

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
Ike's Korner Grille and Neil Hampton)
Rodgers,)
Plaintiffs)
)
v.)
)
The State of South Carolina and Henry)
McMaster, in his official capacity as the)
governor of South Carolina,)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
7TH JUDICIAL CIRCUIT

CASE NO: _____

SUMMONS

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to this Complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint, judgment by default will be rendered against you for the relief demanded in the Complaint.

_____/s Robert K. Merting/
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Attorney for the Plaintiffs

Dated: September 18, 2020
Spartanburg County, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	7 TH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
)	CASE NO: _____
Ike's Korner Grille and Neil Hampton Rodgers,)	
Plaintiffs)	
)	
v.)	COMPLAINT FOR
)	DECLARATORY JUDGMENT AND
)	INJUNCTIVE RELIEF
The State of South Carolina and Henry McMaster, in his official capacity as the governor of South Carolina,)	
Defendants.)	

NOW COMES the Plaintiffs, by their undersigned attorneys, who would show unto the Court:

NATURE OF THE ACTION

1. Plaintiffs, on their own behalf and for all other similarly situated people, seek to declare invalid and enjoin the enforcement of SC Executive Order Nos. 2020-08, 2020-15, 2020-18, 2020-23, 2020-29, 2020-35, 2020-38, 2020-40, 2020-42, 2020-44, 2020-48, 2020-53, 2020-56, and 2020-59, any subsequently issued State of Emergency declarations, and all orders dependent upon the States of Emergency declared therein, as ordered and proclaimed by the Defendant, McMaster, in his official capacity of Governor of South Carolina, because such orders and proclamations are not authorized by the laws of South Carolina and violate the South Carolina Constitution.

JURISDICTION

2. Plaintiff Neil Hampton Rodgers (Rodgers) is a citizen, resident, taxpayer, business owner, and registered elector of Spartanburg County.
3. Plaintiff Ike's Korner Grille, Inc. (Ike's) is a South Carolina corporation, owned by

Rodgers, operating a restaurant in the unincorporated area of Spartanburg County.

4. Together the Plaintiffs bring this action individually and on behalf of all others similarly situated
5. Defendants are the State of South Carolina and its Governor Henry McMaster, named in his official capacity.
6. Rodgers owns and operates Ike's in Anderson County.
7. Defendants proclaimed, ordered, and sought to enforce a series of "Executive Orders" that required Plaintiffs to cease operating Ike's, to convert Ike's to take-out only, to reduce the capacity of seating at Ike's, to limit what could be sold at Ike's, to limit when Ike's could make sales, to require Ike's employees to take specific actions such as wearing masks, and to otherwise instruct Plaintiffs how to operate Ike's and manage their employees and customer relations.
8. Defendants also ordered Rodgers to remain in his residence and prohibited him from freely moving about, travelling, and carrying on his usual business.
9. Defendants' have charged Rodgers and Ike's with violations for refusing to follow the ultra vires orders.
10. Defendants' unlawful actions personally harmed Plaintiffs. Accordingly, they possess Constitutional standing to bring this action.
11. This action raises Constitutional and statutory issues of great public importance, and Plaintiffs ask the Court to grant them standing based upon the great public importance of the issues this action raises.
12. South Carolina courts have not ruled on the issues that this action raises.

13. This Court possesses jurisdiction under S.C. Constitution, Art. I, § 8, under S.C. Code Ann. § 15-53-10 *et seq.*, known as the Uniform Declaratory Judgment Act, and under the following decisions, which address public importance standing and citizen or taxpayer standing: *South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, 421 S.C. 110, 804 S.E.2d 854 (2017); *South Carolina Public Interest Foundation v. Lucas*, 416 S.C. 269, 786 S.E.2d 124 (2016); *South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013), *Sloan v Friends of the Hunley*, 393 S.C. 152, 711 S.E.2d 895 (2011), *American Petroleum Institute v. S.C. Dep't. of Revenue*, 382 S.C. 572, 677 S.E.2d 16 (2009), *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 441, 663 S.E.2d 52 (2008), *Sloan v. Department of Transportation*, 379 S.C. 160, 666 S.E.2d 236 (2008), *Sloan v. Hardee*, 357 S.C. 495, 640 S.E.2d 457 (2007); *Cornelius v Oconee County*, 369 S.C. 531, 633 S.E.2d 492 (2006); *Sloan v. Department of Transportation*, 365 S.C. 299, 618 S.E.2d 876 (2005), *Sloan v. Wilkins*, 362 S.C. 430, 608 S.E.2d 579 (2005); *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004); *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003), *Sloan v. School District of Greenville County*, 342 S.C. 515, 537 S.E.2d 299 (Ct. App. 2000), *Baird v. Richland County*, 333 S.C. 519, 511 S.E.2d 69 (1999), *Newman v. Richland County Historic Preservation Commission*, 325 S.C. 79, 480 S.E.2d 72 (1997).
14. Venue is proper in Spartanburg County, where Defendants' actions have damaged Plaintiffs.

