

STATE OF NORTH CAROLINA
COUNTY OF CARTERET

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 20 CV 1158

Tiffany Howell; Chester's, Inc.;)
TRH, Inc.; Jacqueline Danielle Bull;)
J. Danielle LLC; Jason Ruth;)
Big Boyz, L.L.C.; Matthew Morel;)
Wild Cherry LN, L.L.C.; Benjamin Reese;)
MR Entertainment, LLC; Tony Basford;)
PLUS Dueling Pianos, Inc.; Bryan)
Wheelock; Grey Ghost Entertainment, LLC;)
Drewry Wofford, IV; NC House Party LLC,)

Plaintiffs,)

v.)

Roy A. Cooper, III, in his official)
capacity as Governor; State of)
North Carolina,)

Defendants.)

COMPLAINT
(Jury Trial Demanded)

FILED
20 DEC 22 A 11:24
Carteret, N.C. S.C.
[Signature]

NOW COME the Plaintiffs, Tiffany Howell; Chester's, Inc.; TRH, Inc.; Jacqueline Danielle Bull; J. Danielle LLC; Jason Ruth; Big Boyz, L.L.C.; Matthew Morel; Wild Cherry LN, L.L.C.; Benjamin Reese; MR Entertainment, LLC; Tony Basford; PLUS Dueling Pianos, Inc.; Bryan Wheelock; Grey Ghost Entertainment, LLC; Drewry Wofford, IV; NC House Party LLC, by and through their undersigned counsel, complaining of the Defendants and allege and say:

PARTIES

1. The Plaintiff, Matthew Morel, is a natural person residing in Carteret County, North Carolina, and is the owner or operator of a bar located in Carteret County, North Carolina.
2. The Plaintiffs, Tiffany Howell, Jacqueline Danielle Bull, and Bryan Wheelock, are

natural persons residing in Forsyth County, North Carolina. Plaintiffs, Tiffany Howell and Jacqueline Danielle Bull, are the owners or operators of bars located in Forsyth County, North Carolina. Bryan Wheelock is the owner or operator of a bar located in Guilford County, North Carolina.

3. Plaintiff, Drewry Wofford, IV, is a natural person residing in Guilford County, North Carolina, and is the owner or operator of a bar located in Guilford County, North Carolina.

4. Plaintiff, Jason Ruth, is a natural person residing in New Hanover County, North Carolina, and is the owner or operator of a bar located in New Hanover County, North Carolina.

5. Plaintiff, Benjamin Reese, is a natural person residing in Buncombe County, North Carolina, and is the owner or operator of a bar located in Buncombe County, North Carolina.

6. Plaintiff, Tony Basford, is a natural person residing in Johnston County, North Carolina, and is the owner or operator of a bar located in Wake County, North Carolina.

7. Plaintiffs, Chester's, Inc. and TRH, Inc., are North Carolina corporations with their principal office located in Forsyth County, North Carolina, and are owners or operators of bars located in Forsyth County, North Carolina.

8. Plaintiff, J. Danielle LLC is a North Carolina company with its principal office located in Forsyth County, North Carolina, and is an owner or operator of a bar located in Forsyth County, North Carolina.

9. Plaintiff, Big Boyz, L.L.C., is a North Carolina company with its principal office located in New Hanover County, North Carolina, and is an owner or operator of a bar located in New Hanover County, North Carolina.

10. Plaintiff, Wild Cherry LN, L.L.C., is a North Carolina company with its principal

office located in Carteret County, North Carolina, and is an owner or operator of a bar located in Carteret County, North Carolina.

11. Plaintiff, MR Entertainment, LLC, is a North Carolina company with its principal office located in Buncombe County, North Carolina, and is an owner or operator of a bar located in Buncombe County, North Carolina.

12. Plaintiff, PLUS Dueling Pianos, Inc., is a North Carolina corporation with its principal office located in Buncombe County, North Carolina, and is an owner or operator of a bar located in Buncombe County, North Carolina.

13. Plaintiff, Grey Ghost Entertainment, LLC, is a North Carolina company with its principal office located in Forsyth County, North Carolina, and is an owner or operator of a bar located in Guilford County, North Carolina.

14. Plaintiff, NC House Party LLC, is a North Carolina company with its principal office located in Guilford County, North Carolina, and is an owner or operator of a bar located in Guilford County, North Carolina.

