

SUPREME COURT OF ARIZONA

MICHAEL BEAVER; JACQUELYN BENDIG; MATT BRASSARD; CRAIG DENNY; PATRICIA DION; LOUIE FERNANDEZ; MISTIE GREEN; DAREL AND TAMIE HARRISON; BRAD HENRICH; CHARLES JENKINS; IAN JUUL; COLLEEN KENDALL; ALAN KOWALSKI; DOUGLAS LANDRETH; JOSH MAKRAUER; CHAD NEWBERRY; BRUCE REID; RUSSEL ROBERTS; WES AND REBECCA SCHEMMER; PETER SCIACCA; SHERI SHAW; HEATHER AND JUSTIN WARD; and CHERI WELLS,

Petitioners,

v.

DOUG DUCEY, in his official capacity as the Governor of the State of Arizona,

Respondent.

Case No. _____

Petition for Special Action

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INTRODUCTION

This case is about whether the citizens of Arizona are governed by laws, or by the whims of one man. Petitioners are small business owners all over Arizona whose businesses have been shut down by the Governor's recent executive orders, issued pursuant to a statute that purports to delegate to the Governor the entire "police power" of the state in the event of an emergency. Petitioners seek a declaration of their rights, as well as an order enjoining the Governor from enforcing his executive orders against them.

It is unquestionably reasonable to believe that the country, and the state, are now confronted with an emergency stemming from the novel coronavirus. But, as Justice William Douglas wrote in the famous *Steel Seizure Case* involving President Truman's seizure of the steel mills in the midst of a labor strike during the Korean War, "There can be no doubt that the emergency which caused the President to seize these steel plants was one that bore heavily on the country. But the emergency did not create power; it merely marked an occasion when power should be exercised." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 629 (1952) (Douglas, J., concurring). "We therefore cannot decide this case by determining which branch of government can deal most expeditiously with the present crisis. The answer must depend on the allocation of powers under the Constitution." *Id.* at 630.

As with the federal Constitution and the Korea War emergency, so too with Arizona's own constitution and the coronavirus emergency.

In short, the Governor's orders are made pursuant to a statute, A.R.S. § 26-303(E)(1), that unconstitutionally delegates the legislative power of this state to the Governor. Fortunately, it is possible to construe that authority narrowly in light of more specific authorities the state legislature has granted the Governor to deal with contagious diseases. Under those authorities, the Governor cannot order businesses of any kind to shut down.

Additionally, if A.R.S. § 26-303(E)(1) were interpreted to permit the Governor's executive orders, which allow some but not other businesses to remain open, that statute, as applied, would violate Article 2, Section 13 of the Arizona Constitution, providing that "[n]o law shall be enacted granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations."

Finally, the Governor's orders unconstitutionally deprive the Petitioners of their liberty to pursue their lawful occupations with no process at all, in violation of Article 2, Section 4 of the state Constitution. They therefore petition this Court for declaratory and injunctive relief against the Governor.

PARTIES

Doug Ducey, the Governor of the State of Arizona, is the respondent in this action in his official capacity. The executive orders at issue in this case were issued by him. The Attorney General, Speaker of the House, and President of the Senate have been notified of this action but are not made parties to this case pursuant to A.R.S. § 12-1841.

Petitioners are twenty-six small business owners from all over Arizona including Phoenix, Tucson, Prescott, Prescott Valley, Sedona, Bullhead City, Litchfield Park, Gilbert, Mesa, and Chandler. All of them hold Series 6 or 7 liquor licenses and have had to shut down entirely as a result of Governor Ducey's earlier executive orders, and have had to all but shut down again as a result of the Governor's most recent executive order, EO 2020-43. All are business owners "whose primary business is the sale or dispensing of alcoholic beverages" within the meaning of the prohibition in that executive order. All have suffered great harm as a result of the Governor's executive orders. A full list of Petitioners' business establishments and licenses, which are searchable on the Arizona Department of Liquor website, is provided in Exhibit A of the Appendix.

JURISDICTIONAL STATEMENT

This Court has "[o]riginal" but not exclusive "jurisdiction of habeas corpus, and quo warranto, mandamus, injunction and other extraordinary writs to state of-

ficers.” Ariz. Const. art. 6, § 5(1). Because Petitioners seeks a writ of injunction (or prohibition), this is a “special action.” Ariz. R. P. Spec. Act. 1(a) (“Relief [historically] obtained against a body, officer, or person by writs of certiorari, mandamus, or prohibition in the trial or appellate courts shall be obtained in [a special] action under this Rule”). Questions “that may be raised in a special action” include “[w]hether the defendant has proceeded or is threatening to proceed without or in excess of jurisdiction or legal authority.” *Id.* 3(b). Consistent with the Arizona Constitution, Rule 7 provides that special actions may be brought “in any appellate court,” including in the Supreme Court. *Id.* 7(a)–(b). The present action fits precisely within these rules: Petitioners seek a writ of injunction to a “state officer”—the Governor—and the question raised is whether he is acting “in excess of jurisdiction or legal authority.” *See generally Forty-Seventh Legislature of State v. Napolitano*, 213 Ariz. 482, 485–86 (2006) (accepting original special action jurisdiction over petition against Governor of Arizona).

Whether to accept jurisdiction is, however, discretionary. *Id.* at 485. If the matter presents political questions—questions that “involve decisions that the constitution commits to one of the political branches of government and raise issues not susceptible to judicial resolution according to discoverable and manageable standards”—the Court will of course decline jurisdiction. *Id.* Here, the questions raised are not political questions: they involve the constitutionality of a state stat-

ute, the constitutionality of executive orders made pursuant to the statute, and the invasion of private rights, all within the core of judicial power and judicial competence. “To determine whether a branch of state government has exceeded the powers granted by the Arizona Constitution requires that we construe the language of the constitution and declare what the constitution requires. Such questions traditionally fall to the courts to resolve.” *Id.* (citing *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803)); *cf. Luther v. Borden*, 48 U.S. (1 How.) 1 (1849) (determining what was the legitimate government of Rhode Island was a political question); *Nixon v. U.S.*, 506 U.S. 224 (1993) (what constitutes a “trial” of impeachment is a political question).

This Court considers several factors in accepting jurisdiction, all of which favor jurisdiction here. First, “[t]he issues presented are of public importance: Limiting the actions of each branch of government to those conferred upon it by the constitution is essential to maintaining the proper separation of powers.” *Forty-Seventh Legislature*, 213 Ariz. at 485–86. Second, “the case presents important issues of obvious statewide significance.” *Hull v. Albrecht*, 192 Ariz. 34, 36 (1998). Neither proposition can be disputed in this case.

Third, “a superior court hearing is unnecessary because we can resolve the case on purely legal issues without the aid of fact finding.” *Id.* Fourth, “cost and delay to all parties if normal appellate procedures were utilized . . . militate in fa-

vor of exercising our discretion to accept jurisdiction.” *Univ. of Ariz. Health Scis. Ctr. v. Superior Court of State In & For Maricopa Cty.*, 136 Ariz. 579, 581 (1983). Here, every day the Governor’s orders remain in force is a day where Petitioners cannot earn “the very means by which to live.” *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970).

In short, this Court has jurisdiction, and should exercise it.

STATEMENT OF THE ISSUES

1. Are EO 2020-43 and related executive orders void because they were promulgated pursuant to a statute that purports to delegate to the Governor the entire “police power” of the state in violation of the nondelegation doctrine and Articles 3 and 4 of the state Constitution, and can that statute be narrowly construed to avoid the constitutional problem?

2. Are EO 2020-43 and related executive orders void because, if authorized by A.R.S. § 26-303(E)(1), then the statute as-applied violates Article 2, Section 13 of the state Constitution by “granting” to some citizens “privileges or immunities” to pursue a lawful occupation on the “terms” that they engage in proper sanitary measures, while denying to other citizens the same privilege to pursue a lawful occupation “upon the same terms” of complying with such sanitary measures?

3. Are EO 2020-43 and related executive orders void because they directly deprive Petitioners of liberty without due process of law in violation of Article 2, Section 4 of the state Constitution?

STATEMENT OF FACTS

It is common knowledge that the world, the country, and the state of Arizona are now confronting a novel coronavirus, COVID-19, a contagious disease. Because of the spread of the novel coronavirus, Governor Doug Ducey began issuing executive orders on March 19, 2020, to implement strategies and safety measures that would stem the spread of this coronavirus. On March 19, 2020, Governor Ducey issued Executive Order No. 2020-09, “Limiting the Operations of Certain Businesses to Slow the Spread of COVID-19.” This EO provided, in relevant part, that beginning on March 20, 2020, until further notice, all bars, movie theaters, and indoor gyms and fitness clubs shall close in counties with confirmed cases of COVID-19; and that restaurants in such counties shall close access to on-site dining. *See* Appendix Exhibit B. As a result of EO 2020-09, the Petitioners had to shut down their businesses, at great loss.

On March 30, 2020, Governor Ducey issued Executive Order No. 2020-18, “Stay Home, Stay Healthy, Stay Connected: Physical Distancing to Mitigate COVID-19 Transmission.” This EO provided, in relevant part, that all individuals in the State were to stay home except to engage in essential activities. *See* Appen-

dix Exhibit C. As a result of this order, the Petitioners' businesses continued to be shut down, at great loss.

On April 29, 2020, a day before EO 2020-18 was due to expire, Governor Ducey issued Executive Order No. 2020-33, "Returning Stronger: Amending the Stay Home, Stay Healthy, Stay Connected Order." This EO continued the requirement of EO 2020-18 that all individuals in the State of Arizona shall limit their time away from their place of residence or property except for essential activities, and further provided that non-essential businesses, which is defined to include Petitioners' businesses, may continue to operate activities "that do not require in-person, on-site transactions." Such businesses involving the sale of goods could operate "delivery service, window services, walk-up service, drive-through service, drive-up service, curbside delivery or appointment, provided that they establish and implement protocols and best practices for businesses to address COVID-19 as outlined in this order." *See* Appendix Exhibit D.

As a result of EO 2020-33, some Petitioners began to operate their businesses at extremely limited capacities, providing such "take out" services where possible, at great loss; and other Petitioners' businesses continued to be shut down entirely, at great loss.

On May 4, 2020, Governor Ducey issued Executive Order No. 2020-34, allowing barbers, cosmetologists, and dine-in restaurants to resume operations—but

not bars or indoor gyms. *See* Appendix E. As a result of EO 2020-34, most of Petitioners' businesses continued to be shut down.

