

IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

GARAGE BAR WILLOUGHBY, LLC
37825 Vine Street
Willoughby, Ohio 44094

and

GENNCO VENDING CORP.,
316 Boyle Street
Akron, Ohio 44310

and

SHAFFER SERVICES, INC.,
1350 Oxley Road
Columbus, Ohio 43212

and

PICK'S ENTERPRISES, INC.
2600 Oneida Avenue
Dayton, Ohio 45414

and

THE CADILLAC MUSIC
CORPORATION
3950 Carnegie Avenue
Cleveland, Ohio 44115

and

MAX, INC.
3901 Superior Avenue
Cleveland, Ohio 44114

and

NEXGEN VENDING, LLC
2003 Dryden Road
Moraine, Ohio 45439,

20CV000674
JOHN P. O'DONNELL

COMPLAINT: Action for Declaratory
Judgment and Injunctive Relief

FILED VIA EMAIL
DATE 5-20-2020 TIME 4:46 pm
MAUREEN G. KELLY, CLERK OF COURTS

and)

R&B AMUSEMENT CO., LLC,
2110 South 12th Street, South
Ironton, Ohio 45638,)

and)

ASSOCIATED VENDING, INC.
10305 Reading Road
Cincinnati, Ohio 45241)

and)

M&G SERVICES, INC.
845 Collar Price Road, SE
Brookfield, Ohio 44403,)

and)

GO FOR BROKE AMUSEMENT AND
GAMES, LLC,
108 Wood Street
Flushing, Ohio 43977)

and)

BREMER VENDING CO.
2806 West Sylvania
Toledo, Ohio 43613)

and)

LORAIN MUSIC COMPANY,
1174 Milan Avenue
Amherst, Ohio 44001)

and)

CLEARLY THE BEST, LLC
1120 Pennsylvania Avenue
East Liverpool, Ohio 43920)

and)

PIONEER SERVICE, INC.
3726 Kessen Avenue
Cincinnati, Ohio 45211

and

J&S ELECTRONICS, INC.
P.O. Box 147
New Knoxville, Ohio 45871

and

CITY AMUSEMENT ENTERPRISE,
LLC,
1723 10th Street
Portsmouth, Ohio 45662

and

OHIO COIN MACHINE ASSOCIATION,
3757 Indianola Avenue
Columbus, Ohio 43214,

and

POELKING ENTERTAINMENT
NETWORK, INC.
8871 Kingsridge
Centerville, Ohio 45458,

and

SPARE TIME RECREATION, INC.
2216 South 3rd Street
Ironton, Ohio 45638,

Plaintiffs

v.

AMY ACTON, M.D., M.P.H, *in her
official capacity as Director of the Ohio
Department of Health*
246 N High Street
Columbus, Ohio 43215,

and

OHIO DEPARTMENT OF PUBLIC
HEALTH
246 N. High Street
Columbus, OH 43215

and

LAKE COUNTY HEALTH DISTRICT
37111 Euclid Ave.
Willoughby, OH 44094

and

DAVID YOST
State of Ohio Attorney General
30 E. Broad St., 14th Floor
Columbus, OH 43215

Defendants.

Plaintiffs in support of their Complaint for declaratory judgment and injunctive relief, allege as follows:

Introduction

1. This is an action for declaratory judgment and preliminary and permanent injunction brought pursuant to Ohio Rev. Code Chapter 2721, Ohio Revised Code Chapter 2727, Civ.R. 65, and arising from Defendants' unconstitutional order, which imperil Plaintiffs' business of leasing and/or providing games of amusement to bars, restaurants and bowling alleys and likewise imperil the business of such bars, restaurants and bowling alleys.

2. Through its order entitled "Responsible RestartOhio", the Director of the Ohio Department of Health has absolutely prohibited, under threat of criminal and civil reprisals, duly licensed bar owners/operators, restaurant owners/operators and bowling alley owners/operators,

throughout the State of Ohio from allowing their patrons to engage in billiards, pinball games, video games and arcade games provided by many of the Plaintiffs named herein. This order has been issued by the Director of the Department of Health without any basis to support the conclusion that the patrons of bars, restaurants and bowling alleys cannot safely participate in such games.

