

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Northland Baptist Church of St. Paul,
Minnesota; John Bruski; Living Word
Christian Center; Glow In One Mini Golf,
L.L.C.; Aaron Kessler; Myron’s Cards and
Gifts, Inc.; Larry Evenson; The A J Hulse
Company; Andrew Hulse; Gay Bunch-
Hulse,

Plaintiffs,

v.

Governor Tim Walz, individually and in
his official capacity; Attorney General
Keith Ellison, in his official capacity; Mike
Freeman, in his official capacity as County
Attorney for Hennepin County, Minnesota;
Tony Palumbo, in his official capacity as
County Attorney for Anoka County,
Minnesota; and John Choi, in his official
capacity as County Attorney for Ramsey
County, Minnesota,

Defendants.

Court File No. _____

**COMPLAINT
JURY TRIAL DEMANDED**

INTRODUCTION

1. In Emergency Executive Order 20-01 on March 13, 2020, Governor Tim Walz declared a “peacetime emergency” in Minnesota due to the spread of COVID-19 in the United States and the existence of 14 confirmed cases in Minnesota. Since then, and as of May 5, 2020, Governor Walz has issued 51 “emergency executive orders” (“EOs”) pursuant to the authority he claims to have under Chapter 12 of the Minnesota Statutes.

2. These EOs, including EOs 20-01, 20-04, 20-08, 20-18, 20-20, 20-33, 20-35,

20-38, 20-40, and 20-48 have totally shut down some businesses, schools, and places of worship across Minnesota—while allowing others to remain open. The consequences of these EOs have been devastating for the Plaintiffs, other Minnesota businesses, and places of worship. More than half a million Minnesotans have been forced to apply for unemployment since Governor Walz began selectively shutting down Minnesota's economy.

3. Worshippers across Minnesota have been prohibited from assembling to celebrate Easter and the Passover, while liquor stores have remained open. Target, Walmart, Walgreens, and CVS are open, while local Hallmark stores are closed. Golf courses and bait shops are open, but indoor amusement facilities are shut. Nobody can legally get a haircut, but dogs may now be groomed. Businesses in Minnesota have been forced to carry rent obligations, loan payments, and tax obligations without relief and without income. Those businesses' landlords, in turn, have not been able to collect rent from tenants who cannot afford to pay it.

4. Governor Walz chose this course of action even though there was no federal directive requiring states to shut down their economies to respond to COVID-19. The Cybersecurity and Infrastructure Security Agency Guidance that the governor cites in his Orders does not require or recommend shutting down entire economies to stop COVID-19; rather, it emphasizes the importance of keeping certain businesses *open*. The Center for Disease Control's Community Mitigation Framework proposes common-sense measures to reduce spread and keep people safe: (1) wash your hands, (2) cover your face from coughs, (3) maintain physical distance from others and stay at home when you can,

and (4) clean surfaces regularly. The CDC's guidance states that some restrictions on businesses may be needed, but it does not mention that businesses must or should be closed to slow COVID-19. Yet, Governor Walz chose a draconian shutdown that picks winners and losers, with devastating effects.

5. To enforce this unconstitutional scheme, Governor Walz threatened criminal penalties for individuals and businesses who fail to comply with the EOs, despite not having the statutory authority to impose penalties against businesses or places of worship. Governor Walz even "deputized" Attorney General Keith Ellison, threatening penalties of up to \$25,000 never before applied to alleged violations of Chapter 12 under Minnesota Statutes section 8.31. Governor Walz' orders state that city and county attorneys can proceed under section 8.31 as well, even though the law does not authorize it. These threatened penalties intimidated Plaintiffs into not exercising their First and Fourteenth Amendment rights for fear of criminal prosecution. News reports indicate that dozens of people have been charged with violations of the EOs by County Attorneys responsible for prosecution of violations of the EOs.

6. Had the governor instead adhered to his obligations to "support the Constitution of the United States and the Constitution of the State of Minnesota," as required by his oath of office, most of these damages could have been avoided. Simply put, Governor Walz' scheme of selecting economic "winners and losers" and wholly shutting down some businesses without authority under Minnesota law violates the Plaintiff businesses' 14th Amendment due process and equal protection rights. Governor Walz' actions constitute a taking under the Fifth Amendment and Minnesota statute for

which the State must now pay. And, Governor Walz' prohibition on worshippers gathering violates churches' and individuals' First Amendment rights. Plaintiffs are entitled to money damages and declaratory and injunctive relief because of Governor Walz' unconstitutional conduct.

PARTIES

7. Plaintiff Northland Baptist Church of St. Paul, Minnesota is a Minnesota nonprofit corporation. Northland Baptist Church of St. Paul, Minnesota's registered office address is 1320 Rice St., St. Paul, Ramsey County, Minnesota. Northland Baptist Church holds services at 104 Ivy Ave. W in St. Paul, Ramsey County, Minnesota.

8. Plaintiff John Bruski is an individual who resides in Ramsey County, Minnesota.

9. Plaintiff Living Word Christian Center is a Minnesota nonprofit corporation. Living Word Christian Center's registered office address is 9201 75th Ave. N, Brooklyn Park, Hennepin County, Minnesota. Living Word Christian Center holds services in Brooklyn Park, St. Paul, and Rogers, Minnesota.

10. Plaintiff Glow In One Mini Golf, L.L.C. is a Minnesota limited liability company. Glow In One Mini Golf, L.L.C.'s registered office address is 10150 City Walk Drive #329 in Woodbury, Washington County, Minnesota. Glow In One Mini Golf, L.L.C.'s business location is in Blaine, Anoka County, Minnesota.

11. Plaintiff Aaron Kessler is an individual who resides in Ramsey County, Minnesota.

12. Plaintiff The A J Hulse Company is a Minnesota corporation. The A J

Hulse Company' s registered office address is 12063 Elm Creek Blvd. N., Maple Grove, Hennepin County, Minnesota.

13. Plaintiff Andrew Hulse is an individual who resides in Sherburne County, Minnesota.

14. Plaintiff Gay Bunch-Hulse is an individual who resides in Sherburne County, Minnesota.

15. Plaintiff Myron' s Cards and Gifts, Inc. is a Minnesota corporation. Myron' s Cards and Gifts, Inc.' s registered office address is 1306 County Rd. F West, Suite 130, Arden Hills, Ramsey County, Minnesota. Myron' s Cards and Gifts, Inc. has locations in Bloomington (Hennepin County), Roseville (Ramsey County), Coon Rapids (Anoka County), Blaine (Anoka County), and Mankato (Blue Earth County).