On May 12, 2020, Governor Ducey issued Executive Order No. 2020-36, "Stay Healthy, Return Smarter, Return Stronger." This EO rescinded, as of midnight on May 16, 2020, EO 2020-18 and 2020-33. Paragraph 5 of EO 2020-36 ordered businesses "to limit and mitigate the spread of COVID-19" by

- a. Promoting healthy hygiene practices;
- b. Intensifying cleaning, disinfection and ventilation practices;
- c. Monitoring for sickness;
- d. Ensuring physical distancing;
- e. Providing necessary protective equipment;
- f. Allowing for and encouraging teleworking where feasible;
- g. Providing plans, where possible, to return to work in phases; and
- h. Limiting the congregation of groups of no more than 10 persons when feasible and in relation to the size of the location.

See Appendix Exhibit F. As a result of EO 2020-36, Petitioners finally began operating their businesses, after over a month of being shut down by earlier executive orders. Additionally, Petitioners all worked to comply with Paragraph 5 of EO 2020-36 and implemented a variety of hygiene and safety measures.

On June 29, 2020, however, Governor Ducey issued Executive Order No. 2020-43, "Pausing of Arizona's Reopening: Slowing the Spread of COVID-19." This order remains in force and is the primary order challenged by Petitioners. This EO once again closes down bars with a series 6 or 7 liquor license "and whose primary business is the sale or dispensing of alcoholic beverages," as well as indoor gyms and movie theaters and water parks. Bars may continue to serve the

public through “pick up, delivery, and drive-thru operations as provided for series 12 liquor licenses.” EO 2020-43 is in effect until at least July 27. At that time, assuming the Governor does not extend the order, bars subject to its requirements may seek dispensation from the Arizona Department of Health Services to open. *See Appendix Exhibit G.*

As a result of EO 2020-43, Petitioners have had to all but shut down their businesses again, after being shut down for over a month, and being open for barely a month. Petitioners have suffered great harm from being unable to operate their businesses in pursuit of their lawful occupations and ordinary callings. They have no idea when they will be able to reopen.

All Petitioners were in compliance, or were actively seeking to comply, with the sanitary measures required by Paragraph 5 of EO 2020-36. The Governor never consulted any of the Petitioners, nor held any hearings, to determine whether Petitioners could maintain safe conditions in their establishments.

ARGUMENT

Executive Order 2020-43, and most of Defendant’s other executive orders, are unconstitutional on three grounds. First, the statute on which they are based violates Article 3 and Article 4, Section 1 of the state Constitution. Article 3 provides, “The powers of the government of the state of Arizona shall be divided into three separate departments, the legislative, the executive, and the judicial; and, ex-

cept as provided in this constitution, such departments shall be separate and distinct, and no one of such departments shall exercise the powers properly belonging to either of the others.” Article 4, Section 1 provides that “[t]he legislative authority of the state shall be vested in the legislature.”

Second, the statute on which the Governor’s orders are based, if it authorizes those orders, violates Article 2, Section 13 of the state Constitution, which provides, “No law shall be enacted granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations.”

Third, the executive orders directly deprive Petitioners of their liberty to pursue a lawful occupation with no process at all, in direct violation of Article 2, Section 4 of the state Constitution, which provides, “No person shall be deprived of life, liberty, or property without due process of law.”

I. The Governor issued Executive Order 2020-43 and related orders pursuant to a statute, A.R.S. § 26-303(E), that delegates to him the entire “police power” of the state in violation of the state’s nondelegation doctrine.

a. A.R.S. § 26-303(E) violates the nondelegation doctrine.

Articles 3 and 4 of the state Constitution supply a fundamental principle of our government: the legislature may not delegate its legislative power to another. “Under the doctrine of ‘separation of powers’ the legislature alone possesses the lawmaking power and, while it cannot completely delegate this power to any other

body, it may allow another body to fill in the details of legislation already enacted.” *State v. Ariz. Mines Supply Co.*, 107 Ariz. 199, 205 (1971). “A statute need establish no more than a sufficient basic standard, i.e., a definite policy and rule of action which will serve as a guide for the administrative agency, in order for the delegation of legislative power to be deemed valid.” *Id.* at 205–06 (quoting *Dep’t of Health v. Owens-Corning Fiberglas Corp.*, 100 N.J. Super. 366 (1968)); *see also* *Cook v. State*, 230 Ariz. 185, 188 (Ct. App. 2012) (finding no unlawful delegation of power because the statute provided “‘a sufficient basic standard, i.e., a definite policy and rule of action which will serve as a guide for’ the Department.”) (quoting *Ariz. Mines*, 107 Ariz. at 205–06).

The Governor’s executive orders are purportedly authorized by A.R.S. § 26-303(E)(1), which provides, “During a state of emergency . . . [t]he governor shall have complete authority over all agencies of the state government and the right to exercise, within the area designated, all police power vested in the state by the constitution and laws of this state in order to effectuate the purposes of this chapter.” A pandemic is included within the definition of “state of emergency.” *Id.* § 26-301(15).

The “police power” of a state is, in effect, its legislative power: its power over the health, safety, welfare, and morals of the people. “The state acting pursuant to its police powers may ‘make, ordain and establish all manner of wholesome

and reasonable laws, statutes and ordinances either with penalties or without as shall be judged to be good for the welfare of the state and its residents.” *Campbell v. Superior Court In & For Maricopa Cty.*, 106 Ariz. 542, 546 (1971) (quoting *McKinley v. Reilly*, 96 Ariz. 176, 179 (1964)); see also Ilan Wurman, *The Origins of Substantive Due Process*, 87 U. Chi. L. Rev. 815, 825–52 (2020) (describing a variety of police power doctrines in the antebellum era).

The governor’s discretion is not cabined by this statute in any way, except by the general purpose to confront and resolve emergencies. It is a naked delegation of the state’s legislative power to the governor and is therefore unconstitutional. There are no standards whatsoever. There is no “sufficient basic standard,” no “definite policy and rule of action which will serve as a guide” for the Governor. *Arizona Mines*, 107 Ariz. at 205–06. Can the Governor close restaurants? If he wants to. Can he leave them open at twenty-five percent capacity? If he wants to. Can he permit only takeout? If he wants to. Can he leave restaurants open but close down bars and gyms? If he wants to. Can he close down bars but not gyms, or gyms but not bars? If he wants to. Can he close down schools? If he wants to. Can he order students to attend school only every third day? If he wants to. There is, in short, literally *no* standard by which to judge the Governor’s actions under the statute, and it therefore must violate the nondelegation doctrine.

To be sure, the nondelegation doctrine is notoriously underenforced. In the words of one professor, the nondelegation doctrine (at the federal level) has had only one good year—1935, when two provisions of the same statute were invalidated by the U.S. Supreme Court on nondelegation grounds—and now 230 bad ones. See Cass R. Sunstein, *Nondelegation Canons*, 67 U. Chi. L. Rev. 315, 322 (2000).

Recent scholarship has shown, however, that there was a robust nondelegation doctrine at the federal level. See Ilan Wurman, *Nondelegation at the Founding*, 130 Yale L.J. ____ (forthcoming 2021). Moreover, as Professors Jason Iuliano and Keith Whittington argue, even if “the doctrine has disappeared at the federal level,” it still “thrived at the state level,” where seventeen percent of nondelegation challenges between 1789 and 1940 were sustained. Jason Iuliano & Keith E. Whittington, *The Nondelegation Doctrine: Alive and Well*, 93 Notre Dame L. Rev. 619, 619, 622 (2018). Indeed, “the legislative delegations that were invalidated during this period generally conferred substantial discretion on the delegate,” *id.* at 622—just as here.

This Court does not have to specify the precise contours of this state’s nondelegation doctrine. It is sufficient to observe that A.R.S. § 26-303(E)(1) does not provide “a definite policy and rule of action which will serve as a guide.” *Arizona*

Mines, 107 Ariz. at 205–06. Indeed, there is no policy or rule of action whatsoever.

A government of laws demands more.

b. The constitutional question can be avoided because the best reading of A.R.S. § 26-303(E), in light of the more specific authorities in Title 36, precludes the Governor’s executive orders.

As a general matter, courts will avoid striking down a statute for being unconstitutional if there is a plausible alternative reading of the statute that avoids the constitutional difficulty. *Slayton v. Shumway*, 166 Ariz. 87, 92 (1990) (“[W]here alternate constructions are available, we should choose that which avoids constitutional difficulty.”). At the federal level this “constitutional avoidance” doctrine has been applied (at least arguably) in two nondelegation challenges. *See Indus. Union Dept., AFL-CIO v. Am. Petroleum Inst.*, 448 U.S. 607 (1980) (“The Benzene Case”); *Gundy v. United States*, 139 S. Ct. 2116 (2019).

Historically, when deploying the constitutional avoidance canon, the court would have to *decide* that a statute violated the Constitution, and then would “avoid” striking down the statute by giving the statute some narrowing construction. *Clark v. Martinez*, 543 U.S. 371, 395 (2005) (Thomas, J., dissenting); *Blodgett v. Holden*, 275 U.S. 142, 148 (1927); Anita S. Krishnakumar, *Passive Avoidance*, 71 Stan. L. Rev. 513, 523 (2019). Under the modern doctrine, the court must only have a “serious doubt” about the constitutionality of Congress’s action; it need not actually decide that the law would otherwise be unconstitutional. *See*,

e.g., Nielsen v. Preap, 139 S. Ct. 954, 971 (2019) (“when a serious doubt is raised about the constitutionality of an act of Congress, this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided”) (citations and quotations omitted).

Regardless of whether this Court were to deploy the classical or modern approaches to avoidance, the outcome is the same because, for the following reasons, the best reading of the Governor’s statutory authority is that it precludes shutting down businesses.

The Governor has a suite of specific authorities for handling contagious disease epidemics in Title 36 of the Arizona statutes, which is on “Public Health and Safety.” Chapter 6 of that Title is on “Public Health Control.” Article 2 of Chapter 6 (A.R.S. §§ 36-621–631) is on “Contagious Diseases,” and Article 9 of this same chapter (A.R.S. §§ 36-781–790) is on “Enhanced Surveillance Advisories and Public Health Emergencies.” These statutory provisions grant the Governor and county health authorities a handful of specific authorities to combat contagious diseases.

The sweeping delegation of authority in A.R.S. § 26-303(E)(1), if it is not struck outright, can be narrowly construed in light of those authorities. Title 36 generally authorizes the Governor and county health boards to surveille, quarantine, and isolate individuals who are actually infected or exposed to contagious dis-

eases, and authorizes county health boards to order “sanitary measures,” but no provision authorizes the Governor to close down Petitioners’ businesses.

For example, A.R.S. § 36-782, “Enhanced surveillance advisory,” provides that the “governor after considering the least restrictive measures necessary that are consistent with public health and safety,” can issue an “enhanced surveillance advisory” that “shall direct” which “persons and entities [are] required to report,” the “illness” that is “to be reported,” “patient tracking,” “information sharing,” and “specimen testing coordination.” Nothing in this provision gives the Governor the authority to issue anything like EO 2020-43.

