

STATE OF MICHIGAN		CASE NO.	
OTSEGO	JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY	23- 19393	CZ
SUMMONS			

Court address
225 W. MAIN STREET, GAYLORD MI 49735

Colin G. Hunter
P-71821

Court telephone no.
989-731-1508

Plaintiff's name, address, and telephone no.
MOORE MURPHY HOSPITALITY, LLC
D/B/A IRON PIG SMOKEHOUSE

v

Defendant's name, address, and telephone no.
HEALTH DEPARTMENT
OF NORTHWEST MICHIGAN
220 W. GARFIELD ST.
CHARLEVOIX, MI. 49720
(800)-842-4121



Plaintiff's attorney, bar no., address, and telephone no.
DAVID M. DELANEY
113 N. ILLINOIS AVE.
P.O. BOX 1771
GAYLORD, MI. 49735
(989) 731-1508

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

- There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. I have separately filed a completed confidential case inventory (MC 21) listing those cases.
- It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

- This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
- MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).
- There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has

been previously filed in this court, _____ Court, where

it was given case number 21-18522-AE and assigned to Judge COLIN G. HUNTER

The action remains is no longer pending.

Summons section completed by court clerk.

SUMMONS

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside of Michigan).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date 8-10-23	Expiration date* 11-9-23	Court clerk <i>[Signature]</i>
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*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

STATE OF MICHIGAN
46TH CIRCUIT TRIAL COURT
OTSEGO COUNTY

MOORE MURPHY HOSPITALITY, LLC
D/B/A IRON PIG SMOKEHOUSE,

Plaintiff,

Circuit Court Case No: 23- 19393 -CZ

Honorable Colin G. Hunter

v

HEALTH DEPARTMENT OF NORTHWEST
MICHIGAN

Defendant,

DAVID M. DELANEY, PLC
DAVID M. DELANEY (P43485)
Attorney for Moore Murphy Hospitality, LLC
113 N. Illinois, Ave., PO Box 1771
Gaylord, MI 49734
989.731.1508



COMPLAINT FOR
DECLARATORY RELIEF

A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in this court where it was given docket number 21-18522-AE and was assigned to Judge Colin G. Hunter

PARTIES

1. Plaintiff, Moore Murphy Hospitality, LLC, “the Iron Pig”, is a Michigan Limited Liability Company, formed under the laws of the State of Michigan and operating a restaurant in Gaylord, Otsego County, Michigan.
2. Defendant Health Department of Northwest Michigan is a local health department, serving Antrim, Charlevoix, Emmet and Otsego Counties. (“HDNW”).

JURISDICTION AND VENUE

3. Jurisdiction is proper in this Court pursuant to MCL 600.1615 and MCL 600.605. The actions complained of in this suit occur in Otsego County. Venue is also proper in Otsego County pursuant to MCL 600.1629(1)(a)(i) by way of MCL 1641(2).

COMMON ALLEGATIONS

4. Plaintiff hereby incorporates by reference all preceding paragraphs herein.
5. On October 2, 2020, the Michigan Supreme Court determined the executive branch did not possess authority to issue emergency public health orders under the Emergency Powers of the Governor Act of 1945 MCL 10.31, because that act is an unlawful delegation of legislative power to the executive branch in violation of the Michigan Constitution’s strict separation of powers in Article 3, Section 2.

The Michigan Supreme Court determined that the words “**necessary**” and “**reasonable**” did not provide sufficient standards to curtail the power granted and that those terms were essentially “non-standards”.

6. Unabated, on October 5, 2020 the executive branch, through the State Director of the Michigan Department of Health and Human Services “MDHHS”, continued to issue emergency public health orders under the Michigan Public Health Code.

7. The Public Health Code is divided into Articles. **Article 2** governs Administration. MCL 333.2201 et seq. Article 2 is further divided into the **State** Department of Public Health MCL 333.2201 et. seq. and the **Local** Health Department MCL 333.2401et. seq.

Article 5 governs Prevention and Control of Communicable Diseases MCL 333.5101et. seq.

8. On November 15, 2020, the opening day of deer season, MDHHS issued an “emergency order” under MCL 333.2253 closing indoor dining at Michigan restaurants.

9. MCL 333.2253 provides *if the director determines that control of an epidemic is **necessary** to protect the public health, the director by emergency order may prohibit the gathering of people for any purpose.*

10. On November 25, 2020, Defendant HDNW issued an **Order** To Cease and Desist Food Service Operations at the Iron Pig.

11. The HDNW order is premised on MCL 333.2451 and MCL 333.2453.

12. The counterpart in the Michigan Public Health Code to the State statute MCL 333.2253 prohibiting gathering is the Local statute MCL 333.2453 prohibiting gathering.

