's Silver Spur, Inc. (collectively "Defendants").

IT IS HEREBY ORDERED:

1. The State's motion for a temporary injunction pursuant to Minnesota Rule of Civil Procedure 65.02 is **GRANTED**. The temporary restraining order is converted to a temporary injunction effective until a trial on the merits of this case or until further order of this Court.

2. Effective from the date of this Order, Defendants are prevented, restrained, and enjoined from taking any action violating Executive Order 20-56, including but not limited to providing on-site consumption services at their six Minnesota restaurant locations.

3. Defendants are enjoined and prohibited from providing on-site consumption services at their six Minnesota restaurant locations in any manner inconsistent with Executive Order 20-56 or *Industry Guidance For Safely Reopening: Restaurants and Bars*, the plan that was announced on May 20, 2020 by the Commissioners of Health, Employment and Economic Development, and Labor and Industry in accordance with paragraph 7 of Executive Order 20-56.

4. Defendants shall fully comply with Executive Order 20-56 and any future Executive Orders that apply to bars, taverns, or restaurants issued by the Governor, approved by the Executive Council, and filed in the Office of the Secretary of State in accordance with Minnesota Statutes Chapter 12.

5. Nothing in this Order shall prevent Defendants from offering food and beverage through delivery service, window service, walk-up service, drive-through service, or drive-up service under the conditions provided in Executive Order 20-04. Moreover, nothing in this Order shall prevent Defendants from selling up to one bottle of wine or up to a six-pack of beer, cider, or hard seltzer with their take-out food in accordance with 2020 Minn. Laws ch. 75.

BY THE COURT:

Dated: June 2, 2020

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Shan C. Wang
Judge of District Court

I. Background

A. The COVID-19 Pandemic

On March 13, 2020, Governor Tim Walz declared a peacetime emergency due to the COVID-19 pandemic in Executive Order 20-01. Three days later, the Executive Council of the State of Minnesota approved the peacetime emergency to protect Minnesotans from COVID-19. The peacetime emergency was most recently extended and approved by the Executive Council until at least June 12, 2020, pursuant to Executive Order 20-53.

COVID-19 is highly contagious. The national Centers for Disease Control and Prevention ("CDC") publicized several studies regarding COVID-19's contagiousness. One study of note, documented a viral outbreak which occurred at a family gathering at a restaurant. Both family members and other patrons became sick. The researchers' hypothesis indicates that the virus was spread simply through the air of the restaurant. In another study, researchers found that a single infected person likely spread the virus to 53 other people during a single choir rehearsal. Minnesota's Department of Health confirmed 4,106 cases of COVID-19 in the first week of May, which represents more than 25% of all cumulative confirmed infections in the entire state. In Stearns County cases of COVID-19 increased from 55 in early April to 1,161 by May 7, 2020. By May 21, 2020, the number of confirmed COVID-19 cases has risen to 1,853 within the county.

Research further indicates that this virus is deadly. As of May 21, 2020, there have been at least 18,200 confirmed cases of COVID-19 in Minnesota. COVID-19 has already caused at least 809 deaths, of which 11 occurred in Stearns County. Across the nation the CDC has identified 1,551,095 total confirmed cases and 93,061 total deaths from COVID-19.

In order to protect public health and safety by slowing the "community spread" of COVID-19, on March 16, 2020, Governor Walz issued Executive Order 20-04. This Order closed bars,

taverns, restaurants, and other places of public accommodation for on-premises consumption until March 27, 2020. Executive Order 20-04 encouraged temporarily closed bars, taverns, and restaurants to "offer food and beverage using delivery service, window service, walk-up service, drive-through service, or drive-up service." Subsequently, Executive Order 20-04's closure of bars, taverns, and restaurants was extended by Executive Orders 20-18, 20-33, and 20-48.

The forced closure of small businesses has caused extreme hardship for business owners across the state, including Defendants. The closure and prohibition of onsite consumption at Defendants' restaurants have also caused significant hardship for Defendants' employees who are unable to work, or who are working extremely reduced hours. The Executive Orders have allowed large, non-restaurant businesses such as Menards, Home Depot, Target, and Walmart to remain open.