A.R.S. § 36-787, “Public health authority during state of emergency or state of war emergency,” provides in Part A:

During a state of emergency or state of war emergency declared by the governor in which there is an occurrence or imminent threat of an illness or health condition caused by bioterrorism, an epidemic or pandemic disease or a highly fatal infectious agent or biological toxin and that poses a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability, the department [of health services] shall coordinate all matters pertaining to the public health emergency response of the state.

The reference to a declared “state of emergency or state of war emergency” in the event of an “epidemic or pandemic disease” is a cross-reference back to a declaration under § 26-303. That suggests that when the Governor declares the relevant emergency under § 26-303 (“an epidemic or pandemic disease”), his authorities are those given in § 36-787 and related provisions.

Nothing in § 36-787 authorizes the Governor to close down Petitioners' businesses. The remainder of § 36-787(A) provides that the Department of Health Services has primary jurisdiction, responsibility, and authority for planning and executing public health assessments; coordinating public health emergency responses among local governments; collaborating with the federal government and private entities; organizing public information activities; establishing waivers for professional licensure; and similar authorities.

Section 36-787(B) then provides that the Governor, in consultation with the director of the Department of Health Services, "may issue orders" that "mandate medical examinations for exposed persons," "ration medicine and vaccines," "provide for transportation of medical support personnel and ill and exposed persons," and "provide for procurement of medicines and vaccines." Nothing in § 36-787(B) authorizes the Governor to close down businesses.

Section 36-787(C) then provides,

In addition to the authority provided in subsections A and B, during a state of emergency or state of war emergency in which there is an occurrence or the imminent threat of smallpox, plague, viral hemorrhagic fevers or a highly contagious and highly fatal disease with transmission characteristics similar to smallpox, the governor, in consultation with the director of the department of health services, may issue orders that: 1. Mandate treatment or vaccination of persons who are diagnosed with illness resulting from exposure or who are reasonably believed to have been exposed or who may reasonably be expected to be exposed[; and] 2. Isolate and quarantine persons.

Nothing in § 36-787(C) authorizes the Governor to close down Petitioners' businesses.

A.R.S. § 36-788(A) provides that, “[s]ubject to the provisions of this article, persons who have contracted the disease or who have been exposed to the disease may be subject to isolation and quarantine” if the director of the department of health services “determines that quarantine is the least restrictive means by which the public can be protected from transmission of the disease, due to the nature of the disease and available preventive measures, or refusal by an individual to accept less restrictive measures to prevent disease transmission.” Nothing in § 36-788(A) authorizes the Governor to close down Petitioners' businesses.

A.R.S. § 36-788(B) provides that the Department of Health Services may “[e]stablish and maintain places of isolation and quarantine, which may include the residence of the person quarantined.” It may also “[r]equire isolation or quarantine of any person by the least restrictive means necessary to protect the public health.” The department “shall use all reasonable means to prevent the transmission of disease among the isolated or quarantined persons.” And A.R.S. § 36-789 provides due process rights to “person or persons to be isolated or quarantined.” Nothing in either provision authorizes the Governor to close down Petitioners' businesses.

Moving from Article 9 to Article 2 of Title 36, Chapter 6, A.R.S. § 36-624 provides,

When a county health department or public health services district is apprised that infectious or contagious disease exists within its jurisdiction, it shall immediately make an investigation. If the investigation discloses that the disease does exist, the county health department or public health services district may adopt quarantine and sanitary measures consistent with department rules and sections 36-788 and 36-789 to prevent the spread of the disease. The county health department or public health services district shall immediately notify the department of health services of the existence and nature of the disease and measures taken concerning it.

As noted, §§ 36-788 and 36-789 do not authorize the Governor to close down businesses. Section 36-624 allows the county health department to adopt quarantine and “sanitary measures.” Nothing in that section allows the Governor to close down businesses.

No other provision of the Arizona statutes authorizes the Governor to take any additional actions in the event of a pandemic or epidemic. Indeed, the authority to close down businesses is expressly mentioned *once*: cities and counties—not the Governor—may “[o]rder[] the closing of any business” during a state of emergency, and only if necessary “to preserve the *peace* and *order* of the city, town, or unincorporated areas of the county.” A.R.S. § 26-311(B)(2) (emphasis added).

In sum, this Court can avoid finding A.R.S. § 303(E)(1) an unconstitutional delegation of legislative power by narrowly construing that authority in light of the Governor’s more specific authorities in Title 36 of the Arizona statutes; and nothing in that Title authorizes the Governor to close down Petitioners’ businesses.

Indeed, not only is this narrowing a plausible alternative construction of the Governor’s authority, it is the best reading of the statutes taken together. Ordinarily specific statutes control more general statutes. *Pima Cty. v. Heinfeld*, 134 Ariz. 133, 134 (1982) (“[A] well established rule of statutory construction dictates that where two statutes deal with the same subject, the more specific statute controls.”); *see also State v. Canez*, 118 Ariz. 187, 190–91 (Ct. App. 1977) (“[W]here a special statute deals with the same subject as the general statute, the special statute will control.”); *Arden-Mayfair, Inc. v. State, Dep’t of Liquor Licenses & Control*, 123 Ariz. 340, 342 (1979) (similar). Additionally, courts will interpret statutes to make the entire code of laws cohere as much as possible. *See Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (“[T]he meaning of one statute may be affected by other Acts, particularly where [the legislature] has spoken subsequently and more specifically to the topic at hand.”); *see generally* William Baude & Stephen E. Sachs, *The Law of Interpretation*, 130 Harv. L. Rev. 1079 (2017).¹

¹ As they write:

The crucial question for legal interpreters isn’t “what do these words mean,” but something broader: What law did this instrument make? How does it fit into the rest of the *corpus juris*? What do “the legal sources and authorities, taken all together, *establish*”? Questions like these presuppose some particular system of law, and their answers depend on the other legal rules in place.

Id. at 1083 (citation omitted).

Simply put, Title 36, specifically on contagious diseases, would make no sense in light of the general grant of authority in A.R.S. § 26-303(E)(1) if that Title did not narrow and limit the Governor's authority under § 26-303(E)(1).

II. A.R.S. § 26-303(E), if it authorizes the Governor's orders, violates Article 2, Section 13 of the Arizona Constitution, which requires equality in the privileges and immunities of state citizenship.

Article 2, Section 13 of the state Constitution provides, "No law shall be enacted granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations." Article 2, Section 13, by its text, is limited to "enacted laws." Had the legislature enacted into law the Governor's order, it would have violated this clause. *A fortiori*, it cannot be the case that the Governor can on his own issue orders pursuant to vague delegations if those orders, had they been "laws," would have violated this clause.

Put another way, if A.R.S. § 26-303(E)(1) were interpreted to allow the Governor's executive orders, then that statute, as applied, would violate Article 2, Section 13 of the state Constitution by effectively "granting" to some citizens "privileges or immunities" to pursue a lawful occupation on the "terms" that they engage in proper sanitary measures, while denying to other citizens the same privilege to pursue a lawful occupation "upon the same terms" of complying with such sanitary measures.

This state’s privileges or immunities clause, like the privileges or immunities clauses in several other states, requires equality in the privileges and immunities of state citizenship. *See* Ilan Wurman, *The Second Founding: An Introduction to the Fourteenth Amendment* (Cambridge University Press forthcoming) (on file with counsel) (describing state privileges or immunities clauses). These clauses were products of Jacksonian-era antipathy to special privileges and, in the Reconstruction constitutions in the Southern states, to the insidious Black Codes that systematically denied the same civil rights to black Americans as white Americans enjoyed. *Id.*

The privileges or immunities clause of this and other states’ constitutions, as well as of the federal Constitution, protect civil rights and not political rights. A fundamental civil right includes the right to pursue a lawful calling. Interpreting Article IV of the U.S. Constitution, which requires a state to accord the same privileges and immunities to citizens visiting from other states as it accords its own citizens, Justice Bushrod Washington held that “the privileges and immunities of citizens in the several states . . . belong, of right, to the citizens of all free governments,” and these include “the enjoyment of life and liberty, with the right to acquire and possess property of every kind,” “to pursue and obtain happiness and safety,” and “to reside in any . . . state, for purposes of trade, agriculture, professional pursuits, or otherwise,” subject nevertheless “to such restraints as the gov-

ernment may justly prescribe for the general good of the whole.” *Corfield v. Coryell*, 6 F. Cas. 546, 551–52 (C.C.E.D. Pa. 1825);² see also *Slaughter-House Cases*, 83 U.S. 36, 76 (1872) (noting this definition of state privileges and immunities had been adopted by the Supreme Court); *id.* at 88 (Field, J., dissenting) (“right to pursue one of the ordinary trades or callings of life . . . is a right appertaining solely to the individual”); *id.* at 119 (Bradley, J., dissenting) (“the privilege of engaging in any lawful employment for a livelihood” is a privilege of state and national citizenship).

In numerous cases, Arizona courts have struck down different taxes or regulations imposed on similarly situated businesses or persons where the difference was not in furtherance of the public health, safety, or welfare. In *Gila Meat Co. v. State*, the Supreme Court struck down a statute that “impose[d] different taxes upon persons engaged in the same business, without such difference being based upon a reasonable classification for purposes of the public health, safety, or general welfare,” on the basis that such a statute “in effect grant[ed] to certain citizens privileges and immunities which are not granted to others similarly situated on equal terms.” 35 Ariz. 194, 202 (1929).

Interpreting a related provision of the state Constitution that provides “[n]o local or special laws shall be enacted . . . granting to any corporation, association,

² Although this case is often reported as dating from 1823, it was decided in 1825. 6 F. Cas. at 550.

or individual, any special or exclusive privileges, immunities, or franchises,” Ariz. Const. art. 4, § 19(13), this Court held that the state may exercise its police power in a way that “reasonably tends to protect the public health, safety, or morals.” *State v. Childs*, 32 Ariz. 222, 226 (1927). “[T]he general rule,” however, is that “a statute allowing one class of persons to engage in what is presumptively a legitimate business, while denying such right to others, must be based upon some principle which may reasonably promote the public health, safety or welfare,” otherwise it “is unconstitutional.” *Id.*

Although the Governor’s order purports to classify Petitioners’ businesses as distinct from other businesses, such a classification also cannot be arbitrary. If the purpose of the Governor’s order is to mitigate the spread of a pandemic by ensuring that businesses follow particular sanitary measures, then the Governor must permit all businesses to operate who can meet those standards.

