APPELLANT'S ADDENDUM

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STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF RAMSEY | SECOND JUDICIAL DISTRICT

Case Type: Other Civil

Carvin Buzzell, Jr. individually, and as owner of Timber Valley Grille, Timber Valley Grille Catering, and Rum River Barn and Vineyards, Plaintiff, v. Tim Walz, as Governor of the State of Minnesota, and as Chair of the Minnesota Executive Council, and The Minnesota Executive Council, duly organized under Minnesota Statute 9.011, Defendants.	Court File No. 62-CV-20-3623 Judge Laura Nelson

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS AND DENYING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

This matter did not come for a hearing before the undersigned and was decided based on party submissions.[1] Based upon the files, records, and proceedings herein, and the arguments of counsel, **IT IS HEREBY ORDERED**:

1. Defendants' motion to dismiss with prejudice is **GRANTED**.

2. Plaintiff's motion for partial summary judgment is **DENIED**.

3. This matter is hereby **DISMISSED WITH PREJUDICE.**

4. The attached Memorandum shall be incorporated into this Order.

LET JUDGMENT BE ENTERED ACCORDINGLY.

[1] Pursuant to the Ramsey County Chief Judge's Administrative Order of May 19, 2020—a copy of which has been filed in this matter—and in light of the current health pandemic, this motion was considered on the parties' written submissions without oral argument.

BY THE COURT:

Dated: October 8, 2020

LAURA NELSON
JUDGE OF DISTRICT COURT

MEMORANDUM

Factual and Procedural History

On June 2, 2020, Plaintiff Carvin Buzzell, Jr ("Plaintiff" or "Mr. Buzzell") filed this action against Tim Walz, in his official capacity, and the Minnesota Executive Council ("Defendants"). Plaintiff alleges that the Covid-19 related emergency Executive Orders restricting in-person use of bars, restaurants, and event centers constitute a taking and/or commandeering of those businesses. On June 22, 2020, Defendants filed a motion to dismiss, and Plaintiff filed a motion for partial summary judgment.

Plaintiff owns and operates two related businesses: the Timber Valley Grille and Catering ("Timber Valley") in Mille Lacs County, and the Rum River Barn and Vineyards ("Rum River") in Morrison County. Timber Valley is a full-service restaurant and bar, with an indoor capacity of 150 patrons in the restaurant area, and 36 customers in the bar area. The restaurant also has an outdoor patio space with seating for 50. Rum River is a converted barn and vineyard open for weddings. Plaintiff planned to use Timber Valley, in part, to drive business to Rum River. Plaintiff's business is privately owned with 2019 annual gross revenues exceeding revenues of $800,000.00. Timber Valley had approximately 25% revenue growth year over year from January 1, 2020 through March 17, 2020.

In March 2020, Minnesota, along with the rest of the nation, took steps to respond to the evolving Covid-19 pandemic. On March 13, 2020, the Governor issued Executive Order 20-01,

"Declaring a Peacetime Emergency and Coordinating Minnesota's Strategy to Protect Minnesotans from COVID-19." On March 17, 2020 Governor Walz issued Executive Order 20-04, "Providing for Temporary Closure of Bars, Restaurants, and Other Places of Public Accommodation." On April 30, 2020, Defendant Governor issued Executive Order 20-48, extended the Temporary Closure of Bars, Restaurants, and Other Places of Public Accommodation until May 17, 2020. On May 26, 2020, Governor Walz issued Executive Order 20-62 that allowed wedding venues to operate at 25 percent of normal indoor occupancy with a maximum of 250 people in a single self-contained space. On May 27, 2020, Governor Walz issued Executive Order 20-63 allowing bars and restaurants with patios to serve customers on existing patios at 25% capacity and with other restrictions.[2]

Defendants' Motion to Dismiss

Legal Standard for Motion to Dismiss

A civil claim may be dismissed for "failure to state a claim upon which relief can be granted." Minn. R. Civ. P. 12.02(e). "The reviewing court must consider only the facts alleged in the complaint, accepting those facts as true and must construe all reasonable inferences in favor of the nonmoving party." *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003) (internal citations omitted). Although factual allegations are entitled to deference, legal conclusions contained in the complaint are not binding on the Court and are not entitled to deference. *Hebert v. City of Fifty Lakes,* 744 N.W.2d 226, 235 (Minn. 2008). A district court may only dismiss a complaint for failure to state a claim on which relief may be granted, if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded. Fi*nn v. Alliance Bank*, 860 N.W.2d 638 (Minn. 2015).

Minn. R. Civ. P. 12.02 states: "[i]f, on a motion asserting the defense that the pleading fails to state a claim upon which relief can be granted, matters outside the pleading are presented to and

[2] Since the complaint was filed and the opening briefs were submitted, Governor Walz has issued subsequent Executive Orders further loosening the temporary restrictions on restaurants, bars, and other public accommodations.

not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56." "[D]ocuments that are embraced by the complaint," however, do not convert a motion to dismiss to a motion for summary judgment." *Greer v. Prof'l Fiduciary, Inc.*, 792 N.W.2d 120, 126–27 (Minn. Ct. App. 2011). Accordingly Defendants' discussion of the Executive Orders does not convert their motion to dismiss to a motion for summary judgment under Rule 56.