16. Plaintiff Larry Evenson is an individual who resides in Ramsey County, Minnesota.

17. Defendant Tim Walz is the governor of the State of Minnesota. His office address is 130 State Capitol, 75 Rev. Dr. Martin Luther King Jr. Blvd., Saint Paul, Minnesota 55155. Plaintiffs' claims are against Governor Walz individually and in his official capacity as governor.

18. Defendant Keith Ellison is the attorney general of the State of Minnesota. His office address is 445 Minnesota Street, Saint Paul, Minnesota 55101. Plaintiffs' claims are against Attorney General Ellison in his official capacity only.

19. Defendant Mike Freeman is the county attorney for Hennepin County, Minnesota. His office address is 300 South Sixth St, C-2000, Minneapolis, Minnesota.

Plaintiffs' claims are against County Attorney Freeman in his official capacity only.

20. Defendant Tony Palumbo is the county attorney for Anoka County, Minnesota. His office address is 2100 3rd Ave., Suite 720, Anoka, Minnesota. Plaintiffs' claims are against County Attorney Palumbo in his official capacity only.

21. Defendant John Choi is the county attorney for Ramsey County, Minnesota. His office address is 345 Wabasha St. N, Suite 120, St. Paul, Minnesota. Plaintiffs' claims are against County Attorney Choi in his official capacity only.

JURISDICTION AND VENUE

22. The Court has personal jurisdiction over the defendants, who reside in Minnesota and committed the acts alleged in this Complaint in Minnesota.

23. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331, 28 U.S.C. § 1343, and 28 U.S.C. § 1367.

24. Venue is proper because a substantial part of the events giving rise to the claims occurred in the district of Minnesota. *See* 28 U.S.C. § 1391(b)(2).

STATEMENT OF THE CLAIM

The Executive Orders' Structure and Enforcement Schemes

Executive Order 20-01

25. On March 13, 2020, Governor Walz issued Emergency Executive Order 20-01. A copy of this order is attached to this Complaint as Exhibit A.

26. EO 20-01 declares a peacetime emergency in Minnesota because of the COVID-19 pandemic.

27. EO 20-01 states that “[l]ocal resources are inadequate to fully address the

COVID-19 pandemic.” The Order does not state what local resources would be needed to “fully address the COVID-19 pandemic” or what local resources were available.

28. At the time Governor Walz issued EO 20-01, there were 14 confirmed cases of COVID-19 in Minnesota.

29. EO 20-01 states that it is effective under Minn. Stat. § 4.035, subd. 2, and its duration is governed by Minn. Stat. 12.31, subd. 2.

30. EO 20-01 does not contain a severability provision.

Executive Order 20-04

31. On March 16, 2020, Governor Walz issued Emergency Executive Order 20-04. A copy of this Order is attached to this Complaint as Exhibit B.

32. EO 20-04 closed a number of lawful Minnesota businesses, including restaurants and other places of public accommodation offering food or beverage for on-premises consumption, bars, breweries, cigar bars, theaters, gyms, other exercise studios, amusement parks, bowling alleys, country clubs, golf courses, and other establishments of the like.

33. These businesses were forced to close by 5:00 PM on March 17, 2020.

34. EO 20-04 allowed these businesses to provide services through delivery or take-out means.

35. EO 20-04 excepted from its scope grocery stores, convenience stores, pharmacies, health care facilities, soup kitchens, and a few others.

36. EO 20-04 states the source of its authority as Minn. Stat. § 12.21, subd. 3(1), and quotes part of that statute: “the Governor ‘may make, amend, and rescind the

necessary orders and rules to carry out the provisions’ of Minnesota Statutes, Chapter 12.” But EO 20-04 neglects to quote the next line in that statutory provision: “within the limits of the authority conferred by this section, with due consideration of the plans of the federal government”

37. EO 20-04 does not explain how closure of some Minnesota restaurants, bars, and other like businesses, but keeping open others of like nature, will accomplish mitigation of community spread of COVID-19 or whether there are available less restrictive means by which that goal might be accomplished.

38. EO 20-04 states a concern for overwhelming health care facilities needed to combat COVID-19, but presents no factual information that would indicate that persons ill with COVID-19 could not be serviced by local resources where they live in Minnesota.

39. EO 20-04 states that it may be enforced pursuant to Minn. Stat. § 12.45 as to “persons,” but does not state a separate penalty for businesses failing to comply. EO 20-04 threatens a penalty for violation of up to 90 days in jail and up to a \$1,000 fine.

40. EO 20-04 does contain a severability provision and invites a Court to ‘blue pencil’ the Order if part of it is deemed to be invalid.

Executive Order 20-08

41. On March 18, 2020, Governor Walz issued Emergency Executive Order 20-08. A copy of this Order is attached to this Complaint as Exhibit C.

42. EO 20-08 amended EO 20-04 to include, relevant here, cosmetology salons and barber shops.

43. EO 20-08 was effective immediately and did not provide any lead time for compliance.

Executive Order 20-18

44. On March 18, 2020, Governor Walz issued Emergency Executive Order 20-18. A copy of this Order is attached to this Complaint as Exhibit D.

45. EO 20-18 extended the closure of places of accommodation set forth in EO 20-04 and 20-08 until May 1, 2020.

Executive Order 20-20

46. On March 25, 2020, Governor Walz issued Emergency Executive Order 20-20. A copy of this Order is attached to this Complaint as Exhibit E.

47. EO 20-20 forced Minnesotans to stay at home except for Critical Sector Work and Activities outlined in paragraphs 5 and 6 of that Order.

48. Paragraph 5 allows for the following activities, in relevant part:

- a. Seek emergency services;
- b. Obtain medical services, supplies, and medications;
- c. Visit a health care or dental facility or veterinarian;
- d. Obtain groceries;
- e. Obtain alcoholic beverages;
- f. Obtain supplies needed to work from home;
- g. Visit laundromats and dry cleaners.

49. Paragraph 6 allows the following “Critical Sector” workers (relevant to this action) to continue working despite the Order:

- a. Health care workers listed in the CISA guidance, which includes dentists;
- b. Providers of “reproductive health care,” which includes abortions, childbirth services, mental health care, and substance use treatment;
- c. Workers in bicycle shops;
- d. The news media;
- e. Officials, workers, and leaders in houses of worship and other places of religious expression or fellowship, and workers necessary to plan, record, and distribute online or broadcast content;
- f. Skilled trades like electricians, plumbers, HVAC technicians, elevator technicians, exterminators, janitorial staff, moving services, and security staff;
- g. Labor union essential activities, including the administration of health and welfare funds, and monitoring the wellbeing and safety of members providing services in the Critical Sectors;
- h. Laundry services;
- i. “Essential supply stores,” which is limited to workers at businesses that sell products, tools, materials, or supplies necessary for: (1) the above Critical Sectors to continue their essential operations, (2) for workers to work from home, or (3) for the maintenance of the safety, sanitation, and essential operation of homes or residences.