15. Defendant, Roy A. Cooper, III, is a natural person and is sued only in his official capacity as Governor of the State of North Carolina whose official residence and office are located in Wake County, North Carolina.

16. Defendant, State of North Carolina, is a state of the United States with the right to sue and be sued.

FACTS

17. On March 10, 2020, the Defendant, Roy A. Cooper, III (hereinafter “Defendant Cooper” or “Cooper”) issued Executive Order No. 116 in which Defendant Cooper declared a

state of emergency to "prevent the spread of COVID-19". A copy of the Executive Order No. 116 is attached hereto as Exhibit 1 and incorporated herein by reference.

18. On March 17, 2020, Defendant Cooper issued Executive Order 118. This Executive Order ordered all bars in North Carolina to close. Bars were defined as establishments that are not restaurants and that have a permit to sell alcoholic beverages for onsite consumption under N.C. Gen. Stat. § 18B-1001. A copy of the Executive Order No. 118 is attached hereto as Exhibit 2 and incorporated herein by reference.

19. On March 27, 2020, Defendant Cooper issued Executive Order 121, otherwise referred to as the "Stay at Home Order". This Executive Order continued the closure of bars. A copy of the Executive Order No. 121 is attached hereto as Exhibit 3 and incorporated herein by reference.

20. On April 23, 2020, Defendant Cooper issued Executive Order No. 135 which extended the closure of bars until May 8, 2020. A copy of the Executive Order No. 135 is attached hereto as Exhibit 4 and incorporated herein by reference.

21. On May 5, 2020, Defendant Cooper issued Executive Order No. 138 which ordered that bars "are directed to not serve alcoholic beverages for onsite consumption." This provision had the practical effect of requiring bars to remain closed. A copy of the Executive Order No. 138 is attached hereto as Exhibit 5 and incorporated herein by reference.

22. On May 20, 2020, Defendant Cooper issued Executive Order No. 141, the Phase 2 Order, which ordered that "bars are not to serve alcoholic beverages for onsite consumption." This provision had the practical effect of requiring bars to remain closed. A copy of the Executive Order No. 141 is attached hereto as Exhibit 6 and incorporated herein by reference.

Order. This Executive Order continued to prohibit the serving of alcoholic beverages at indoor
28. On September 30, 2020, Defendant Cooper issued Executive Order 169, the Phase 3

Order No. 163 is attached hereto as Exhibit 11 and incorporated herein by reference.
This provision had the practical effect of requiring bars to remain closed. A copy of Executive
Executive Order ordered that "bars are not to serve alcoholic beverages for onsite consumption."

27. On September 4, 2020, Defendant Cooper issued Executive Order 163. This
herein by reference.

2020. A copy of the Executive Order No. 155 is attached hereto as Exhibit 10 and incorporated
Order extended the effective date of Executive Orders 141, 147, and 151 until September 11,

26. On August 5, 2020, Defendant Cooper issued Executive Order 155. This Executive
incorporated herein by reference.

am until 11:00 pm. A copy of the Executive Order No. 153 is attached hereto as Exhibit 9 and
restaurants, breweries, wineries, and distilleries for onsite consumption to the hours between 7:00

Order did not allow bars to open, but instead restricted the hours of sale of alcohol drinks at
25. On July 28, 2020, Defendant Cooper issued Executive Order 153. This Executive

reference.
of the Executive Order No. 151 is attached hereto as Exhibit 8 and incorporated herein by

Order extended the effective date of Executive Orders 141 and 147 until August 7, 2020. A copy
24. On July 16, 2020, Defendant Cooper issued Executive Order 151. This Executive

Executive Order No. 147 is attached hereto as Exhibit 7 and incorporated herein by reference.
Order extended the effective date of Executive Order 141 until July 17, 2020. A copy of the

23. On June 24, 2020, Defendant Cooper issued Executive Order 147. This Executive

bars, but allowed for bars to “serve alcoholic beverages for on-site consumption in outdoor seating areas on its premises.” The outdoor occupancy limit was a maximum of 100 people, or no more than 7 guests per 1000 square feet. Many bars, including some bars owned by the Plaintiffs, have been unable to open as they do not have outdoor seating facilities. Further, the bars that have opened with outdoor seating have been severely limited by weather. A copy of Executive Order No. 169 is attached hereto as Exhibit 12 and incorporated herein by reference.