It may be thought that such old cases are from the discredited “*Lochner* era,” so-called after the infamous U.S. Supreme Court case *Lochner v. New York*, 198 U.S. 45 (1905), in which the Court invalidated a democratically enacted state law that limited the number of hours bakers could work in a day. But Petitioners’ arguments have nothing to do with *Lochner*, which was decided on the basis of “substantive due process,” a notorious contradiction in terms—“sort of like ‘green pastel redness.’” John Hart Ely, *Democracy and Distrust: A Theory of Judicial Re-*

view 18 (1980). Indeed, Petitioners’ counsel has elsewhere argued that there was no substantive due process doctrine in antebellum law. Ilan Wurman, *The Origins of Substantive Due Process*, 87 U. Chi. L. Rev. 815 (2020). Petitioners’ argument is different. Petitioners urge this Court to apply the textual meaning of the state’s *privileges or immunities clause*—which expressly requires equality in the privileges and immunities of state citizenship. As far as Petitioners’ counsel has been able to determine, this Court has never repudiated the early precedents under that clause.

III. The Governor’s orders work direct deprivations of liberty without due process of law, in violation of Article 2, Section 4 of the Arizona Constitution.

Article 2, Section 4 of the state Constitution provides, “No person shall be deprived of life, liberty, or property without due process of law.” Due process of law is fundamentally a separation of powers provision: it requires that there be established law that is violated, and that an adjudication of that violation be in accordance with a certain minimum of judicial procedures. *See* Nathan S. Chapman & Michael W. McConnell, *Due Process as Separation of Powers*, 121 Yale L.J. 1672 (2012); Ilan Wurman, *The Second Founding: An Introduction to the Fourteenth Amendment* (Cambridge University Press forthcoming) (on file with counsel) (arguing that state due process of law clauses required that there be established law, violations of which were adjudicated according to a minimum of judicial pro-

cedure); Ilan Wurman, *The Origins of Substantive Due Process*, 87 U. Chi. L. Rev. 815 (2020) (same); *cf. also State v. Cota*, 99 Ariz. 233, 236 (1965) (statutes that are too vague violate due process of law, thereby affirming the requirement of established law); *Forman v. Creighton Sch. Dist. No. 14*, 87 Ariz. 329, 332 (1960) (due process requires, at a minimum, “notice and opportunity to be heard”).

As explained previously, the right to earn a living and pursue an ordinary calling and lawful occupation is a privilege of citizenship, and a fundamental liberty. It is therefore within the meaning of “liberty” in the due process clause, and Petitioners have all been deprived of their liberty to operate their lawful businesses by the Governor’s executive orders.

A.R.S. § 26-303(E)(1) and § 26-317, the latter of which authorizes penalties for violations of executive orders made pursuant to the former section, deny due process of law because § 26-303(E)(1) is so vague that “men of common intelligence must necessarily guess at its meaning and differ as to its application.” *Cota*, 99 Ariz. at 236. This violation is intimately connected with the violation of the nondelegation doctrine: if a statute is so vague that it does not give the Governor sufficient guiding principles, then it also violates due process of law.

Even if the Governor’s order is made pursuant to “law,” it is not a regulation or rulemaking but rather an order, i.e., an application of existing law to a set of facts. The Petitioners are therefore entitled to an opportunity to be heard so that

they may argue that A.R.S. § 26-303(E)(1) should not be, or cannot be, lawfully applied to them in the manner of the Governor's executive order. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 646 (1952) (Jackson, J., concurring) (noting that President Truman's executive order directing the Secretary of Commerce to seize privately owned steel mills implicated due process of law: "[The authority to] 'take Care that the Laws be faithfully executed' . . . must be matched against [the] words . . . 'No person shall be . . . deprived of life, liberty, or property, without due process of law. One gives a governmental authority that reaches so far as there is law, the other gives a private right that authority shall go no farther.');" *see also Bi-Metallic Inv. Co. v. State Bd. of Equalization*, 239 U.S. 441, 446 (1915) (explaining that where "[a] relatively small number of persons was concerned, who were exceptionally affected, in each case upon individual grounds," by the order of an administrative body or executive officer, then those persons have "a right to a hearing").

Put another way, either the Governor is acting as a legislature, in which case he is impermissibly exercising power unconstitutionally delegated to him; or he is acting as a court, in which case he has violated the requirement of due process of law.

CONCLUSION

No one denies that reasonable people may disagree over the nature of the novel coronavirus emergency. No Petitioner denies that important policy decisions have to be made. No Petitioner denies that government has the power to close down their businesses in appropriate circumstances. The question is *who* within our constitutional system of government has that power. That person is not the Governor. The state legislators have that power. They have, and cannot delegate, the legislative power of this state. And any such exercise of power must not discriminate in the privileges or immunities of state citizenship, and in implementing that power, liberty cannot be deprived without due process of law. The Governor's orders are unconstitutional and should be invalidated.

PRAYER FOR RELIEF

Wherefore, Petitioners respectfully request that this Court grant the following relief:

A. Declare A.R.S. § 26-303(E)(1) an unconstitutional violation of the nondelegation doctrine, and declare that A.R.S. § 26-303(E)(1) violates Article 2, Sections 4 and 13 of the Arizona Constitution as applied; and/or

B. Declare that Executive Order 2020-43, and related executive orders, are illegal and void because they are made pursuant to unconstitutional delegations

of authority, and because those orders directly violate Article 2, Sections 4 and 13 of the Arizona Constitution; and/or

C. Declare that Executive Order 2020-43, and related executive orders, are in excess of statutory authority in light of Title 36 of the Arizona Revised Statutes; and

D. Permanently enjoin the Governor from enforcing Executive Order 2020-43 and similar orders against the Petitioners; and

E. Award costs pursuant to A.R.S. § 12-341; and

F. Award attorney's fees pursuant to A.R.S. § 12-348(A)(4) and Special Actions Rule of Procedure 4(g); and

G. Award such other and further relief as may be just and equitable.

Respectfully submitted,

/s/ *Ilan Wurman*

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Phoenix, AZ 85004
(480) 965-2245
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Attorney for Petitioners

*Affiliation provided for identification purposes only.

CERTIFICATE OF SERVICE

I hereby certify that on July 9, 2020, I filed the foregoing Petition electronically with:

Clerk of the Supreme Court
1501 W Washington St., Suite 402
Phoenix, AZ 85007

And caused said Petition to be served by hand and electronically to:

Governor Doug Ducey
1700 W Washington St.
Phoenix, AZ 85007
afoster@az.gov

And caused said Petition to be served by hand and electronically, along with a notice of claim of unconstitutionality, to:

Attorney General Mark Brnovich
2005 N. Central Ave.
Phoenix, AZ 85004-2926
O.H.Skinner@azag.gov

The Honorable Russell Bowers
Speaker, Arizona State House of Representatives
Arizona State Capitol Complex
1700 W Washington St.
Phoenix, AZ 85007
rbowers@azleg.gov

The Honorable Karen Fann
President, Arizona State Senate
Arizona State Capitol Complex
1700 W Washington St.
Phoenix, AZ 85007
kfann@azleg.gov

Dated: July 9, 2020

/s/ Ilan Wurman

Ilan Wurman

Counsel for Petitioners

CERTIFICATE OF COMPLIANCE

The foregoing Petition for Special Action complies with Arizona Rule of Procedure for Special Actions 7(e) in that it is double spaced and uses a proportionately spaced typeface of Times New Roman, 14 point font, and has a word count of 7,000 words.

Dated: July 9, 2020

/s/ *Ilan Wurman*

Ilan Wurman

APPENDIX

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EXHIBIT A

List of Petitioners and Their Business Establishments:

Michael Beaver
The Beaver Bar
11801 N. 19th Avenue
Phoenix, Az. 85029
Liquor License # 06070105

Jacquelyn Bendig
Chad Newberry
1881 Spirits
144 S Montezuma St
Prescott, AZ 86303
Liquor License # 06130074

Matt Brassard
Matt's Saloon
112 S. Montezuma St
Prescott, AZ 86303
Liquor License #06130053

Craig Denny
Pudge and Asti's Sports Grill
721 6th St
Prescott, AZ 86301
Liquor License # 06130018

Patricia Dion
Louie Fernandez
Douglas Landreth
Jester's Sports Lounge
877 Hancock Rd
Bullhead City, AZ 86442
Liquor License # 06080013

Mistie Green
Larry's Cocktails
20027 N Cave Creek RD
Phoenix, AZ 85024
Liquor License # 06070356

Darel & Tamie Harrison
Music Box Lounge
6951 E 22nd Street
Tucson, AZ 85710
Liquor License # 06100069

Brad Henrich
Shady's Fine Ale and Cocktails
2701 E Indian School Rd
Phoenix, AZ 85016
Liquor License # 06070635

Charles Jenkins
Office Sports Bar
330 S. Gilbert Rd. #3
Mesa, AZ 85204
Liquor License # 06070158

Ian Juul
Mooney's Irish Pub
671 AZ-179
Sedona, AZ 86336
Liquor License # 06030002

Colleen Kendall
The Windsock, LLC
1836 Timber Cove Ln
Prescott, AZ 86305
Liquor License # 06130016

Alan Kowalski
Clicks Billiards
3325 N 1st Ave. #100
Tucson, AZ 85719
Liquor License # 06100028

Josh Makrauer
Jersey Lilly Saloon
116 S Montezuma St
Prescott, AZ 86303
Liquor License # 06130076

Bruce Reid
Barefoot Bob's Billiards
8367 E Pecos Dr Suite 2
Prescott Valley, AZ 86314
Liquor License # 06130055

Russell Roberts
Lyzzard's Lounge
120 N Cortez St.
Prescott, AZ 86301
Liquor License # 06130035

Wes & Rebecca Schemmer
Vino di Sedona,
2575 West SR 89A
Sedona, AZ 86336
Liquor License # 07130063

Peter Sciacca
QuartHaus
201 S Washington St
Chandler, AZ 85225
Liquor License # 07070573

Sheri Shaw
The Back Alley Wine Bar
156 S Montezuma St.
Prescott, AZ 86303
Liquor License # 07133001

Heather and Justin Ward
Monkey Bar
1120 S Wilmot Rd
Tucson, AZ 85711
Liquor License # 06100196

Cheri Wells
Aint Nicks Tavern
6840 N. 27th Ave
Phoenix, AZ 85017
Liquor License # 06070472

EXHIBIT B

EO-2020-09

STATE OF ARIZONA
★
EXECUTIVE ORDER

Executive Order 2020-09

LIMITING THE OPERATIONS OF CERTAIN BUSINESSES TO SLOW THE SPREAD OF COVID-19

WHEREAS, both the state of Arizona and the federal government have declared a public health emergency to address the 2019 novel Coronavirus (COVID-19); AND

WHEREAS, the President of the United States has declared a national emergency due to both the health and economic implications of the COVID-19 virus; AND

WHEREAS, the disease caused by COVID-19 is contagious and can be fatal, resulting in the World Health Organization declaring it a global pandemic; AND

WHEREAS, the State of Arizona has experienced community spread of COVID-19 in multiple counties as it continues to spread across the country and the state, posing an increasing threat to public health and having a devastating impact on the economy; AND

WHEREAS, on March 16, 2020, the United States Centers for Disease Control and Prevention issued updated guidance recommending that individuals avoid social gatherings of more than 10 people and use drive-thru, pickup, or delivery options at restaurants and bars to slow the spread of the disease; AND

WHEREAS, the time has come for further measures to protect public health and safety, protect our most vulnerable citizens, and mitigate the strain on our health care providers by slowing the spread of COVID-19; AND

WHEREAS, in taking such critical measures to protect public health there will be direct economic consequences for businesses across the state of Arizona that provide employment for many Arizonans, including bars and restaurants; AND

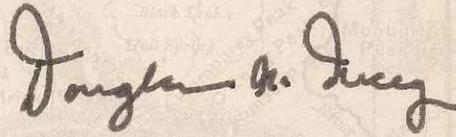
WHEREAS, Arizona is committed to both mitigating the economic harm of COVID-19 and ensuring the safety of those in our state.