50. EO 20-20 did not allow businesses to operate even if they could provide services or sell goods with sanitary precautions that either keep people at least six feet

apart, consistent with CDC guidelines, or prevent direct touching or communication of bodily fluids like saliva.

51. EO 20-20 specifically prohibited public accommodations from providing services, even if they could be provided outside and in keeping with CDC guidelines.

52. EO 20-20 claims that its authority is derived from Minn. Stat. §§ 12.02 and 12.21. Relevant here, Section 12.21, subd. 3(7) states: “In performing duties under this chapter and to effect its policy and purpose, the governor may: . . . 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 direction or control of: . . . (vi) the evacuation, reception, and sheltering of persons.”

53. EO 20-20 does not indicate that it is necessary to cooperate with any directive of the federal government or another state to shelter persons.

54. EO 20-20 became effective on March 27, 2020 at 11:59 PM and was to expire on April 10, 2020 at 5:00 PM.

55. EO 20-20 threatens a penalty for violation of up to 90 days in jail and up to a \$1,000 fine under Minn. Stat. § 12.45. EO 20-20 does not state a separate penalty for businesses.

56. After EO 20-20 was issued, the Minnesota Department of Employment and Economic Development (“DEED”) issued guidance for what people and businesses are exempt from the EO. This document eventually spanned 24 pages as of May 3, 2020 with

numerous changes throughout the coming weeks. A copy of this guidance is attached as Exhibit F.

Executive Order 20-33

57. On April 8, 2020, Governor Walz issued Emergency Executive Order 20-33. A copy of this Order is attached to this Complaint as Exhibit G.

58. EO 20-33 rescinded EO 20-20 and imposed a new requirement that persons shelter in place and extended the closure of public accommodations required by EO 20-04 and its amending Orders, both until May 3, 2020.

59. Like EO 20-20, EO 20-33 prohibited public accommodations from providing outside services even if they could follow CDC guidelines related to sanitization and spacing.

60. EO 20-33 continued to prohibit elective surgeries and procedures.

61. EO 20-33 added new categories of “Critical Sector” workers, including the following:

- a. Workers “supporting the medical cannabis industry”;
- b. Landscaping and lawn care workers;
- c. Recreational vehicle and all-terrain vehicle sales that are “necessary to allow for essential travel or support Critical Sectors”;
- d. Workers needed to process hunting and fishing licenses;
- e. EO 20-33 specified that, while financial sector workers were exempted, debt collection professionals were *not* part of that exemption;
- f. Workers at gun stores, though ranges had to remain closed;

- g. Workers cleaning common areas in apartments, but workers doing residential cleaning care of individual homes were not exempt;
 - h. Workers “supporting major appliance sales”;
 - i. Process servers and legal couriers;
 - j. Workers supporting pet adoption and animal foster care so long as paperwork is done online and social distancing is observed through the adoption process (but pet groomers are not exempt even if they can do the same);
 - k. Workers supporting “minimum basic operations” in businesses, such as to preserve inventory, process payroll, and facilitate remote work.
62. DEED made further amendments to its guidance attached as Exhibit G.
63. EO 20-33 did not allow businesses to operate even if they could provide services or sell goods with sanitary precautions that either keep people at least six feet apart, consistent with CDC guidelines, or prevent direct touching or communication of bodily fluids like saliva.
64. EO 20-33 specifically prohibited public accommodations from providing services, even if they could be provided outside and in keeping with CDC guidelines.
65. EO 20-33 claims that its authority is derived from Minn. Stat. §§ 12.02 and 12.21. It cites the same provisions as EO 20-20 to support the authority to require sheltering in place, Section 12.21, subd. 3(7).
66. EO 20-33 does not indicate that it is necessary to cooperate with any directive of the federal government or another state to shelter persons.

67. EO 20-33 became effective on April 8, 2020 at 11:59 PM and was to expire on May 3, 2020 at 11:59 PM.

68. EO 20-33 threatens a penalty for violation by individuals of up to 90 days in jail and up to a \$1,000 fine for individuals under Minn. Stat. § 12.45.

69. EO 20-33 also threatens a penalty for violation of up to a year of imprisonment and a \$3,000 fine for business owners without citing to any statutory authority for that higher penalty.

70. EO 20-33 also threatens that the Attorney General and city and county attorneys may seek civil relief under Minn. Stat. § 8.31 of up to \$25,000 per occurrence for businesses violating EO 20-33.

71. Minn. Stat. § 8.31 does not reference Chapter 12 and only references the Attorney General's enforcement of consumer fraud type actions available in other Minnesota statutes. Minn. Stat. § 8.31 is titled, "Additional Duties of Attorney General" and does not authorize city or county attorneys to seek civil penalties.

72. Executive Order 20-35

73. On April 13, 2020, Governor Walz issued Emergency Executive Order 20-35, which extended the peacetime emergency declared in EO 20-01 for 30 days, until May 13, 2020. A copy of this Order is attached to this Complaint as Exhibit H.

74. EO 20-35 states that local resources are inadequate to address the threat of COVID-19, but the Order does not state what local resources would be needed to "fully address the COVID-19 pandemic" or what local resources were available.

Executive Order 20-38

75. On April 17, 2020, Governor Walz issued Emergency Executive Order 20-38. A copy of this Order is attached to this Complaint as Exhibit I.

76. EO 20-38 amends EO 20-33, 20-04, and 20-18, effective as of April 18, 2020 at 5:00 AM.

77. EO 20-38 allows certain activities, including outdoor golfing, boating, and fishing that were prohibited by prior EOs.

78. EO 20-38 allows certain stores to open to support outdoor recreational facilities that had been force-closed before, including golf pro shops, marinas, docks, mooring services, pump-out stations, ATV and watercraft repair and sales facilities, lake service providers who provide docks and boatlifts, bait shops, and outdoor shooting ranges and game farms.

79. EO 20-38 does not allow for indoor activities even if those indoor activities can comply with CDC guidelines for sanitization and social distancing.

Executive Order 20-40

80. On April 17, 2020, Governor Walz issued Emergency Executive Order 20-40. A copy of this Order is attached to this Complaint as Exhibit J.