The Minnesota Executive Council is Not a Legal Entity Subject to Suit

Plaintiff named the Minnesota Executive Council as a defendant in this matter. The Council moves to dismiss arguing it is not a legal entity subject to suit. To sue or be sued, a party must be a legal entity. *See Galob v. Sanborn*, 160 N.W.2d 262, 265 (Minn. 1968). State entities "are creatures of statute and they have only those powers given to them by the legislature." *In re Hubbard*, 778 N.W.2d 313, 318 (Minn. 2010). The enabling statute creating a state entity must provide the ability to sue or be sued in its own name. *See Galob*, 160 N.W.2d at 265. The Minnesota Executive Council is established in Minnesota Statute chapter 9. This Chapter sets the members, duties, and powers of the council. Although the chapter addresses settlement of claims, it does not create the ability to sue or be sued in its own name.

Plaintiff argues that, although Minn. Stat. Ch. 9 does not explicitly grant the Executive Council the ability to sue or be sued that is not the relevant inquiry. Instead, Plaintiff argues that because each of the members of Executive Council can be sued in their official capacity, without specific statutory authority, the same should be true of the Executive Council itself. Plaintiff cites no authority for this extension. Notably in *Galob*, the Plaintiff initially brought suit against the individual commissioners because the law establishing the commission itself did not include the ability to sue or be sued. The Supreme Court found that the enabling legislation establishing the commission did not create it as a legal entity and did not create an ability to be sued. The Supreme Court in *Galob* certainly did not find that the ability to sue individual commissioners created an ability to sue the commission. Consistently, this Court declines Plaintiff's invitation to do the same here. The Minnesota Executive Council is dismissed from this action.

Plaintiff's Takings Claim

Plaintiff alleges that the Governor's Executive Orders constituted a categorical taking under the Minnesota Constitution by denying all economically beneficial or productive use of his land. In analyzing Plaintiff's takings claim, this Court recognizes there are two recognized tests for takings: a "categorical taking" and a "case-specific taking." Plaintiff argues that the complaint sufficiently alleges a taking under either test. We first looks to whether Plaintiff has alleged a categorical taking. A categorical taking occurs where a "regulation denies all economically beneficial or productive use of land." *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1015 (1992). But "where an owner possesses a full 'bundle' of property rights, the destruction of one 'strand' of the bundle is not a taking, because the aggregate must be viewed in its entirety." *Andrus v. Allard*, 444 U.S. 51, 65–66 (1979). Anything less than a "complete elimination of value" or a "total loss" requires a more fact-specific analysis under *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104 (1978). *See Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 330 (2002) (quoting *Lucas*, 505 U.S. at 1019–20 n.8). An analysis under *Penn Central* involves consideration of the economic impact of the regulation, the interference with reasonable investment-backed expectations, and the character of the regulation. *Penn Cent.*, 438 U.S. at 124; *see also Agins v. City of Tiburon*, 447 U.S. 255, 261-62, (1980).

The Executive Orders do not Amount to a Categorical Taking

Here, Plaintiff alleges that Timber Valley had approximately a 75% reduction in revenue in light of the Covid-19 Executive Orders. He further alleges that Rum River has suffered a significant loss of revenue, but does not provide any financials. There can be no doubt to anyone that this has been an incredibly challenging situation for Plaintiff and for many, if not most, small businesses. The impact of the Covid-19 pandemic on the economy and on individuals and small businesses has been staggering. Under the Executive Orders, however, the Plaintiff has maintained the ability to make economically beneficial use of his properties. Plaintiff has been able to offer takeout, curbside, and delivery food under the terms of the initial Executive Order. Since Executive Order 20-63 was issued on May 27, 2020, Plaintiff has also been able to offer limited outdoor dining. It is unclear from the complaint whether Plaintiff has chosen to offer takeout or delivery from his Rum River location. *See McCarthy v. Cuomo*, 2020 WL 3286530, *5 (E.D. N.Y. June 18, 2020) (finding that similar

Executive Orders in New York did not deny a club owner all economically beneficial use of his property, because he could, for example, offer take-out or delivery as an alternative business model). Under *Lucas*, there has not been a categorical taking. 505 U.S. at 1015.

The Complaint does not Sufficiently Allege a Case-Specific Taking

Under *Penn Central*, in assessing an allegation of case-specific taking, a court must review: (1) the economic impact of the regulation on the person suffering the loss; (2) the extent to which the regulation interferes with distinct investment-backed expectations; and (3) the character of the government action to assess whether the complained of action effected a taking of private property for public use. *Connolly v. Pension Benefit Guar. Corp.*, 475 U.S. 211, 224-25 (1986); *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 124 (1978); *Zeman v. City of Minneapolis*, 552 N.W.2d 548, 552 (Minn. 1996).

If this case were allowed to proceed, the Court assumes Plaintiff would produce evidence of the economic impact of the Executive Orders on his business and the extent to which they interfere with his investment-backed expectations. Plaintiff's complaint certainly meets a notice pleading standard on both elements.

