

Michael B. Lavery, Esq. (033241989)
William H. Pandos, Esq. (114972014)
James F. Moscagiuri, Esq. (029222001)
Lavery, Selvaggi, Abromitis & Cohen
A Professional Corporation
1001 Route 517
Hackettstown, NJ 07840
(908) 852-2600
Counsel for Plaintiff,
New Jersey Republican State Committee

Michael L. Testa, Jr., Esq. (032092001)
Testa, Heck, Testa & White
A Professional Association
424 West Landis Avenue
Vineland, NJ 08360
Counsel for Plaintiffs,
John E. Postas, d/b/a Postas Barber Shop;
54th Street Liquor, LLC, d/b/a Eastlyn Golf Course
& The Greenview Inn; Mizzitraining, LLC; and
Bucket Brigade Brewery, LLC

NEW JERSEY REPUBLICAN STATE
COMMITTEE; JOHN E. POSTAS, d/b/a Postas
Barber Shop; 54TH STREET LIQUOR, LLC,
d/b/a Eastlyn Golf Course & The Greenview Inn;
MIZZITRAINING, LLC; AND BUCKET
BRIGADE BREWERY, LLC,

Plaintiffs,

v.

PHILIP D. MURPHY, in his official capacity as
Governor of the State of New Jersey; GURBIR S.
GREWAL, in his official capacity as Attorney
General of the State of New Jersey; AND
PATRICK J. CALLAHAN, in his official
capacity as Superintendent of the New Jersey
Division of State Police and as State Director of
Emergency Management,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CAPE MAY COUNTY
DOCKET NO.: CPM-L-

Civil Action

**COMPLAINT, JURY DEMAND, TRIAL
COUNSEL DESIGNATION, RULE 1:38
AND RULE 4:5-1 CERTIFICATIONS**

Plaintiffs, the New Jersey Republican State Committee; John E. Postas, d/b/a Postas Barber Shop; 54th Street Liquor, LLC, d/b/a Eastlyn Golf Course & The Greenview Inn; Mizzitraining, LLC; and Bucket Brigade Brewery, LLC (“Plaintiffs”), by way of their Complaint against Defendants, Philip D. Murphy, in his official capacity as Governor of the State of New Jersey; Gurbir S. Grewal, in his official capacity as Attorney General of the State of New Jersey; and Patrick J. Callahan, in his official capacity as Superintendent of the New Jersey Division of State Police and as State Director of Emergency Management (“Defendants”); hereby allege as follows:

INTRODUCTION

1. In March 2020, the World Health Organization declared a global pandemic concerning the spread of the COVID-19 virus.

2. In response to the crisis, Governor Philip D. Murphy exceeded his authority by enacting a series of unconstitutional Executive Orders that have shuttered large swaths of the State’s economy, and which have already caused irreparable harm to innumerable small businesses throughout the State.

3. These Executive Orders unlawfully discriminate between similarly situated businesses by arbitrarily designating some of them as “essential” and others as “non-essential.”

4. Essential businesses are permitted to remain open, while non-essential businesses are forced to close under threat of criminal penalty.

5. The Governor’s classification of some businesses as essential, and others as non-essential, is completely arbitrary, capricious, and wholly disconnected from the proffered purposes of health and safety.

6. Despite the similar ability of most businesses to safely service the public and fully comply with CDC guidelines, the Governor has ordered some businesses to close based solely upon the goods and services that they provide.

7. In doing so, the Governor has unfairly protected a group of mostly large corporate chain stores, to the great detriment of the State's small businesses, in a way that violates substantive due process and equal protection of the laws as guaranteed by the Constitution of the State of New Jersey.

8. Plaintiffs are representative of the many small businesses from around the State that have been unlawfully targeted by Governor Murphy's Executive Orders.

THE PARTIES

8. Plaintiffs hereby reallege the foregoing paragraphs of the Complaint as if they had been fully set forth herein.

9. Plaintiff, the New Jersey Republican State Committee ("NJGOP"), is a non-profit corporation of the State of New Jersey, with its principal place of business located at 150 West State Street, Suite 230, Trenton, Mercer County, New Jersey 08608. The NJGOP is the only official body endowed with authority to guide the Republican party in the State of New Jersey, and it relies upon the meetings of its membership in order to undertake the business of the organization.

10. Plaintiff, John E. Postas d/b/a Postas Barber Shop ("Postas"), is a sole proprietorship of the State of New Jersey, with its principal place of business located at 356 Rutherford Ave, Franklin, Sussex County, New Jersey 07416. Postas is a community barber shop that has been in operation since 1925.