3. By prohibiting Plaintiffs' from conducting their various businesses through threats of civil and criminal reprisals when, based upon Defendants' own statements, there is minimal safety risk for the age segment of the population that typically frequents bars and bowling alleys, Defendants have violated the rights of Plaintiffs, guaranteed by Art. I, §1, Art. I §2, Art. I §18, Art. I §19 and Art. II §1 of the Ohio Constitution, to conduct their legitimate businesses.

4. Defendants have made no showing that the games offered by Plaintiffs cannot be conducted in a manner that complies with the spacing standards and sanitizing standards recommended by Defendants. Finally, Defendants' orders are even more constitutionally suspect because Director of the Department of Health's order exempts from its absolute prohibition, state-supported games of the Lottery Kiosks available in bars and bowling alleys.

4. As a direct and proximate result of the unconstitutional order issued by the Director of the Ohio Department of Health, together with enforcement efforts by local health departments, all Plaintiffs face imminent risk of losing their businesses, their livelihoods and economic security, of being criminally prosecuted and suffering irreparable harm to their rights as citizens in the State of Ohio to be treated equally under the law, to receive due process and to be protected from the arbitrary conduct of an unelected official in whom virtually all powers of government, legislative and executive, have been singularly and unlawfully reposed.

5. Due to Defendants' unconstitutional order, mandate and decree, Plaintiffs will suffer irreparable harm that must be enjoined to protect Plaintiffs' constitutional right to be secure in the possession of and use of their property.

6. The Plaintiffs seek a preliminary injunction enjoining the Defendants from: (1) relying solely on the authority in R.C. 3701.13 and R.C. 3701.352 to impose criminal, civil, or equitable penalties on Plaintiffs *so long as they adhere to the safety regulations expressly articulated in Paragraphs 8, 16, 21(a), 21(b), and 21(c) of the Director's Stay Safe Ohio Order*; (2) imposing criminal, civil, or equitable penalties that arise from orders that exceed the limits of the authority granted by R.C. 3701.13 on Plaintiffs *so long as they adhere to the safety regulations expressly articulated in Paragraphs 8, 16, 21(a), 21(b), and 21(c) of the Director's Stay Safe Ohio Order*; (3) imposing criminal, civil, or equitable penalties on Plaintiffs *so long as they adhere to the safety regulations expressly articulated in Paragraphs 8, 16, 21(a), 21(b) and 21(c) of the Director's Stay Safe Ohio Order*; and/or (4) enjoin the enforcement of Paragraph 13(g) of the *Director's Stay Safe Ohio Order*.

The Parties
Plaintiffs

7. Plaintiff GARAGE BAR WILLOUGHBY, LLC is an Ohio limited liability company that engages in the bar and tavern business and provides its patrons the opportunity to play billiards, pinball games, video games and arcade games, and is located in Lake County, Ohio.

8. Plaintiff GENNCO VENDING CORP. is an Ohio corporation that engages in the business of leasing and/or providing of pool tables, pinball games, video games and arcade games, and is located in Lake County, Ohio. This Plaintiff leases and/or provides pool tables, pinball games, video games and arcade games to bars owners/operators and bowling alley owners/operators.

9. Plaintiff SHAFFER SERVICES, INC. is an Ohio corporation that engages in the business of leasing and/or providing pool tables, pinball games, video games and arcade games, and is located in Franklin County, Ohio. This Plaintiff leases and/or provides pool tables, pinball games, video games and arcade games to bars owners/operators and bowling alley owners/operators.

10. Plaintiff PICK'S ENTERPRISES, INC. is an Ohio corporation that engages in the business of leasing and/or providing pool tables, pinball games, video games and arcade games, and is located in Montgomery County, Ohio. This Plaintiff leases and/or provides pool tables, pinball games, video games and arcade games to bars owners/operators and bowling alley owners/operators.