In cases involving regulations aimed at protecting public health, however, it is the third *Penn Central* factor that is paramount. *See Zeman*, 552 N.W.2d at 554. Where regulations are "aimed at the protection of the public health and safety," the laws imposing such prohibitions do not result in a taking even where they have "destroyed or adversely affected recognized real property interests." *Minn. Sands, LLC*, 940 N.W.2d at 200 (quoting *Penn Cent.*, 438 U.S. at 125). Courts will not find a taking "[i]f the state regulation appears genuinely designed to prevent harm to the public and is likely to achieve that goal and the harm suffered by the property owner does not appear to be one that should be borne by the entire community." *See Zeman*, 552 N.W.2d at 554.[3] "A harm-prevention

[3] The burden of the Executive Order is spread across the food and beverage industry—this widespread burden further argues against finding a taking. *See Wensmann Realty, Inc. v. City of Eagan*, 734 N.W.2d 623, 639 (Minn. 2007).

regulation, if not a ruse for a state purpose other than protecting the public from noxious harm or illegal activity, is a powerful rationale militating against finding a taking." *Id.*

In addressing the issue of public harm, the Court turns to *Jacobson v. Commonwealth of Massachusetts,* 197 U.S. 11 (1905), for guidance. Over a century ago, the U.S. Supreme Court taught that "a community has the right to protect itself against an epidemic of disease which threatens its members." *Id. at* 27. Covid-19 is just such an epidemic. Courts across the country have cited *Jacobson,* while upholding COVID-19-related state and local restrictions against a variety of legal challenges. *See e.g. Open Our Oregon v. Brown*, 2020 WL 2542861, at *2 (D. Or. May 19, 2020); *Geller v. De Blasio*, 2020 WL 2520711 (S.D. N.Y. May 18, 2020); *Elim Romanian Pentecostal Church v. Pritzker*, 2020 WL 2517093 (7th Cir. May 16, 2020); *Spell v. Edwards*, 2020 WL 2509078 (M.D. La. May 15, 2020); *In re Abbott*, 954 F.3d 772 (5th Cir. Apr. 7, 2020); *Lighthouse Fellowship Church v. Northam*, 2020 WL 2110416 (E.D. Va. May 1, 2020); *Henry v. DeSantis*, 2020 WL 2479447 (S.D. Fla. May 14, 2020); *Calvary Chapel of Bangor v. Mills*, 2020 WL 2310913 (D. Me. May 9, 2020); *Cassell v. Snyders*, 2020 WL 2112374 (N.D. Ill. May 3, 2020); *Legacy Church, Inc. v. Kunkel*, 2020 WL 1905586 (D.N.M. Apr. 17, 2020); *Cross Culture Christian Ctr. v. Newsom*, 2020 WL 2121111 (E.D. Cal. May 5, 2020); *Gish v. Newsom*, 2020 WL 1979970 (C.D. Cal. Apr. 23, 2020); *McGhee v. City of Flagstaff*, 2020 WL 2308479 (D. Az. May 8, 2020). The Executive Orders at issue in this case were put in place to attempt to stem the tide of the Covid-19 pandemic, which is indisputably a public health concern. Under *Penn Central*, the claim for a case-specific taking fails as a matter of law.

Plaintiff's Commandeering Claim

Plaintiff alleges in Count Two that Defendants commandeered Timber Valley and Rum River by restricting his use of the properties through the Covid-19 related Executive Orders. Chapter 12 authorizes the Governor to "commandeer, for emergency management purposes . . . any motor vehicles, tools, appliances, medical supplies, or other personal property and any facilities." Minn. Stat. § 12.34, subd. 1(2) (2018). "The owner of commandeered property must be promptly paid just compensation for its use and all damages done to the property while so used for emergency management purposes." *Id.* at subd. 2. There is no dispute that Plaintiff has not been compensated

for any use of his property. Nor do there appear to be any factual disputes about the Executive Orders at issue. The disagreement is a legal one—whether the restrictions in the Executive Orders constitute "commandeering."

"Commandeer" is not defined within either statute. See Minn. Stat. § 12.03. Therefore, this Court must interpret the statutes. Statutory interpretation is a question of law. *See Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016). The purpose of all statutory interpretation is to "ascertain and effectuate the intention of the legislature." *Id.*; *see also* Minn. Stat. § 645.16. "[W]ords and phrases are construed according to the rules of grammar and according to their common and approved usage." Minn. Stat. § 645.08 (1). The plain language of a statute is the best indicator of legislative intent. *Rodriguez v. State Farm Mut. Auto. Ins. Co.*, 931 N.W.2d 632, 634 (Minn. 2019). "[T]he plain, obvious and rational meaning of a statute is always to be preferred" over any obscure, lengthy, academic endeavor. *Lynch v. Alworth-Stephens Co.*, 294 F. 190, 194 (8th Cir. 1923). Courts will only look to other interpretive tools when the statutory language is ambiguous. *See Id.* If statutory text is clear and unambiguous, the plain language of the statute controls and "shall not be disregarded under the pretext of pursuing the spirit." Minn. Stat. § 645.16.