29. On October 21, 2020, Defendant Cooper issued Executive Order 170. This Executive Order extended the effective date of Executive Order 169 until November 13, 2020. A copy of Executive Order No. 170 is attached hereto as Exhibit 13 and incorporated herein by reference.

30. On November 10, 2020, Defendant Cooper issued Executive Order 176. This Executive Order extended Executive Order 169 until December 4, 2020. A copy of Executive Order No. 176 is attached hereto as Exhibit 14 and incorporated herein by reference.

31. On December 8, 2020, Defendant Cooper issued Executive Order 181. This Executive Order repeated the restrictions on bars contained in Executive Order 169, and further prohibited the sale and service of alcoholic beverages between the hours of 9:00 pm and 7:00 am. This provision has the practical effect of making bars unprofitable to operate. A copy of Executive Order No. 181 is attached hereto as Exhibit 15 and incorporated herein by reference.

32. Each of the Plaintiffs are owners and operators of bars which have been ordered to close by the above-referenced Executive Orders, or have been made unprofitable to operate due to the above-referenced Executive Orders.

33. Each of the Plaintiffs has suffered financial damages due to the closing of their

respective businesses, or the severe restrictions placed on their respective businesses by the Defendants.

JURISDICTION

34. The Court has jurisdiction over this action pursuant to N.C. Gen. Stat. § 1-253.

35. The Court further has jurisdiction over this action as it is brought to determine rights under Art. I, sec. 1, 6, and 19 of the North Carolina Constitution. These rights, as part of the Declaration of Rights of the Constitution, are self-executing.

36. Injunctive relief is proper as the actions of the Defendants in prohibiting the Plaintiffs from engaging in ordinary occupations present a substantial encumbrance on economic activity which constitutes a manifest threat of irreparable harm sufficient to invoke the equity jurisdiction of the Court.

37. Injunctive relief is further proper in that the Plaintiffs will suffer irreparable harm due to the actions of the Defendants as it deprives the Plaintiffs of their Constitutional right to work and enjoy the fruits of their labor, and the Plaintiffs' rights to equal protection under the law and substantive due process as provided by the Law of the Lands Clause of the North Carolina Constitution.

38. The Emergency Management Act under which the Defendants are operating does not provide for a plain, speedy, or adequate remedy at law. The Plaintiffs therefore do not have an adequate state remedy.

39. Damages would not fully redress any harm suffered by Plaintiffs because they are unable to engage in constitutionally protected activities.

40. The Defendants do not have sovereign immunity under the Declaratory Judgment

Act, nor do the Defendants have sovereign immunity as this action is brought directly under the North Carolina Constitution.

FIRST CAUSE OF ACTION
(Right to earn a living)

41. Paragraphs 1-40 of this Complaint are incorporated herein by reference.

42. The Plaintiffs are each owners and operators of bars located in the State of North Carolina.

43. By his issuance of various Executive Orders, beginning with Executive Order 118 on March 17, 2020, and continuing through the current Order being Executive Order 181, Defendant Cooper has ordered that the facilities of the Plaintiffs be closed, or so severely restricted as to make the facilities of the Plaintiffs unprofitable to operate.

44. Pursuant to N.C. Gen. Stat. § 166A-19.30(c)(2), executive orders are enforced by the Defendant, State of North Carolina, through its public officers.

45. Executive Orders 118, 121, 133, 138, 141, 147, 151, 155, 163, 169, 170, 176, and 181, as listed above, deprive the Plaintiffs of their inalienable right to earn a living as guaranteed by Art. I, sec. 1 and 19, of the North Carolina Constitution.

46. Art. I, sec. 1 of the Constitution provides that: “We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.”

47. Art. I, sec. 19 of the Constitution provides that: “No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any

manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.”

48. Executive Orders 118, 121, 133, 138, 141, 147, 151, 155, 163, 169, 170, 176, and 181 are or were unconstitutional as applied to owners and operators of bars as neither the State of North Carolina nor the Governor of the State possess the authority to deprive the Plaintiffs of their right to earn a living.

49. Due to the unconstitutional executive orders, the Plaintiffs have been damaged in a sum in excess of \$ 25,000.

SECOND CAUSE OF ACTION

(Unconstitutionality of N.C. Gen. Stat. § 166A-19.31(b)(2))

50. Paragraphs 1-49 of this Complaint are incorporated herein by reference.

51. Defendant Cooper in his Executive Order 181, and in prior executive orders listed above, has determined that municipalities and counties are unable to handle control of the COVID-19 emergency. Pursuant to N.C. Gen. Stat. § 166A-19.30(c), Defendant Cooper has therefore availed himself of the powers given to municipalities and counties under N.C. Gen. Stat. § 166A-19.31.