11. Plaintiff THE CADILLAC MUSIC CORPORATION is an Ohio corporation that engages in the business of leasing and/or providing pool tables, pinball games, video games and arcade games, and is located in Cuyahoga County, Ohio. This Plaintiff leases and/or provides pool tables, pinball games, video games and arcade games to bars owners/operators and bowling alley owners/operators.

12. Plaintiff MAX, INC. is an Ohio corporation that engages in the business of leasing and/or providing pool tables, pinball games, video games and arcade games, and is located in Cuyahoga County, Ohio. This Plaintiff leases and/or provides pool tables, pinball games, video games and arcade games to bars owners/operators and bowling alley owners/operators.

13. Plaintiff NEXGEN VENDING, LLC is an Ohio limited liability company that engages in the business of leasing and/or providing pool tables, pinball games, video games and arcade games and is located in Montgomery County, Ohio. This Plaintiff leases and/or provides

pool tables, pinball games, video games and arcade games to bars owners/operators and bowling alley owners/operators.

14. Plaintiff R&B AMUSEMENT CO., LLC is an Ohio limited liability company that engages in the business of leasing and/or providing pool tables, pinball games, video games and arcade games, and is located in Lawrence County, Ohio. This Plaintiff leases and/or provides pool tables, pinball games, video games and arcade games to bars owners/operators and bowling alley owners/operators.

15. Plaintiff ASSOCIATED VENDING, INC. is an Ohio corporation that engages in the business of leasing and/or providing pool tables, pinball games, video games and arcade games, and is located in Hamilton County, Ohio. This Plaintiff leases and/or provides pool tables, pinball games, video games and arcade games to bars owners/operators and bowling alley owners/operators.

16. Plaintiff M&G SERVICES, INC. is an Ohio corporation that engages in the business of leasing and/or providing pool tables, pinball games, video games and arcade games, and is located in Trumbull County, Ohio. This Plaintiff leases and/or provides pool tables, pinball games, video games and arcade games to bars owners/operators and bowling alley owners/operators.

17. Plaintiff GO FOR BROKE AMUSEMENT AND GAMES, LLC is an Ohio limited liability company, that engages in the business of leasing and/or providing pool tables, pinball games, video games and arcade games, and is located in Belmont County, Ohio. This Plaintiff leases and/or provides pool tables, pinball games, video games and arcade games to bars owners/operators and bowling alley owners/operators.

18. Plaintiff BREMER VENDING, LLC is an Ohio limited liability company that engages in the business of leasing and/or providing pool tables, pinball games, video games and arcade games and is located in Lucas County, Ohio. This Plaintiff leases and/or provides pool tables, pinball games, video games and arcade games to bars owners/operators and bowling alley owners/operators.

19. Plaintiff LORAIN MUSIC COMPANY is an Ohio limited liability company that engages in the business of leasing and/or providing pool tables, pinball games, video games and arcade games, and is located in Lorain County, Ohio. This Plaintiff leases and/or provides pool tables, pinball games, video games and arcade games to bars owners/operators and bowling alley owners/operators.

20. Plaintiff CLEARLY THE BEST, LLC is an Ohio limited liability company, that engages in the business of leasing and/or providing pool tables, pinball games, video games and arcade games, and is located in Columbiana County, Ohio. This Plaintiff leases and/or provides pool tables, pinball games, video games and arcade games to bars owners/operators and bowling alley owners/operators.

21. Plaintiff PIONEER SERVICE, INC. is an Ohio corporation that engages in the business of leasing and/or providing pool tables, pinball games, video games and arcade games, and is located in Hamilton County, Ohio. This Plaintiff leases and/or provides pool tables, pinball games, video games and arcade games to bars owners/operators and bowling alley owners/operators.

22. Plaintiff J&S ELECTRONICS, INC. is an Ohio corporation that engages in the business of leasing and/or providing pool tables, pinball games, video games and arcade games, and is located in Auglaize County, Ohio. This Plaintiff leases and/or provides pool tables, pinball

games, video games and arcade games to bars owners/operators and bowling alley owners/operators.