The word "commandeer" generally means "to seize for military or police use; confiscate" or "to take arbitrarily or by force" or "to force into military service." The American Heritage Dictionary of the English Language (5th Ed. 2020). None of these definitions apply to the circumstances described in Plaintiff's complaint. Plaintiff's property was not seized or confiscated, nor was it taken or forced into military service. Plaintiff does not claim that his property was affirmatively used by the government at all.[4] Plaintiff claims that his use of his property was restricted by the Defendants in an attempt to respond to the Covid-19 pandemic, and he was therefore deprived of the economic value of that property. In essence he argues that by being restricted from acting, Plaintiff was forced to help in the government's attempt to respond to Covid-19. He asks this Court to define commandeering to include that restriction. Plaintiff provides no

[4] By contrast, the parties all agree that if the government had forced Plaintiff into operating a mess hall out of his business that would be commandeering his property under Minn. Stat. § 12.34.

case law or other legal support for his expansive proposed definition of commandeering.[5] Further, as compensation for commandeered property is tied to use of that property under the statute, adopting Plaintiff's expansive definition could result in instances of property being commandeered but not eligible for compensation. This Court declines to adopt Plaintiff's proposed definition, relying instead on the definitions from the American Heritage Dictionary. As the term commandeer does not encompass the alleged behavior in the complaint, the plain language of Minn. Stat. § 12.34 does not apply to this circumstance and Plaintiff's claim for compensation under this section fails as a matter of law.

Plaintiff's Claim for Relief under Article 1, Section 8

Article 1, Section 8 of the Minnesota Constitution states that "[e]very person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive to his person, property or character, and to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformable to the laws." Plaintiff seeks relief under this section based on his claim that his property was commandeered. For the reasons stated above, the underlying commandeering claim fails as a matter of law, therefore this claim shall also be dismissed.

Plaintiff's Motion for Partial Summary Judgment

For the reasons discussed above, this Court grants Defendants' motion to dismiss. Having granted the motion to dismiss, Plaintiff's motion for partial summary judgment is denied.

LEN

[5] Plaintiff's reliance on *Printz v. United States*, 521 U.S. 898 (1997) and *Planned Parenthood v. Rounds*, 530 F.3d 724 (8th Cir. 2008) is inapposite as neither case defines commandeering or supports his expanded understanding of the term.

STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1561

Carvin Buzzell, Jr.,
Appellant,

vs.

Tim Walz Governor of Minnesota, et al.,
Respondents.

Filed June 14, 2021
Affirmed
Cochran, Judge

Ramsey County District Court
File No. 62-CV-20-3623

Steven Anderson, Anderson Law Group PLLC, St. Paul, Minnesota (for appellant)

Keith Ellison, Attorney General, Liz Kramer, Solicitor General, Richard Dornfeld, Katherine Hinderlie, Assistant Attorneys General, St. Paul, Minnesota (for respondents)

Considered and decided by Gaïtas, Presiding Judge; Larkin, Judge; and Cochran, Judge.

SYLLABUS

The governor does not "commandeer" property within the meaning of Minn. Stat. § 12.34, subd. 1(2) (2020), of the Minnesota Emergency Management Act of 1996 by issuing executive orders during a peacetime emergency that subject a business owner to operating restrictions.

OPINION

COCHRAN, Judge

This case arises from respondent-governor's exercise of his authority under the Minnesota Emergency Management Act of 1996 (MEMA or the act), Minn. Stat. §§ 12.01-.61 (2020). Pursuant to that authority, the governor issued executive orders in the spring of 2020 to address the COVID-19 pandemic, including orders restricting business operations at bars, restaurants, and other places of public accommodation.

Appellant owns and operates two businesses affected by the executive orders. Appellant brought an action in district court alleging claims arising from the executive orders. Among other claims, appellant alleged that the governor "commandeer[ed]" his property within the meaning of Minn. Stat. § 12.34, subd. 1(2), through issuance of the executive orders, and therefore he is entitled to compensation as an "owner of commandeered property" under Minn. Stat. § 12.34, subd. 2. Ruling on cross-motions by the parties, the district court dismissed all claims and denied appellant's motion for partial summary judgment as to the commandeering claim. Appellant now challenges the district court's decision only with respect to his commandeering claim against the governor under Minn. Stat. § 12.34. Because the district court correctly determined that the governor did not "commandeer" appellant's business property within the meaning of Minn. Stat. § 12.34, and that appellant is therefore not entitled to compensation as an "owner of commandeered property" under the statute, we affirm.