FACTS

15. Rodgers is the third generation owner of Ike's, an iconic bar and grill in Spartanburg County.
16. Ike's has operated in its present location for sixty (60) years and has built up a loyal clientele.
17. On March 13, 2020, by SC Executive Order 2020-08 the Governor declared a State of Emergency extending for fifteen days, due to the coronavirus (COVID-19).
18. On March 28, 2020, without seeking or receiving the consent of the General Assembly, the Governor declared a "unique and distinct" emergency existed for the "**continued** spread of Covid-19" which "poses an actual, **ongoing**, and **evolving** public health threat" due to the "**evolving** nature and scope" of COVID-19. *See* S.C. Executive Order 2020-15 (emphasis added).
19. On March 17, 2020, by S.C. Executive order 2020-10, Governor McMaster ordered that all restaurants close on-premises and dine-in services effective March 18, 2020.
20. Abiding by the Governor's Executive Order, Plaintiffs closed Ike's on March 18, 2020 to all on-site service, and, as allowed, offered only to-go orders.
21. On March 28, 2020, the Governor issued S.C. Executive Order 2020-15 extending the closure of Ike's for an additional fifteen days.
22. On April 12, 2020, the Governor issued S.C. Executive Order 2020-23 extending the closure of Ike's for another fifteen days.
23. On April 27, 2020, the Governor issued S.C. Executive Order 2020-29 extending the closure of Ike's for a fourth fifteen-day period.
24. On May 3rd, 2020, forty-seven days after requiring Plaintiffs to cease all on-site services at Ike's, the Governor issued S.C. Executive Order 2020-31 allowing out-door dining to

- resume on May 4th, 2020.
25. On May 8th, 2020, fifty-two days after initially shuttering all on-site services at restaurants, the Governor issued S.C. Executive Order 2020-34 “authoriz[ing] limited indoor dining services” at restaurants effective May 11, 2020.
 26. From May 11th, 2020 to current, the Governor has maintained continuous restrictions on the capacity of restaurants to limit how many customers they may serve on-site.
 27. On July 11, 2020, Governor McMaster issued S.C. Executive Order 2020-45 curtailing the hours during which Ike’s could offer for sale alcoholic beverages.
 28. Said restriction is currently in force against Ike’s.
 29. On August 2, 2020, Governor McMaster issued S.C. Executive Order 2020-50 that created, from whole cloth, extensive “restrictions regarding restaurant operations” including to limit capacity, require the wearing of masks, limit table size, and limit the use of any ‘bar area’.
 30. Said restrictions are currently in force against Ike’s.
 31. All such S.C. Executive Orders are an unconstitutional violations of the separation of powers requirement in the S.C. Constitution and a violation of the statutorily imposed limits on the duration of the Governor’s emergency powers.
 32. Based upon Defendants’ unlawful orders, Defendants, through the South Carolina State Law Enforcement Division (SLED), warned Ike’s for violating the “Governor’s Executive Order –(2020-50)” on or about August 27, 2020.
 33. Based upon Defendants’ unlawful orders, Defendants, through SLED, issued a violation to Ike’s for “violating the Governor’s Executive Oder – Violation of Restaurant Restrictions” on or about August 28, 2020.