52. N.C. Gen. Stat. § 166A-19.31(b)(2) provides that municipalities and counties, and in this case Defendant Cooper, have the authority to prohibit the operation of business establishments and therefore to prohibit individuals from earning a living.

53. The General Assembly does not possess the authority to prohibit the right of individuals to earn a living. It therefore cannot give that right to municipalities and counties, and

in this case to the Governor.

54. To the extent that N.C. Gen. Stat. § 166A-19.31(b)(2) allows the Defendants to order the closure of the Plaintiffs' businesses, it violates the Plaintiffs' right to earn a living as guaranteed by Art. I, sec. 1 and 19 of the North Carolina Constitution.

55. N.C. Gen. Stat. § 166A-19.31(b)(2) is unconstitutional as applied to the Plaintiffs as owners and operators of bars.

THIRD CAUSE OF ACTION
(Substantive Due Process)

56. Paragraphs 1-55 of this Complaint are incorporated herein by reference.

57. Plaintiffs have the fundamental right to earn a living.

58. Article I, sec. 19 of the North Carolina Constitution guaranties that the State does not issue orders that are unreasonable, arbitrary or capricious, and the law be substantially related to the valid object sought to be obtained.

59. Restaurants, private clubs, breweries, wineries, and distilleries have been allowed to open and operate for onsite indoor consumption of alcohol, while bars have been ordered to close or have their businesses severely limited by draconian restrictions which make the operation of bars unprofitable. These restrictions include only allowing bars to serve alcohol outdoors, and not allowing bars to serve alcoholic beverages between the hours of 9:00 pm and 7:00 am.

60. There is no rational basis for allowing restaurants, private clubs, breweries, wineries, and distilleries to reopen indoors while requiring the Plaintiffs' businesses to remain closed or only operating outdoors. Nor is there a rational basis for limiting alcohol sales between the hours of 9:00 pm and 7:00 am.

61. Executive Orders 118, 121, 133, 138, 141, 147, 151, 155, 163, 169, 170, 176, and 181 as listed above thus violate the substantive due process rights of the Plaintiffs and are invalid.

62. Due to the unconstitutional executive orders, the Plaintiffs have been damaged in a sum in excess of \$ 25,000.

FOURTH CAUSE OF ACTION
(Equal Protection)

63. Paragraphs 1-62 of this Complaint are incorporated herein by reference.

64. The businesses of the Plaintiffs have been ordered to remain closed or only operating outdoors with severely reduced hours of operation by the Defendant Cooper through his issuance of Executive Orders 118, 121, 133, 138, 141, 147, 151, 155, 163, 169, 170, 176, and 181.

65. Restaurants, private clubs, breweries, wineries, and distilleries have been allowed to open and operate for onsite indoor consumption of alcohol, while bars have been ordered to close or have there businesses severely limited by draconian restrictions which make the operation of bars unprofitable.

66. There is no rational basis for distinguishing between Plaintiffs' businesses and restaurants, private clubs, breweries, wineries, and distilleries which also sell alcoholic beverages.

67. Executive Orders 118, 121, 133, 138, 141, 147, 151, 155, 163, 169, 170, 176, and 181, and their successors, if any, deprive the Plaintiffs of the equal protection of the laws in violation of Article I, sec. 19 of the North Carolina Constitution.

68. Due to the unconstitutional executive orders, the Plaintiffs have been damaged in a

sum in excess of \$ 25,000.

FIFTH CAUSE OF ACTION
(Separation of Powers)

69. Paragraphs 1-68 of this Complaint are incorporated herein by reference.

70. Art. I, sec. 6 of the North Carolina Constitution provides that “The legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other.”

71. N.C. Gen. Stat. § 166A-19.31(b) provides for the types of prohibitions and restrictions during a state of emergency which can be enacted by counties and municipalities by enactment of ordinances.

72. The governing bodies of counties and municipalities are legislative in nature and may be delegated legislative powers by the General Assembly.