FACTS

The Governor's Executive Orders

Beginning in March 2020, respondent Minnesota Governor Tim Walz issued a series of executive orders aimed at slowing the spread of the COVID-19 virus. This case pertains only to the following executive orders relied on by appellant Carvin Buzzell, Jr., in his complaint, which we refer to collectively as the COVID-19-related executive orders.[1]

On March 13, 2020, the governor issued Executive Order 20-01, declaring a peacetime emergency. Emerg. Exec. Order No. 20-01, *Declaring a Peacetime Emergency & Coordinating Minnesota's Strategy to Protect Minnesotans from COVID-19* (Mar. 13, 2020). On March 16, the governor issued Executive Order 20-04. Emerg. Exec. Order No. 20-04, *Providing for Temporary Closure of Bars, Restaurants, & Other Places of Public Accommodation* (Mar. 16, 2020). That executive order temporarily closed various businesses and facilities to the public, including restaurants, bars, and other places offering food or beverage for on-premises consumption. *Id.* Although the order prohibited onsite consumption, it allowed businesses subject to the order to continue offering delivery and take-out services. *Id.* The order stated that any person who willfully violated its mandates would be guilty of a misdemeanor offense. *Id.* The governor extended the restrictions a number of times during the spring of 2020. *See* Emerg. Exec. Order No. 20-48, *Extending & Modifying Stay at Home Order, Continuing Temporary Closure of Bars, Restaurants, &*

[1] The facts set forth are based on Buzzell's complaint. In reviewing the district court's dismissal of a complaint for failure to state a claim, we accept the facts alleged in the complaint as true. *State by Smart Growth Minneapolis v. City of Minneapolis*, 954 N.W.2d 584, 594 (Minn. 2021).

Other Places of Public Accommodation, & Allowing Additional Workers in Certain Non-Critical Sectors to Return to Safe Workplaces (Apr. 30, 2020); Emerg. Exec. Order No. 20-56, *Safely Reopening Minnesota's Economy & Ensuring Safe Non-Work Activities during the COVID-19 Peacetime Emergency* (May 13, 2020) (extending the temporary closure of bars, restaurants, and other places of public accommodation through May 31, 2020).

Beginning in May 2020, the governor began relaxing restrictions on businesses. On May 27, the governor issued Executive Order 20-63, which permitted restaurants and bars to resume outdoor dining, provided they limited outdoor occupancy to 50 people and complied with various safety precautions. Emerg. Exec. Order No. 20-63, *Continuing to Safely Reopen Minnesota's Economy & Ensure Safe Non-Work Activities during the COVID-19 Peacetime Emergency* (May 27, 2020).

The Present Action

Buzzell owns and operates two businesses: Timber Valley Grille and Catering in Mille Lacs County and Rum River Barn and Vineyards in Morrison County. Timber Valley Grille and Catering is a full-service bar, restaurant, and catering business. Buzzell operates Rum River Barn and Vineyards as a wedding venue. As places of public accommodation, both of Buzzell's businesses were subject to the COVID-19-related executive orders.

Buzzell commenced this action on June 2, 2020, against the governor and the Minnesota Executive Council. His complaint averred that he had "closed" his businesses in compliance with the COVID-19-related executive orders. He stated that the restrictions

caused his monthly gross revenue at Timber Valley Grille and Catering to decline by 94% and that Rum River Barn and Vineyards had earned no new revenue since the governor declared the peacetime emergency. He asserted that he was "unable to keep current on his monthly costs and [was] in severe risk of losing his business by July 2020." Buzzell alleged that the defendants had "commandeer[ed]" his businesses within the meaning of Minn. Stat. § 12.34, subd. 1(2), and that he therefore must be compensated under Minn. Stat. § 12.34, subd. 2, as an "owner of commandeered property." In addition to his commandeering claim, Buzzell alleged that the defendants had "taken" his property pursuant to article I, section 13 of the Minnesota Constitution, and he further asserted a claim under article I, section 8 for "[r]edress of injuries or wrongs," which was predicated on his commandeering claim.

The governor and the Minnesota Executive Council moved to dismiss all three claims under rule 12.02(e) of the Minnesota Rules of Civil Procedure for failure to state a claim upon which relief can be granted. The Minnesota Executive Council also moved to dismiss on the ground that it is not a legal entity subject to suit. Buzzell moved for partial summary judgment on his commandeering claim.

The district court granted the defendants' motion to dismiss the complaint and denied Buzzell's motion for partial summary judgment. The court also dismissed the Minnesota Executive Council as a party to the action, determining that it is not a legal entity subject to suit. The district court concluded that Buzzell had not alleged a "taking" under the Minnesota Constitution because the governor's executive orders did not deprive Buzzell of all economically beneficial use of his property and, furthermore, the executive

orders could not serve as the basis for a "taking" claim because the orders were aimed at protecting public health and safety. Relevant to this appeal, the district court also rejected as a matter of law Buzzell's argument that he was entitled to compensation as an "owner of commandeered property" under Minn. Stat. § 12.34, subd. 2. The district court concluded that the term "commandeer" as used in section 12.34 did not encompass the government actions alleged in the complaint. And, because the district court concluded that Buzzell's commandeering claim failed as a matter of law, it also dismissed his related claim under article 1, section 8 of the Minnesota Constitution and denied his motion for partial summary judgment.

Buzzell now appeals, challenging only the district court's decision regarding his commandeering claim under section 12.34 against the governor.

ISSUE

Does the governor "commandeer" property within the meaning of Minn. Stat. § 12.34, subd. 1(2), by issuing executive orders during a peacetime emergency that subject a business owner to operating restrictions?

ANALYSIS

This case requires us to interpret section 12.34 of MEMA and the meaning of the term "commandeer" as used in that statute. Before addressing the language of section 12.34 and the specific issue in this case, we provide an overview of MEMA and its purposes as background to our analysis.