On April 16, 2020, Minnesota joined six other states in the Midwest to form a coalition to reopen the economic region. The coalition includes Michigan, Ohio, Wisconsin, Illinois, Indiana, Kentucky, and Minnesota. Each state has developed their own laws and best practices for dealing with the pandemic. The federal government has issued guidelines for dealing with the crisis primarily through the CDC. No closure of bars and restaurants has been enacted on the federal level.

On May 13, 2020, Governor Walz issued Executive Order 20-56, extending the closure of bars, taverns, restaurants, and other public accommodations for on-premises consumption set forth in Executive Order 20-04 "until May 31, 2020 at 11:59 pm." When announcing this Order, the Governor cited three factors that guided the re-opening of restaurants: proximity of individuals in a given setting, length of time in close proximity, and the predictability of the setting. Executive Order 20-56 further instructed the Commissioners of Health, Employment and Economic

Development, and Labor and Industry "to develop a phased plan to achieve the limited and safe reopening of bars, restaurants, and other places of public accommodation beginning on June 1, 2020."

On May 14, 2020, the Governor signed into law an act by the Minnesota Legislature allowing bars and restaurants that are selling take-out food to also sell up to one bottle of wine or up to a six-pack of beer, cider, or hard seltzer with their food. *See* 2020 Minn. Laws Ch. 75.

The State issued guidelines on May 20, 2020, that allow for limited on-site consumption at restaurants and bars starting on June 1st. Restaurants and bars can only be open for outdoor service, not indoor service. In addition, restaurants and bars must adopt and implement a COVID-19 preparedness plan, have a minimum of 6 feet of distance between tables, limit the number of people at a table to 4 (or 6 if part of a family unit), limit total on-premises capacity to no more than 50 people, require reservations in advance, require workers to wear masks, and strongly encourage masks be worn by customers.

B. Defendants' Plan to Open for On-Premises Consumption despite Executive Order

Defendants sought advice from Stearns County on how to reopen their restaurants for on-premises food and liquor consumption. Stearns County informed Defendants on May 11, 2020, that "[o]ur official position is to have all establishments stay in compliance with any applicable active Executive Orders in addition to the Food Code and CDC guidelines for safe operations." However, Stearns County did provide them with the latest guidance from the CDC, Minnesota Department of Health, Occupational Safety and Health Administration, and other State and Federal agencies. Defendants subsequently compiled a preparedness plan to follow social distancing and other guidelines which they deemed to be sufficient to justify on-premises food and liquor consumption at their restaurants.

On or about May 13, 2020, Defendant Schiffler was interviewed by television news channel KMSP Fox 9 and publicly announced that he would be opening all six of his Minnesota restaurants for on-premises consumption on May 18, 2020. During the interview, Schiffler stated he did not believe he would be held accountable for violating Executive Order 20-56:

> We contacted our local sheriff's department in every bar that we own. A couple of them are in different counties, so we spoke with them. The answer is, we get a call we have to show up and we have to send a report but the report pretty much dies on the table. I don't think they're going to do anything after that.

Similar public announcements were made on a number of the Facebook pages for the Defendants' six Minnesota restaurants.

On May 15, 2020, an assistant attorney general with the Minnesota Attorney General's Office contacted Defendants and explained that re-opening their six Minnesota restaurants on May 18, 2020, for on-premises consumption would constitute a clear violation of Executive Order 20-56. Defendants acknowledged this, but nevertheless confirmed their plan to open each restaurant on May 18, 2020.

Defendants obtained counsel, who spoke with the Minnesota Attorney General's Office on May 16, 2020. During the phone call Defendants' counsel stated that Defendants' restaurants would be re-opening on May 18, 2020, for on-premises consumption. During this call, counsel also stated that he would discuss the matter further with his clients.

Later in the day on May 16, 2020, Defendant Schiffler posted a video on Facebook and stated in part:

> We are going to try to open on [May] 20th. Governor Walz comes out with a new safety precaution plan that has taken him 8 weeks to get done. We hope that he

> gets that done …There's no promises on us being open on [June] 1st, so what we're planning on doing is we wanna open on [May] 20th. Once we get that paperwork that says what we need to do to follow the orders, we will get that to our health inspectors and get them approved ASAP and we will try to open Wednesday, [May] 20th.