81. EO 20-40 allows some workers to return to work, but requires that all workers who can work from home continue to do so. Among the workers allowed to return to work are the following:

- a. Non-“Critical Sector” workers in industrial and manufacturing businesses;

- b. Non-“Critical Sector” workers in office-based businesses whose work is “primarily” not customer-facing.

82. DEED provided guidance as to reopening businesses, but that guidance does not define what businesses or jobs are “primarily” customer-facing. A copy of the guidance is attached as Exhibit K.

83. EO 20-40 did not end the ban on retail stores, hair salons, or entertainment-based businesses even if those businesses could operate by following federal CDC guidelines for sanitization and social distancing.

Executive Order 20-48

84. On April 30, 2020, Governor Walz issued Emergency Executive Order 20-48. A copy of this Order is attached to this Complaint as Exhibit L.

85. EO 20-48 replaced prior EOs and extended the shelter in place order through May 17, 2020 at 11:59 PM.

86. EO 20-48 rescinded EOs 20-33, 20-38, 20-40, and 20-47 as of May 3, 2020 at 11:59 PM and became effective in their place as of May 3, 2020 at 11:59 PM.

87. EO 20-48 essentially incorporated the orders it replaced, and includes the following exemptions:

- a. People may leave home to pick up retail products from establishments offering curbside pickup services;
- b. Weddings are now allowed so long as they are limited to 10 people or fewer and social distancing is observed;
- c. Workers supporting bait harvesters;

- d. Workers transporting boats;
- e. Workers necessary to operate safe harbors and marinas;
- f. Workers supporting car washes of cars' exteriors;
- g. Workers supporting environmental compliance, habitat restoration, natural land and water management, and plant and animal population management;
- h. Workers at "traditional retail establishments" working to fulfill online orders for pickup and delivery;
- i. Workers supporting the sale of "essential furnishings," including beds and other furniture "necessary" for other workers to work from home;
- j. Workers who construct and repair decks and fences;
- k. Window cleaners, power washers of home exteriors, and gutter cleaning services;
- l. Workers supporting resorts in accordance with the outdoor recreation guidance;
- m. Workers supporting race tracks and horse training and stabling;
- n. Ski areas (now that it is May);
- o. Outdoor recreational equipment rental facilities;
- p. Retail businesses that sell, rent, maintain, and repair goods that can be picked up outside;
- q. Pet groomers if they can adhere to guidelines related to sanitization and social distancing; and

r. Salons and barbershops *only* to sell retail products.

88. EO 20-48 does not allow other businesses to operate indoors even if they can provide services or sell goods with sanitary precautions that either keep people at least six feet apart, consistent with CDC guidelines, or prevent direct touching or communication of bodily fluids like saliva.

89. EO 20-48 specifically prohibits public accommodations from providing services, even if they could be provided outside and in keeping with CDC guidelines, other than salons and barbershops selling retail products that can be picked up outside.

90. EO 20-48 claims that its authority is derived from Minn. Stat. §§ 12.02 and 12.21. It cites the same provisions as EO 20-20 to support the authority to require sheltering in place, Section 12.21, subd. 3(7).

91. EO 20-48 does not indicate that it is necessary to cooperate with any directive of the federal government or another state to shelter persons.

92. EO 20-48 threatens a penalty for violation by individuals of up to 90 days in jail and up to a \$1,000 fine for individuals under Minn. Stat. § 12.45.

93. EO 20-48 also threatens a penalty for violation of up to a year of imprisonment and a \$3,000 fine for business owners without citing to any statutory authority for that higher penalty.

94. EO 20-48 also threatens that the Attorney General and city and county attorneys may seek civil relief under Minn. Stat. § 8.31 of up to \$25,000 per occurrence for businesses violating EO 20-48.

95. Minn. Stat. § 8.31 does not reference Chapter 12 and only references the

Attorney General's enforcement of consumer fraud type actions available in other Minnesota statutes. Minn. Stat. § 8.31 is titled, "Additional Duties of Attorney General" and does not authorize city or county attorneys to seek civil penalties.

The Executive Orders Shut Down Plaintiffs' Businesses and Leave Others Open

96. Each of the Plaintiff businesses and their owners has suffered severe damages as a result of Governor Walz' orders, which allow others to operate despite the threat posed by their operation in the midst of COVID-19.

Northland Baptist Church and Pastor John Bruski

97. Northland Baptist Church ("Northland") is a church in St. Paul, Minnesota. Its Pastor is John Bruski, who also lives in St. Paul.

98. Northland usually holds a Sunday School service, two Sunday services in the morning and evening, and a Wednesday evening service. Northland is a small church that usually hosts 10-20 attendees at each service.

99. Northland was prohibited from holding from any in-person services or other religious gathering by EOs 20-20, 20-33, and 20-48. Governor Walz made clear that EO 20-20, for example, banned church meetings. <https://www.fox9.com/news/minnesota-governor-stresses-no-large-gatherings-as-easter-passover-approach>.

100. While these EOs make an exception for worship leaders and to facilitate online services, Northland does not broadcast its services live. It posts to YouTube and Anchor FM after the recorded services end. Recorded services are not a replacement for in-person services, as the Bible states that Christians should not "forsak[e] the assembling

of ourselves together,” Hebrews 10:25 (KJV), and Northland is a Bible-believing church whose statement of faith declares that “The Holy Scriptures of the Old and New Testaments are THE Plenary Inspired Word of God.”

101. Thus, the EOs banned Northland from holding church services. The EOs do not provide for the opportunity to hold church services while sanitizing the church and common areas and observing social distancing.

102. At the same time, the EOs allowed big box stores and other places, like even bait shops, to operate.

103. The EOs did not allow churches to hold services outside, either, despite allowing outdoor recreation like running, where people often come into close proximity to one another on heavily used trails.

104. Northland wishes to hold church services consistent with proper sanitization procedures and social distancing, but fears prosecution under the EOs by Attorney General Keith Ellison and Ramsey County Attorney John Choi because the church is located and holds services in St. Paul.

Living Word Christian Center

105. Living Word Christian Center (“LWCC”) is a church with campuses in Brooklyn Park, St. Paul, and Rogers, Minnesota.

106. LWCC usually holds Saturday, Sunday, and Wednesday services. Northland is a large church that hosts anywhere from 150 to 1,600 attendees, depending on the service date and time.

107. LWCC was prohibited from holding from any in-person services or other

religious gathering by EOs 20-20, 20-33, and 20-48. Governor Walz made clear that EO 20-20, for example, banned church meetings. <https://www.fox9.com/news/minnesota-governor-stresses-no-large-gatherings-as-easter-passover-approach>.