34. Based upon Defendants' unlawful orders, Defendants, through the Sheriff of Spartanburg County (Sheriff), issued a citation to Rodgers for "Violation of Executive Order" on or about August 28, 2020.
35. Based upon Defendants' unlawful orders, Defendants, through the South Carolina Department of Labor, Licensing, and Regulation Occupational Safety and Health Administration (OSHA) harassed Ike's and demanded written "findings and the action you have taken" to comply with the Defendants' unlawful orders.
36. Despite Plaintiffs response to OSHA and voluntarily implementing multiple safety procedures to mitigate the effect of COVID-19, Defendants continued to harass Plaintiffs and attempt to enforce the ultra vires orders.
37. On September 10, 2020, SLED continued to enforce the ultra vires orders and issued Ike's a second administrative Violation and wrote Mr. Rodgers a second criminal citation.
38. The shuttering of Plaintiffs' on-site services damaged their customer base, which in turn has led to the loss of business.
39. The enforcement action of the Governor, acting as both the legislature and the executive, has disrupted Plaintiffs' business, caused Plaintiffs to incur legal fees, and forced Plaintiffs to face both monetary and liberty losses.
40. Plaintiff is in his prime working years. These Executive Orders have damaged his business at a time when he should be setting money aside for retirement. Even being allowed to reopen, he must re-build his customer base while complying with restrictive orders regarding limited occupancy, limited hours, social distancing, and other anti-viral mandates. *See* SC Executive Order 2020-50, Section 3.

41. Plaintiffs face the threat of lasting and permanent harm to their business and personal liberty by the restrictive micro-managing of operations pursuant to S.C. Executive Order 2020-50 to include requiring masks, reducing the hours during which beer can be sold, limiting the overall capacity of the business, setting a minimum distance between tables, setting a maximum table size, and forbidding the use of the bar area for standing among a myriad of other regulations. Such harm is both irreparable and continuing.
42. The Governor has continued to declare successive states of emergency for over half of 2020. (Of recent, S.C. Executive Order No. 2020-35, May 12, 2020; S.C. Executive Order No. 2020-38, May 27, 2020; S.C. Executive Order No. 2020-40, June 11, 2020; S.C. Executive Order No. 2020-42, June 26, 2020; S.C. Executive Order No. 2020-44, July 11, 2020; S.C. Executive Order No. 2020-48, July 26, 2020; S.C. Executive Order 2020-53, August 10, 2020; S.C. Executive Order 2020-56, August 25, 2020; S.C. Executive Order 2020-59.) These declarations have continued to the present, and unless this Court acts are expected to continue to be issued into the indefinite future.
43. The Governor's Executive Orders have also interfered with Rodgers' right to travel and move about the state, and with Ike's right to contract with those who wish to consume food on premise. Plaintiffs are required to wear "Face Coverings" in Ike's, to require employees to wear "Face Coverings," to require customers to wear "Face Coverings," and are barred from doing business with persons who, for religious or conscientious reasons, refuse to wear a "Face Covering." S.C. Executive Order 2020-50 Section 3.A.2.
44. Plaintiffs have been subject to a plethora of ever-changing executive orders issued and enforced by Defendants under a series of "Declarations of Emergency" for what is

factually a single event. Plaintiffs' harm is both ongoing and changing, and the exact nature of that harm is likely to change multiple times before this Court rules.

GOVERNING STATUTES

45. The Governor relies on certain statutes for his authority to issue the Declarations of Emergency and Executive Orders.
46. S.C. Code Ann. § 1-3-420 provides in pertinent part: "The Governor, when in his opinion the facts warrant, shall, by proclamation, declare that, because of . . . a public health emergency, . . . an emergency . . . exists."
47. Because of the emergency, declared by the Governor, he can then issue orders and directions to anyone, provided that in his opinion they would "prevent or minimize danger." Finally, he has "full power by use of all appropriate available means to enforce such order or proclamation." So, he declares, he legislates, and he enforces.
48. S.C. Code Ann. § 1-3-430 states:

In all such cases **when the Governor shall issue his proclamation** as provided in § 1-3-420 **he may further**, cope with such threats and danger, **order and direct any person or group of persons to do any act which would in his opinion prevent or minimize danger to life, limb or property**, or prevent a breach of the peace; **and he may order any person or group of persons to refrain from doing any act or thing which would, in his opinion, endanger life, limb or property**, or cause, or tend to cause, a breach of the peace, or endanger the peace and good order of the State or any section or community thereof, **and he shall have full power by use of all appropriate available means to enforce such order or proclamation.**

Id. (emphasis added).

49. Similarly, S.C. Code Ann. § 25-1-440(a)(1) states that when an emergency has been declared, the Governor is empowered to "issue emergency proclamations and regulations and amend or rescind them. These proclamations and regulations have the

force and effect of law as long as the emergency exists.”