On Sunday, May 17, 2020, Defendant Schiffler posted a new message on his personal Facebook account stating the following: "Shady's Hometown Tavern in Albany will be open tomorrow, Monday May 18th at Noon!" Immediately after seeing the post, the State filed a motion for an *ex parte* Temporary Restraining Order (TRO) to prevent Defendants from opening up any of their restaurants in violation of the Executive Order. The TRO was granted shortly before noon on Monday, May 18, 2020.

II. ANALYSIS

To determine if the State is entitled to further the injunction against Defendants, the Court must first consider if the temporary restraining order was valid. Then the Court will determine the correct factors to use in determining if the State is entitled to an injunction and apply those factors.

A. This Court has Proper Jurisdiction over all Defendants

"Civil actions … in which the state of Minnesota is plaintiff, may be begun and tried in such county as the attorney general, or other attorney authorized to bring the same, shall select." Minn. Stat. § 542.07. Defendants challenge that the Stearns County District Court lacks jurisdiction to enjoin Defendants' two restaurants which are located outside of this county. However, Minnesota "district courts virtually constitute one court of general jurisdiction coextensive with the boundaries of the state, the fact that a civil action is brought or tried in the wrong county is not jurisdictional." *Claseman v. Feeney*, 211 Minn. 266, 268 (1941). Executive

Order 20-56 applies to all restaurants in Minnesota and the specific restaurant that the Defendants' wanted to open on May 18, 2020, is located in Stearns County. Therefore, this Court is the proper venue and has jurisdiction over all Defendants in this case.

B. The Ex Parte TRO was properly granted against the Defendants

Minn. R. Civ. P. 65.01 states:

> A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney states to the court in writing the efforts, if any, which have been made to give notice or the reasons supporting the claim that notice should not be required.

Therefore, an *ex parte* TRO may only be issued if there is impending irreparable harm and reasonable efforts have been made to notify the other party, or there are reasons why notice should not be required. *Id.*

Here, the State filed three affidavits in support of its motion for the TRO. These affidavits established that immediate and irreparable injury or damage will result from Defendants opening their businesses for on-premises consumption pursuant to Minn. R. Civ. P. 65.01. The affidavits provided epidemiological studies of COVID-19 and its community spread within Stearns County. The studies coupled with the high infection rate within Stearns County proved by a preponderance of the evidence that Defendants' plan to open business for on-premises consumption in violation of the executive order posed unnecessary risks to public health and safety. This threat to public health and safety constitutes immediate and irreparable injury under Minn. R. Civ. P. 65.01.

The State's filings also established sufficient reason for why notice was not required. Despite ongoing negotiations, the Defendants issued inconsistent statements regarding their plans to open for on-premises consumption. Even though they were advised by Stearns County that Executive Orders currently prevented their restaurants from opening, Defendants made several public announcements that they were reopening, including via the news. When contacted by the State, the Defendants moved their planned opening day and obtained counsel. Once the attorneys spoke on Saturday, May 16, 2020, the State believed that the Defendants would not open on Monday, May 18, 2020, and thus saw no need to inform Defendants' counsel that an injunction would be filed. However, when Defendants publically announced on Sunday new plans to open up one of their restaurants on Monday at noon, the State had very little time to file for a TRO. While the State could have given notice to the Defendants, there was insufficient time to allow the Defendants to be heard on the State's Motion for the TRO before the intended opening of at least one of Defendants' restaurants at noon on May 18, 2020, occurred. This timeline constitutes good cause why notice was not required in this case. Thus, the *ex parte* TRO was properly granted.