23. Plaintiff CITY AMUSEMENT ENTERPRISES, LLC is an Ohio limited liability company that engages in the business of leasing and/or providing pool tables, pinball games, video games and arcade games and is located in Scioto County, Ohio. This Plaintiff leases and/or provides pool tables, pinball games, video games and arcade games to bars owners/operators and bowling alley owners/operators.

24. Plaintiff, OHIO COIN MACHINE ASSOCIATION is a trade association that supports and advocates for the interests of the Plaintiffs (listed above) that lease and/or provide pool tables, pinball games, video games and arcade games to bars, bowling alleys and others.

25. Plaintiff POELKING ENTERTAINMENT NETWORK, INC. is an Ohio corporation, operating two (2) bowling alleys, both of which provide pool tables, pinball games, video games and arcade games for the benefit of their patrons and both of which are located in Montgomery County, Ohio.

26. Plaintiff SPARE TIME RECREATION, INC. is an Ohio corporation, operating a bowling alley and rolling skating rink, which provides pool tables, pinball games, video games and arcade games, which is located in Lawrence County, Ohio.

Defendants

27. Defendant AMY ACTON, M.D., M.D.H., has been at all times relevant hereto the Director of the Ohio Department of Health.

28. Defendant THE OHIO DEPARTMENT OF HEALTH, among its other responsibilities, is entrusted with the duty of preventing and controlling the spread of infectious

diseases and providing direction, support and coordination in promoting good health and assuring quality care.

29. Defendant LAKE COUNTY COMBINED GENERAL HEALTH DISTRICT is a county health district organized under Ohio Rev. Code Chapter 3709, charged with enforcing the Ohio Department of Health's Orders and empowered to make its own orders.

30. Defendants have undertaken and/or threatened to undertake specific action to deprive Plaintiffs their constitutional rights by effectively prohibiting, under threats of criminal reprisals, Plaintiff bar owners/operators, Plaintiff bowling alley owners/operators and others from allowing their patrons to participate in billiards, pinball games, video games and arcade games leased and/or provided to them by some of the Plaintiffs. The unlawful, concerted actions of Defendants has impaired the rights of these Plaintiffs who lease and/or provide pool tables, pinball games, video games and arcade games for amusement to duly licensed bars and bowling alleys by threatening them with criminal penalties should they exercise their constitutional rights to use their property.

31. All Defendants are being sued in their official capacity.

Facts Common To All Claims

32. Art. I, §1 of the Ohio Constitution provides:

All men are, by nature, free and independent, and have certain inalienable rights, among which are those enjoying and defending life and liberty, acquiring, possessing and protecting property, and obtaining happiness and safety.

33. Art. I, §2 of the Ohio Constitution provides:

All political power is inherent in the people. Government is instituted for their equal protection and benefit, and have the right to alter, reform or abolish the same, whenever they may deem it necessary; no special privileges or immunities shall ever be granted, that may not be altered, revoked or repealed by the General Assembly.

34. Art. I, §16 of the Ohio Constitution provides:

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay. Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

35. Art. II, §1 of the Ohio Constitution provides:

The legislative power of the state shall be vested in a General Assembly consisting of a senate and house of representatives but the people reserve to themselves the power to propose to the General Assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided. They also reserve the power to adopt or reject any law, section of any law or any item in any law appropriating money passed by the General Assembly, except as hereinafter provided; and independent of the General Assembly to propose amendments to the constitution and to adopt or reject the same at the polls. The limitations expressed in the constitution, on the power of the General Assembly to enact laws, shall be deemed limitations on the power of the people to enact laws.

36. During March, 2020, the U.S. Government announced a state of emergency and many of the fifty states, including the State of Ohio, followed suit due to the coronavirus pandemic. Dr. Acton was thereafter given sweeping authority to address issues arising from the coronavirus pandemic.

37. Ohio Rev. Code § 3701.352 mandates that “[n]o person shall violate any rule the director of health or department of health adopts or any order the director or department of health issues under this chapter to prevent a threat to the public caused by a pandemic, epidemic, or bioterrorism event.”