13. The counterpart in the Michigan Public Health Code to the State statute MCL 333.2251 is the Local statute MCL 333.2451.

14. MCL 333.2451 of the Local statute provides in pertinent part that an **order** may be issued upon a determination by the local health officer of an “**imminent danger**”.

15. MCL 333.2451 defines an “imminent danger” as a condition which could “**reasonably**” be expected to cause disease.

16. HDNW order threatened the Iron Pig that failure to promptly comply with the order would result in seeking assistance from the Michigan Attorney General to revoke the Liquor License; Food Establishment License; enforcement of the Michigan Occupational

Safety and Health Administration (MIOSHA) and legal proceedings in Circuit or District Court to compel compliance with the Order and the Public Health Code.

17. On November 25, 2020, the Iron Pig defied the MDHHS order and the HDNW order and allowed the indoor “gathering of people”.

18. On November 30, 2020 the Michigan Occupational Safety and Health Administration (MIOSHA) notified the Iron Pig that a referral from the public has been received alleging COVID-19 health hazards to your employees.

- Employees were not wearing masks. There were no signs on the floor or doors to wear masks or to stay 6 feet apart.

As an employer, you are expected to comply with the MIOSHA Emergency Rules for Coronavirus Disease 2019 (Covid-19).

19. On December 2, 2020, without notice or a hearing, representatives of the Michigan Liquor Control Commission (MLCC) walked into the Iron Pig and took the liquor license off the wall. The liquor license was immediately suspended.

20. On December 14, 2020, a hearing was regarding the Iron Pig’s liquor license suspension. The executive branch Administrative Law Judge found that the Iron Pig engaged in “illegal acts” in disregarding the **MDHHS emergency order** and is an “imminent threat” to the public’s health, safety and welfare.

The Administrative Law Judge stated:

The Licensee’s slogan, “RISK IT FOR THE BRISKET-BBQ WITH A SIDE OF FREEDOM” rhymes but downplays the incredibly serious nature of the COVID-19 virus. Unfortunately, a more appropriate slogan might “Brisket to die for”

No one died at the Iron Pig.

The liquor license was suspended for 90 days, the longest suspension for any restaurant in Michigan, for not complying with the **MDHHS emergency order**.

The Administrative Law Judge found “the Licensee is intent on defying the **Emergency Public Health Order**. The Licensee was given ample warning by law enforcement, the health department, and the Commission that there would be consequences for continuing to unsafely operate in person dining.

The goal is not (at least solely) to punish the Licensee, but rather to have the Licensee comply with the November 15, 2020 **Emergency Order**. If, within the next 14 days, the Licensee chooses to comply with the **Emergency Order** by ceasing in person dining and requiring staff to wear face masks, the Licensee may file a request for reconsideration. Any such request should be accompanied by the Licensee’s affidavit establishing the date that the establishment came into compliance and the Licensee’s intention to remain in compliance.

21. On December 29, 2020, without a notice or a hearing, the Michigan Department of Agriculture and Rural Development (MDARD) suspended the food license of the Iron Pig.

22. On January 14, 2021, during a hearing regarding the Iron Pig’s food license suspension, MDARD conceded there were never any cases of Covid-19 at the Iron Pig.

23. The executive branch Administrative Law Judge found that disregarding the **MDHHS emergency order** is a “condition” at the Iron Pig that is an “imminent or substantial hazard”.

24. On January 27, 2021, MDARD commenced legal proceedings against the Iron Pig in the Ingham County Circuit court and obtained an ex parte Temporary Restraining Order to shutter the restaurant. MDARD sent an “undercover employee” with a hidden video camera to the Iron Pig.

25. On February 4, 2021, the Iron Pig owner Ian Murphy was threatened with jail, held in contempt of court and fined.
26. MDHHS filed an administrative proceeding against the Iron Pig. MDHHS filed a motion for summary disposition requesting a ruling that the Iron Pig violated the emergency order. Following a brief telephone hearing, an Administrative Law Judge entered an Order finding that the MDHHS emergency order was issued and in effect at all relevant times, with “nothing to suggest that it was invalid”.
27. The entire legal foundation of the foregoing proceedings was the MDHHS emergency order.
28. On May 16, 2021, the Iron Pig filed an administrative appeal in the Otsego County Circuit Court, under the Administrative Procedures Act MCL 24.306.
29. On January 13, 2022 Otsego County Circuit Court Judge Colin G. Hunter ruled that MCL 333.2253, under article 3 section 2 of the Michigan Constitution, is clearly an unconstitutional delegation of power from the Legislative to the Executive branch. The court severed MCL 333.2253 from the Michigan Public Health Code under MCL 8.5. The court found there is nothing within the sole standard “**necessary**” that serves in any realistic way to guide the health director’s exercise of discretion under the statute or to channel or check that power, outside of the health director’s own finding.
30. On January 20, 2022, MDHHS filed a motion for a Stay of Judge Hunter’s ruling. The Stay was not granted.
31. On February 3, 2022 MDHHS filed an Application for Leave to Appeal in the Court of Appeals.
32. On the next day, February 4, 2022, MDHHS filed a Bypass Application in the Michigan

Supreme Court. In the Bypass Application MDHHS stated that the Otsego County Circuit Court ruling is “dangerous”. Amicus briefs were filed by the Michigan Senate and the House of Representatives and the Mackinac Center for Public Policy.