NOW, THEREFORE, I, Douglas A. Ducey, Governor of the State of Arizona, by virtue of the authority vested in me by the Constitution and laws of this state, hereby order as follows:

1. Beginning at close of business on Friday, March 20, 2020, all of the following establishments located in counties of the State with confirmed cases of COVID-19 shall close access to the public until further notice:
 - a. Bars
 - b. Movie theaters
 - c. Indoor gyms and fitness clubs
2. Beginning at close of business on Friday, March 20, 2020, all restaurants in counties of the State with confirmed cases of COVID-19 shall close access to on-site dining until further notice. Restaurants may continue serving the public through pick up, delivery, and drive-thru operations.
3. Beginning at 5:00 p.m. on Friday, March 20, 2020, in counties of the State with confirmed cases of COVID-19, the Arizona Department of Liquor Licenses and Control and any Arizona Peace Officer Standards and Training Board certified law enforcement officer shall not enforce provisions of the series 12 liquor license that prohibit the sale by restaurants of beer, wine and spirituous liquor off-premises subject to the following provisions:
 - a. Any sale of beer, wine and spirituous liquor shall be in sealed containers.
 - b. Title 4 licensees shall ensure that sales of beer, wine and spirituous liquor for consumption off premises is only for consumption for individuals over the age of 21 as for other sale of alcoholic beverages both on and off-premises and that all other title 4 laws are followed.
 - c. In the event that the Arizona Department of Liquor Licenses and Control determines that a title 4 licensee has otherwise violated title 4 by selling to a minor or not providing alcohol in a sealed container, the Department may take enforcement action against the title 4 licensee.
4. The Arizona Department of Liquor Licenses and Control shall post guidance to title 4 licensees on its website to assist in compliance with this order.
5. The Department of Liquor Licenses and Control shall not enforce any restriction on manufacturers, wholesalers or retailers to buy back unopened products from restaurants, bars and clubs.
6. Cafeterias at nursing homes, hospitals, and similar facilities as well as soup kitchens that provide meals to the needy are not subject to these restrictions and may continue normal operations while taking precautions to ensure social distancing and appropriate hygiene according to Centers for Disease Control and Prevention standards.

7. This order shall remain in place until further notice, and shall be reconsidered for repeal or revision every two weeks following issuance.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.

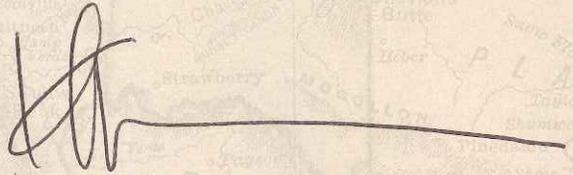


GOVERNOR

DONE at the Capitol in Phoenix on this nineteenth day of March in the Year Two Thousand and Twenty and of the Independence of the United States of America the Two Hundred and Forty-Fourth.



ATTEST:



Secretary of State

EXHIBIT C

EO-2020-18

STATE OF ARIZONA
★
EXECUTIVE ORDER

Executive Order 2020-18

Stay Home, Stay Healthy, Stay Connected
Physical Distancing to Mitigate COVID-19 Transmission

WHEREAS, Arizona is committed to combating COVID-19, which represents a serious threat to public health; and

WHEREAS, the State of Arizona has taken proactive actions to mitigate the risk of COVID-19 to public health and address the economic impact of the COVID-19 pandemic; and

WHEREAS, on March 11, 2020, pursuant to A.R.S. §§ 26-303 and 36-787, I, as Governor of the State of Arizona, issued a declaration of a Public Health State of Emergency due to the necessity to prepare for, prevent, respond to, and mitigate the spread of COVID-19; and

WHEREAS, on March 15, 2020, a statewide school closure was issued in coordination with Superintendent of Public Instruction Kathy Hoffman, later extended on March 30, 2020, through the end of the school year; and

WHEREAS, many businesses have greatly reduced their hours and operations as directed by health officials and in an effort to protect the public health and slow the spread of COVID-19; and

WHEREAS, on March 17, 2020, following updated guidance from the Centers for Disease Control and Prevention (CDC), the Arizona Department of Health Services (ADHS) issued updated guidance that included canceling or postponing gatherings of 10 or more people, recommending telework and other alternatives, restricting access to nursing homes, retirement homes and long-term care facilities to provide critical assistance, and providing recommendations to restaurants and eating establishments to mitigate the risk of COVID-19 transmission; and

WHEREAS, on March 19, 2020, Executive Order 2020-09 was issued requiring restaurants in Arizona counties with confirmed COVID-19 cases to provide dine-out options only and required all bars, gyms and movie theaters in those counties to close; and

WHEREAS, on March 19, 2020, Executive Order 2020-10 halted all elective surgeries in the State of Arizona to free up medical resources and maintain the capacity for hospitals and providers to continue offering vital services; and

WHEREAS, essential services were identified in Executive Order 2020-12 as those specifically necessary to promote the public health, safety and welfare of the state or assist others in fulfilling such functions; and

WHEREAS, to combat COVID-19, and at the recommendation of the state’s health officials, the State of Arizona must continue its efforts by further limiting potential exposure through a policy of physical distancing while maintaining social connectedness; and

WHEREAS, pursuant to A.R.S. §§ 26-303(E), the Governor of Arizona, after a Declaration is issued, has “the right to exercise, within the area designated, all police power vested in the state by the constitution and laws of this state”; and

WHEREAS, pursuant to A.R.S. § 36-787(A), during a State of Emergency declared by the Governor, the Arizona Department of Health Services has primary jurisdiction, responsibility and authority for:

- (1) Planning and executing public health emergency assessment, mitigation, preparedness response and recovery of the State;
- (2) Coordinating public health emergency response among State, local and tribal authorities;
- (3) Collaborating with relevant federal government authorities, elected officials or other states, private organizations and private sector companies; and
- (4) Coordinating recovery operations and mitigation initiatives subsequent to public health emergencies; and

WHEREAS, on March 30, 2020, the Director of the Arizona Department of Health Services, based on an epidemiological assessment of Arizona specific data and in alignment with CDC guidance, recommended the state implement enhanced mitigation strategies.

NOW, THEREFORE, I, Douglas A. Ducey, Governor of the State of Arizona, by virtue of the authority vested in me by the Constitution and laws of the State, including but not limited to A.R.S. § 26-303 and after consultation with the Director of the Arizona Department of Health Services, do hereby order, effective at 5:00 p.m. on March 31, 2020:

1. Arizona shall institute a “Stay home, Stay healthy, Stay connected” policy that promotes physical distancing, while also encouraging social connectedness. This builds on actions the state has already taken, and further memorializes some already in effect, to slow the spread of COVID-19 and protect our citizens.
2. Under this policy, all individuals in the State of Arizona shall limit their time away from their place of residence or property, except:
 - a. To conduct or participate in Essential Activities.
 - b. For employment, to volunteer or participate in Essential Functions.
 - c. To utilize any services or products provided by Essential Businesses.
 - d. Employment, if as a sole proprietor or family owned business, work is conducted in a separate office space from your home and the business is not open to serve the public.
 - e. No person shall be required to provide documentation or proof of their activities to justify their activities under this order.
3. Arizonans are encouraged to improve social connectedness, resiliency, and help-seeking behavior by:

- a. Maintaining ongoing connections and communication with current social supports and structures such as family, friends, neighbors and other social groups;
- b. Educating fellow Arizonans on the negative health impacts of social isolation;
- c. Developing habits and activities that increase resilience, such as physical activity, virtual social gatherings, assisting neighbors, implementing or participating in connection campaigns for at-risk populations, and participating in volunteer activities;
- d. Sharing information and awareness of newly available social services and resources to improve the stability of families and reduce financial stressors; and
- e. Sharing information and awareness of resources in the community by providing information on where and how high risk populations can access suicide prevention services throughout Arizona, including specific resources that are targeted to high risk populations.

4. Under this policy, Essential Activities include:

- a. Obtaining necessary supplies and services for family, household members and pets, such as groceries, food and supplies for household consumption and use, supplies and equipment needed to work from home, assignments for completion of distance learning and products necessary to maintain safety, sanitation and essential maintenance of the home and residence.
- b. Engaging in activities essential for the health and safety of family, household members and pets, including things such as seeking medical, behavioral health or emergency services and obtaining medical supplies or medication.
- c. Caring for a family member, friend, or pet in another household or residence, which includes but is not limited to transportation of a family member, friend or their pet for essential health and safety activities and to obtain necessary supplies and services for the other household.
- d. Engaging in outdoor exercise activities, such as walking, hiking, running, biking or golfing, but only if appropriate physical distancing practices are used.
- e. Attending or conducting work or volunteering in Essential Functions which includes but is not limited to transporting children to child care services for attending work in an essential service.
- f. Engaging in constitutionally protected activities such as speech and religion, and any legal or court process provided that such is conducted in a manner that provides appropriate physical distancing to the extent feasible.

5. To the extent individuals are using shared or outdoor spaces when outside their residence or property for Essential Activities, they shall to the extent possible maintain physical distancing of at least six feet from any other person, consistent with guidance from the CDC.

6. All persons may leave their place of residence only for Essential Activities, to participate in or receive Essential Governmental Functions, or to participate in or fulfill Essential Functions outlined in Executive Order 2020-12.

7. Individuals shall limit use of public transportation to when absolutely necessary to obtain or conduct Essential Activities or attend work in an Essential Function. While using public transportation, riders shall maintain to the extent possible recommended physical distancing of at least six feet from other riders and the operator.