108. While LWCC has been able to broadcast services online, it has come at a steep cost in terms of investment of human capital and unbudgeted monies. LWCC believes that broadcast services are not a replacement for in-person services, as the Bible states that Christians should not “forsak[e] the assembling of ourselves together,” Hebrews 10:25 (KJV), and LWCC is a Bible-believing church which believes that this scriptural mandate is as relevant today as it was in the First Century A.D.

109. Thus, the EOs banned LWCC from holding in-person church services. The EOs do not provide for the opportunity to hold church services while sanitizing the church and common areas and observing social distancing. LWCC has held services per its regular times and provided supplemental content during the week, all on digital platforms. The church has abided by the shutdown order and provided weekly food distributions, childcare for essential workers, and significant benevolence to impacted people.

110. At the same time, the EOs allowed big box stores and other places, like liquor stores and even bait shops, to operate.

111. The EOs did not allow churches to hold services outside, either, despite allowing outdoor recreation like running, where people often come into close proximity to one another on heavily used trails.

112. None of the updated shutdown EOs have eased the burdens on LWCC,

either, and it has presented a financial hardship on the church coupled with a significant spike in benevolence, pastoral care, and food requests that LWCC has strived to meet.

113. LWCC wishes to hold church services consistent with proper sanitization procedures and social distancing, but fears prosecution under the EOs by Attorney General Keith Ellison, Hennepin County Attorney Mike Freeman, and Ramsey County Attorney John Choi because the church is located and holds services in Brooklyn Park, Rogers, and St. Paul.

Myron's Cards and Gifts, Inc. and Larry Evenson

114. Plaintiff Myron's Cards and Gifts, Inc. ("Myron's") does business as Evenson's Hallmark and features five retail locations in Bloomington, Coon Rapids, Roseville, Blaine, and Mankato, Minnesota. Myron's is owned and operated by Larry Evenson.

115. Myron's has employed approximately 45 full and part-time employees and has been in business for decades (51 years).

116. Myron's mall location in Roseville was shut down by EO 20-04 on March 19, 2020 because of the substantial reduction in mall customer traffic, and EO 20-20 shut down the remaining four stores to in-store face-to-face customer transactions on March 27, 2020.

117. Because of the EOs, Myron's is experiencing damages of approximately \$350,000. Its full and part-time employees (with the exception of one full-time employee) have been laid off because they have not been able to work under the EOs.

118. Because of the EOs, Myron's has been unable to meet vendor inventory

debt obligations and rent obligations.

119. Because of the EOs, customers have been driven to big box competitor stores like Target, Walmart, Walgreens, or CVS, which are deemed “Critical” and where patrons can get Hallmark cards and the like.

120. Even though these big name stores are deemed “Critical,” and Myron’s is not, Myron’s can easily operate by observing sanitization procedures and maintaining social distancing, in a way far better and more in keeping with federal guidelines than can occur at Target or CVS, which have experienced large crowds in Minnesota during the COVID-19 pandemic.

121. Because of the EOs, Myron’s missed three of the most important revenue generating seasons in the card and gift industry: Easter, Mother’s Day, and Graduation.

122. Even though EO 20-48 allowed for some curbside pick-up, the amount of revenue generated from that change is miniscule and will only be able to pay the wage of one employee in three stores as of May 4, 2020.

123. Myron’s owner, Larry Evenson, has also been unable to work because of the shutdown imposed by EOs 20-20, 20-33, and 20-48.

124. Myron’s wants to fully operate its stores consistent with proper sanitization procedures and social distancing guidelines where possible, and Larry Evenson wants to work. However, they fear that, because of the punishments threatened by the EOs, if they return to work or open their business, they could be prosecuted by Attorney General Keith Ellison, Hennepin County Attorney Mike Freeman, Anoka County Attorney Tony Palumbo, or Ramsey County Attorney John Choi because of shops open in Hennepin,

Ramsey, and Anoka Counties.

Glow In One Mini Golf L.L.C. and Aaron Kessler

125. Plaintiff Glow In One Mini Golf L.L.C. (“Glow In One”) is an indoor blacklight mini-golf experience located in Blaine, Minnesota and owned and operated by Plaintiff Aaron Kessler.

126. Glow In One has employed approximately 4 part time employees.

127. Glow In One was totally shut down by EO 20-04 on March 17, 2020 at 5:00 PM. EOs 20-20, 20-33, and 20-48 make it impossible for Glow In One to operate as well.

128. Because of the EOs, Glow In One has experienced damages of approximately \$40,000 to 45,000. Because March is a huge business month for an indoor facility like Glow In One, the damage has been enormous. Its full time employees have been laid off because they have not been able to work under the EOs.

129. Glow In One has had to refund party reservation deposits and other deposits made through the summer months as patrons have cancelled those events due to uncertainty caused by the EOs.

130. Despite being shut down, Glow In One still has to pay its rent, overhead, and loan expenses, but cannot afford to pay rent and has been denied rent relief. Glow In One fears an eviction as soon as Governor Walz’ moratorium on evictions ends and expects damages will top \$100,000 as it continues to not be able to operate.

131. Like with outdoor golf courses, Glow In One has the ability to service customers while sanitizing equipment, preventing touching of common surfaces like the

cups on a given hole, and maintaining social distance between all patrons not in the same household. Nonetheless, Glow In One is totally prohibited from operating while golf courses are allowed to operate by virtue of EO 20-38.

132. Glow In One's owner and operator, Aaron Kessler, has also been unable to work because of the shutdown imposed by EO 20-04. As a result, Mr. Kessler and his family's finances will likely be devastated by the loss of business and corresponding personal liability for rent obligations that Glow In One is now unable to pay.

133. Glow In One wants to operate consistent with proper sanitization procedures and social distancing, and Kessler wants to work. However, both fear that, because of the punishments threatened by the EOs, if they return to work or open their business, they could be prosecuted by Attorney General Keith Ellison, Anoka County Attorney Tony Palumbo, or Ramsey County Attorney John Choi because they work in Anoka County and live in Ramsey County.

The A J Hulse Company, Andrew Hulse, and Gay Bunch-Hulse

134. Plaintiff The A J Hulse Company ("AJ Hulse") does business as 18 | 8 Fine Men's Salons and features two retail locations in Maple Grove and Wayzata. AJ Hulse is owned and operated by Andrew Hulse and Gay Bunch-Hulse.

135. AJ Hulse has employed approximately 20 full time equivalent employees and has been growing because of its excellent service and professionalism.

