

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Division

MICHAEL LAWRENCE,

Plaintiff,

v.

THE STATE OF COLORADO; JARED POLIS, GOVERNOR OF THE STATE OF COLORADO; THE COLORADO DEPT. OF PUBLIC HEALTH AND ENVIRONMENT; THE DENVER DEPT. OF PUBLIC HEALTH AND ENVIRONMENT; and DENVER MAYOR MICHAEL HANCOCK,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO
MAR 30 2020
JEFFREY P. CULWELL
CLERK

COMPLAINT FOR INJUNCTIVE RELIEF PURSUANT TO F.R.C.P. 65

INTRODUCTION

1. This is an action demanding injunctive relief and monetary damages from the above-named defendants for violating the plaintiff's constitutional rights and property rights. At various times in March 2020, as set forth in detail infra, the defendants issued orders that restricted the plaintiff's ability to exercise his constitutional rights and that impaired his property rights.

2. **The plaintiff seeks an immediate, emergency hearing and preliminary injunction**, followed by a more comprehensive hearing in which the plaintiff will ask the Court to make the injunction permanent, to enjoin the defendants from enforcing their orders any longer. Such relief will end the defendants' unlawful restrictions on the plaintiff's constitutional rights and on his property rights. The plaintiff seeks monetary relief as compensation to make the plaintiff whole from the injuries the defendants have caused the plaintiff.

PARTIES

3. At all relevant times, the plaintiff is and has been a natural person residing at 8330 E Quincy Ave, Apt. H209, Denver, Colorado 80237.
4. The defendant State of Colorado is a state in the western United States of America, and it acts through its governor and its administrative agencies, among other entities. The defendant State of Colorado has acted through its agents that are named as defendants in this case in such a manner as to injure the plaintiff's constitutional and property rights. The defendant State of Colorado is thus liable to the plaintiff for the damages sought herein.
5. The Governor of the State of Colorado, Jared Polis, is a natural person residing in and acting in the City and County of Denver. At all times relevant to this matter, defendant Polis has acted on behalf of the defendant State of Colorado. In his capacity as an agent of the State of Colorado, defendant Polis has injured the plaintiff's constitutional and property rights, and thus is liable to the plaintiff for the damages sought herein.
6. The defendant Colorado Department of Public Health and Environment is an administrative agency acting on behalf of the defendant State of Colorado. Its offices are located in the City and County of Denver. At all times relevant to this matter, the defendant Colorado Department of Public Health and Environment has acted on behalf of the defendant State of Colorado. In its capacity as an agent of the State of Colorado, the defendant Colorado Department of Public Health and Environment has injured the plaintiff's constitutional and property rights, and thus is liable to the plaintiff for the damages sought herein.
7. The defendant Denver Department of Public Health and Environment is an administrative agency acting on behalf of the City and County of Denver, a political sub-division

of the defendant State of Colorado. Its offices are located in the City and County of Denver. At all times relevant to this matter, the defendant Denver Department of Public Health and Environment has acted on behalf of the defendant State of Colorado. In its capacity as an agent of the State of Colorado, the defendant Denver Department of Public Health and Environment has injured the plaintiff's constitutional and property rights, and thus is liable to the plaintiff for the damages sought herein.

8. The defendant, Denver Mayor Michael Hancock, is an agent of the City and County of Denver, a political sub-division of the defendant State of Colorado. He is a natural person acting through the City and County of Denver. At all times relevant to this matter, the defendant Denver Mayor has acted as an agent of the City and County of Denver, a political sub-division of the defendant State of Colorado. In his capacity of Denver mayor and as an agent of the defendant State of Colorado, the defendant Denver mayor has injured the plaintiff's constitutional and property rights, and thus is liable to the plaintiff for the damages sought herein.

JURISDICTION AND VENUE

9. This court has jurisdiction over the plaintiff's federal constitutional rights claims and property claims pursuant to the U.S. Const., Art. III, Sect. 2.

10. Venue is proper in this Court under 28 U.S.C. Sect. 1331(b) because all of the events giving rise to the present action occurred in Denver, Colorado.

FACTUAL BACKGROUND

11. On March 13, 2020, the Executive Director of the Denver Department of Public Health & Environment ("DDPHE"), pursuant to section 24-16 of the Denver Revised Municipal Code, restricted access to certain facilities to minimize the spread of COVID-19.