C. The *Dahlberg* Factors are Appropriate to Determine Granting the Injunction

"The Attorney General…may seek any civil relief available pursuant to Minnesota Statutes 2019, section 8.31, for violations of this Executive Order." Executive Order 20-56. Section 8.31 authorizes the Attorney General to "sue for and have injunctive relief in any court of competent jurisdiction against any such violation or threatened violation without abridging the penalties provided by law." Minn. Stat. § 8.31, subd. 3. Generally, "the Attorney General's burden to obtain a permanent injunction under the statute is limited to the statutory condition: proving that a listed law has been or is being violated, or is about to be violated." *State v. Minnesota Sch. of Bus., Inc.,* 899 N.W.2d 467, 472 (Minn. 2017) (citation omitted). Thus, the Court is "not required to make

findings on the *Dahlberg* factors to enjoin violation of the statute." *State ex rel. Hatch v. Cross Country Bank, Inc.*, 703 N.W.2d 562, 573 (Minn. Ct. App. 2005).

Here, the State argues that the Executive Order specifically provides for injunctive relief and that the Court ought to decide based on the *Minnesota School of Business* factors. However, where a party "legitimately disputes" the applicability of the underlying statute authorizing injunctive relief, the district court must consider the *Dahlberg* factors to grant a temporary injunction. *Pac. Equip. & Irrigation, Inc. v. Toro Co.*, 519 N.W.2d 911, 918 (Minn. App. 1994). In this case, the Defendants challenge the Executive Order's applicability to them arguing that it exceeds the Governor's authority and is unconstitutional. Therefore, the Court will err on the side of caution and consider the *Dahlberg* factors to determine whether this injunction should be granted.

To grant a preliminary injunction the Court must consider:

(1) The nature and background of the relationship between the parties preexisting the dispute giving rise to the request for relief.

(2) The harm to be suffered by plaintiff if the temporary restraint is denied as compared to that inflicted on defendant if the injunction issues pending trial.

(3) The likelihood that one party or the other will prevail on the merits when the fact situation is viewed in light of established precedents fixing the limits of equitable relief.

(4) The aspects of the fact situation, if any, which permit or require consideration of public policy expressed in the statutes, State and Federal.

(5) The administrative burdens involved in judicial supervision and enforcement of the temporary decree.

Dahlberg Bros. v. Ford Motor Co., 272 Minn. 264, 274–75 (Minn. 1965).

i. The Nature and Background of the Relationship

Under the first *Dahlberg* factor, the Court must consider "the nature and background of the relationship between the parties preexisting the dispute giving rise to the request for relief." *Dahlberg Bros.*, 137 N.W.2d at 321. When the background and relationship of the parties is that of regulator and non-compliant regulated entity, this factor favors the regulator. *See Swanson v. CashCall, Inc.,* Nos. A13-2086, A14-0028, 2014 WL 4056028, *5 (Minn. App. Aug. 18, 2014), *review denied* (Minn. Nov. 17, 2015). Here, Executive Order 20-56 empowers the Attorney General's Office to investigate and take action against persons or companies that are operating in violation of the Order. Since this action for injunctive relief seeks to regulate the Defendants' expressed intent to defy the Executive Order, this factor weighs in favor of the State.

ii. The Harm to be Suffered by Plaintiff

The second *Dahlberg* factor requires the Court to balance the harms to be suffered if the temporary injunction is granted with the harms to be suffered if it is denied. *Dahlberg Bros.*, 137 N.W.2d at 321. An irreparable injury may occur where the actions of an adverse party may render the relief sought by the other party "ineffectual." *Cramond v. Am. Fed. of Labor & Congress of Indus. Organizations*, 126 N.W.2d 252, 256 (Minn. 1964).

Here, the death and infection rates from COVID-19 continue to climb and are particularly high in Stearns County. Based on epidemiological studies and consultation with the Department of Health and the CDC, the Governor determined that restaurants present a particularly high risk of transmitting the disease. Defendants opening their restaurants in violation of the Executive Order would more likely than not exacerbate the pandemic and threaten to overwhelm medical facilities. Monetary sanctions are not a realistic remedy in this situation, as Defendants' actions endanger members of the public with infection and further unrest for the public as a whole.