11. Plaintiff, 54th Street Liquor, LLC, d/b/a Eastlyn Golf Course & The Greenview Inn (“Eastlyn”), is a limited liability company of the State of New Jersey, with its principal place of business located at 4049 Italia Ave, Vineland, Cumberland County, New Jersey 08361. Eastlyn is a golf course that also operates a restaurant and event center.

12. Plaintiff, Mizzitraining, LLC (“Mizzi”), is a limited liability company of the State of New Jersey, with its principal place of business located at 125 Wertsville Road, Hillsborough Township, Somerset County, New Jersey 08822. Mizzi is an equestrian training facility that provides lessons to riders of all skill levels, and which serves as the home for the Rutgers Western IHSA Team.

13. Plaintiff, Bucket Brigade Brewery, LLC (“Bucket Brigade”), is a limited liability company of the State of New Jersey, with its principal place of business located at 205 North Main Street, Cape May Court House, Cape May County, New Jersey 08210. Bucket Brigade is a brewpub owned and operated by two brothers who have been volunteer and career firemen with a combined 50 years of public service.

14. Defendant, Philip D. Murphy, is the Governor of the State of New Jersey, and he is named as a defendant in his official capacity as such. As the chief executive of the State of New Jersey, the Governor issued the Executive Orders being challenged, and is responsible for their continued efficacy.

15. Defendant, Gurbir S. Grewal, is the Attorney General of the State of New Jersey, and he is named as a defendant in his official capacity as such. As the chief law enforcement officer of the State of New Jersey, the Attorney General exercises, delegates, and supervises all the powers and duties of the New Jersey Department of Law and Public Safety, including the

enforcement of N.J.S.A. App. A:9-49, which imposes criminal penalties for violations of Executive Orders issued by the Governor.

16. Defendant, Patrick J. Callahan, is the Superintendent of the New Jersey Division of State Police as well as the State Director of Emergency Management, and he is named as a defendant in his official capacity as such. As Superintendent of the New Jersey Division of State Police, he is responsible for carrying out the enforcement of N.J.S.A. App. A:9-49, which imposes criminal penalties for violations of Executive Orders issued by the Governor. As State Director of Emergency Management, he is responsible for implementing the Executive Orders being challenged, including the list of essential businesses.

THE EXECUTIVE ACTION

16. Plaintiffs hereby reallege the foregoing paragraphs of the Complaint as if they had been fully set forth herein.

17. On March 21, 2020, Governor Murphy took unprecedented action in response to the COVID-19 pandemic, and issued Executive Order 107, directing citizens to stay at home, and further ordering non-essential businesses to close effective 9:00 p.m. that very day.

18. Essential businesses, as determined by the Governor and Defendant Callahan, are excluded from the mandate, and are allowed to stay open.

19. In pertinent part, Executive Order 107 provides as follows:

Gatherings of individuals, such as parties, celebrations, or other social events, are cancelled, unless otherwise authorized by this Order. The State Director of Emergency Management, who is the Superintendent of the State Police, shall have the discretion to make clarifications and issue orders related to this provision.

The brick-and-mortar premises of all non-essential retail businesses must close to the public as long as this Order remains in effect. Essential retail businesses, listed below, are excluded from this

directive and may remain open during their normal business hours....

- a. Grocery stores, farmer's markets and farms that sell directly to customers, and other food stores, including retailers that offer a varied assortment of foods comparable to what exists at a grocery store;
- b. Pharmacies and alternative treatment centers that dispense medicinal marijuana;
- c. Medical supply stores;
- d. Retail functions of gas stations;
- e. Convenience stores;
- f. Ancillary stores within healthcare facilities;
- g. Hardware and home improvement stores;
- h. Retail functions of banks and other financial institutions;
- i. Retail functions of laundromats and dry-cleaning services;
- j. Stores that principally sell supplies for children under five years old;
- k. Pet stores;
- l. Liquor stores;
- m. Car dealerships, but only to provide auto maintenance and repair services, and auto mechanics;
- n. Retail functions of printing and office supply shops; and
- o. Retail functions of mail and delivery stores.

20. Executive Order 107 further bestows unbridled authority upon Defendant Callahan "to make additions, amendments, clarifications, exceptions, and exclusions to this list[,]" even though he is an unelected member of the Executive Branch of the New Jersey State government.

21. The efficacy of Executive Order 107 has since been extended by Executive Orders 119 and 138, respectively, and Governor Murphy has yet to provide any indication of a date certain for the end of mandatory closures of non-essential businesses.