12. On March 16, 2020, the Executive Director of the Denver Department of Public Health & Environment, pursuant to section 24-16 of the Denver Revised Municipal Code, restricted additional activities, including but not limited to, onsite consumption of food and beverage in restaurants and banned mass gatherings of 50 persons or more.

13. On March 16, 2020, the Executive Director of the Colorado Department of Public Health and Environment, pursuant to C.R.S. §§ 25-1.5-101(1)(a) and 25-1 .5-102(1)(a)(I), closed bars, restaurants and gymnasiums by Notice of Public Health Order 20-22, which order was amended on March 17, March 18, and March 19, 2020.

14. On March 18, 2020, the Executive Director of the Colorado Department of Public Health and Environment, pursuant to Colorado Revised Statute §§ 25-1.5-101(l)(a) and 25-1.5-102(l)(a)(I), issued an order implementing physical distancing measures, which limits gatherings of individuals to no more than (10) people to slow the spread of the COVID-19 virus.

15. On March 18, 2020, the Executive Director of the Colorado Department of Public Health and Environment, pursuant to Colorado Revised Statute §§ 25-1.5-101 (1)(a) and 25-1.5-102(l)(a)(I), amended the March 16 CDPHE Order to also clarify that hotel dining services are not exempted other than in room dining services, and extend the March 16 CDPHE Order through April 30, 2020.

16. On March 21, 2020, the Executive Director of the Colorado Department of Public Health and Environment, pursuant to Colorado Revised Statute §§ 25-1.5-101 (I)(a) and 25-1.5-

102(1)(a)(I), amended the March 18 CDPHE Order to further clarify those activities and functions that are exempted from its physical distancing order.

17. On March 23, 2020, the defendant Denver mayor, acting through the Executive Director of the DDPHE, pursuant to section 24-16 of the Denver Revised Municipal Code, issued a Stay at Home Order to minimize the spread of COVID-19, which order was amended on the same date.

18. On March 25, 2020, the defendant Governor of the State of Colorado, Jared Polis, pursuant to Article IV, Section 2 of the Colorado Constitution and the relevant portions of the Colorado Disaster Emergency Act, C.R.S. § 24-33.5-701, et seq., issued a state-wide stay-at-home Order similar to the one issued by the City and County of Denver on March 23, 2020.

THE PLAINTIFF'S INJURIES

19. As a result of the Orders listed above that restrict the gathering of more than ten people at a time, the plaintiff's parish has ceased conducting weekly Mass, has ceased offering the Eucharist, and has ceased hearing confessions. The defendants' conduct has impaired the plaintiff's ability to freely exercise his religious faith, in violation of the First Amendment.

20. As a result of the stay-at-home Orders from the State of Colorado and the Denver mayor's office, the plaintiff cannot visit with friends. The defendants' conduct has impaired the plaintiff's ability to exercise his right to peaceably assemble, in violation of the First Amendment.

21. The plaintiff is a cook at a local restaurant. The defendants' Orders have caused his place of work to close. The plaintiff has lost wages as a result of the defendants' conduct. Because the defendants' Orders have limited the use of the plaintiff's place of work for the

owners of the premises, such a limitation constitutes the exercise of eminent domain over those premises. Such a limitation constitutes a taking that requires the defendants to pay the plaintiff the reasonable value of the wages he has lost through the defendants' exercise of eminent domain and restriction on the commercial uses of that property.

22. The plaintiff has a valid Colorado driver's license. The plaintiff owns an automobile. The plaintiff has current license plates on his car and has proper insurance for his car. Even so, the defendants' Orders have barred the plaintiff from almost every use of his automobile. The plaintiff cannot drive to work, because he has no job now, the plaintiff cannot drive to the gym, because the gyms are closed, the plaintiff cannot drive to visit a friend because such visits are banned, and cannot drive to church because the churches are closed. In this case too the defendants have effected a taking of the plaintiff's automobile. The plaintiff is entitled to be compensated by the defendants for the costs of operating and maintaining his car.