73. N.C. Gen. Stat. § 166A-19.30(c)(1) allows the Governor, in his discretion, to enact any of the prohibitions granted to counties and municipalities in N.C. Gen. Stat. § 166A-19.31(b). The Governor may further amend or rescind prohibitions and restrictions imposed by the local legislative bodies.

74. The Governor’s actions are in his discretion and not accompanied by adequate guiding standards to govern the exercise of the delegated powers by the chief executive. Further, there are no procedural safeguards to control the Governor’s actions in his use of Executive Orders pursuant to N.C. Gen. Stat. § 166A-19.30(c).

75. N.C. Gen. Stat. § 166A-19.30(c) represents an abdication of the authority of the General Assembly to make laws and is in violation of the Separation of Powers Clause of the

North Carolina Constitution.

WHEREFORE, the Plaintiffs, Tiffany Howell; Chester's, Inc.; TRH, Inc.; Jacqueline Danielle Bull; J. Danielle LLC; Jason Ruth; Big Boyz, L.L.C.; Matthew Morel; Wild Cherry LN, L.L.C.; Benjamin Reese; MR Entertainment, LLC; Tony Basford; PLUS Dueling Pianos, Inc.; Bryan Wheelock; Grey Ghost Entertainment, LLC; Drewry Wofford, IV; NC House Party LLC, pray the Court as follows:

1. That the Court grant a declaratory judgment that Executive Orders 118, 121, 133, 138, 141, 147, 151, 155, 163, 169, 170, 176, and 181, or any successor order, ordering the closure of the Plaintiffs' bars, or having the effect of making the operation of bars unprofitable, is a violation of Art. I, sec. 1 and 19, of the North Carolina Constitution in violation of the Plaintiffs' right to earn a living.

2. That the Court grant a declaratory judgment that N.C. Gen. Stat. § 166A-19.31(b)(2) is unconstitutional as applied to Plaintiffs and their bars as a violation of Art. I, sec. 1 and 19, of the North Carolina Constitution.

3. That a three-judge panel be appointed pursuant to N.C. Gen. Stat. § 1-267.1(a1), and the Court grant a declaratory judgment that N.C. Gen. Stat. § 166A-19.30(c) is a violation of Art. I, sec. 6, of the North Carolina Constitution as violating the Separation of Powers Clause of the North Carolina Constitution.

4. That the Court grant a declaratory judgment that Executive Orders 118, 121, 133, 138, 141, 147, 151, 155, 163, 169, 170, 176, and 181, or any successor order, limiting the operation of Plaintiffs' bars is a violation of Art. I, sec. 19, of the North Carolina Constitution as depriving the Plaintiffs of substantive due process.

5. That the Court grant a declaratory judgment that Executive Orders 118, 121, 133, 138, 141, 147, 151, 155, 163, 169, 170, 176, and 181, or any successor order, limiting the operation of Plaintiffs' bars is a violation of Art. I, sec. 19, of the North Carolina Constitution as depriving the Plaintiffs of the equal protection of the laws.

6. That a permanent injunction be issued preventing the Defendants and their officers, officials, and employees from enforcing Executive Order 181, or any successor Executive Order, as it applies to the Plaintiffs and the operation of the Plaintiffs' bars, as prayed above.

7. That a judgment be had against the Defendants and in favor of the Plaintiffs in an amount in excess of \$ 25,000.

8. That a trial by jury be had on all issues so triable.

9. That a reasonable attorney's fee be allowed to the Plaintiffs pursuant to N.C. Gen. Stat. § 6-19.1.

10. That the costs of this action be taxed to the Defendants.

11. For such other and further relief as the Court deems mete and proper.

This the 22nd day of December, 2020.

KITCHEN & TURRENTINE, PLLC



S. C. Kitchen
N.C. Bar No. 9309
920-C Paverstone Dr.
Raleigh, NC 27615
Email: ckitchen@ktlawnc.com
Phone: (888) 308-3708
Fax: (888) 308-3614

VERIFICATION

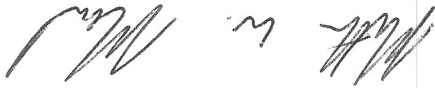
Matthew Morel says:

That the contents of the foregoing Complaint are true to his own knowledge, except as to matters stated on information and belief, and as to those matters, he verily believes them to be

true.

I affirm, under the penalties for perjury, that the foregoing representations are true.

This the 22nd day of December, 2020.



Matthew Morel