50. However, S.C. Code Ann. § 25-1-440(a)(2) provides a limitation on this power: “A declared state of emergency shall not continue for a period of more than fifteen days without the consent of the General Assembly.”
51. This state of emergency has been continuous since March 13, 2020, and the General Assembly has not consented. In fact, on May 12, 2020, the Senate passed a concurrent resolution, S. 1201, expressing its **lack** of consent:

TO EXPRESS THE SENSE OF THE GENERAL ASSEMBLY THAT THE GOVERNOR IS NOT AUTHORIZED TO DECLARE SUCCESSIVE STATES OF EMERGENCY THAT ARE BASED UPON THE SCOPE OF IMPACT OF THE EVENT OR OCCURRENCE THAT WAS THE BASIS FOR THE STATE OF EMERGENCY. FURTHER, TO EXPRESS THE SENSE OF THE GENERAL ASSEMBLY THAT A STATE OF EMERGENCY DECLARED BY THE GOVERNOR MAY NOT LAST LONGER THAN FIFTEEN DAYS WITHOUT THE EXPRESS CONSENT OF THE GENERAL ASSEMBLY, THAT THE GOVERNOR HAS A DUTY TO REQUEST AN EXTENSION IF HE BELIEVES THAT THE EMERGENCY WILL EXTEND BEYOND FIFTEEN DAYS, AND THAT WITHOUT EXPRESS CONSENT FROM THE GENERAL ASSEMBLY THE STATE OF EMERGENCY EXPIRES FIFTEEN DAYS AFTER IT IS DECLARED.

52. S. 1201 further states:

That it is the sense of the General Assembly that changing circumstances or a change in the degree of the impact of the underlying imminent or actual threat, event, occurrence, or similar incident giving rise to a State of Emergency are not sufficient grounds upon which to declare a State of Emergency subsequent to a State of Emergency declared pursuant to Section 25-1-440(a)(2).

53. Finally, S. 1201 states:

That it is the sense of the General Assembly that it is the Governor’s duty to ask for consent if a state of emergency needs to be extended beyond fifteen days and that it is the General Assembly’s duty to give consent in a timely manner if the General Assembly determines that such an extension is warranted. If explicit consent is not given by the General Assembly the State of Emergency expires fifteen days after declared.

COUNT I
Successive and Continuous Declarations of Emergency
and ongoing Executive Orders Violate State Law

54. The foregoing paragraphs are incorporated by reference as fully as if set forth herein.
55. The Governor issued S.C. Executive Order 2020-08 on March 13, 2020 declaring: “[D]ue to the evolving nature and scope of the public health threat or other risks posed by COVID-19 and the actual and anticipated impacts associated with the same . . . a State of Emergency exists in South Carolina.” This Order “remain[ed] in effect for a period of fifteen (15) days [expiring March 28, 2020].”
56. The Governor issued S.C. Executive Order 2020-10 on March 17, 2020 directing restaurants to:
- “suspend services for, and may not permit, on-premises or dine-in consumption beginning Wednesday, March 18, 2020, and through March 31, 2020.”
57. The Governor’s Executive Order 2020-10, predicated on the state of emergency declared in S.C. Executive Order 2020-08, was issued for a duration that exceeded the fifteen-day limitation of the declared state of emergency imposed by statute.
58. The Governor extended the restrictions on restaurants in S.C. Executive Order 2020-15 on March 28, 2020, which declared in pertinent part:
- based on recent developments, to include the continued spread of COVID-19, the resulting strain on healthcare resources, and the significant economic consequences for individuals and businesses in this State . . . that a separate and distinct emergency exists due to the evolving nature and scope of the public health threat or other risks posed by COVID-19 and the actual, ongoing, and anticipated impacts associated with the same.

* * *

[T]he “threat posed by COVID-19 has since transitioned to a new and distinct stage.” Order 2020-15 “remain[ed] in effect for a period of

fifteen (15) days [expiring April 12, 2020].”

59. The Governor of South Carolina issued S.C. Executive Order 2020-21 on April 6, directing:

“that effective Tuesday, April 7, 2020, at 5:00 p.m., any and all residents and visitors of the State of South Carolina are required to . . . limit their movements outside of their home, place of residence, or current place of abode (collectively, “Residence”), except as allowed by this Order, for purposes of engaging in Essential Business, Essential Activities, or Critical Infrastructure Operations, as set forth below and as such terms are further defined herein.”

This Order was in effect for the duration of the State of Emergency.