THE WUHAN FLU IN COLORADO IS NOT AN EMERGENCY

23. The defendants all rely on the Wuhan flu's introduction into Colorado as the emergency or catastrophe that statutorily justifies their imposition of martial law on Colorado. Their reliance on the Wuhan flu as an emergency that justifies the suspension of the U.S. Constitution fails.

24. According to the most recent statistics compiled by the defendant CDPHE, as of March 29, 2020, Colorado has seen 2,307 cases of Wuhan flu, and a total of 47 people have died from it. This is not an emergency.

25. According to the U.S. census bureau, last year 2.8 million people died in the U.S. The year before it was the same amount. The census reports there are 327 million people in the

U.S. The census reports too that there are just shy of 5.8 million people in Colorado. Colorado thus has 1.75% of the nation's population. One can see then that roughly 49,000 people died in Colorado last year, and the year before (because $2.8 \text{ million} \times .0175 = \text{approx. } 49,000$). That means 4,100 people die in Colorado each month.

26. The 47 people who have died in Colorado from the Wuhan flu since its detection in Colorado about a month and a half ago constitute less than a 1% increase in Colorado's death toll. **An increase of less than 1% in our death rate is not an eventuation that justifies the destruction of the Constitution and the thriving Colorado economy.**

27. To give some context to the deaths Colorado has experienced as a result of the Wuhan flu, it is useful to look at other causes of death in Colorado and the number of deaths that happen because of them. According to the CDC, nationally, about 88,000 deaths were caused last year because of alcohol (this includes deaths from DUI accidents and cirrhosis and other alcohol-related matters). Colorado's share of that is 1.75%, or 1,540, or 128 per month, or 4.3 per day.

28. Obesity is another common cause of death. Nationally, the CDC reports 300,000 people died from obesity last year. Colorado's share of that figure is thus 5,250 last year, or 437 per month, or 14.6 people per day.

29. The commonest cause of death from voluntary conduct is smoking. Nationally, smoking caused 480,000 deaths last year. In Colorado, that would be 8,400 per year, or 700 per month, or 23 deaths per day.

30. Deaths from voluntary bad habits in Colorado amount to 1,265 deaths per month. The total death toll from the Wuhan flu after 1.5 months in Colorado is 47. This is scarcely a noticeable amount. This is not an emergency.

31. In the 2018-19 flu season, Colorado experienced 3,832 hospitalizations because of the flu. In the 2017-18 flu season, Colorado experienced 4,650 hospitalizations because of the flu. In the 2019-20 flu season so far (as measured late last week), Colorado has experienced 3,441 hospitalizations because of the flu. With the flu season almost at an end, we are likely to match last year's hospitalizations but fall short of flu hospitalizations from two years ago. **We are not experiencing a flu crisis.** The numbers do not lie. We are having a heavy flu season, but not as heavy as in the recent past.

NO EMERGENCY; THINGS ARE GETTING BETTER

32. As the statistics cited in the last section indicate, the Wuhan flu does not constitute a crisis in Colorado. What is more, things are getting better.

33. We are almost at the end of the flu season in Colorado. The defendant CDPHE graphs that depict flu cases in Colorado over the last several years all show the same pattern. The flu season in Colorado begins in September and ends in May. The seasons start and end slowly, and they usually peak in January or February. As we look to the beginning of April, we are at a time when we can reasonably expect a significant and continuing reduction in the number of new flu cases in Colorado.

34. Researchers all over the world are working on a cure. Already the FDA has just approved hydroxychloroquine as a treatment for Wuhan flu, and already hydroxychloroquine has shown significant success in treating the flu. For the next several months, we can expect the Wuhan flu to fall into quiescence, with the wrapping up of the flu season. In the meantime, researchers will continue to find treatments for Wuhan flu that did not exist in this first meeting

with the new pathogen. There is thus room for hope, but not reason to gut the economy to fight an enemy already on the ropes.

COLORADO'S EMERGENCY PROVISIONS ARE VOID BECAUSE THEY ARE UNCONSTITUTIONAL

35. Even if an emergency or catastrophe were to occur, the statutes on which the defendants rely to strip Colorado citizens of their constitutional rights are void precisely because they strip the citizenry of their constitutional rights. The defendants pretend to implement martial law. We are not at war, and war against a pathogen is a metaphoric war, not a real one.