The policy of MEMA is to (1) ensure that the state is adequately prepared to deal with natural disasters and other disasters of major size and destructiveness, (2) generally

protect the public peace, health, and safety, and (3) preserve the lives and property of the people of the state. Minn. Stat. § 12.02, subd. 1. To help achieve these goals, the act confers upon the governor certain emergency and disaster powers. *Id.*, subd. 1(2). These powers include the authority to declare a peacetime emergency "when an act of nature . . . endangers life and property and local government resources are inadequate to handle the situation." Minn. Stat. § 12.31, subd. 2(a). The powers also include the authority to declare a national security emergency. *Id.*, subd. 1. MEMA further grants the governor general authority to control the state's emergency management and to carry out the provisions of the act. Minn. Stat. § 12.21, subd. 1. And it provides that the governor, in performing his or her duties under the act and to effect its policy and purpose, may "make, amend, and rescind the necessary *orders* and rules to carry out the provisions" of the act. *Id.*, subd. 3(1) (emphasis added). With this background in mind, we turn to the language of section 12.34 and the specific issue before us.

Under section 12.34, subdivision 1(2), of MEMA, the governor may "commandeer, for emergency management purposes" private property. When the governor commandeers a person's property, section 12.34, subdivision 2, requires the governor to compensate the person for the government's use of that property. Section 12.34 provides the following, in relevant part:

> Subdivision 1. Emergency powers. When necessary to save life, property, or the environment during a national security emergency or during a peacetime emergency, the governor . . . may:
>
> . . . .
>
> (2) *commandeer*, for emergency management purposes as directed by any of the persons described above, any motor

> vehicles, tools, appliances, medical supplies, or other personal property and any facilities.
>
> Subd. 2. Compensation. The *owner of commandeered property* must be promptly paid just compensation for its use and all damages done to the property while so used for emergency management purposes. The governor . . . , according to the use of the property, shall make a formal order determining the amount of compensation.

(Emphasis added.)

Buzzell contends that the district court erred by concluding that he failed to state a claim for compensation under section 12.34. Buzzell argues that the governor, through the COVID-19-related executive orders, "commandeer[ed]" his property within the meaning of section 12.34, subdivision 1(2), by limiting his business operations, and therefore he is entitled to compensation as an "owner of commandeered property" under section 12.34, subdivision 2. The governor argues that he did not "commandeer" Buzzell's property because the term "commandeer," as used in the statute, does not apply to government restrictions on the use of private property but rather requires direct use of the property by the state. The answer to the question of whether the district court properly concluded that Buzzell failed to state a claim under section 12.34 depends on the meaning of the word "commandeer" as used in section 12.34. The term "commandeer" is not defined in the statute.

"We review de novo whether a complaint sets forth a legally sufficient claim for relief. We accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the nonmoving party." *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 606 (Minn. 2014) (citation omitted). We also apply a de novo standard of review to issues

involving statutory interpretation. *White Bear Lake Restoration Ass'n ex rel. State v. Minn. Dep't of Nat. Res.*, 946 N.W.2d 373, 379 (Minn. 2020).

The goal of statutory interpretation is to "ascertain and effectuate the intention of the legislature." *State by Smart Growth Minneapolis*, 954 N.W.2d at 590 (quotation omitted). "Statutory interpretation begins by assessing whether the statute's language, on its face, is ambiguous." *State v. Prigge*, 907 N.W.2d 635, 638 (Minn. 2018) (quotation omitted). A statutory term is ambiguous if it is "subject to more than one reasonable interpretation." *Rodriguez v. State Farm Mut. Auto. Ins. Co.*, 931 N.W.2d 632, 634 (Minn. 2019) (quotation omitted). In the absence of statutory definitions, courts "give words their plain and ordinary meaning." *In re Krogstad*, 958 N.W.2d 331, 334 (Minn. 2021) (quotation omitted). We may consider dictionary definitions to determine the plain and ordinary meaning of a statutory term. *State v. Alarcon*, 932 N.W.2d 641, 646 (Minn. 2019).

The supreme court has cautioned, however, that simply because a term "has more than one meaning does not mean it is ambiguous." *Krogstad*, 958 N.W.2d at 334 (quotation omitted). Rather, a word's meaning "depends on how it is being used; only if more than one meaning applies within that context does ambiguity arise." *Id.* (quotation omitted). We also "consider a statute as a whole to harmonize and give effect to all its parts." *Save Lake Calhoun v. Strommen*, 943 N.W.2d 171, 177 (Minn. 2020) (quotation omitted). "When legislative intent is clear from the statute's plain and unambiguous language, [courts] interpret the statute according to its plain meaning without resorting to other

principles of statutory interpretation." *Binkley v. Allina Health Sys.*, 877 N.W.2d 547, 550 (Minn. 2016) (quotation omitted).

We begin our statutory interpretation analysis by examining whether the term "commandeer" as used in section 12.34, subdivision 1(2), is ambiguous. Buzzell contends that the term is ambiguous and is best interpreted broadly to apply where the governor restricts the use of private property through executive orders for emergency management purposes. The governor, in contrast, argues that the term is unambiguous and requires direct, involuntary use of private property by the government.[2] The parties' disagreement focuses on whether the term "commandeer" requires direct use or whether the government can indirectly "commandeer" property through restrictions on its use.[3] We conclude that the word "commandeer" as used in section 12.34, subdivision 1(2), unambiguously requires direct, active use of private property by the government.