33. On April 1, 2022, the Michigan Supreme Court denied the application because the Court was not persuaded that the questions presented should be reviewed “before consideration by the Court of Appeals”. Justices Viviano and Bernstein dissented stating “[w]e would take this case now to give the court an opportunity to provide clarity on a topic of great importance to our citizens.” The dissent continued “the “present case is a sequel of sorts to *In re Certified Questions*, 506 Mich at 385.” “After the Court’s decision in *In re Certified Questions*, the executive branch turned to the Public Health Code and **especially MCL 333.2253**, as the primary source of authority for its orders pertaining to the epidemic.” (emphasis supplied).

The dissent indicated MDHHS is requesting an “overruling” of *In re Certified Questions*. Finally, the dissent determined that under “the circuit court’s ruling, the DHHS can no longer rely on MCL 333.2253.”

34. On May 25, 2022 Judge Shapiro, in a Court of Claims action, determined that the delegation of Legislative power to the Executive branch in MCL 333.2253 is constitutional and the issue is not moot. *T&V Associates v Michigan Department of Health and Human Services* Case No. 21-000075-MM Court of Claims.

35. Although the Otsego County court had struck down MCL 333.2253 as unconstitutional in January 2022, the MLCC, after the May 2022 Court of Claims decision finding MCL 333.2253 constitutional, continued to pursue the Iron Pig for violations of the MDHHS order for other dates it had allowed the indoor “gathering of people”.

36. On June 8, 2022 *T&V* filed an appeal in the Court of Appeals. Case No. 361727.
37. On June 16, 2022 MDHHS filed a letter in the *Iron Pig* case with the Court of Appeals advising of the *T&V* Court of Claims opinion as a basis to accept its application.
38. On July 20, 2022 the Court of Appeals granted the application.
39. On August 17, 2022 MDHHS filed a Docketing Statement in the *Iron Pig* case referencing the *T&V* opinion.
40. On the same date, August 17, 2022 in the *T&V* action, MDHHS filed a motion to dismiss the appeal as moot.
41. On September 19, 2022, the Court of Appeals in the *T&V* action, denied the motion. In a dissent, Judge Krause stated Plaintiff in this matter “sought only declaratory relief. At this juncture that relief would constitute an advisory opinion, based on a **statute that may or may not still exist** in its present form.” (emphasis supplied).
42. On November 9, 2022, in the *Iron Pig* appeal, MDHHS filed its brief citing the *T&V* opinion.
43. On November 23, 2022 at 2:44 p.m., the day before Thanksgiving, MDHHS filed a motion for voluntary dismissal of the *Iron Pig* appeal under MCR 7.218.
44. The premise of the MDHHS motion for voluntary dismissal in the *Iron Pig* appeal was the *T&V* Court of Claims opinion. MDHHS avers in its motion for voluntary dismissal that the *Iron Pig* and *T&V* decisions are “trial-level” opinions and do not have precedential effect.
45. On December 12, 2022 the Court of Appeals dismissed the *Iron Pig* appeal.
46. On December 15, 2022, the Court of Appeals in a published decision ruled that under the Michigan Public Health Code, an unelected local health officer employee, may issue emergency public health orders **without** approval of the elected local board of

health *Flynn v Ottawa County Department of Public Health* December 15, 2022 No. 359774.

47. The *Flynn* decision cited MCL 333.2453 and MCL 333.2451 as authority for the an unelected local health officer employee, to issue a mask mandate as an emergency public health order **without** approval of the elected local board of health.

However, *Flynn* did not address whether MCL 333.2453 and MCL 333.2451, under article 3 section 2 of the Michigan Constitution, is an unconstitutional delegation of power from the Legislative to the Executive branch.

48. The counterpart in the Michigan Public Health Code to the State statute MCL 333.2253 is the Local statute MCL 333.2453.

49. MCL 333.2451 of the Local statute provides in pertinent part that an **order** may be issued upon a determination by the local health officer of an “imminent danger”.

50. MCL 333.2451 defines an “imminent danger” as a condition which could “**reasonably**” be expected to cause disease.

51. Judge Hunter had foreshadowed that some or all of the various other statutes within the broad Public Health Code may ultimately be determined to “suffer from the same fatal delegation flaws” as MCL 333.2253. The court cited **MCL 333.2453**; MCL 333.2455 and MCL 333.5201 governing communicable diseases. The court stated this is not an “exhaustive list”.

