

STATE OF MINNESOTA
IN COURT OF APPEALS
Case No. _____

FREE MINNESOTA SMALL BUSINESS COALITION, SOUTHWEST
SCHOOL OF DANCE L.L.C., TREV'S KITCHEN, PRESTIGE GYMNASTICS,
YOGA BY BLISSTOPIA LLC, TITLE BOXING CLUB COON RAPIDS, TITLE
BOXING CLUB ARDEN HILLS, and TITLE BOXING CLUB ROGERS,

Petitioners,

vs.

TIM WALZ, Governor of Minnesota,

Respondent.

PETITION FOR DECLARATORY JUDGMENT
UNDER MINNESOTA STATUTES § 14.44
CHALLENGING THE CONSTITUTIONALITY
OF GOVERNOR WALZ'S EXECUTIVE ORDERS
20-20, 20-33, 20-38 AND 20-40

To the Court of Appeals of the State of Minnesota:

The Petitioners Free Minnesota Small Business Coalition, Southwest School of Dance L.L.C., Trev's Kitchen, Prestige Gymnastics, Yoga by Blisstopia LLC, Title Boxing Club Coon Rapids, Title Boxing Club Arden Hills and Tile Boxing Club Rogers petition the Court of Appeals under Minnesota Statutes § 14.44 for a declaratory judgment determining the unconstitutionality of Executive Order Nos. 20-20, 20-33, 20-38, and 20-40 (collectively "Executive Orders") issued by Minnesota Governor Timothy Waltz.

The Petitioners are all businesses in Minnesota shut down by the Executive Orders. The Petitioners have suffered damages caused by the Executive Orders. Therefore, the Petitioners have standing to challenge the constitutionality of the Executive Orders.

The Executive Orders directly conflict with the Equal Protection Clause of the U.S. Constitution because of the categories established through the Executive Orders of “Critical Sectors” and “Non-Critical Exempt Businesses” are not narrowly tailored to meet any compelling state interest. The Executive Orders fail to reflect any constitutional refinement to distinguish one class of businesses from another class of businesses in a meaningful way to satisfy strict scrutiny. Therefore, this Court should adjudicate that the Executive Orders are invalid.

The Executive Orders are attached as Exhibits 1 through 4. The Executive Orders have, under the categories of “Critical Sectors” category and “Non-Critical Exempt Businesses” category, unconstitutionally shut down some businesses, but not other businesses who present no greater public health risk. The government has failed to adequately explain its public health rationale distinguishing those business who are allowed to continue and those businesses—like the Petitioners—who have been shut down.

Since March 25, 2020, due to the Executive Orders, Minnesota businesses who are not in the designated “Critical Sectors” or who are not so-called “essential” “Non-Critical Exempt Businesses” have not been able to legally operate. The method of the

Executive Orders to shut down certain businesses while allowing other businesses to operate violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

Further, in Executive Order No. 20-33 issued on April 8, 2020, the Governor authorized certain businesses in “Critical Sectors” to re-open and go back to work.

Paragraph 6 provides the exemptions for the businesses in the “Critical Sectors”:

- a. Health care and public health...
- b. Law enforcement, public safety, and first responders...
- c. Food and agriculture...
- d. Energy...
- e. Water and wastewater...
- f. Transportation and logistics...
- g. Public works and infrastructure support services...
- h. Communications and information technology...
- i. Other community-based government operations and essential functions...
- j. Critical manufacturing...
- k. Hazardous materials...
- l. Financial Services...
- m. Chemical...
- n. Defense industrial base...
- o. Commercial facilities/essential supply stores...
- p. Residential/shelter facilities and services...
- q. Laundry and hygiene products and services...
- r. Tribal Governments...
- s. The Judicial Branch...
- t. The Executive Branch...
- u. Executive Constitutional Offices..
- v. The Legislative Branch...
- w. Federal employees...
- x. National Guard...
- y. Faith leaders and workers...
- z. Education...
- aa. Construction and critical trades...
- bb. Child care providers..
- cc. Hotels, residential facilities, and shelters...

- dd. Charitable and social services organizations...
- ee. Legal services...
- ff. Notaries...
- gg. Critical labor union functions...
- hh. Animal care and veterinarians...
- ii. Real estate transactions... and
- jj. Minimum basic operations....

In Executive Order No. 20-38 issued on April 17, 2020, the Governor amended the meaning of “Critical Sectors”, to add an additional category for outdoor recreational facilities. Paragraph 3 creates an exemption for:

- kk. Outdoor recreational facilities....

In Executive Order No. 20-40 issued on April 23, 2020, the Governor created a new category of exempt business beyond those identified in “Critical Sectors” as defined in paragraph 6 of Executive Order No. 20-33 and as amended by paragraph 3 of Executive Order 20-38. The Governor’s new category is “Non-Critical Exempt Businesses.” “Non-critical exempt businesses” are businesses that are within the scope of paragraph 5 of Executive Order No. 20-40. Paragraph 5 of Executive Order No. 20-40 lists only the following as non-critical exempt businesses:

- a. Industrial and manufacturing businesses...
- b. Office-based businesses...

In as much as the Governor seeks to control the current health crisis response in a meaningful manner, the Executive Orders cannot arbitrarily suspend and negate the constitutional rights of some businesses and protect those same rights of other businesses who, taken as a whole, are otherwise on equal footing. The Executive

Orders create the illusion of a shutdown wherein the reality suggests a partial shutdown at best, but at the economic detriment of certain businesses such as Petitioners while others have been allowed to continue to operate.

For example, sales at Target Stores are up in the first quarter of 2020 because Target Stores are allowed to continue to operate, but other smaller stores selling the same products or services are closed under the Executive Orders. Another example is the government-run Minnesota Lottery still selling lottery tickets at convenience stores. The disparity is apparent; large corporations are favored over small businesses. Certainly, there is no evidence to reflect that large corporations can conduct themselves in a more socially responsible manner in the current health crisis than small businesses.

Because the Executive Orders distinguish between businesses to be continued and businesses to be shut down, the Executive Order are subject to strict scrutiny and must be narrowly tailored to meet the state's compelling state interest. The Executive Orders lack the constitutional refinement, the narrow tailoring required and any cognizable public health or economic standards. The Executive Orders are written without regard to the equal treatment of businesses required by the Equal Protection Clause. The Executive Orders unconstitutionally pick businesses to be winners and losers during the pandemic instead of treating businesses equally.

This Court should adjudicate that the Executive Orders are invalid because they are unconstitutional.

Dated: April 29, 2020.

/s/Erick G. Kaardal
Erick G. Kaardal, 229647
Mohrman, Kaardal & Erickson, P.A.
150 South Fifth Street, Suite 3100
Minneapolis, Minnesota 55402
Telephone: 612-341-1074
Facsimile: 612-341-1076
Email: kaardal@mklaw.com
Attorney for Petitioners

ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements and reasonable attorney and witness fees may be awarded pursuant to Minnesota Statute §549.211, subd. 3, to the party against whom the allegations in this pleading are asserted.

Dated: April 29, 2020

/s/ Erick G. Kaardal
Erick G. Kaardal