22. Since the initial implementation of Executive Order 107, Governor Murphy and Defendant Callahan have even reopened some specific businesses, despite the status quo of the pandemic.

23. For example, on March 30, 2020, Governor Murphy decided that gun shops should be reopened, after they had previously been shuttered by his Executive Order.

24. This demonstrates the arbitrary and capricious nature of the Governor's list of essential business, which is subject to change on a whim and without reason.

EFFECTS OF THE EXECUTIVE ACTION

25. Plaintiffs hereby reallege the foregoing paragraphs of the Complaint as if they had been fully set forth herein.

26. As of the week ending May 2, 2020, over 1,000,000 unemployment claims had been filed in the State of New Jersey since Executive Order 107 was enacted in mid-March.

27. Plaintiffs were forced to close immediately, despite their willingness to observe the same health and safety precautions imposed upon essential businesses, including the requirements to "abide by social distancing practices to the extent practicable," and to take "reasonable efforts to keep customers six feet apart and frequent use of sanitizing products on common surfaces."

28. While thousands of businesses were forced to close their doors on March 21, 2020, and without any advanced warning, most big-name retailers remain open.

29. Hardware stores such as Home Depot remain open, even though more than ten people regularly gather in their aisles and at their checkouts.

30. Meanwhile, businesses such as Plaintiff Eastlyn – which operates an event center and has the same capabilities as Home Depot to enact social distancing and sanitation measures – must remain closed to any-sized crowd.

31. Lower volume businesses – such as jewelry stores – that can operate by appointment only and ensure compliance with health and safety requirements, have been arbitrarily shuttered.

32. Some non-essential big-name retailers, such as Walmart, remain open simply because they have a minor grocery or hardware component, which somehow transmutes the entire store into an essential business. Walmart's floorspace devoted to non-essential retail – such as the floorspace devoted to adult clothing – is allowed to remain open to shoppers, while other clothiers are forced to close in their entirety. Clearly the designation of adult clothing, among many other products and services, as non-essential is wholly unrelated to concerns of health, safety, or welfare because those products are permitted to be sold by some stores and not by others.

33. The case of Walmart begs the question as to whether a fitness club, or other non-essential business, could remain open simply by selling screwdrivers¹ at the front desk.

34. Moreover, the Governor's selection of certain essential products and services to the exclusion of others is totally arbitrary and is devoid of any relation to any legitimate purpose.

35. For example, the Governor has declared alcohol to be an essential product, such that liquor stores are permitted to remain open during the pandemic. This is despite the well-known health hazards of alcohol, as well as the strong link between alcohol use and the occurrence of domestic violence. See *Intimate Partner Violence and Alcohol*, World Health Organization, https://www.who.int/violence_injury_prevention/violence/world_report/factsheets/fs_intimate.pdf (last visited May 21, 2020).

36. While Plaintiffs argue that all businesses should remain open so long as they can adhere to reasonable health and safety restrictions, certainly alcohol cannot legitimately be classified as an essential product, to the exclusion of many other products and services that actually benefit the public health, safety, and welfare of the State of New Jersey.

¹ According to Executive Order 107, the sale of hardware is considered an essential service.

37. Presently, Plaintiffs – along with thousands of other businesses across the State of New Jersey – are forced to remain closed under the Governor’s Executive Orders, and they face the imminent threat of insolvency despite the existence of willing customers for their products and services.

COUNT ONE
(VIOLATION OF EQUAL PROTECTION)

38. Plaintiffs hereby reallege the foregoing paragraphs of the Complaint as if they had been fully set forth herein.

39. The Constitution of the State of New Jersey proclaims, “All persons are by nature free and independent and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness.” N.J. Const. art. I, ¶ 1.

40. In recognition of those freedoms inherent in all persons, the Constitution of the State of New Jersey guarantees equal protection of the laws, such that “[n]o person shall be denied the enjoyment of any civil or military right, nor be discriminated against in the exercise of any civil or military right” N.J. Const. art. I, ¶ 5.

41. The aforesaid Executive Orders and actions deprive Plaintiffs of the equal protection of the law because they allow some businesses to operate but not Plaintiffs’ businesses, even though they are similarly situated.

42. The challenged Executive Orders also deprive Plaintiffs of their liberty and property interests in performing services for willing customers when they can do so safely and in the same manner as other businesses that are allowed to operate.

43. Each individual Plaintiff is able to conduct business in full compliance with all of the rules imposed upon those businesses allowed to operate under the challenged Executive Orders.