38. On March 22, 2020, Dr. Acton, in her capacity as the Director of the Ohio Department of Health, issued a *Director’s Stay at Home Order*, and in accord with and based upon Executive Order 2020-01D signed by Governor Michael DeWine on March 9, 2020, ordering that

“non-essential businesses and operations must cease” and “effective at 11:59 pm on March 23, 2020, all persons are to stay at home or their place of residence unless they are engaged in Essential Activities, Essential Governmental Functions, or to operate Essential Businesses and Operations as set forth in this Order.”

39. Rather than defining the category articulated as “Essential Businesses and Operations,” the *Director’s Stay at Home Order* attempted to name “essential businesses and operations” over the course of three pages and 25 paragraphs.

40. While the standard of “essential” may arguably be clear, *i.e.*, “necessary for survival,” the *Director’s Stay at Home Order* included within the category of “essential”, *inter alia*, liquor stores, marijuana dispensaries, dry cleaners, and the state lottery.

41. Licensed bars, bowling alleys, restaurants¹ and companies like many of the Plaintiffs in this action offering to lease and/or provide pool tables, pinball games, video games and arcade games to bar owners/operators and bowling alley owners/operators did not make the list of “essential businesses” within the *Director’s Stay at Home Order* although operations which are clearly significant to the State of Ohio’s revenues such as liquor stores, marijuana dispensaries and the state lottery were all deemed “essential”.

42. On April 2, 2020, Dr. Acton renewed the *Director’s Stay at Home Order*, with the issuance of the *Amended Director’s Stay at Home Order*.

43. The *Director’s Stay at Home Order* was issued by Dr. Acton without enabling legislation or administrative rulemaking.

44. The *Amended Director’s Stay at Home Order* further provided for Dispute Resolution” through a Dispute Resolution Commission that continues to the date of this filing.

¹ Except those that offer “take-out”.

45. On April 30, 2020, AMY DR. ACTON renewed the *Director's Stay at Home Order*, with the issuance of the *Director's Stay Safe Ohio Order*.

46. A true and accurate copy of the *Director's Stay Safe Ohio Order* is in Defendants' possession and will be provided to the Court.

47. The *Director's Stay Safe Ohio Order* provides, *inter alia*, as follows:

- a. "All businesses and operations in the State, except as defined below, are permitted to reopen within the State so long as all workplace safety standards are met." Page 1, ¶2.

48. The Ohio Department of Health subsequently enacted rules and restrictions affecting the re-opening of restaurants and bars:

The open congregate areas in restaurants and bars that are not necessary for the preparation and service of food or beverages (billiards, card playing, pinball games, video games, arcade games, dancing, and entertainment) shall remain closed.

Pursuant to the "mandatory requirements" issued by the Department of Health is a prohibition against allowing restaurants and bars/owners and others from allowing their patrons to engage in billiards, card playing, pinball games, video games, arcade games, entertainment and "dancing".

49. This mandatory and absolute prohibition against allowing patrons at bars, restaurants and bowling alleys issued by the Director of the Ohio Department of Health is unconstitutional as applied to Plaintiffs who lease or provide pool tables, pinball games, video games and arcade games, to these bars, restaurants and bowling alleys. It is also unconstitutional as applied to those to whom games are leased and/or provided including, but not limited to, bar owners, bowling alley operators and restaurant owners who provide those amusements to their patrons.

50. This mandatory prohibition is also unconstitutional because the Director of Public Health exempts from its scope State Lottery Kiosk games available within bars, restaurants and bowling alleys. Patrons operate these Lottery Kiosk games in much the same manner as the privately owned pinball games, video games and arcade games which have been absolutely prohibited by the Director of the Department of Health.

51. The absolute prohibitions enacted by the Director of the Department of Health impose civil and criminal sanctions against those who allow patrons to place such games and amusements and thus dramatically affects and impairs the ability of those Plaintiffs who lease or provide such amusements to use and enjoy their property is guaranteed by the Ohio Constitution.

52. The State's own statistics, repeated and publicized on a daily, if not an hourly, basis, instruct that the overwhelming number of deaths in Ohio (it is true of other states as well) attributed to coronavirus are found in the age category of persons between the ages of 65-90. Furthermore, over 55% of the coronavirus deaths in Ohio are reported to have occurred in nursing homes. Few people between the ages of 70 to 80 or 90, or who are bound to nursing homes, are found frequenting bars and bowling alleys. Fewer still are going to bars and playing billiards, pinball games, video games or arcade games.