136. AJ Hulse was shut down by EOs 20-04 and 20-08 on March 17, 2020 at 5:00 PM. EOs 20-20, 20-33, and 20-48 make it impossible for AJ Hulse to operate as well. All employees were laid off.

137. Because of the EOs, AJ Hulse is experiencing damages of approximately \$80,000-90,000 per month. Its full time employees have been laid off because they have not been able to work under the EOs.

138. AJ Hulse has submitted plans to the state requesting the ability to re-open, but currently has not been authorized to reopen or been provided any guidance as to when it will be able to re-open.

139. Despite being shut down, AJ Hulse still has to pay its rent (even while obtaining some deferrals) and loan expenses.

140. Perhaps most frustrating for AJ Hulse, its employees are licensed by the state and specifically trained in infection control as part of the state licensing regime, and, because of this training, AJ Hulse employees could easily adapt to additional procedures to minimize the risk of spreading COVID-19. In fact, Andrew and Gay have already tapped into industry resources to establish best practices.

141. Nonetheless, AJ Hulse has been completely shut down without any economic use of its business from March 17 through May 3. EO 20-48 allowed the sale of retail products, but AJ Hulse's business' viability depends on its ability to provide professional services such as men's haircuts. Retail products represent only about 2.5% of sales for AJ Hulse.

142. At the same time, Governor Walz' most recent EO 20-48 allows pet groomers to give animals haircuts, but AJ Hulse is not allowed to operate.

143. AJ Hulse's owners, Andrew Hulse, and Gay Bunch-Hulse, have also been unable to work because of the shutdown imposed by EOs 20-04 and 20-08.

144. Andrew Hulse is not eligible for unemployment benefits. Gay Bunch-Hulse has finally been provided unemployment benefits after a long wait.

145. AJ Hulse wants to operate consistent with proper sanitization procedures and social distancing where possible, and Andrew Hulse, and Gay Bunch-Hulse want to work. However, they fear that, because of the punishments threatened by the EOs, if they return to work or open their business, they could be prosecuted by Attorney General Keith Ellison or Hennepin County Attorney Mike Freeman because they work in Hennepin County. In fact, on May 4, 2020, a St. Paul barbershop that publicly attempted to re-open during the shutdown was closed down by police. AJ Hulse also fears losing its license and thus its ability to operate, which has been communicated by both the Cosmetology Board and the Barber Board in Minnesota.

Article III Standing

146. The Plaintiffs have Article III standing to bring their claims because they have suffered money damages and would choose to work or freely exercise their religion and rights to speech and assembly, but they cannot because of a credible threat of prosecution by the Attorney General and applicable County Attorneys based on the penalties threatened by the EOs.

CAUSES OF ACTION

147. Plaintiffs have set forth a short and plain statement showing their entitlement to relief that is substantially plausible under *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), *Ashcroft v. Iqbal*, 556 U.S. 662, and *Johnson v. City of Shelby*, 135 S. Ct. 346 (2014), and further identifies discrete claims for relief, which include but are

not limited to the following.

148. This Court has pendent jurisdiction to determine Plaintiffs' state law claims under 28 U.S.C. § 1367. See *Knight v. Alsop*, 535 F.2d 466 (8th Cir. 1976).

149. Defendants do not have any type of immunity from suit because any Minnesota statute they might rely upon to justify their conduct is unconstitutional, facially or as-applied, as set forth herein.

150. Governor Walz' positions taken related to the EOs are not substantially justified, and no special circumstances would make an award of attorney fees to Plaintiffs unjust. Minn. Stat. § 15.472.

Count One
Free Exercise of Religion
U.S. Const. Amend. I and Minn. Const. Art. I, § 16.
42 U.S.C. §§ 1983 and 1988, and 28 U.S.C. § 2201

151. Plaintiffs incorporate the preceding paragraphs by reference.

152. Plaintiffs Northland Baptist Church and Living Word Christian Center's sincerely held religious beliefs teach that the Bible is the inspired Word of God and the sole authority for faith and practice.

153. Plaintiffs Northland, Bruski, and LWCC sincerely believe that the Bible teaches the necessity of gathering together for corporate prayer and worship and that such assembly is necessary and good for the Church and its members' spiritual growth.

154. EOs 20-20, 20-33, and 20-48 substantially burden Northland, Bruski, and LWCC's religion by prohibiting them from holding in-person church services.

155. EOs 20-20, 20-33, and 20-48 substantially interfere with Northland, Bruski,

and LWCC's ability to carry out their religious doctrine, faith, and mission.

156. EOs 20-20, 20-33, and 20-48 target, discriminate against, and show hostility towards churches, including Northland and LWCC.

157. EOs 20-20, 20-33, and 20-48 are neither neutral nor generally applicable.

158. The State does not have a compelling reason for prohibiting church services where congregants can otherwise practice adequate social distancing protocol, especially when compared to the vast secular activities exempted under the EOs, nor has it selected the least restrictive means to further any purported interest.

159. EOs 20-20, 20-33, and 20-48 violate the Free Exercise Clause of the First Amendment to the United States Constitution and Article I, section 16 of the Minnesota Constitution, both facially and as applied.

160. EOs 20-20, 20-33, and 20-48 are unconstitutional because they are based on EO 20-01, which lacks any statutory authority under Minnesota law and are thus void.

161. In the absence of declaratory and injunctive relief, Northland, Bruski, and LWCC will be irreparably harmed.

Count Two
Free Speech and Peaceable Assembly
U.S. Const. Amend. I and Minn. Const. Art. I, § 3
42 U.S.C. §§ 1983 and 1988, and 28 U.S.C. § 2201

162. Plaintiffs incorporate the preceding paragraphs by reference.

163. EOs 20-20, 20-33, and 20-48 violate Plaintiffs Northland, Bruski, and LWCC's freedom of speech by prohibiting them from engaging in religious speech through their church services, which occur exclusively on private property.

164. EOs 20-20, 20-33, and 20-48 violate Plaintiffs Northland, Bruski, and LWCC's right to peaceably assemble because the ban on in-person services does not serve any legitimate, rational, substantial, or compelling government interest.

165. Prohibiting or punishing Plaintiffs Northland, Bruski, and LWCC's religious speech and assembly does not serve any legitimate, rational, substantial, or compelling government interest.

166. Defendants also have alternative, less restrictive means to achieve any interests that it might have.

167. EOs 20-20, 20-33, and 20-48 are unconstitutional because they are based on EO 20-01, which lacks any statutory authority under Minnesota law and are thus void.

168. EOs 20-20, 20-33, and 20-48 violate the Free Speech and Assembly Clauses of the First Amendment to the United States Constitution, both facially and as applied.