8. Individuals experiencing homelessness are exempt from this directive, but are strongly urged to obtain shelter as soon as possible and to the maximum extent practicable.
9. Individuals whose residences are unsafe or become unsafe, such as victims of domestic violence, are permitted and urged to leave their home and stay at a safe alternative location.
10. For purposes of this Executive Order, homes or residences include hotels, motels, shared rental units, shelters, and similar facilities.
11. Businesses and entities that remain open shall implement rules and procedures that facilitate physical distancing and spacing of individuals of at least six feet.
 - a. All businesses that are classified as Essential Functions may remain open and maintain operations, but shall establish and implement social distancing and sanitation measures established by the United States Department of Labor or the Arizona Department of Health Services.
 - b. Essential Functions conducted by governmental entities shall remain open. Government leaders may adjust operations to promote physical distancing, including but not limited to offering on-line services as feasible, limiting the number of persons in a physical space or limiting access to specific facilities or areas to protect from the spread of COVID-19.
 - c. Employment in Essential Businesses and Operations means an essential employee performing work for an Essential Function as identified in the "Prohibiting the Closure of Essential Services" Executive Order list.
12. Non-essential businesses may continue to operate those activities that do not require in-person, on-site transactions and are encouraged to maintain at least minimum basic operations that maintain the value of the business' inventory, preserve the condition of the business' physical plant and equipment, ensure security, process payroll and employee benefits, facilitate employees of the business being able to continue to work remotely from their residences, and related functions to include mail pickup.
13. This Executive Order shall not be construed to prohibit working from home, operating a single owner business with no in-person, on-site public interaction, or restaurants and food services providing delivery or take-away services, so long as proper physical distancing and sanitation measures are established and implemented.
14. Arizonans are already acting responsibly during this public health emergency. The intent of this Executive Order is to ensure that people maintain physical distance to the maximum extent feasible, while enabling essential services to continue, protecting people's rights and slowing the spread of COVID-19 to the greatest extent possible. When people need to leave their places of residence, whether to perform Essential Activities, or to otherwise facilitate authorized activities necessary for continuity of social and commercial life, they should at all times and as much as reasonably possible comply with physical distancing recommendations. All provisions of this Executive Order shall be interpreted to effectuate this intent. Prior to any enforcement action being taken to enforce this order in accordance with A.R.S. § 26-317, a person shall be notified and given an opportunity to comply.

15. Pursuant to A.R.S. § 26-307, no county, city or town may make or issue any order, rule or regulation that conflicts with the policy, directives or intent of this Executive Order, including any order, rule or regulation that limits an individual from conducting, participating in or receiving Essential Services, Essential Activities or Non-essential Services as outlined in this order and prior executive orders.
16. If any provision of this Executive Order or its application to any person or circumstance is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.
17. This Executive Order shall be in effect until April 30, 2020, unless extended.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.



Douglas R. Ducey

GOVERNOR

DONE at the Capitol in Phoenix on this Thirtieth Day of March in the Year Two Thousand and Twenty and of the Independence of the United States of America the Two Hundred and Forty-Fourth.

ATTEST:

[Signature]

Secretary of State

EXHIBIT D

EO-2020-33

STATE OF ARIZONA
★
EXECUTIVE ORDER

Executive Order 2020-33

Returning Stronger

Amending the Stay Home, Stay Healthy, Stay Connected Order

WHEREAS, Arizona is committed to combating COVID-19, which represents a serious threat to public health; and

WHEREAS, the State of Arizona has taken proactive actions to mitigate the risk of COVID-19 to public health and address the economic impact of the COVID-19 pandemic; and

WHEREAS, on March 11, 2020, pursuant to A.R.S. §§ 26-303 and 36-787, I, as Governor of the State of Arizona, issued a declaration of a Public Health State of Emergency due to the necessity to prepare for, prevent, respond to, and mitigate the spread of COVID-19; and

WHEREAS, many businesses have greatly reduced their hours and operations as directed by health officials and in an effort to protect the public health and slow the spread of COVID-19; and

WHEREAS, on March 17, 2020, following updated guidance from the Centers for Disease Control and Prevention (CDC), the Arizona Department of Health Services (ADHS) issued updated guidance that included canceling or postponing gatherings of 10 or more people, recommending telework and other alternatives, restricting access to nursing homes, retirement homes and long-term care facilities to provide critical assistance, and providing recommendations to restaurants and eating establishments to mitigate the risk of COVID-19 transmission; and

WHEREAS, on March 19, 2020, Executive Order 2020-09 was issued requiring restaurants in Arizona counties with confirmed COVID-19 cases to provide dine-out options only and required all bars, gyms and movie theaters in those counties to close; and

WHEREAS, on March 19, 2020, Executive Order 2020-10 halted all elective surgeries in the State of Arizona to free up medical resources and maintain the capacity for hospitals and providers to continue offering vital services; and

WHEREAS, essential services were identified in Executive Order 2020-12 as those specifically necessary to promote the public health, safety and welfare of the State or assist others in fulfilling such functions; and

WHEREAS, to combat COVID-19, and at the recommendation of the state's health officials, the State of Arizona must continue its efforts by further limiting potential exposure through a policy of physical distancing while maintaining social connectedness; and

WHEREAS, pursuant to A.R.S. § 26-303(E), the Governor of Arizona, after a Declaration is issued, has “the right to exercise, within the area designated, all police power vested in the state by the constitution and laws of this state”; and

WHEREAS, pursuant to A.R.S. § 36-787(A), during a State of Emergency declared by the Governor, the Arizona Department of Health Services has primary jurisdiction, responsibility and authority for:

- (1) Planning and executing public health emergency assessment, mitigation, preparedness response and recovery of the State; and
- (2) Coordinating public health emergency response among State, local and tribal authorities; and
- (3) Collaborating with relevant federal government authorities, elected officials or other states, private organizations and private sector companies; and
- (4) Coordinating recovery operations and mitigation initiatives subsequent to public health emergencies; and

WHEREAS, on March 30, 2020, the Director of the Arizona Department of Health Services, based on an epidemiological assessment of Arizona specific data and in alignment with CDC guidance, recommended the State implement enhanced mitigation strategies; and

WHEREAS, since the issuance of Executive Order 2020-18, *Stay Home, Stay Healthy, Stay Connected*, the federal government issued guidance on the criteria that states should meet prior to allowing gatherings of people and opening businesses that have been closed due to the need to mitigate COVID-19; and

WHEREAS, due to the availability of Personal Protective Equipment (PPE) and efforts taken to increase capacity in our hospitals and intensive care units, Arizona is now more prepared to face the potential for an increase in patients needing treatment for COVID-19; and

WHEREAS, even with this increased capacity, the data is still showing significant numbers of people testing positive for COVID-19 and we are still learning the extent to which the disease has spread within our state; and

WHEREAS, increased diagnostic and serology testing is beginning in Arizona in partnership with private labs and the universities; and

WHEREAS, since April 1, 2020, essential businesses have innovated and proven they can implement protocols to ensure that employees and the public are safe as they fulfill Essential Activities and participate in Essential Functions; and

WHEREAS, although strides to assess, mitigate and prepare for the COVID-19 response and recovery have been made, the current efforts in the State to limit potential exposure through a policy of physical distancing while maintaining social connectedness is necessary; and

WHEREAS, in continuing efforts to mitigate, respond and recover from COVID-19, there is the ability to slowly and strategically loosen some restrictions while others remain in place as we turn toward reenergizing our economy..

NOW, THEREFORE, I, Douglas A. Ducey, Governor of the State of Arizona, by virtue of the authority vested in me by the Constitution and laws of the State, including but not limited to A.R.S. §§ 26-303 and 36-787, and after consultation with the Director of the Arizona Department of Health Services, do hereby order:

1. Arizona shall institute a “Stay home, Stay healthy, Stay connected” policy that promotes physical distancing, while also encouraging social connectedness. This builds on actions the State has already taken, and further memorializes some already in effect, to slow the spread of COVID-19 and protect our citizens.
2. Under this policy, all individuals in the State of Arizona shall limit their time away from their place of residence or property, except:
 - a. To conduct or participate in Essential Activities;
 - b. For employment, to volunteer or participate in Essential Functions;
 - c. To utilize any services or products provided by Essential Businesses;
 - d. Employment, if as a sole proprietor or family owned business, work is conducted in a separate office space from your home and the business is not open to serve the public; and
 - e. No person shall be required to provide documentation or proof of their activities to justify their activities under this order.
3. Arizonans are encouraged to improve social connectedness, resiliency, and help-seeking behavior by:
 - a. Maintaining ongoing connections and communication with current social supports and structures such as family, friends, neighbors and other social groups;
 - b. Educating fellow Arizonans on the negative health impacts of social isolation;
 - c. Developing habits and activities that increase resilience, such as physical activity, virtual social gatherings, assisting neighbors, implementing or participating in connection campaigns for at-risk populations, and participating in volunteer activities;
 - d. Sharing information and awareness of newly available social services and resources to improve the stability of families and reduce financial stressors; and
 - e. Sharing information and awareness of resources in the community by providing information on where and how high risk populations can access suicide prevention services throughout Arizona, including specific resources that are targeted to high risk populations.
4. Under this policy, Essential Activities include:
 - f. Obtaining necessary supplies and services for family, household members and pets, such as groceries, food and supplies for household consumption and use, supplies and equipment needed to work from home, assignments for completion of distance learning and products necessary to maintain safety, sanitation and essential maintenance of the home and residence;

- g. Engaging in activities essential for the health and safety of family, household members and pets, including things such as seeking medical, behavioral health or emergency services and obtaining medical supplies or medication;
 - h. Caring for a family member, friend, or pet in another household or residence, which includes but is not limited to transportation of a family member, friend or their pet for essential health and safety activities and to obtain necessary supplies and services for the other household;
 - i. Engaging in outdoor exercise activities, such as walking, hiking, running, biking or golfing, but only if appropriate physical distancing practices are used;
 - j. Attending or conducting work or volunteering in Essential Functions which includes but is not limited to transporting children to child care services for attending work in an essential service;
 - k. Engaging in constitutionally protected activities such as speech and religion, and any legal or court process provided that such is conducted in a manner that provides appropriate physical distancing to the extent feasible; and
 - l. Persons may visit retailers permitted to operate pursuant to this order.
5. To the extent individuals are using shared or outdoor spaces when outside their residence or property for Essential Activities, they shall to the extent possible maintain physical distancing of at least six feet from any other person, consistent with guidance from the CDC.
6. All persons may leave their place of residence only for Essential Activities, to participate in or receive Essential Governmental Functions, or to participate in or fulfill Essential Functions outlined in Executive Order 2020-12.
7. Individuals shall limit use of public transportation to when absolutely necessary to obtain or conduct Essential Activities or attend work in an Essential Function. While using public transportation, riders shall maintain to the extent possible recommended physical distancing of at least six feet from other riders and the operator.
8. Individuals experiencing homelessness are exempt from this directive, but are strongly urged to obtain shelter as soon as possible and to the maximum extent practicable.
9. Individuals whose residences are unsafe or become unsafe, such as victims of domestic violence, are permitted and urged to leave their home and stay at a safe alternative location.
10. For purposes of this Executive Order, homes or residences include hotels, motels, shared rental units, shelters, and similar facilities.
11. Businesses and entities that remain open shall implement rules and procedures that facilitate physical distancing and spacing of individuals of at least six feet.
 - a. All businesses that are classified as Essential Functions may remain open and maintain operations, but shall establish and implement social distancing and sanitation measures established by the United States Department of Labor or the Arizona Department of Health Services.
 - b. Essential Functions conducted by governmental entities shall remain open. Government leaders may adjust operations to promote physical distancing, including but not limited to offering on-line services as feasible, limiting the number of persons

in a physical space or limiting access to specific facilities or areas to protect from the spread of COVID-19.