Because the public health and safety of Minnesotans are threatened by Defendants' actions absent a temporary injunction, this factor weighs in favor of the State.

iii. The Likelihood that One Party or the Other will Prevail on the Merits

The Defendants have conceded that their plan to open their restaurants for on-premises consumption would violate the Executive Order. However, they argue that they will succeed on the merits because the Governor's actions exceed his statutory emergency authority and his Executive Order infringes on the Defendants' constitutional rights. These arguments also support Defendants' claim that the Executive Order does not apply to them. Considering the significance of these arguments, the Court will address each in turn.

a. The Governor Has the Authority to Declare a State of Emergency

The Constitution of the United States "principally entrusts '[t]he safety and the health of the people' to the politically accountable officials of the States 'to guard and protect.'" *South Bay United Pentecostal Church v. Newsom*, 590 U. S. ____ (2020) (citing *Jacobson v. Massachusetts*, 197 U. S. 11, 38 (1905)). Minnesota Statutes grant the Governor power to issue Executive Orders in response to emergencies:

> The governor (1) has general direction and control of emergency management, (2) may carry out the provisions of this chapter, and (3) during a national security emergency declared as existing under section 12.31 … may assume direct operational control over all or any part of the emergency management functions within this state.

Minn. Stat. § 12.21 subd.1. "A peacetime declaration of emergency may be declared only when an act of nature…endangers life and property and local government resources are inadequate to handle the situation." Minn. Stat. § 12.31 subd. 2(a). Although the Governor is bound to consult with local leaders, and the sitting state legislature, the Governor may determine when an

emergency is occurring on his own authority. "Nothing in this section shall be construed to limit the governor's authority to act without such consultation when the situation calls for prompt and timely action." *Id.* The Governor is checked from abusing such power by the Legislature's ability to end a peacetime emergency which extends beyond thirty days by a majority vote in each house. Minn. Stat. § 12.31 subd. 2(b).

Here, Defendants argue that the Governor is bound to consult local governments and defer to their judgement before declaring a state of emergency. The plain language of the statute refutes this interpretation. *See* Minn. Stat. § 12.31 subd. 2(a). Rather, the record establishes that COVID-19 was and remains an international health crisis which required a coordinated and statewide response. This supports the Governor's determination that local government resources were inadequate to handle such a response. *See* Executive Order 20-01. Therefore, the Governor did not abuse the power granted to him by the Legislature when he determined that the COVID-19 pandemic constituted a peacetime emergency.

The emergency began on March 16, 2020, and has continued for over thirty days. In that time, the Legislature has not sought to terminate the peacetime emergency. Rather the Legislature passed a bill to supplement the Executive Orders, declaring that the "authority … [of] this section expires when the closure of restaurants as set forth in Executive Order 20-04, as modified and extended by Executive Orders 20-18 and 20-33, or any subsequent order, expires, or is terminated or rescinded." 2020 Minn. Laws Ch. 75(1)(e). Therefore, the Governor properly used his emergency powers to issue Executive Order 20-56 on May 13, 2020.

b. The Governor Has the Authority to Close Restaurants

The Governor issued Executive Order 20-56 from his general powers and powers of emergency management under Minnesota Statute § 12.21 subd. 1. The Executive Order also noted two subsections of the same statute which authorized the Executive Order's operations. First, the

Governor has the authority to "cooperate with the president and the heads of the armed forces, the Emergency Management Agency of the United States and other appropriate federal officers and agencies, and with the officers and agencies of other states in matters pertaining to the emergency management of the state and nation" including "the conduct of persons in the state, including entrance or exit from any stricken or threatened public place, occupancy of facilities . . . [and] public meetings or gatherings." Minn. Stat. § 12.21, subd. 3(7). Second, the Governor may "make, amend, and rescind the necessary orders and rules to carry out the provisions of this chapter." Minn. Stat. § 12.21, subd. 3(1). Minn. Stat. § 12.21, subd. 3 provides a list of specific authority that the Governor may perform "to effect its policy and purpose" of emergency management.