52. On February 8, 2023 the Minnesota Supreme Court ruled that a March 2020 executive emergency public health order which was rescinded in May 2021, was not moot and was justiciable as a matter of “statewide significance” and “lack of clarity” that requires immediate decision.

The question is a straight forward one of statutory interpretation to decide the scope of power the Legislature delegated to the Governor. The Judiciary is the branch of government constitutionally committed to resolving such disputes. The judiciary's role is to say what the law is (quoting *Marbury v Madison*, 5 US 137 (1803)) .

Snell v Walz A-21-0626.

53. On June 29, 2023, in a published decision, the Michigan Court of Appeals decided the T&V case.

54. The court struck down MCL 333.2253 as an unconstitutional delegation of legislative authority to the executive branch in violation of the separation of powers in article 3 section 2 of the Michigan Constitution *T&V Associates v Director of Health and Human Services* No. 361727.

55. The court found the issue was not moot in that an actual case and controversy exists since the health department disputes that MCL 333.2253 is unconstitutional.

56. The court determined that the health department's exercise of authority under MCL 333.2253 is an issue of public significance.

57. MCR 2.605 (A)(1) states that, "[i]n a case of actual controversy in its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment."

58. *T&V* has an interest in obtaining declaratory relief regarding the constitutionality of the statute.

59. The vindication of constitutional rights is sometimes a time-consuming exercise, but a necessary one to the health of a democracy.

60. Under Michigan law, "whenever a litigant meets the requirements of MCR 2.605,

it is sufficient to establish standing to seek a declaratory judgment.” *League of Women Voters v. Secretary of State*, 506 Mich 561, (2020).

61. To that end, MCR 2.605 (A)(1) states that, “[i]n a case of actual controversy in its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment.”

62. To show an “actual controversy,” Plaintiffs need only “plead and prove facts which indicate an adverse interest necessitating the sharpening of the issues raised.” *Lansing School Educational Association v. Lansing Board of Education*, 487 Mich at 372 (2010).

63. Michigan’s appellate courts have consistently found that a plaintiff pleads an “actual controversy” where they allege that an invalid rule or illegal action jeopardizes their rights or interests. *Lash v. Traverse City*, 479 Mich 180, *UAW v. Central Michigan University Trustees*, 295 Mich App 486, (2012).

64. However bothersome for a court, an actual controversy exists; it has not been rendered moot by the cessation of the director’s action.

65. In January 2022, Judge Hunter found that the word “epidemic” remains undefined and solely up to the determination of the Director, the potential for even more extreme uses of that broad emergency order authority clearly exist, even if they have not been utilized.

For example “vapor products” and “alternative nicotine products” in response to the Department’s finding that Michigan was confronted with a “vaping crisis among youth” The United States Surgeon General officially declared e-cigarette use among youth in the United States an “epidemic”.

66. Judge Hunter determined the clear point is that the **unexercised, but available** use of the Director’s authority could conceivably reach and effect each and every political, social, moral or other societal problem if only the Director determines that the concern can now be categorized as an “epidemic” and that the Director believes that control of the epidemic is necessary to protect public health.

67. In June 2023, the *T&V* court found that the MCL 333.2253 does not define “epidemic”. In the field of public health the term “epidemic” is not restricted to disease. An epidemic includes obesity, opioid overdose, tobacco and the greatest threat to public health, is loneliness.

68. Under Michigan law, “whenever a litigant meets the requirements of MCR 2.605, it is sufficient to establish standing to seek a declaratory judgment.” *League of Women Voters v. Secretary of State*, 506 Mich 561, (2020).

COUNT I
NONDELEGATION DOCTRINE
UNCONSTITUTIONAL STATUTE
MCL 333.2453

69. Plaintiff incorporates herein by reference the allegations of all preceding paragraphs of this complaint.

70. MCL 333.2453 provides in pertinent that “If a local health officer determines that control of an epidemic is necessary to protect the public health, **the local health officer may prohibit the gathering of people for any purpose...**”

71. The 1963 Michigan Constitution Article 3 Section 2 mandates the separation-of-powers of the three branches: legislative, executive and judicial.

72. “The accumulation of all powers, legislative, executive, and judiciary, in the same

hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny” *46th Circuit Court Trial Court v Crawford County*, 476 Mich 131 (2006); *The Federalist No. 47 James Madison*.

73. Challenges of unconstitutional delegation of legislative power is to determine whether the statute contains sufficient limits or standards. When broad power is delegated with few or no constraints, the risk of an unconstitutional delegation is at its peak.

74. The conferral of indefinite authority accords a greater accumulation of power than does the grant of temporary authority.