Because MEMA does not define "commandeer," we first consider dictionary definitions of the term to determine its meaning. *The American Heritage Dictionary* defines "commandeer" to mean "[t]o seize for military or police use; confiscate," "[t]o take arbitrarily or by force," or "[t]o force into military service." *The American Heritage Dictionary of the English Language* 370 (5th ed. 2018). Similarly, *Merriam-Webster's*

[2] In his brief, the governor offers the phrase "direct and forcible" use of private property. At oral argument, the governor's counsel clarified that the term "forcible" means "involuntary."

[3] There is no dispute that the COVID-19-related executive orders subjected business owners to involuntary operating restrictions. Accordingly, we need not reach the question of whether the term "commandeer" as used in section 12.34, subdivision 1(2), requires "involuntary" use of property in addition to direct use.

Collegiate Dictionary defines the word "commandeer" as: "to compel to perform military service," "to seize for military purposes," or "to take arbitrary or forcible possession of." *Merriam-Webster's Collegiate Dictionary* 248 (11th ed. 2014). These definitions suggest that an essential element of the term "commandeer" is *direct*, *active* use of private property by the government.

The interpretation that commandeering requires the government to directly and actively use the private property in question is consistent with section 12.34 as a whole. First, subdivision 1(2) of section 12.34 identifies the types of property that can be subject to commandeering for emergency management purposes: "motor vehicles, tools, appliances, medical supplies, or other personal property and any facilities." These are all items that can be physically appropriated and directly deployed by the government as part of an emergency response. In other words, these are all items that can be directly and actively used by the government. Second, subdivision 2 provides that "[t]he owner of commandeered property must be promptly paid just compensation for its *use* and all damages done to the property while so used for emergency management purposes." Minn. Stat. § 12.34, subd. 2 (emphasis added). This provision requires the government to compensate a property owner for its "use" of commandeered property. And the provision contemplates that commandeered property will be "use[d]" in situations where the property could be damaged. Within the context of subdivision 2, the only reasonable interpretation of "use" is direct, active use. Moreover, subdivision 2 requires compensation to be given for "use" of "commandeered property," but it does not require the state to undergo an independent determination of whether the property has in fact been "use[d]." *See id.* This

suggests that the government's direct, active use of the property is a fundamental component of commandeering—that is, for the government to have "commandeer[ed]" a person's property, it must have directly and actively used that property.

Considering common dictionary definitions and the use of the word "commandeer" in the statute as a whole, it is reasonable to interpret the term "commandeer" as used in section 12.34, subdivision 1(2), to require direct, active use of a person's private property by the government for emergency management purposes. Such direct, active use would occur, for instance, if the government were to take control of a business owner's refrigerated trucks to store vials of vaccine for a mobile vaccine site. In contrast, merely placing restrictions on how private parties may use their property does not constitute direct, active use and therefore does not "commandeer" property under this interpretation of the term.

Buzzell suggests that there is another reasonable interpretation of the term "commandeer" as used in section 12.34, subdivision 1(2). He contends that it *is* reasonable to interpret the term "commandeer" to include circumstances where the governor restricts business operations through an executive order for emergency management purposes. He relies not on the dictionary definitions discussed above to support his argument but instead on an alternative definition of "commandeer" found in Oxford's online dictionary. Oxford's online dictionary defines "commandeer" as follows:

> 1. Officially take possession or control of (something), especially for military purposes.
>
> 1.1 Take possession of (something) without authority.
>
> 1.2 Enlist (someone) to help in a task, typically against the person's will.

Commandeer, Oxford U. Press, https://www.lexico.com/en/definition/commandeer (last visited June 1, 2021). Buzzell relies on the last listed definition—"[e]nlist (someone) to help in a task, typically against the person's will." He argues this definition "fits" the context of the statute better than other dictionary definitions, including the first definition of "commandeer" in Oxford's online dictionary—to "[o]fficially take possession or control of (something)." Interpreting the term "commandeer" to mean to "[e]nlist (someone) to help in a task," he argues that the governor "enlist[ed]" his help in combatting the COVID-19 pandemic when the governor placed restrictions on the use of his business property through executive orders and thereby "commandeer[ed]" his business property for use by the government. He further argues that the structure of section 12.34 supports his proposed interpretation of "commandeer" because the section lists several "tasks"—saving life, property, or the environment during a peacetime emergency—then confers authority to commandeer. We are not persuaded.