Here, Defendants argue that since the Governor is not acting under a direct federal order or in perfect synchronicity with the surrounding states, he is in violation of his duty to cooperate under Minn. Stat. § 12.21 subd. 3(7). Considering the statute's plain language and the Executive Order as a whole, these sections combine to support the Governor's actions. None of these sections can be read in isolation to void the authority granted by the others. Rather, the evidence shows that the Governor has coordinated his response to the COVID-19 pandemic with the federal government and other states across the nation. Executive Order 20-56 is consistent with the federal government's CDC's guidance on bars and restaurants that assigns four levels of risk of transmission in which the risk increases. Defendants even noted that the Governor has joined a partnership of governors from six other states to coordinate their work to reopen the states' economies during the COVID-19 pandemic. None of these states have adopted uniform rules regarding the reopening of their economies, but are united in their efforts. Thus, the Governor also acted within his authority to issue Executive Order 20-56 as it pertains to restaurants.

c. The Governor's Actions are Constitutional

"[L]iberty itself, the greatest of all rights, is not unrestricted license to act according to one's own will. It is only freedom from restraint under conditions essential to the equal enjoyment of the same right by others." *Jacobson*, 197 U.S. at 26–27. During a public health crisis a state may constitutionally enact quarantine law. *Id.* at 25. Such action is susceptible to constitutional challenge only if: (1) it has no real or substantial relation to the object of protecting the public health, safety, or morals; or (2) it "is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution." *Jacobson*, 197 U.S. at 31. This level of scrutiny "is not to say that the government may trample on constitutional rights during a pandemic." *Cassell v. Snyders*, No. 20 C 50153, 2020 WL 2112374, at *7 (N.D. Ill. May 3, 2020). "[C]ourts must remain vigilant, mindful that government claims of emergency have served in the past as excuses to curtail constitutional freedoms." *Id.*

First, Defendants argue that the Governor's orders curtail their due process and equal protection rights under the Fourteenth Amendment. Defendants rely on *Wisconsin Legislature v. Palm*, 2020 WL 2465677 (Wis. May 13, 2020). But that case did not deal with the power of a governor's emergency orders or with any constitutional violations; the opinion specifically noted that "[t]his case is not about Governor Tony Evers' Emergency Order or the powers of the Governor." *Id.* at 1. The *Palm* case had to do with whether the Secretary-designee of Wisconsin's Department of Health Service failed to abide by the Wisconsin statutes authorizing emergency rules. *Id*. As such, the *Palm* case is inapplicable to this case and is unpersuasive.

Defendants assert, contrary to established case law, that the Constitution ensures operation of a business is a constitutionally protected fundamental right. The Court disagrees. The United States Supreme Court has long held that legislation of economic affairs does not infringe on

fundamental rights within the meaning of the Fourteenth Amendment. *See Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envtl. Prot.,* 560 U.S. 702, 721 (2010)*; Hodel v. Indiana*, 452 U.S. 314, 331 (1981); *Dandridge v. Williams*, 397 U.S. 471, 485 (1970); *Slaughter-House Cases*, 83 U.S. 36, 80 (1872). Therefore, even in normal circumstances the State need only provide a rational basis for its actions. *Scott v. Minneapolis Police Relief Ass'n, Inc.*, 615 N.W.2d 66, 74 (Minn. 2000).

Executive Order 20-56 has both a substantial relation to protecting public health and a rational basis. The Governor has cited three factors from pertinent studies which guided Executive Order 20-56: proximity of individuals in a given setting, length of time in close proximity, and the predictability of the setting. Bars and restaurants are enclosed, indoor spaces where large numbers of people linger for substantial periods of time, sometimes hours in close contact with each other. These particular features of businesses like the Defendants', which distinguish them from grocery, hardware, and other types of stores, provide a rational basis to conclude that dine-in service at restaurants and bars present unique risks for COVID-19 transmission. This basis also demonstrates that the Governor's action to restrict such risks is substantially related to protecting public health.

Second, Defendants assert that Executive Order 20-56 violates the First Amendment right of assembly by limiting the meeting of people inside restaurants and bars. While it is true that restaurants and bars provide important forums for social interactions, those who gather at Defendants' businesses do so for the primary purpose of engaging in an economic not political activity. Defendants have not provided any case law to establish that the public has a constitutional right to assemble to conduct business. While political expression may be one of many reasons a customer chooses a restaurant, that alone "is not sufficient to bring the activity within the

protection of the First Amendment." *City of Dallas v. Stanglin*, 490 U.S. 19, 25 (1989). "Unless laws create suspect classifications or impinge upon constitutionally protected rights, it need only be shown that they bear some rational relationship to a legitimate state purpose." *Id.* at 23 (citation omitted).