75. MCL 333.2253, the State Public Health code prohibiting gathering, was recently severed from the Michigan Public Health Code for violating the Michigan Constitution’s non-delegation doctrine. See *Moore Murphy Hospitality, LLC d/b/a Iron Pig Smokehouse v. Michigan Department of Health and Human Services*, File No. 21-18522-AE (Opinion dated January 13, 2022).

76. Judge Hunter, in *Moore Murphy*, stated that “MCL 333.2253, while likely the product of well-meaning forethought by the Legislature to permit quick action in times of actual emergency, fails to pass Constitutional muster because, read as a whole, the statute fails to include any meaningful standards that channel either the scope of the Director’s exercise of sweepingly broad authority, or the duration of the exercise of such authority, in any material way.” *Moore Murphy*, File No. 21-18522-AE.

77. MCL **333.2453** is substantially similar to MCL 333.2253.

78. MCL 333.2453 likewise provides no standards to channel the scope of a local health director's broad authority.
79. MCL 333.2453 provides the local health officer indefinite powers.
80. The local health officer possesses the same free reign as the State Health Director did under MCL 333.2253, to exercise a substantial part of the state and local legislature authority-including police powers-for an indefinite period of time.
81. The delegation of power to the local health officer to *prohibit the gathering of people for any purpose* constitutes an unlawful delegation of legislative power to the executive and is unconstitutional under Const 1963, Art 3, Sec. 2, which prohibits exercise of the legislative power by the executive branch.
82. MCL 333.2453 is unconstitutional.

COUNT II
NONDELEGATION DOCTRINE
UNCONSTITUTIONAL STATUTE
MCL 333.2451

83. Plaintiff incorporates herein by reference the allegations of all preceding paragraphs of this complaint.
84. The 1963 Michigan Constitution Article 3 Section 2 mandates the separation-of-powers of the three branches: legislative, executive and judicial.
85. "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny" *46th Circuit Court Trial Court v Crawford County*, 476 Mich 131 (2006); *The Federalist No. 47 James Madison*.

86. Challenges of unconstitutional delegation of legislative power is to determine whether the statute contains sufficient limits or standards. When broad power is delegated with few or no constraints, the risk of an unconstitutional delegation is at its peak.
87. The conferral of indefinite authority accords a greater accumulation of power than does the grant of temporary authority.
88. **MCL 333.2451** confers broad sweeping authority to a lone local health director to issue orders once an “imminent danger” determination is made.
89. MCL 333.2451 defines “imminent danger” as a “condition or practice which could *reasonably* be expected to cause death, disease, or serious physical harm immediately or before the imminence of the danger can be eliminated through enforcement procedures otherwise provided.”
90. MCL 333.2451 defines “person” as a governmental entity.
91. MCL 333.2451 thereby affords a local health director to make an imminent danger finding based on “**reasonableness**” and thereafter order other governmental agencies to enforce rules as promulgated by the local health director for an indefinite amount of time.
92. MCL 333.2451 provides no standards to channel the scope of a local health director’s broad authority.
93. MCL 333.2451 provides the local health officer indefinite powers.
94. The local health officer possesses the same free reign as the State Health Director did under MCL 333.2253, to exercise a substantial part of the state and local legislature authority-including police powers-for an indefinite period of time.

95. MCL 333.2451 is unconstitutional.

COUNT III
NONDELEGATION DOCTRINE
UNCONSTITUTIONAL STATUTE
MCL 333.2455

96. Plaintiff incorporates herein by reference the allegations of all preceding paragraphs of this complaint.

97. The 1963 Michigan Constitution Article 3 Section 2 mandates the separation-of-powers of the three branches: legislative, executive and judicial.

98. “The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny” *46th Circuit Court Trial Court v Crawford County*, 476 Mich 131 (2006); *The Federalist No. 47 James Madison*.

99. Challenges of unconstitutional delegation of legislative power is to determine whether the statute contains sufficient limits or standards. When broad power is delegated with few or no constraints, the risk of an unconstitutional delegation is at its peak.

100. The conferral of indefinite authority accords a greater accumulation of power than does the grant of temporary authority.

101. **MCL 333.2455** confers broad sweeping authority to a lone local health director to issue an order to **avoid**, correct, or remove, at the owners expense, a building or **condition** which violates health laws or which the local health officer or director

reasonably believes to be a nuisance, unsanitary condition, or cause of **illness**.

102. MCL 333.2455 thereby affords a local health director to issue an order on a finding if the health officer “**reasonably believes**” a **condition** is a cause of **illness**.

103. MCL 333.2455 provides no standards to channel the scope of a local health director’s broad authority.

104. MCL 333.2455 provides the local health officer indefinite powers.

105. The local health officer possesses the same free reign as the State Health Director did under MCL 333.2253, to exercise a substantial part of the state and local legislature authority-including police powers-for an indefinite period of time.