44. There is no rational basis for Defendants to discriminate against the Plaintiffs and force their closure during the COVID-19 pandemic, based solely upon the products and services that they offer.

45. Furthermore, the challenged Executive Orders are not reasonably related to a legitimate governmental interest.

WHEREFORE, Plaintiffs seek a declaration that the challenged Executive Orders and actions violate the Equal Protection Clause of the Constitution of the State of New Jersey, as well as a permanent injunction against further infringements of their rights under this Clause, enjoining Defendants from enforcing the challenged Executive Orders and from issuing any future orders or rules similar to the invalid ones described in this action, along with any and all other relief the Court deems just.

COUNT TWO
(VIOLATION OF SUBSTANTIVE DUE PROCESS)

46. Plaintiffs hereby reallege the foregoing paragraphs of the Complaint as if they had been fully set forth herein.

47. “The principle of substantive due process, founded in... our State Constitution, N.J. Const. art. I, ¶ 1, protects individuals from the ‘arbitrary exercise of the powers of government’ and ‘governmental power [...] being used for [the] purposes of oppression.’” Felicioni v. Administrative Office of Courts, 404 N.J. Super. 382, 392 (App. Div. 2008) (quoting Daniels v. Williams, 474 U.S. 327, 331 (1986)).

48. Due process requires “that a law shall not be unreasonable, arbitrary or capricious, and that the means selected shall bear a rational relation to the legislative object sought to be obtained.” Robson v. Rodriguez, 26 N.J. 517, 522 (1958).

49. The Governor’s classification of some businesses as essential, and others as non-essential, is completely arbitrary, capricious, and wholly disconnected from any legitimate purpose.

50. Even though each individual Plaintiff is able to conduct business in full compliance with all of the rules imposed upon those businesses allowed to operate under the challenged Executive Orders, the Governor has nonetheless prohibited them from conducting business.

51. Therefore, the Governor’s unprecedented Executive Orders shock the conscience and unreasonably interfere with Plaintiffs’ deeply-rooted liberty and property rights, including the right to work, the right to contract, and the right to engage in commerce.

WHEREFORE, Plaintiffs seek a declaration that the challenged Executive Orders and actions violate the Due Process Clause of the Constitution of the State of New Jersey, as well as a permanent injunction against further infringements of their rights under this Clause, enjoining Defendants from enforcing the challenged Executive Orders and from issuing any future orders or rules similar to the invalid ones described in this action, along with any and all other relief the Court deems just.

COUNT THREE
(DECLARATORY AND INJUNCTIVE RELIEF)

52. Plaintiffs hereby reallege the foregoing paragraphs of the Complaint as if they had been fully set forth herein.

53. Defendants have violated Plaintiffs’ civil rights as guaranteed by the Constitution of the State of New Jersey through their implementation and enforcement of the challenged

Executive Orders, which arbitrarily discriminate against Plaintiffs and many other businesses throughout the State.

WHEREFORE, Plaintiffs seek a declaration that the challenged Executive Orders and actions violate the Equal Protection Clause and Due Process Clause of the Constitution of the State of New Jersey, as well as a permanent injunction against further infringements of their rights under these Clauses, enjoining Defendants from enforcing the challenged Executive Orders and from issuing any future orders or rules similar to the invalid ones described in this action, along with any and all other relief the Court deems just.

DEMAND FOR TRIAL BY JURY

Plaintiffs hereby demand a trial by jury as to all issues so triable herein.

DESIGNATION OF TRIAL COUNSEL

Pursuant to the provisions of R. 4:25-4, Michael B. Lavery, Esq. and Michael L. Testa, Jr., Esq., are hereby designated as trial counsel on behalf of Plaintiffs.

RULE 4:5-1 CERTIFICATION

Pursuant to R. 4:5-1, the undersigned hereby certify that, to the best of their knowledge, information, and belief, the matter in controversy is not the subject of any other action pending in any other court or of a pending arbitration proceeding, no other action or arbitration proceeding is contemplated, and there are no other parties known who should be joined in this action.

RULE 1:38 CERTIFICATION

The undersigned hereby certify that confidential personal identifiers, if any, have been redacted from documents now submitted to the Court, and will be redacted from all documents submitted in the future in accordance with the Rules of Court.

By: /s/ Michael B. Lavery

Michael B. Lavery, Esq. (033241989)
William H. Pandos, Esq. (114972014)
James F. Moscagiuri, Esq. (029222001)
Lavery, Selvaggi, Abromitis & Cohen
A Professional Corporation
1001 Route 517
Hackettstown, NJ 07840
(908) 852-2600
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Dated: May 21, 2020