It is of note that the United States Supreme Court recently denied a church's motion to enjoin the Governor of California's Executive Order limiting the number of attendees at places of worship to 25% of building capacity or a maximum of 100 attendees. *See South Bay United Pentecostal Church*, 590 U. S. ____ (2020). In that case, the Court acknowledged COVID-19 is an "extraordinary health emergency" and noted that "[t]he precise question of when restrictions on particular social activities should be lifted during the pandemic is a dynamic and fact-intensive matter subject to reasonable disagreement." *Id.* The Court further observed that "[o]ur Constitution principally entrusts '[t]he safety and the health of the people' to the politically accountable officials of the States 'to guard and protect.'" *Id.* (citation omitted). The Court recognized that these officials should be given broad latitude "to act in areas fraught with medical and scientific uncertainties," especially when "local officials are actively shaping their response to changing facts on the ground." *Id.* (citation omitted). In denying the request to enjoin the Executive Order, the Court held that "[w]here these broad limits are not exceeded," they "should not be subject to second-guessing" by a judiciary "which lacks the background, competence, and expertise to assess public health." *Id.* (citation omitted).

Here, as established above, the Governor's order is rationally based on federal guidance and epidemiological studies to further the legitimate purpose of slowing the spread of COVID-19. While reasonable minds can agree or disagree with the scope of the Governor's Executive Order and whether adequate safety measures currently exist to justify on-premises consumption of food

and beverages, the law affords the Governor considerable latitude in imposing restrictions on businesses and social activities during a peacetime emergency. Based on the record submitted in this case, this Court cannot find that the Governor's Executive Order unconstitutionally infringed upon the Defendants' fundamental rights.

In sum, both parties agree that the Defendants' plans to open their business for on premise service violated or was about to violate Executive Order 20-56. Because Defendants' arguments regarding the lack of authority and unconstitutionality of the Executive Order fail, the State is likely to succeed on the merits. Therefore, this factor weighs in favor of the State.

iv. Consideration of Public Policy

The fourth *Dahlberg* factor requires the Court to consider any public interest or public policy expressed in applicable statutes. *Dahlberg Bros.*, 137 N.W.2d at 321-22. As discussed above, the Constitution of the United States recognizes and Minnesota Statutes Chapter 12 grants emergency authority to the Governor, by which authority he issued Executive Order 20-56, to slow the spread of a deadly infectious disease.

Here, the Defendants' proposed action to open for on-premises service violates a valid Executive Order. Although the Defendants state they have consulted the CDC guidelines on their own, public policy disfavors allowing parties to disregard certain laws merely because they disagree with the law. Other local small business owners suffer similar economic hardships as the Defendants but yet chose to follow the Executive Order. To allow the Defendants to operate on-premises dining would essentially grant them a monopoly on this commodity during the ongoing health crisis unless other similarly-situated businesses also chose to disregard the Executive Order. Therefore, this factor weighs in favor of enjoining them from violating the Executive Order during this litigation.

v. The Administrative Burdens of the Temporary Decree.

Finally, the Court must consider the administrative burdens a temporary injunction may impose upon the Court. *Dahlberg Bros.*, 137 N.W.2d at 322. Here, issuing a temporary injunction will impose no administrative burdens on the Court because all the State requests is that Defendants obey the Governor's Executive Order 20-56 as all other similarly situated businesses have done. Thus, this final factor also favors granting the State's requested temporary injunctive relief.

Since all the *Dahlberg* Factors weigh in favor of the State, the Court shall grant temporary injunctive relief against the Defendants.

III. CONCLUSION

The Court understands and appreciates the economic hardships suffered by the Defendants and the people of Minnesota due to the pandemic. While reasonable minds can agree or disagree with the Governor's decisions regarding the scope of his Executive Orders, it is clear that the Governor has the statutory authority to issue the Executive Order at issue in this case. Allowing the Defendants to unilaterally disregard the Executive Order because of their belief that they have implemented sufficient measures to ensure public safety at their establishments would be contrary to law and public policy. Accordingly, the Court hereby grants the State's motion for a temporary injunction.

6/2/2020