106. MCL 333.2455 is unconstitutional.

COUNT IV
NONDELEGATION DOCTRINE
UNCONSTITUTIONAL STATUTES
MCL 333.5201; MCL333.5203

107. Plaintiff incorporates herein by reference the allegations of all preceding paragraphs of this complaint.

108. The 1963 Michigan Constitution Article 3 Section 2 mandates the separation-of-powers of the three branches: legislative, executive and judicial.

109. “The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny” *46th Circuit Court Trial Court v Crawford County*, 476 Mich 131 (2006); *The Federalist No. 47 James Madison*.

110. Challenges of unconstitutional delegation of legislative power is to determine whether the statute contains sufficient limits or standards. When broad power is delegated with few or no constraints, the risk of an unconstitutional delegation is at its peak.

111. The conferral of indefinite authority accords a greater accumulation of power than does the grant of temporary authority.

112. **MCL 333.5201** confers broad sweeping authority to a lone local health director defining a “Carrier” as an individual who the department “**reasonably** believes” to harbor an infection, whether or not there is present discernible disease.

113. **MCL 333.5203** provides that upon a determination by a local health officer that an individual is a carrier, the local health officer **shall** issue a warning notice to the individual **requiring** the individual **to cooperate** with the local health department.

114. MCL 333.5203 thereby affords a local health officer with the authority to **require** an individual to **cooperate**, if the finding if the health officer “**reasonably believes**” the individual has an infection without further evidence.

115. MCL 333.5201 and MCL 333.5203 provides no standards to channel the scope of a local health director’s broad authority.

116. MCL 333.5201 and MCL 333.5203 provides the local health officer indefinite powers.

117. The local health officer possesses the same free reign as the State Health Director did under MCL 333.2253, to exercise legislature authority-including police powers-for an indefinite period of time.

118. MCL 333.5201 and MCL 333.5203 are unconstitutional.

COUNT V
VIOLATION OF THE
MICHIGAN CONSTITUTION
VESTING CLAUSES

119. Plaintiff incorporates herein by reference the allegations of all preceding paragraphs of this complaint.

120. The Michigan Constitution is an instrument of delegation. In its words “We, the people of the state of Michigan, grateful to Almighty God for the blessings of freedom” provides that “All political power is inherent in the people.”

121. The Michigan Constitution does not speak in terms of delegation and nondelegation. Instead it *vests* its powers.

122. Article VI Section 1 of the Michigan Constitution delegates *from the people* “legislative power... **vested**” in a senate and a house of representatives.

123. The Constitution bars Congress from delegating *any* legislative power. The Constitution does not speak to delegation. The Constitution uses vesting language of powers and *strict* separation of those powers.

124. Delegation should be abandoned because the Michigan Constitution speaks of **vested** rather than delegating. A congressional transfer of legislative powers violates the Constitution’s vesting of such powers in Congress and divests Congress of the power vested in it.

125. The Michigan Constitution vested powers in three branches of government; legislative, executive and judicial. This not merely conveys the powers, but makes their location mandatory: Article IV Section 1 (legislative); Article V Section 1 (executive); Article VI Section 1 (judicial); Article III Section 2;

(separation of powers) Power is “**vested**” in each branch and one branch “**shall**” not exercise power of another branch.

126. The Articles of the Michigan Constitution respectively *vest* the legislative, executive, and judicial powers each in a separate department of the government. The separation, by which each department may exercise only its own constitutional powers, is fundamental to the idea of a limited government accountable to the people. The principle is particularly noteworthy in regard to the Congress.

127. That the power assigned to each branch must remain with that branch, and may be expressed only by that branch, is central to the theory. The Governor and the courts are **vested** with the executive and judicial powers, respectively. Neither power includes a general power of lawmaking. Nor can the Congress confer such a lawmaking power by statute, for the simple reason that the Congress has no enumerated power to create executive and judicial lawmakers.

128. When the Constitution says legislative power is vested in Congress, it requires them to be there not elsewhere. That is, when legislative powers are shared with the executive, they are no longer vested merely in Congress, and the sharing thus violates the Constitution’s injunction.

129. The phrase “is vested” is decisive. It is evident the Constitution requires its powers be vested *in their respective branches* of government. Because of the plain text, **vested** and **shall**, this location is mandatory. A power that the Constitution says is *vested* in one branch cannot be located elsewhere. Nor can the body that the Constitution vests with the power be divested of it.

130. Legislative powers cannot be divested from Congress to an administrative agency or

vested elsewhere. This would contradict the Constitution's vesting of legislative powers in Congress. This *sharing* vests legislative powers contrary to where the Constitution says it is **vested**.