- c. Employment in Essential Businesses and Operations means an essential employee performing work for an Essential Function as identified in the “Prohibiting the Closure of Essential Services” Executive Order list.
12. Except as provided herein, non-essential businesses may continue to operate those activities that do not require in-person, on-site transactions and are encouraged to maintain at least minimum basic operations that maintain the value of the business’ inventory, preserve the condition of the business’ physical plant and equipment, ensure security, process payroll and employee benefits, facilitate employees of the business being able to continue to work remotely from their residences, and related functions to include mail pickup.
- a. Effective May 4, 2020, retailers which are not classified as essential under Executive Order 2020-12, *Prohibiting the Closure of Essential Services*, and whose business involves the sale of goods, may operate and offer goods through delivery service, window service, walk-up service, drive-through service, drive-up service, curbside delivery or appointment provided they establish and implement protocols and best practices for businesses to address COVID-19 as outlined in this order.
 - b. Effective May 8, 2020 retailers which are not classified as essential under Executive Order 2020-12, *Prohibiting the Closure of Essential Services*, and whose business involves the sale of goods may open, operate and offer goods for sale to customers in their stores provided they establish and implement protocols and best practices for businesses to address COVID-19 as outlined in this order.
 - c. To operate under this order, retailers for goods shall follow those provisions outlined in paragraph 11.
 - d. Areas where people may be inclined to congregate in an enclosed or confined area such as indoor shopping malls shall continue to limit operations. Retailers located within such buildings or areas whose only entrance is through the shopping mall or other enclosed area may operate through delivery or curbside service or appointment only.
 - e. Nothing in this order shall be construed as requiring a retailer to open for business.
13. This Executive Order shall not be construed to prohibit working from home, operating a single owner business with no in-person, on-site public interaction, or restaurants and food services providing delivery or take-away services, so long as proper physical distancing and sanitation measures are established and implemented.
14. Arizonans are already acting responsibly during this public health emergency. The intent of this Executive Order is to ensure that people maintain physical distance to the maximum extent feasible, while enabling essential services to continue, reinvigorating our economy, protecting people’s rights and slowing the spread of COVID-19 to the greatest extent possible. When people need to leave their places of residence, whether to perform Essential Activities, or to otherwise facilitate authorized activities necessary for continuity of social and commercial life, they should at all times and as much as reasonably possible comply with physical distancing recommendations. All provisions of this Executive Order shall be interpreted to effectuate this intent. Prior to any enforcement action being taken to enforce

this order in accordance with A.R.S. § 26-317, a person shall be notified and given an opportunity to comply.

15. Pursuant to A.R.S. § 26-307, no county, city or town may make or issue any order, rule or regulation that conflicts with the policy, directives or intent of this Executive Order, including any order, rule or regulation that limits an individual from conducting, participating in or receiving Essential Services, Essential Activities or Non-essential Services as outlined in this order and prior executive orders.
16. If any provision of this Executive Order or its application to any person or circumstance is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.
17. This Executive Order shall be in effect until May 15, 2020 at 11:59 p.m., unless modified, extended or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.



Douglas R. Ducey

GOVERNOR

DONE at the Capitol in Phoenix on this twenty-ninth day of April in the Year Two Thousand and Twenty and of the Independence of the United States of America the Two Hundred and Forty-Fourth.

ATTEST:

[Signature]

Secretary of State

EXHIBIT E

EO-2020-34

STATE OF ARIZONA
★
EXECUTIVE ORDER

Executive Order 2020-34

Building on COVID-19 Successes

Resuming additional business operations for barbers, cosmetologists and dine-in restaurants

WHEREAS, on March 11, 2020, pursuant to A.R.S. §§ 26-303 and 36-787, I, as Governor of the State of Arizona, issued a declaration of a Public Health State of Emergency due to the necessity to prepare for, prevent, respond to, and mitigate the spread of COVID-19; and

WHEREAS, on March 30, 2020, the Director of the Arizona Department of Health Services, based on an epidemiological assessment of Arizona specific data and in alignment with CDC guidance, recommended the State implement enhanced mitigation strategies; and

WHEREAS, since the issuance of Executive Order 2020-18, *Stay Home, Stay Healthy, Stay Connected*, the federal government issued guidance on the criteria that states should meet prior to allowing gatherings of people and opening businesses that have been closed due to the need to mitigate COVID-19; and

WHEREAS, due to the availability of Personal Protective Equipment (PPE) and efforts taken to increase capacity in our hospitals and intensive care units, Arizona is now more prepared to face the potential for an increase in patients needing treatment for COVID-19; and

WHEREAS, increased diagnostic and serology testing has begun in Arizona in partnership with private labs and the universities; and

WHEREAS, since April 1, 2020, essential businesses have innovated and proven they can implement protocols to ensure that employees and the public are safe as they fulfill Essential Activities and participate in Essential Functions; and

WHEREAS, on April 29, 2020, Executive Order 2020-33, *Returning Stronger*, was issued to allow for retailers to resume operation in a limited capacity while still directing people to stay home to the extent possible; and

WHEREAS, on May 4, 2020, additional data was released by the Arizona Department of Health Services showing continued progress in mitigating and limiting the spread of COVID-19 and sustaining adequate hospital capacity; and

WHEREAS, in continuing efforts to mitigate, respond and recover from COVID-19, there is the ability to slowly and strategically loosen some restrictions while others remain in place as we turn toward reenergizing our economy; and

WHEREAS, even as some restrictions are lifted, the data must continue to be monitored to determine the impacts of opening businesses on the rates of COVID-19 Like Illnesses (CLI) in our community to ensure that such actions are not negatively impacting the strides made to our healthcare system; and

WHEREAS, pursuant to A.R.S. § 26-303(E), the Governor of Arizona, after a Declaration is issued, has “the right to exercise, within the area designated, all police power vested in the state by the constitution and laws of this state”; and

WHEREAS, pursuant to A.R.S. § 36-787(A), during a State of Emergency declared by the Governor, the Arizona Department of Health Services has primary jurisdiction, responsibility and authority for:

1. Planning and executing public health emergency assessment, mitigation, preparedness response and recovery of the State;
2. Coordinating public health emergency response among State, local and tribal authorities;
3. Collaborating with relevant federal government authorities, elected officials or other states, private organizations and private sector companies; and
4. Coordinating recovery operations and mitigation initiatives subsequent to public health emergencies.

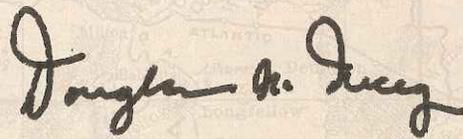
NOW, THEREFORE, I, Douglas A. Ducey, Governor of the State of Arizona, by virtue of the authority vested in me by the Constitution and laws of the State, including but not limited to A.R.S. §§ 26-303 and 36-787, and after consultation with the Director of the Arizona Department of Health Services, do hereby order:

1. Notwithstanding Executive Order 2020-33, effective Friday, May 8, 2020, barbers and cosmetologists defined and licensed by Title 32 of the Arizona Revised Statutes may resume operations provided they establish and implement protocols and best practices for businesses to address COVID-19, including using face coverings for employees and customers, operating by appointment only and following protocols as directed by the Centers for Disease Control and Prevention, the United States Department of Labor Division of Occupational Safety and the Arizona Department of Health Services. All other provisions of Executive Order 2020-33 shall remain in effect.
2. Notwithstanding Executive Order 2020-09, effective Monday, May 11, 2020, dine-in services may resume provided they establish and implement protocols and best practices for businesses to address COVID-19, including enacting physical distancing policies, limiting the number of diners and following protocols as directed by the Centers for Disease Control and Prevention, the United States Department of Labor Division of

Occupational Safety and Health Administration and the Arizona Department of Health Services. All other provisions of Executive Order 2020-09 shall remain in effect.

3. Persons visiting businesses providing services under this order shall not be deemed to be in violation of Executive Order 2020-33.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.



GOVERNOR



DONE at the Capitol in Phoenix on this fourth day of May in the Year Two Thousand and Twenty and of the Independence of the United States of America the Two Hundred and Forty-Fourth.

ATTEST:



Secretary of State

EXHIBIT F

EO-2020-36

STATE OF ARIZONA
★
EXECUTIVE ORDER

Executive Order 2020-36

Stay Healthy, Return Smarter, Return Stronger

WHEREAS, on March 11, 2020, pursuant to A.R.S. §§ 26-303 and 36-787, I, as Governor of the State of Arizona, issued a declaration of a Public Health State of Emergency due to the necessity to prepare for, prevent, respond to, and mitigate the spread of COVID-19; and

WHEREAS, on March 30, 2020, the Director of the Arizona Department of Health Services (ADHS), based on an epidemiological assessment of Arizona specific data and in alignment with the Centers for Disease Control and Prevention (CDC) guidance, recommended the State implement enhanced mitigation strategies; and

WHEREAS, due to the availability of Personal Protective Equipment (PPE) and efforts taken to increase capacity in our hospitals and intensive care units, Arizona is now more prepared to face the potential for an increase in patients needing treatment for COVID-19; and

WHEREAS, increased diagnostic and serology testing has accelerated in Arizona in partnership with private labs and the universities; and

WHEREAS, since April 1, 2020, businesses have innovated and demonstrated they can implement protocols to ensure that employees and the public are safe; and

WHEREAS, on April 29, 2020, Executive Order 2020-33, *Returning Stronger*, was issued to allow for retailers to resume operation in a limited capacity while still directing people to stay home to the extent possible; and

WHEREAS, on May 4, 2020, additional data was released by ADHS showing continued progress in mitigating and limiting the spread of COVID-19 and sustaining adequate hospital capacity; and

WHEREAS, on May 8, 2020, retailers, cosmetologists and barbers were able to open for customers; and

WHEREAS, on May 11, 2020, dine-in services were opened; and

WHEREAS, Arizona has satisfied the gating criteria outlined in the Guidelines for Opening Up America Again published by the CDC and the White House Coronavirus Task Force and has entered Phase I of the proposed phased approach; and

WHEREAS, in continuing efforts to mitigate, respond and recover from COVID-19, there is the ability to slowly and strategically loosen some restrictions while others remain in place as we turn toward reenergizing our economy; and

WHEREAS, even as some restrictions are lifted, the data must continue to be monitored to determine the impacts of opening businesses on the rates of COVID-19 Like Illnesses (CLI) in our community to ensure that such actions are not negatively impacting the strides made to our healthcare system; and

WHEREAS, pursuant to A.R.S. § 36-787(A), during a State of Emergency declared by the Governor, ADHS has primary jurisdiction, responsibility and authority for:

1. Planning and executing public health emergency assessment, mitigation, preparedness response and recovery of the State;
2. Coordinating public health emergency response among State, local and tribal authorities;
3. Collaborating with relevant federal government authorities, elected officials or other states, private organizations and private sector companies; and
4. Coordinating recovery operations and mitigation initiatives subsequent to public health emergencies.