60. The Governor of South Carolina issued S.C. Executive Order 2020-23 on April 12, 2020 declaring in pertinent part:

“the public health threat posed by COVID-19 subsequently evolved from one that presented “imminent risk of a qualifying health condition” to one that involved an actual and widespread “occurrence” of a “qualifying health condition [T]he extraordinary circumstances and conditions that necessitated the undersigned’s prior emergency declarations have not subsided and have, in fact, evolved and expanded to present different and additional risks and dangers [T]he State of South Carolina has transitioned from the investigation, recognition, and initiation phases of the COVID-19 pandemic to the acceleration phase, with DHEC now reporting cases of COVID-19 in each of the State’s forty-six (46) counties. . . . [T]he State of South Carolina must continue to utilize extraordinary measures and deploy substantial resources to meet the unprecedented threat posed by COVID-19 . . . the [Governor] had determined that the accelerated spread of COVID-19 throughout the State poses an actual, ongoing, and evolving public health threat to the state of South Carolina, which now represents a new and distinct emergency and requires additional proactive action by the State of South Carolina and implementation and enforcement of further extraordinary measures to slow the spread of Covid-19.”

Said Order further declared “that a State of Emergency exists in South Carolina”, continued the effectiveness of S.C. Executive Order No. 2020-10, and “remain[ed] in effect for a period of fifteen (15) days [expiring April 27, 2020].

61. The Governor of South Carolina issued S.C. Executive Order 2020-29 on April 27, 2020

which, like the continuing orders before it, states that the threat of COVID-19 was ongoing and evolving, that South Carolina must continue to respond to said threat, and that such threat requires a new and distinct emergency. The Governor declared a State of Emergency exists in South Carolina, continued the effect of S.C. Executive Order No. 2020-10, and set the expiration of the order for fifteen (15) days, May 12th, 2020, from issuance.

62. The Governor found that “based on recent developments, [updated data]*, new facts, changing conditions, and the previously unforeseen occurrence of a combination of extraordinary circumstances—that an effective response to the ongoing COVID-19 pandemic, including the different, additional, and intensifying threats cited herein, represents and requires a new and distinct emergency.” He made that same finding in each of the following S.C. Executive Orders:
- a. On May 12, 2020, 2020 In Executive Order No. 2020-35 (final WHEREAS clause).
 - b. On May 27, 2020 in Executive Order No. 2020-38 (final WHEREAS clause) (*“Updated data” added as a reason; appearing in all orders below).
 - c. On June 11, 2020 in Executive Order No. 2020-40 (final WHEREAS clause).
 - d. On June 26, 2020 in Executive Order No. 2020-42 (final WHEREAS clause).
 - e. On July 11, 2020 in Executive Order No. 2020-44 (final WHEREAS clause).
 - f. On July 26, 2020 in Executive Order No. 2020-48 (final WHEREAS clause).
 - g. On August 10, 2020 in Executive Order No. 2020-53 (final WHEREAS clause).
 - h. On August 26, 2020 in Executive Order No. 2020-56 (final WHEREAS clause) (substituting “evolving” for “intensifying” and adding “the declaration of”

before “a new and distinct emergency”).

- i. On September 9, 2020 in Executive Order No. 2020-59 (final WHEREAS clause) (substituting “**evolving**” for “**intensifying**” and adding “the declaration of” before “a new and distinct emergency”).
63. Through such nine orders, and the preceding four declarations of emergency, the Governor kept South Carolina in a declared state of emergency for 195 days, or more than half of 2020, as of September 17, 2020.
64. The Governor did not seek, and the General Assembly did not provide, consent for the continued declared state of emergency.
65. The Governor usurped the power of the General Assembly when he failed to seek their consent and illegally extended the “State of Emergency” for the same continuing, evolving, and ongoing threat of COVID-19.
66. S.C. Executive Order Nos. 2020-10, 2020-21, 2020-31, 2020-45, and 2020-50 are predicated upon the existence of a declared “State of Emergency.”
67. S.C. Executive Order Nos. 2020-10, 2020-21, 2020-31, 2020-45, and 2020-50 interfered with Plaintiffs operation of Ike’s and deprived them of income from their capital and labor.
68. S.C. Executive Order No. 2020-50 has disrupted the Plaintiffs’ ability to contract and do business with others.
69. Enforcement of the Executive Orders against Plaintiffs, and all other similarly situated people, caused irreparable and immediate harm.
70. Enforcement of the Executive Orders against Plaintiffs, and all other similarly situated people, threaten them with bankruptcy and total loss of the business.