131. Constitutional powers cannot be "vested" anywhere but where the Constitution says it "is vested". The delegation interpretation rewrites the Constitution. Legislatures have no power to appoint deputy legislatures.

132. Congress cannot *divest* itself of what is vested in it. The Constitution does not permit Congress to be divested of the powers that the Constitution says is vested in it.

133. A transfer of power cannot accurately be considered a delegation. It is a divesting of legislative power. Once the Constitution has said that Congress *is vested* with such power, that body cannot be divested of it by a mere statute.

134. The people of the State of Michigan "vested" the legislative powers in Congress and thereby precluded congress from vesting in others, or divesting itself of, such powers.

135. The absence in the Constitution of text allowing delegation shows that delegation of legislative power is forbidden. Congress can do nothing with that power not explicitly permitted elsewhere in the Constitution, and because delegation is not mentioned, it is barred.

136. There is no proposition more clear and no principle more plain or certain, than that every act of a delegated authority is void.

137. The Constitution is a fiduciary instrument. Because the different branches of government are fiduciaries with their powers delegated to them by the people, they cannot subdelegate their authority because there is no express authority to do so in the Constitution. As agents, the powers of Congress and the Executive Branch must be

strictly construed.

138. The rule against subdelegation of legislative authority is among the clearest constitutional rules one can imagine. The Constitution does not permit such a subdelegation of legislative power to other actors. Indeed, there are few propositions of constitutional meaning as thoroughly overdetermined as the unconstitutionality of subdelegations of legislative authority.

139. When there is a pure delegation of legislative power it is irrelevant whether the standards are adequate. They are not standards related to the exercise of executive powers; they are, plainly and simply, standards for further legislation.

140. A legislative act that prescribes no rules of conduct for society, but instead empowers another entity to do so, is not only invalid-*it is not a law*.

141. **The legislature may not pass an act which is not a law in itself when passed, and has no force or authority as such, and is not to become or be a law, until it shall have been created and established by the will and act of some other person or body.**

142. A law must be complete in itself, in all of its terms and provisions when it leaves the legislative branch of government, so that by appropriate judicial review and control any action taken pursuant to such delegated authority may be kept within the defined limits of the authority conferred and within the express and implied limitations of all controlling provisions and principles of dominant law, and it is not left to an administrative authority to decide what should and what should not be deemed infringement of the law.

143. The Legislature may not delegate the power to enact a law or to declare what the law shall be; but it may enact a law, complete in itself, designed to accomplish a general

public purpose, and may expressly authorize designated officials within definitive valid limitations to provide rules and regulations for the complete operation and enforcement of the law within its expressed general purpose.

144. When the statute is couched in vague and uncertain terms or is so broad in scope that no one can say with certainty, *from the terms of the law itself*, what would be deemed an infringement of the law, it must be held unconstitutional as attempting to grant to the administrative body the power to say what the law shall be.

145. Legislative power is the power of *prescribing* rules of civil conduct. Laws are complete and positive in themselves when they pass from the legislature, and are not to become laws by the creative power of other persons.

146. Congress cannot divest itself of the powers that the Constitution vests in it. A delegated power is one that can be resumed at the will or discretion of the delegator.

147. The legislature cannot transfer the power of making laws to any other hands; for it being a delegated power from the people, they, who have it, cannot pass it over to others.

148. When, by means of the Constitution, the people established their legislature, the legislature had no authority to alter their constitution and therefore could not delegate its power.

149. As an agent of the public, Congress is prohibited from delegating powers granted to it. The nondelegation doctrine was developed out of an elementary maxim of the law of agency, *delegata potestas non potest delagari*-delegated powers cannot be further delegated.

150. The statutes are couched in vague and uncertain terms or are so broad in scope that no one can say with certainty, *from the terms of the law itself*, what would be deemed an

infringement of the law, it must be held unconstitutional as attempting to grant to the administrative body the power to say what the law shall be.

151. A legislative act that prescribes no rules of conduct for society, but instead empowers another entity to do so, is not only invalid-*it is not a law*.

152. This is a pure delegation of legislative power. It is irrelevant whether the standards are adequate. They are not standards related to the exercise of executive power; they are, plainly and simply, standards for further legislation.

153. Legislative powers cannot be divested from Congress to an administrative agency.

154. When the Constitution says legislative power is vested in Congress, it requires them to be there not elsewhere. That is, when legislative powers are shared with the Executive, they are no longer vested merely in Congress, and the sharing thus violates the Constitution's injunction.

155. MCL 333.2453; MCL 333.2451; MCL 333.2455; MCL 333.5201 and MCL333.5203 violate the Vesting Clauses of the Michigan Constitution.