NOW, THEREFORE, I, Douglas A. Ducey, Governor of the State of Arizona, by virtue of the authority vested in me by the Constitution and laws of the State, including but not limited to A.R.S. §§ 26-303 and 36-787, and after consultation with the Director of ADHS, do hereby order that effective May 16, 2020 at 12:00 a.m.:

1. Arizona shall institute a “Stay Healthy, Return Smarter, Return Stronger” policy that promotes physical distancing, while encouraging social connectedness and allows businesses to gradually and safely open in compliance with federal guidelines as the state continues to mitigate and prevent the spread of COVID-19. This builds on actions the state has already taken, and further memorializes some already in effect, to slow the spread of COVID-19 and protect our citizens.
2. Executive Orders 2020-18, 2020-24 and 2020-33 are hereby expired and rescinded. Provisions of all other orders issued and still in effect since the March 11, 2020 Declaration of Public Health Emergency remain in place unless guidance is or has been provided by ADHS on how to safely reopen or operate while mitigating COVID-19 or the orders expire, are amended or rescinded.
3. Under this policy, all vulnerable individuals, including the elderly and individuals with underlying health conditions, are advised to take reasonable steps to continue limiting their time away from their place of residence or property. Members of households with

vulnerable individuals should take precautions to protect vulnerable individuals and should be aware that by returning to work or being out in public, they could carry the virus back home.

4. All individuals, when in public areas, should maximize physical distance from others. Social settings where appropriate physical distancing is not practical should be avoided unless precautionary measures are observed and CDC guidelines are followed.
5. Any business, whether for-profit or non-profit, institution, profession or entity that physically operates in this state and serves the public or is an employer shall develop, establish and implement policies based on guidance from the CDC, Department of Labor, Occupational Safety and Health Administration (OSHA) and ADHS to limit and mitigate the spread of COVID-19 including the following:
 - a. Promoting healthy hygiene practices;
 - b. Intensifying cleaning, disinfection and ventilation practices;
 - c. Monitoring for sickness;
 - d. Ensuring physical distancing;
 - e. Providing necessary protective equipment;
 - f. Allowing for and encouraging teleworking where feasible;
 - g. Providing plans, where possible, to return to work in phases; and
 - h. Limiting the congregation of groups of no more than 10 persons when feasible and in relation to the size of the location.
6. Nothing in this order prevents a person from engaging in constitutionally protected activities such as speech and religion or participating in the democratic process.
7. Pursuant to A.R.S. § 26-307, no county, city or town may make or issue any order, rule or regulation that conflicts with or is in addition to the policy, directives or intent of this Executive Order, including but not limited to any order restricting persons from leaving their home due to the COVID-19 public health emergency, or any other order, rule or regulation that was not in place as of March 11, 2020. This includes but is not limited to any function or service designated as an Essential Service in Executive Order 2020-12.
8. Arizonans have continued to act responsibly during this public health emergency. The intent of this Executive Order is to ensure that the State of Arizona continues to mitigate the spread of COVID-19 to the greatest extent possible. All law enforcement and regulatory agencies that have enforcement authority under existing law should focus first on educating and working to promote best practices to accomplish this goal. An individual shall be notified of the provisions of this order and given an opportunity to comply prior to any enforcement action being taken.
9. If any provision of this Executive Order or its application to any person or circumstance is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

10. This order shall remain in place until further notice, and shall be considered for repeal or revision at least every two weeks following issuance.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.



Douglas R. Jucey

GOVERNOR

DONE at the Capitol in Phoenix on this twelfth day of May in the year Two Thousand and Twenty and of the Independence of the United States of America the Two Hundred and Forty-Fourth.

ATTEST:

[Signature]

Secretary of State

EXHIBIT G

EO 2020-43

STATE OF ARIZONA
EXECUTIVE ORDER

Executive Order 2020-43

**Pausing of Arizona's Reopening
*Slowing the Spread of COVID-19***

WHEREAS, on March 11, 2020, pursuant to A.R.S. §§ 26-303 and 36-787, I, as Governor of the State of Arizona, issued a declaration of a Public Health State of Emergency due to the necessity to prepare for, prevent, respond to, and mitigate the spread of COVID-19; and

WHEREAS, on March 30, 2020, the Director of the Arizona Department of Health Services (ADHS), based on an epidemiological assessment of Arizona specific data and in alignment with the Centers for Disease Control and Prevention (CDC) guidance, recommended the State implement enhanced mitigation strategies which are continuing; and

WHEREAS, on May 12, 2020, Executive Order 2020-36, *Stay Healthy, Return Smarter, Return Stronger*, was issued outlining requirements for businesses to assist in mitigating the spread of COVID-19 as they reopened and mandated that businesses adopt policies consistent with guidance from the CDC and the ADHS; and

WHEREAS, as of June 28, 2020, there have been 73,908 diagnosed cases of COVID-19 in Arizona including 1,588 deaths, and the State is seeing an increase in the number of cases and hospitalizations; and

WHEREAS, the increased case numbers and hospitalizations also necessitate the need for an increased focus on precautionary measures by both businesses and individuals; and

WHEREAS, data has shown that community spread continues to grow at an exponential pace and is greatest among the demographic of 20-44 year olds; and

WHEREAS, there has not been sufficient time for mask mandates and limiting groups to have a demonstrable effect on containing the spread and additional measures need to be taken to ensure quicker containment; and

WHEREAS, it is necessary to impose additional measures to protect public health and safety and mitigate the strain on our health care providers by slowing the spread of COVID-19; and

WHEREAS, in taking such critical measures to protect public health there will be direct economic consequences for businesses across the State of Arizona that provide employment for many Arizonans, including bars and restaurants; and

WHEREAS, A.R.S. § 4-203, allows “[a] spirituous liquor license...[to] be issued only after satisfactory showing of the capability, qualifications and reliability of the applicant and, with the exception of

wholesaler, producer, government or club licenses, that the public convenience requires and that the best interest of the community will be substantially served by the issuance.” ; and

WHEREAS, due to community spread of COVID-19, the state will not be substantially served by the issuance of certain liquor licenses; and

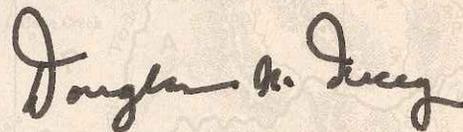
WHEREAS, Arizona is committed to containing the spread of COVID-19.

NOW, THEREFORE, I, Douglas A. Ducey, Governor of the State of Arizona, by virtue of the authority vested in me by the Constitution and laws of this state including A.R.S. §§ 26-303 and 36-787, hereby order as follows:

1. Effective June 29, 2020, organized public events of more than 50 people are prohibited unless the city, town or county in unincorporated areas has approved the event, and only if adequate safety precautions are implemented, including physical distancing measures. A city, town or county in unincorporated areas may deny a request for an organized event due to public health concerns related to COVID-19. Any approval may be subject to certain conditions or restrictions not inconsistent with this or any other executive order. Nothing in this order shall inhibit a person from engaging in constitutionally protected activities such as speech and religion, and any legal or court process provided that such is conducted in a manner that provides appropriate physical distancing to the extent feasible.
2. The Department of Liquor Licenses and Control shall cease issuing series 15, Special Event licenses and series 16, Festival/Fair licenses for the period of June 29, 2020 through July 27, 2020.
3. Notwithstanding any other law or executive order, effective at 8:00 pm on Monday, June 29, 2020, the following establishments shall pause operations until at least July 27, 2020, unless extended:
 - a. Bars, meaning an entity who holds a series 6 or 7 liquor license from the Department of Liquor Licenses and Control and whose primary business is the sale or dispensing of alcoholic beverages. These entities may continue serving the public through pick up, delivery, and drive-thru operations as provided for series 12 liquor licenses in Executive Order 2020-09, *Limiting The Operations Of Certain Businesses To Slow The Spread Of COVID-19*.
 - b. Indoor gyms and fitness clubs or centers.
 - c. Indoor movie theaters.
 - d. Water parks and tubing operators.
4. Pools may continue to operate as follows:
 - a. Pools operated as part of a public accommodation, such as those at hotels but not those at multi-housing complexes, shall prohibit groups larger than 10 from congregating together in or near the pool.
 - b. Privately owned pools located in public areas such as those at multi-housing complexes or other privately owned facilities may continue to be open provided that signage is included at all entrances to the pool reminding people to maintain physical distance and that groups larger than 10 should not congregate.

5. To receive authorization to reopen, entities shall complete and submit a form as prescribed by the Arizona Department of Health Services that attests the entity is in compliance with guidance issued by ADHS related to COVID-19 business operations. The form shall also be posted in an easily visible public place on the entity's premises. ADHS shall provide information to the public on those entities that have submitted such attestations on its website.
6. A local governmental jurisdiction shall have the authority to take immediate action against an entity that operates without submitting the prescribed attestation to the Arizona Department of Health Services.
7. Notwithstanding any other law or executive order, this executive order allows law enforcement and any regulatory agency, pursuant to their regulatory authority, to take immediate enforcement action against any business that fails to follow this Executive Order or any guidance issued by the Arizona Department of Health Services relating to COVID-19 for the protection of the public health, safety and welfare up to and including summary suspension for any license that the business holds.
8. If any provision of this Executive Order or its application to any person or circumstance is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.
9. This order shall remain in place until further notice, and shall be reconsidered for repeal or revision every two weeks after July 27, 2020.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.



GOVERNOR

DONE at the Capitol in Phoenix on this twenty-ninth day of June in the year Two Thousand and Twenty and of the Independence of the United States of America the Two Hundred and Forty-Fourth.

ATTEST:



Secretary of State