36. The defendants' stay-at-home orders are analogous to the interning of Japanese-Americans in WWII. The government then imposed martial law, but properly because then there was an actual war going on. Even so, in retrospect, a consensus exists now that internment was wrong. It was wrong for Japanese-Americans then, and it is wrong for Coloradans now.

37. The plaintiff is a citizen, not a serf. The plaintiff has rights under the U.S. Constitution that cannot be voided because the defendants blow up an imaginary crisis out of panic and ignorance.

THE DEFENDANTS' SOLUTION IS FAR WORSE THAN THE PROBLEM

38. The defendants propose to destroy the entire state economy to prevent a few deaths. Their solution is far more costly than the problem it seeks to solve.

39. If the defendants continue with their Orders, the Colorado economy will be destroyed. The defendants will do this for the benefit of saving a handful of lives from the coronavirus. The cost in lives will be greater than the number of lives the defendants save.

40. Economic distress and joblessness create depression. Depression causes people to commit suicide. This relation was explored and quantified by researchers. In a 2014 article titled "Economic Suicides in the Great Recession in Europe and North America," authors A. Reeves, M. McKee, and D. Stuckler found (in the British Journal of Psychiatry, 205(3): 246-47) that the 2009 economic recession caused by the bubble bursting in the sub-prime real estate loan market caused 45,000 people in the U.S. to commit suicide.

41. The economic disaster the defendants are concocting right now through their orders will almost certainly (with similarly ill-advised conduct from other state governors) create an economic downturn worse than the one in 2009.

42. While the sole benefit of the defendants' solution would be to save a handful of lives, the cost would be extensive economic misery, with the people at the extremes of that misery committing suicide in the hundreds or even thousands. That is the cost/benefit analysis of the defendants' conduct. The defendants' Orders must be immediately enjoined.

THE DEFENDANTS HAVE AN EASY AND LEGAL ALTERNATIVE

43. The defendants could achieve almost all of their goals if they rescinded their orders and trusted Coloradans to do the right thing. If the defendants withdrew their orders and instead asked the people of Colorado to maintain social distancing and to avoid crowds, most people would do it most of the time.

44. The defendants should have trusted Coloradans to do what they should do to avoid the flu. It is a presumption in the rules of evidence that people will do things for their advantage and avoid doing things to harm themselves. That presumption applies here.

45. The people can be trusted not to get too close to each other and yet still attend church. The people can be trusted not to get too close to each other and yet still go to work.

46. Instead of looking to the people for cooperation, the defendants look at the people as serfs, as cattle to be directed where to go. This is a grave misapprehension of the legal relation between the governors and the governed.

47. The defendants have no genuine public health quarantine because they do not care about public health. In this fake quarantine, people can still go to the liquor store, to the tobacco store, to the marijuana dispensaries. These products kill far more people than the flu. The defendants do not care about public health. They enjoy wielding power. The Constitution bars the power they seek to wield.

REQUEST FOR RELIEF

48. The plaintiff seeks an immediate hearing to enjoin the defendants from continuing their Orders. This is an emergency matter. If the Court does not immediately enjoin the defendants from destroying Colorado with their improvident and unconstitutional orders, the plaintiff's employer will close down permanently. The cooking industry will be impaired permanently and the plaintiff will have difficulty for years in finding gainful employment.

49. An immediate injunction will have an immediately salutary effect on the plaintiff's microeconomy and on the Colorado economy in general. An immediate injunction will give the plaintiff swift restoration of his rights under the Constitution. Quick relief will also provide economic compensation to the plaintiff for the economic damages caused by the defendants.

50. The defendants have notice of this Complaint for Injunctive Relief. The plaintiff has hand-delivered a copy to the defendants at the Colorado Attorney General's Office, and at the Denver city attorney's office on the same day of the filing of this Complaint with the Court.

WHEREFORE, the plaintiff seeks an immediate preliminary injunction to bar the defendants from continuing to impose their Orders on the plaintiff and on other Coloradans, a subsequent hearing to make the injunction permanent, for the Court to award fees to the plaintiff as compensation for his economic losses and as a penalty for taking away the plaintiff's constitutional rights, and for all such further relief as this Court deems just and proper.

DATED this 30th day of March, 2020

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