156. The executive branch does not wield legislative power.

157. Delegation falsely implies an easily revocable transfer.

158. When the legislature "delegates" its powers, it always retains the authority to unilaterally revoke its delegation.

159. A statutory transfer of lawmaking power to the executive thus ties the hands of the legislature.

160. The Michigan Constitution forbids arrangements that transfer legislative power from the legislature to the executive.

161. A statute cannot reallocate authority that the Michigan Constitution itself has established

and statutes that improperly allocate powers among the branches offend the command of the relevant vesting clauses.

162. When a statute transfers legislative powers to the executive, it is “divesting” rather than “delegating”.

163. When there is a pure delegation of legislative power it is irrelevant whether the standards are adequate.

164. The Michigan Constitution does not allow the executive branch to create legislation.

165. The Constitution prohibits Congress from giving the executive branch *carte blanche* to write laws. The Constitution does not endorse this “extraconstitutional” arrangement.

166. It does not matter that the branches themselves have assented to this power transfer, because the people forbade it in the constitution to protect *their* liberty.

167. The location of this power in Congress is essential to a fundamental principle of self-government: citizens must consent, through their elected representatives, to all legal limits on their liberty.

168. It is the Right of the People when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security *July 4, 1776 Declaration of Independence.*

WHEREFORE, Plaintiff requests this Honorable Court:

- a. Order declaratory relief articulated in each of the counts above;
- b. Grant attorney fees and costs.
- c. Grant any other relief deemed to be equitable and just.

Dated: August 10, 2023


DAVID M. DELANEY PLC (P43485)
Attorney for the Iron Pig

HEALTH DEPARTMENT OF NORTHWEST MICHIGAN

In the matter of:

The Iron Pig Smokehouse

Greystone Coffee Company

ORDER TO CEASE AND DESIST FOOD SERVICE OPERATIONS

**THE IRON PIG SMOKEHOUSE (SFE0569217771)
AT 143 WEST MAIN STREET, GAYLORD, MI 49735
AND
GREYSTONE COFFEE COMPANY(SFE0569248506)
AT 127 WEST MAIN, GAYLORD, MI 49735**

Matters of concern to the health of Otsego County citizens have been brought to the attention of the Administrative Health Officer of the Health Department of Northwest Michigan, and the Administrative Health Officer having made the following determinations, issues this Order pursuant to the Michigan Public Health Code, MCL 333.2451 and 333.2453, as well as the applicable November 15, 2020 Emergency (Pandemic) Order issued by the Michigan Department of Health and Human Services (MDHHS) and the Food Law (Act 99 of 2000, as amended) referenced in the findings:

1. The Iron Pig Smokehouse remains open to the public for in-person dining and allowing gatherings of persons not of the same household.
2. The Greystone Coffee Company remains open to the public for in-person dining and allowing gatherings of persons not of the same household.

Allowing these activities violate the following sections of the MDHHS November 15, 2020 Emergency Order:

1. Section 2(a)(2), which restricts indoor gatherings and mandates that indoor gatherings are "prohibited at non-residential venues".

Now, therefore, it is hereby Ordered that:

- A) The Iron Pig Smokehouse and Greystone Coffee Company, its owner(s), employees and agents shall immediately cease all operations facilities located at 143 West Main Street, Gaylord, MI 49735 and 127 West Main Street, Gaylord, MI 49735.
- B) The businesses and persons identified in this Order shall comply with the Michigan Public Health Code.
- C) The businesses and persons identified in this Order shall comply with the Michigan Department of Health and Human Services (MDHHS) November 15, 2020 Emergency Order.
- D) Copies of this Order shall be served upon the businesses and persons identified in this Order.

- E) Copies of this Order shall be posted on all entrance doors of the Iron Pig Smokehouse and Greystone Coffee Company at 143 West Main Street, Gaylord, Mi 49735 and 127 West Main Street, Gaylord, Mi 49735 and shall remain posted and not be removed or obstructed in any way that would prevent public notice of this Order.
- F) Upon failure to promptly comply with this Order, the Health Department of Northwest Michigan may enforce this Order or seek enforcement of this Order as authorized by law, which includes, but is not limited to referring this matter to the Michigan Department of Agriculture and Rural Development (MDARD), Michigan Department of Labor and Economic Opportunity, Michigan Occupational Safety and Health Administration (MIOSHA) and Liquor Control Commission to commence proceedings revoking licenses including the applicable Food Establishment License.
- G) Upon failure to promptly comply with this Order and as authorized by law, the Health Department of Northwest Michigan Corporate Counsel will take actions to revoke any food licenses under Section 289.2113 of the Michigan Food Law (Act 99 of 2000, as amended) and may seek enforcement assistance from the Michigan Attorney Generals office and/or commence legal proceedings in Circuit or District Court to compel compliance with this Order and the Public Health Code.



Lisa Peacock
Administrative Health Officer
Health Department of Northwest Michigan