Count Three
Equal Protection
U.S. Const. Amend. XIV
42 U.S.C. §§ 1983 and 1988, and 28 U.S.C. § 2201

169. Plaintiffs incorporate the preceding paragraphs by reference.

170. The regime of EOs described above in this Complaint show that Governor Walz—and the Attorney General and County Attorneys authorized to enforce the EOs—have deprived all Plaintiffs of the equal protection of the laws guaranteed under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983 because they ban Plaintiffs' work and speech but except other similarly

situated persons and businesses from their restrictions.

171. Thus, as described above, the EOs prohibit religious speech but allow union leaders to operate, prohibit the sale of Hallmark cards at a local store but allow Target, Walmart, Walgreens, and CVS to sell them, allow outdoor golf because social distancing is possible but not indoor golf where social distancing is possible, and prohibit people from getting haircuts while allowing pets to get haircuts and others to cluster in hardware and liquor stores in the same retail locations.

172. When the government treats individuals or businesses disparately as compared to similarly situated persons, and that disparate treatment burdens a fundamental right or has no rational basis, no substantial relationship to the objectives of the order, or is arbitrary and capricious, that treatment violates the Equal Protection Clause of the United States Constitution and 42 U.S.C. § 1983.

173. As set forth in this Complaint, EOs 20-04, 20-08, 20-09, 20-18, 20-20, 20-33, 20-35, 20-38, 20-40, and 20-48 treat the Plaintiffs and their businesses differently than other businesses despite the categorization being underinclusive and having no rational relationship to the object of the Orders, prevention of the spread of COVID-19.

174. In the absence of declaratory and injunctive relief, Plaintiffs will be irreparably harmed.

175. The EOs are unconstitutional because they are based on EO 20-01, which lacks any statutory authority under Minnesota law and are thus void.

176. Because of Defendants' actions, Plaintiffs have suffered direct and immediate violations of their fundamental rights guaranteed by the United States

Constitution and are therefore entitled to money damages, injunctive relief, and declaratory relief to redress, remedy, and prevent future violations of their rights.

Count Four
Substantive Due Process – Deprivation of Liberty
U.S. Const. Amend. XIV
42 U.S.C. §§ 1983 and 1988, and 28 U.S.C. § 2201

177. Plaintiffs incorporate the preceding paragraphs by reference.

178. The EOs described above and their enforcement mechanisms have deprived the Plaintiffs of their rights to due process under the Fourteenth Amendment and 42 U.S.C. § 1983.

179. The Due Process Clause of the Fourteenth Amendment protects individuals from deprivations of life, liberty, or property without due process of law.

180. The shelter in place orders, EOs 20-20, 20-33, and 20-48, exceed the authority provided to the governor under Minn. Stat. § 12.21 and are thus arbitrary and capricious on their face and as applied to the Plaintiffs.

181. The other EOs prohibiting Plaintiffs from working or practicing their religious views lack any rational basis, are arbitrary and capricious, and have no real or substantial relation to the objectives of the Orders given the broad exceptions allowed to select other businesses.

182. In the absence of declaratory and injunctive relief, Plaintiffs will be irreparably harmed.

183. EOs 20-20, 20-33, and 20-48 are unconstitutional because they are based on EO 20-01, which lacks any statutory authority under Minnesota law and are thus void.

184. Because of Defendants' actions, Plaintiffs have suffered and continue to suffer direct and immediate violations of their fundamental rights guaranteed by the United States Constitution and are therefore entitled to money damages, penalties, fees, injunctive relief, and declaratory relief to redress, remedy, and prevent future violations of their rights.

Count Five
U.S. Const. Amend. V and Minn. Stat. § 12.34
42 U.S.C. §§ 1983 and 1988, and 28 U.S.C. § 2201

185. Plaintiffs incorporate the preceding paragraphs by reference.

186. By virtue of the EOs, Governor Walz has seized or commandeered without just compensation the business Plaintiffs' property in the form of their access to their physical property, lost revenue and goodwill.

187. These uncompensated takings violate the Takings Clause of the Fifth Amendment to the United States Constitution and Minn. Stat. § 12.34.

188. With respect to Minn. Stat. § 12.34, Governor Walz has commandeered personal property and facilities for emergency management purposes, and has failed to promptly pay just compensation for the property's use. The Court should order the governor to make a formal order to determine the amount of compensation due.

189. With respect to the Fifth Amendment to the United States Constitution, temporary takings are compensable if they deprive a plaintiff of all economic use of property, which is what has happened to the Plaintiff businesses.

190. The business Plaintiffs are entitled to just compensation in an amount to be determined at trial, and their damages continue to accrue.

Count Six
Quo Warranto

191. Plaintiffs incorporate the preceding paragraphs by reference.

192. A writ of quo warranto may be issued to restrain an ongoing exercise of power not authorized by a Minnesota statute. *Save Lake Calhoun v. Strommen*, 928 N.W.2d 377 (Minn. Ct. App. 2019).

Section 12.21, subd. 3(7).

193. Minnesota Statutes Chapter 12 was passed in 1951, just after World War II and as the threat of nuclear attacks by the Soviet Union began to pose a threat to American security.

194. Section 12.01 in its original form (attached as Exhibit M) states that the Act's purpose, in relevant part, is as follows: "Because of the existing and increasing possibility of the occurrence [sic] of disasters of unprecedented size and destructiveness resulting from enemy attack, sabotage, or other hostile action, and in order to insure that preparations of this state will be adequate to deal with such disasters, and generally to provide for the common defense and protect the public peace, health, and safety, and to preserve the lives and property of the people of the state, it is hereby found and declared to be necessary: . . . (3) To provide for the rendering of mutual aid among the political subdivisions of the state and with other states, and to cooperate with the federal government with respect to the carrying out of civil defense functions.

195. Section 201, subdivision 3(9) of the 1951 Act provided that the governor had to power to effect "the evacuation and reception of the civilian population," which

powers could be used, consistent with the act's purpose, to "cooperate with the federal government, with other states, and with private agencies, in all matters pertaining to the civil defense of this state and of the nation."

196. The Minnesota Emergency Management Act of 1996 (attached as Exhibit N) amended the 1951 Act and changed some of the language of the act, adding natural disasters to the language and removing "civil defense" and references to the "common defense" and changing them to refer to "emergency management," consistent with the change in the federal agency responsible for emergency management from the Federal Civil Defense Administration to the Federal Emergency Management Administration in 1979.