71. The declared State of Emergency of S.C. Executive Order Nos. 2020-8, 2020-15, 2020-23, 2020-29, 2020-35, 2020-38, 2020-40, 2020-42, 2020-44, 2020-48, 2020-53, 2020-56, and 2020-59 and all subsequent renewals of the State of Emergency declaration constitute one and the same state of emergency for COVID-19.
72. S.C. Executive Order Nos. 2020-15, 2020-23, 2020-29, 2020-35, 2020-38, 2020-40, 2020-42, 2020-44, 2020-48, 2020-53, 2020-56, and 2020-59 and all orders dependent upon the States of Emergency declared therein, are in violation of S.C. Code Ann. § 25-1-440 and are therefore null, void, and of no effect.

COUNT II
Violation of Separation of Powers

73. The foregoing paragraphs are incorporated by reference as fully as if set forth herein.
74. Article I, Section 8 of the South Carolina Constitution provides: “the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.”
75. Said Constitution explicitly vests the legislative power of the South Carolina government in the General Assembly and forbids the executive branch from exercising the functions of the legislative powers.
76. The proclamations by the Governor creating new rules, regulations, laws and limits upon private parties and the actions they can take in S.C. Executive Orders Nos. 2020-08 to 2020-59 usurp the legislative power of the General Assembly and violate the constitutional provision requiring the separation of such powers.

COUNT III**Statutes Granting the Governor the Sole Power to Issue, Amend and Rescind Regulations Violate the S.C. Constitution by Granting Legislative Power to the Executive.**

77. The foregoing paragraphs are incorporated by reference as fully as if set forth herein.
78. The South Carolina Constitution names war, epidemic, natural disasters, and other causes of emergency.
79. The Constitution provides for special, but limited powers, in the event of emergency.
80. Article I, Section 7 of the South Carolina Constitution provides: “the power to suspend the laws shall be exercised only by the General Assembly or by its authority in particular cases expressly provided for by it.”
81. Article III, Section 1 of the South Carolina Constitution provides: “the legislative power of this State shall be vested in two distinct branches, the one to be styled the “Senate” and the other the “House of Representatives,” and both together the “General Assembly of the State of South Carolina.”
82. Said provisions of power and authority do not authorize the Governor to issue edicts, orders, rules or make proclamations, except to appoint a location of meeting for the General Assembly when a “contagious disease render[s] it unsafe to meet at the seat of Government.”
83. The South Carolina Constitution provides for emergency powers only in the General Assembly and only in “emergency resulting from disasters caused by enemy attack.” Art. XVII, § 12.
84. Article III, Section 9 of the South Carolina Constitution provides in part: “if the casualties of war or contagious disease render it unsafe to meet at the seat of government, the Governor by proclamation, may appoint a more secure and convenient place of meeting.”

85. Article IV, Section 20 of the South Carolina Constitution provides in part: “The Governor shall reside at the Capital of the State except in cases of epidemics, natural disaster, or the emergencies of war.”
86. The South Carolina statutes, including S.C. Code Ann. § 25-1-440 and § 1-3-420, empowering the Governor to declare a “State of Emergency” and issue orders, directions, and regulations are unconstitutional delegations of legislative authority to the Governor.
87. The S.C. Executive Orders Nos. 2020-08 to 2020-59 which declare States of Emergency or issue edicts pursuant thereto are unconstitutional proclamations predicated on the ultra vires and unconstitutional statutes.

WHEREFORE, Plaintiff respectfully prays this Court to:

- a. Declare S.C. Executive Order Nos. 2020-15, 2020-23, and 2020-29, 2020-35, 2020-38, 2020-40, 2020-42, 2020-44, 2020-48, 2020-53, 2020-56, 2020-59, any subsequent State of Emergency declarations relating to COVID-19, and all orders dependent upon the States of Emergency declared therein, invalid under State law, S.C. Code Ann. § 25-1-420 et seq. and § 1-3-410 et seq.,
- b. Declare S.C. Code Ann. § 25-1-440 and 445 and § 1-3-420 to 450 and the S.C. Executive Orders Nos. 2020-08 to 2020-59 dependent thereupon unconstitutional,
- c. Grant temporary and permanent injunctions prohibiting the enforcement of said Orders and Statutes,
- d. Grant a permanent injunction prohibiting the Governor of South Carolina from proclaiming or declaring similar Executive Orders,
- e. Award Plaintiff his costs and attorney fees pursuant to S.C. Code Ann. § 15-53-100, and § 15-77-300 ff,
- f. And provide for such other relief as it deems just and proper.

Respectfully submitted,

/s/ Robert K. Merting

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September 18, 2020
Spartanburg County, South Carolina