53. Among its "Recommended Best Practices" in "Responsible RestartOhio", the Ohio Department of Health recommends that owners of businesses, including bar and restaurant owners, should station someone at an entrance and exit door to encourage "at-risk" older population to utilize alternative options rather than sitting in a bar. For years such employees had the task of keeping "underage" persons out of bars and that practice met with universal approbation by the citizens of the State of Ohio. Because of the peculiar risks imposed by the coronavirus, there is no reason why these same practices cannot be reversed so that the obviously

at-risk population can be advised against entering a bar in the unlikely event that they actually have any interest in doing so. In addition to the "Recommended Best Practices," the Department of Health has also issued certain mandatory requirements for customers and guests. Including among these are the following:

- Ask customers and guests not to enter if symptomatic;
- Provide access to hand-washing methods while in the food service establishment, and if possible, place approved hand-washing/sanitizing products in high contact areas;
- Food service establishments offering dine-in service must take affirmative steps for the customers to achieve safe social distancing guidelines.

These standards can be applied to restaurant and bar owners and bowling alley operators with respect to patrons' continued use of billiards, pinball machines, video games, and arcade games so that Defendants' interest in the protection of the patrons is satisfied.

Additionally, according to the Responsible Restart Ohio management requirements, customers of bars and restaurants are to be provided access to handwashing opportunities and to the establishment of places where sanitizers can be located. Plaintiffs are prepared to do these things in a manner that allows the patrons to sanitize machines and billiard cues after they use them. All concerns that the State of Ohio may have about the rules of "hand touching" and distancing can be addressed in precisely in the manner that is satisfactory to Defendants.

First Cause of Action
Declaratory Judgment and injunctive Relief
(Violation Of Separation of Powers and Due Process Because Of Impermissible Delegation
Of Legislative Authority And/Or Vague Delegation)

54. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs as if set forth fully herein.

55. Through enactment of Ohio Rev. Code § 3701.13, the Ohio General Assembly delegated to the Ohio Department of Health, *inter alia*, “ultimate authority in matters of quarantine and isolation.”

56. In delegating “ultimate authority in matters of quarantine and isolation” to the Ohio Department of Health, the Ohio General Assembly has delegated legislative authority without intelligible standards.

57. The due process and separation of powers concerns raised by the delegation of “ultimate” legislative and executive authority to the Ohio Department of Health is aggravated by the unilateral creation of strict liability crimes by the various orders issued by Dr. Acton.

58. Absent applicable standards, the delegation of authority must be deemed void for vagueness as allowing ad hoc decisions or giving unfettered discretion to an unelected bureaucrat.

59. A delegation of core legislative authority offends due process especially when made to an unelected individual and is unaccompanied by discernible standards, such that the delegate’s action cannot be measured against objective criteria.

60. Ohio has always considered the right of property to be a *fundamental right*. There can be no doubt that the bundle of venerable rights associated with property is strongly protected in the Ohio Constitution and must be trod upon lightly, no matter how great the emergency since the free use of property is guaranteed by Section 19, Article I of the Ohio Constitution.

61. The void delegation of legislative authority to an unelected member of the Executive Branch both on its own and in combination with the various orders issued by Dr. Acton, has violated, continues to violate, and will further violate Plaintiffs’ due process rights.

62. Dr. Acton has conceded and repeatedly claimed that her generally-applicable orders are legislative acts.

63. Dr. Acton claims that the Ohio Department of Health may usurp the function of the Ohio General Assembly by creating strict liability criminal penalties, *i.e.*, disobedience with any order issued by AMY DR. ACTON, including, without limitation, the *Director's Stay at Home Order*, the *Amended Director's Stay at Home Order*, and the *Director's Stay Safe Ohio Order*.