Buzzell's alternative interpretation of "commandeer" is not reasonable when considered in the context of section 12.34. Foremost, as discussed above, the plain language of section 12.34, subdivision 2, shows that the government must directly and actively "use" the property in question in order for the government's actions to constitute commandeering. Buzzell's argument that "commandeer" merely means "[e]nlist (someone) to help in a task" contradicts this plain language and fails to give effect to section 12.34, subdivision 2. *Save Lake Calhoun*, 943 N.W.2d at 177 (explaining that a goal of

statutory interpretation is "to harmonize and give effect to all its parts" (quotation omitted)).[4]

Buzzell also contends that the structure of Minn. Stat. § 9.061 (2020) supports his proposed definition. Section 9.061 governs the Minnesota Executive Council's authority in an emergency. Subdivision 1 provides that the Minnesota Executive Council may, for instance, "take such measures as are necessary to prevent an impending disaster that threatens to destroy life or property." Minn. Stat. § 9.061, subd. 1. The subdivision further states:

> In these emergencies, the Executive Council may, when necessary, commandeer and use any property, vehicle, means of transportation, means of communication, or public service. The owner of any property taken shall be given a receipt for the property and be paid for its use and or any damages inflicted upon the property while in the service of the Executive Council.

Id. Buzzell contends that because this section "lists several tasks, then confers authority to commandeer," it supports his proposed "enlist to help in a task" definition. But, just like section 12.34, section 9.061 makes the government's direct use of the property a fundamental component of commandeering. It similarly refers to "use" and potential "damages" to the property, and it further contemplates that commandeered property has been "taken." Section 9.061 does not support Buzzell's interpretation of the word

[4] We note that Buzzell's argument that the governor enlisted him to help in a task more closely aligns with the meaning of subdivision 1(1) of section 12.34. Subdivision 1(1) permits the governor to "require any person . . . to perform services for emergency management purposes." Buzzell, however, does not raise an argument under subdivision 1(1) and that provision does not contain the term "commandeer" or require compensation for services performed. *See* Minn. Stat. § 12.34, subd. 1(1).

"commandeer" but rather supports interpreting "commandeer" to require direct, active use of the property as discussed above.

Lastly, Buzzell argues that *Printz v. United States*, 521 U.S. 898, 117 S. Ct. 2365 (1997), supports his alternative interpretation. We are not persuaded. In *Printz*, the United States Supreme Court invalidated as unconstitutional certain federal statutory provisions that required state and local law enforcement officers to perform background checks on prospective handgun purchasers. 521 U.S. at 902, 117 S. Ct. at 2368. In its analysis, the Court described the provisions and other federal regulatory schemes that compel actions by state actors as "[f]ederal commandeering of state governments." *Id.* at 925, 117 S Ct. at 2379. *Printz* did not involve interpretation of the term "commandeer" as used in a statute or otherwise purport to define the term, and it did not involve analogous facts to the present case. *Printz* does not support Buzzell's alternative interpretation of the term "commandeer" as used in section 12.34, subdivision 1(2).

In sum, the only reasonable interpretation of the term "commandeer" in section 12.34, subdivision 1(2), requires direct, active use of private property by the government for emergency management purposes. The term does not apply in situations in which the governor has placed a restriction on a private party's own ability to use his or her property. This interpretation is the only interpretation that comports with the language of the statute as a whole.

Having determined that the term "commandeer" as used in section 12.34, subdivision 1(2), requires direct, active use of private property by the government, we next consider whether Buzzell's complaint sets forth a legally sufficient claim under that statute.

In his complaint, Buzzell does not allege that the governor directly used his property or that the governor authorized any state agency to directly use his property. Instead, Buzzell alleges that the governor "commandeer[ed]" his property within the meaning of section 12.34 through issuance of the COVID-19-related executive orders that restricted his use of his business property. On that basis, he contends that he is entitled to relief as "an owner of commandeered property" under section 12.34, subdivision 2. Because Buzzell does not allege that the governor authorized direct, active use of his property, but instead alleges that the governor limited Buzzell's own use of his property, Buzzell has not alleged that the governor "commandeer[ed]" his property within the meaning of section 12.34. Buzzell therefore has failed to state a legally sufficient claim for compensation under section 12.34, subdivision 2, as an "owner of commandeered property."

We recognize that the governor's COVID-19-related executive orders have imposed a significant burden on many Minnesota business owners. However, MEMA does not provide compensation for a business owner unless the government has, in relevant part, directly and actively used property owned by the business for emergency management purposes. The language of section 12.34 indicates the legislature's intent to limit the meaning of the term "commandeer," and it is not our role to expand that definition. *See Beardsley v. Garcia*, 753 N.W.2d 735, 740 (Minn. 2008) (stating that "[t]he prerogative of amending a statute . . . belongs to the legislature, not to th[e] court[s]").

DECISION

We conclude that the term "commandeer" as used in Minn. Stat. § 12.34, subd. 1(2), requires direct, active use of private property by the government for emergency

management purposes. The term does not apply in circumstances such as this one, where the government places restrictions on a person's own use of private property. For that reason, a business owner subject to operating restrictions under executive orders issued by the governor during a peacetime emergency is not, on that basis, an "owner of commandeered property" entitled to compensation under Minn. Stat. § 12.34, subd. 2. We therefore affirm the district court's dismissal of Buzzell's claim for compensation as an "owner of commandeered property" under Minn. Stat. § 12.34, subd. 2. And, because we conclude that the district court properly dismissed Buzzell's commandeering claim, we likewise affirm the district court's denial of Buzzell's motion for partial summary judgment on the same claim.

Affirmed.