197. With respect to section 12.21, subdivision 3, the numbering of that subdivision changed so that the provision applicable to "evacuation and reception of the civilian population" became "the evacuation, reception, and sheltering of persons," close to what it is today.

198. Section 12.21 specifically refers to powers to "cooperate with" with the federal government, agencies, or other states as an antecedent for any sheltering requirement. There is no standalone power in section 12.21 allowing the governor to shelter persons except for the purpose of cooperation with another government.

199. The Minnesota Court of Appeals just held, while granting a writ of quo warranto in a published decision in 2019, that where a Minnesota statute requires an agency's "cooperation with" another entity to exercise a power, it may not exercise that power alone. *Save Lake Calhoun v. Strommen*, 928 N.W.2d 377, 388 (Minn. Ct. App.

2019).

200. No federal or neighboring state demand has been made on Minnesota to “cooperate with” another governing body or agency to shelter persons in place within Minnesota’s territorial jurisdiction.

201. Minn. Stat. § 12.21 subd. 3(7) thus does not authorize EOs 12-20, 12-33, or 12-48, or any other shelter in place order issued by Governor Walz.

202. Because Governor Walz’ EOs 20-20, 20-33, and 20-48 require sheltering in place without the statutory authority to do so, Plaintiffs request the issuance of a writ of quo warranto to restrain the governor’s ongoing *ultra vires* conduct.

Section 12.31, subd. 2

203. Section 12.31, subdivision 2 only allows declaration of a peacetime emergency if “an act of nature . . . endangers life and property and local government resources are inadequate to handle the situation.” (Emphasis added).

204. The statute does not state that the governor has the authority to predict that local government resources might become inadequate to handle the situation; the statute requires that local resources are inadequate.

205. While EO 20-01 asserts that local government resources are inadequate to handle the situation, EO 20-01 provides no evidentiary support or rational basis for that claim. None of the subsequent EOs provide a basis for that claim.

206. At the time EO 20-01 was ordered, Minnesota only had 14 confirmed cases of COVID-19, and there was no actual evidence that local resources were inadequate to address the hospital capacity issues supposed to be correlated to the spread of COVID-19.

207. As of May 4, 2020, major health care companies and hospitals were in the midst of massive layoffs and furloughs of hospital staff because hospitals are relatively empty following Governor Walz' ban on non-elective surgeries. <https://www.startribune.com/minneapolis-based-allina-health-extends-workforce-reductions-in-wake-of-covid-19-pandemic/570190722/>.

208. The Minnesota Department of Health has guidance for addressing possible pandemics and responses to them, and categorizes the level of need based on the status of the disease at issue, its spread, and its effect on health care facilities. <https://www.health.state.mn.us/communities/ep/surge/crisis/panstages.html>.

209. Governor Walz did not reference the MDH's Pandemic Incident Command Considerations to indicate that there was an "overwhelming number of local cases beyond capacity of healthcare system," as categorized by the MDH's guidance.

210. There is no evidence that local government resources are inadequate to handle the COVID-19 situation.

211. Governor Walz' EO 20-01 thus exceeds his statutory authority to declare an emergency, and Plaintiffs thus request that the Court issue a writ of quo warranto to restrain the governor's ongoing *ultra vires* conduct.

Sections 12.45 and 8.31

212. Section 12.45 authorizes penalties and jail time against individuals of up to a \$1,000 fine and 90 days in jail.

213. Section 12.45 does not reference businesses as subject to criminal penalties.

214. Section 12.45 does not reference Section 8.31.

215. Section 8.31 allows the attorney general to seek civil penalties of up to \$25,000 for violation of various consumer fraud statutes and the like. It does not mention chapter 12.

216. Section 8.31 only provides limited powers to the attorney general. It does not allow county or city attorneys to exercise its civil penalty authority.

217. EOs 20-40 and 20-48 threaten individuals with penalties under Section 12.45, but also threaten businesses with up to a \$3,000 fine and a year in jail for encouraging or requiring employees to violate the Orders. These EOs do not cite any statutory authority to support these punishments.

218. EOs 20-40 and 20-48 also threaten that the AG can seek up to \$25,000 in civil damages under Minn. Stat 8.31. However, the AG is not specifically authorized to enforce the governor's executive orders under § 8.31. There are no cases in Minnesota citing Minn. Stat 8.31 that mention the phrase "executive order."

219. Governor Walz did not have the authority to issue executive orders threatening penalties to businesses.

220. Governor Walz did not have the authority to issue executive orders authorizing the Attorney General and county and city attorneys to penalize or prosecute businesses or persons under Section 8.31.

221. Governor Walz' threats of penalties under EOs 20-40 and 20-48 thus exceed his statutory authority, and Plaintiffs request that the Court issue a writ of quo warranto to restrain the governor's ongoing ultra vires conduct. Because the purported authority granted by EOs 20-40 and 20-48 exceeds the authority allowed to be exercised

by the Attorney General and the County Attorney Defendants, Plaintiffs request that these defendants also be prohibited from acting upon that purported authority.

222. The *ultra vires* conduct of the Defendants described here also demonstrates the lack of rational basis for the deprivations of Plaintiffs' constitutional rights described herein.

PRAYER FOR RELIEF

Plaintiffs respectfully request that the Court grant them relief as follows after a trial by jury, which is demanded:

A. An award of money damages under 42 U.S.C. § 1983 and Minn. Stat. § 12.34 for Defendant Governor Walz' unconstitutional deprivations and takings;

B. A declaration that Governor Walz did not have the statutory authority to declare an emergency that invoked Chapter 12 of the Minnesota Statutes, issue shelter in place orders, or authorize penalties in excess of his statutory authority, and that the Attorney General and County Attorney Defendants do not have the authority to prosecute violations of the EOs using that authority;

C. A corresponding writ of quo warranto restraining the ongoing exercise of *ultra vires* power;

D. A declaration that Defendants violated the equal protection and due process rights of the Plaintiffs under the United States and Minnesota Constitutions to free exercise, free speech, peaceable assembly, and the right to operate their businesses without arbitrary and capricious government interference;

E. An injunction prohibiting the Defendants from enforcing EOs 20-01, 20-04,

20-08, 20-09, 20-18, 20-20, 20-33, 20-35, 20-38, 20-40, and 20-48;

F. An award of attorney fees in favor of Plaintiffs and against Defendants upon Plaintiffs prevailing in this litigation, pursuant to 42 U.S.C. § 1988 and Minn. Stat. § 15.472; and

G. An award of all other relief that the court may deem just, proper, or equitable.

Respectfully submitted,

Dated: May 6, 2020

/s/ James V. F. Dickey

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