64. One of two conclusions is necessarily true: either (i) the General Assembly's delegation of authority to the Ohio Department of Health in Ohio Rev. Code § 3701.13 is too broad or vague; or (ii) the Ohio Department of Health's exercise of the delegated authority is too broad. Under either conclusion, the absolute prohibition against allowing a bar owner's patrons or a bowling alley operator's patrons to participate in billiards, pinball games, video games and arcade games as set forth in Responsible Restart Ohio and criminalizing the conduct of bar owners and bowling alley operators is unconstitutional or unauthorized.

Second Cause of Action
Declaratory Judgment and Injunctive Relief
(Dr. Acton's Orders Are *Ultra Vires*)

65. Plaintiffs hereby incorporate by reference the allegations in the foregoing paragraphs as if set forth fully herein.

66. The orders at issue in this case were allegedly issued pursuant to Defendant Acton's authority under R.C. 3701.13.

67. R.C. 3701.13 provides that: the department of health shall have supervision of all matters relating to the preservation of the life and health of the people and have ultimate authority in matters of *quarantine and isolation*, which it may declare and enforce, when neither exists, and modify, relax, or abolish, when either has been established. (Emphasis added.)

68. "Isolation" means the separation of an infected individual from other during the period of disease communicability in such a way that prevents, as far as possible, the direct or indirect conveyance of an infectious agent to those who are susceptible to infection or who may spread the agent to others." Ohio Adm. Code 3701-3-01(R).

69. "Quarantine" means the restriction of the movements or activities of a well individual or animal who has been exposed to a communicable disease during the period of communicability of that disease and in such a manner that transmission of the disease may have occurred. The duration of the quarantine ordered shall be equivalent to the usual incubation period of the disease to which the susceptible person or animal was exposed." Ohio Adm. Code 3701-3-01(W).

70. The duration of the quarantine ordered shall be equivalent to the usual incubation period of the disease to which the susceptible person was exposed. Ohio Adm. Code 3701-3-01(W). The incubation period can be up to 14 days, according to the department of health.

71. The director has quarantined the entire population of the state of Ohio, for much more than 14 days. The director has no statutory authority to close businesses, including the plaintiffs, which she deems non-essential for a period exceeding two months. She has acted beyond her authority in an impermissibly arbitrary, unreasonable, and oppressive manner.

Third Cause of Action
Declaratory Judgment and Injunctive Relief
(Equal Protection)

72. Plaintiff incorporates by reference the allegations in the preceding paragraphs.

73. Article I, §2 of the Ohio Constitution provides that "[a]ll political power is inherent in the people. Government is instituted for their equal protection and benefit..."

74. No classification may be arbitrary. Rather, the attempted classification must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis.

75. Discrimination of an unusual character especially suggest[s] careful consideration to determine whether the classifications are obnoxious to the constitutional equal protection provision.

76. The Department of Health *Restart Ohio* guidelines specifically preclude bar patrons from being permitted to participate in billiards, pinball games, video games and arcade games in duly licensed bars and bowling alleys. At the same time, the State of Ohio permits the same patrons to play lottery kiosk games and to engage in state supported lottery kiosk games. There is no reasonable, justifiable differences between the activities involved in playing lottery kiosk games and those activities that are absolutely precluded under the mandatory requirements of the *Restart Ohio* provisions.

77. In selectively singling out and prohibiting bar patrons, restaurant patrons and bowling alley patrons from participating in billiards, pinball games, video games or arcade games provided by private entities, rather than requiring recognized and approved safety practices that, should the bar patron chose to participate in billiards, pinball games, video games or arcade games, but allowing patrons to participate in the Lottery Kiosk games, the State has failed to afford equal protection under its orders and statutes by precluding bars and bowling alleys from allowing its patrons to participate in billiards, pinball games, video games or arcade games provided by private businesses such as the Plaintiffs in this case.

78. Plaintiffs are willing and able to abide by the safety regulations mandated by the *Director's Stay Safe Ohio Order*, including but not limited to ¶8 (requiring facial masks), ¶16 (requiring "Social Distancing Requirements"); ¶21(a) (requiring certain safety protocols of "manufacturing, distribution, & construction" employers); ¶21(b) (requiring certain safety protocols of "consumer, retail & services" employers); ¶21(c) (requiring certain safety protocols of "general office environments" employers).

WHEREFORE, Plaintiffs pray for a declaration and a preliminary injunction against Defendant Amy Acton in her official capacity as the Director of the Ohio Department of Health and the Lake County General Health District, together with their officers, agents, servants, employees and attorneys, and those persons or entities acting at their direction or behest, or in active concert or participation with them, and who receive actual notice of this order, whether by personal service or otherwise, including, without limitation, law enforcement officers, prosecuting attorneys, and the attorney general, are hereby ENJOINED from imposing or enforcing penalties solely for non-compliance with the director's order against the businesses listed in the Complaint, so long as they operate in accordance with all applicable safety regulations, whether those in the state's order, the state's supplemental guidelines governing businesses like those of the Plaintiffs in this case, or the Lake County General Health District, together with attorney fees and costs.

AND

PLAINTIFFS pray for a declaration that the Director's prohibition against patrons of bars, restaurants and bowling alleys from playing amusement games provided by Plaintiffs unconstitutionally impairs Plaintiffs' property rights, in violation of separation of powers, due

process, and equal protection provisions of the Ohio Constitution, and damages, attorney fees and costs.

/s/Orville L. Reed, III

Orville L. Reed, III (#0023522)

David W. Hilkert (#0023486)

Stark & Knoll Co., L.P.A.

3475 Ridgewood Rd.

Akron, Ohio 44333

Telephone: (330) 572-0328

Fax: (330) 572-0329

Email: oreed@stark-knoll.com

dhilert@stark-knoll.com

Attorneys for Plaintiffs

99999.001-772372v1

IN THE COURT OF COMMON PLEAS
LAKE COUNTY

20CV000674

JOHN P. O'DONNELL

GENNCO VENDING CORP., et al

Plaintiffs

v.

AMY ACTON, *in her official capacity*
as Director of the Ohio Department of
Health, et al.,

Defendants.

INSTRUCTIONS FOR CERTIFIED
MAIL SERVICE ON DEFENDANTS

FILED VIA EMAIL

DATE 5-20-2020 TIME 4:46 PM
MAUREEN G. KELLY, CLERK OF COURTS

Plaintiffs respectfully request the Court to make service of the Summons and Complaint
upon Defendants at the following address, by certified mail service:

AMY ACTON, *in her official capacity*
as Director of the Ohio Department of Health
246 N High Street
Columbus, Ohio 43215,

and

OHIO DEPARTMENT OF PUBLIC HEALTH
246 N. High Street
Columbus, OH 43215

and

DAVID YOST
State of Ohio Attorney General
30 E. Broad St., 14th Floor
Columbus, OH 43215

and

LAKE COUNTY HEALTH DISTRICT
37111 Euclid Ave.
Willoughby, OH 44094

/s/Orville L. Reed, III

Orville L. Reed, III (#0023522)

David W. Hilkert (#0023486)

Stark & Knoll Co., L.P.A.

3475 Ridgewood Rd.

Akron, Ohio 44333

Telephone: (330) 572-0328

Fax: (330) 572-0329

Email: oreed@stark-knoll.com

dhilert@stark-knoll.com

Attorneys for Plaintiffs

MAUREEN G. KELLY

CLERK OF COURTS

Lake County Common Pleas Court

ATTENTION ALL PARTIES TO THE CASE

Whether you are represented by an Attorney or representing yourself in this Legal action, LAKE COUNTY LOCAL COURT RULES require that all participants familiarize themselves with, and follow the requirements of each court.

Pre-trial orders and procedures are available on our website at

www.lakecountyohio.gov/coc

Select DOWNLOADS

Scroll to PRE-TRIAL ORDERS

Select the appropriate pre-trial order/procedure for YOUR respective case and Judge.

If you are unable to access or unclear as to which pre-trial order/procedure applies to you, contact the Office of the Clerk of Courts, New Case Department (440.350.2657) during normal business hours and a copy will be immediately mailed to you.

Maureen G. Kelly, Clerk of Courts

Revised 7/1/2013 Pretrial orders