

**IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE**

PERRY ALLEN and )  
ROLLER EXPRESS, INC., )  
 )  
Plaintiffs, )  
 )  
v. ) Docket No. \_\_\_\_\_  
 )  
WILLIAM B. LEE, in his official capacity )  
as the Governor for the State of Tennessee, )  
TRE HARGETT, in his official capacity as the )  
Secretary of State for the State of Tennessee, and )  
HERBERT H. SLATERY III, in his official )  
capacity as the Attorney General for the )  
State of Tennessee )  
 )  
Defendants. )

**COMPLAINT FOR INJUNCTIVE RELIEF  
AND DECLARATORY JUDGMENT**

COME the Plaintiffs, and sue the Defendants based on the following facts and causes of action:

**I. PARTIES**

1. Perry Allen is a citizen and resident of Tennessee, who conducts his business from 1215 E. Tri County Blvd., Oliver Springs, TN 37840. An affidavit supporting this Complaint and the request for injunctive relief is attached as Exhibit 1.

2. Perry Allen (“Allen”) is an owner of a roller skating business named “Roll Arena”, located at 2801 E. Broadway Ave., Maryville, TN 37804.

3. Roller Express, Inc. (“Roller Express”) is an active corporation, authorized to do business in the State of Tennessee by the Tennessee Secretary of State, control number 98076. The primary asset of Roller Express, Inc. is real property improved by a roller skating rink,

located at 1215 E. Tri County Blvd., Oliver Springs, TN 37840. Plaintiff Allen is a stockholder in Roller Express, Inc., and is authorized to serve as its corporate representative.

4. Defendant William B. Lee is the Governor of the State of Tennessee. Governor Lee is sued solely in his official capacity. His official address is State Capitol, First Floor, Nashville, TN 37243.

5. The source of authority for any powers and duties of the office of the Governor for the State of Tennessee are found primarily in Article III of the Tennessee Constitution, but also in the following articles of the Tennessee Constitution: Article II, §8 & §18; Article V, §4; Article VI, §3 & §11; Article VII, § 5; and Article VIII, §2.

6. Defendant Tre Hargett is the Secretary of State for the State of Tennessee. Secretary Hargett is sued solely in his official capacity. His official address is State Capitol, Nashville, TN 37243.

7. The Office of Secretary of State for the State of Tennessee is enabled by Art. II § 17 of the Tennessee Constitution, which contains a description of the constitutional duties of the Secretary of State.

8. Defendant Herbert H. Slatery III is the Attorney General for the State of Tennessee. Secretary Slatery is sued solely in his official capacity. His official address is 425 Fifth Ave North Nashville, TN 37243.

9. Defendant Herbert H. Slatery is joined in this action pursuant to TCA §29-14-107, TRCP 24.04, and relevant case law. E.g., Waters v. Farr, 291 S.W.3d 873, 880 FN.8 (Tenn. 2009).

**II. COUNT I – DECLARATORY JUDGMENT; EXECUTIVE ORDER NOS. 17, 21, 22,  
23, 27, AND NOW 30 ARE UNENFORCEABLE AGAINST PLAINTIFFS AND THEIR  
CUSTOMERS, AND THE STATUTORY AUTHORITY FOR THESE EXECUTIVE  
ORDERS ARE INVALID AND UNCONSTITUTIONAL  
AS APPLIED TO PLAINTIFFS AND THEIR CUSTOMERS**

**A. Standing**

10. Plaintiffs are proceeding under TCA §29-14-103, which allows a plaintiff whose rights are affected by a statute to have the validity of the statute be tested via a declaratory judgment action, and obtain a declaration of rights, status or other legal relations thereunder.

11. On March 30, 2020, Defendant Governor Lee issued Executive Order No. 21 as a response to a perceived threat of pandemic from Wuhan Covid-19, declaring, inter alia, that entertainment and recreational gathering venues, which include roller skating rinks, shall not be open to members or the public.

12. Executive Order No. 21 extended and expanded Executive Order No. 17, and they were both made effective through April 14, 2020. Additionally, Defendant Gov. Lee issued a letter to the law enforcement community in Tennessee, attached as Exhibit 2, authorizing them to resort to enforcement measures if Tennesseans refuse to comply with these Executive Orders. The violation of any Executive Order is a class A misdemeanor.

13. On March 30, 2020, Defendant Governor Lee also issued Executive Order No. 22, which expanded the scope of Executive Order Nos. 17 and 21, inter alia, by defining businesses as essential or nonessential.

14. Executive Order No. 22 reiterated that Executive Order Nos. 17 and 21 were still in effect, and therefore roller skating rinks were prohibited from opening to the public or members.

15. Executive Order No. 23, issued on April 2, 2020 by Defendant Governor Lee, amended the scope of Executive Order No. 22 with regard to Tennesseans, requiring them to stay at home except for engaging in Essential Activity or Essential Services.

16. On April 13, 2020, Defendant Governor Lee issued Executive Order No. 27, which extended the implementation of Executive Order Nos. 17, 21, 22, and 23 until April 30, 2020. On April 28, 2020, Defendant Governor Lee issued Executive Order No. 30, which repealed and superseded Executive Order Nos. 17, 21, 22, 23, and 27, but included the same moratorium against operation of roller skating rinks, which extends to May 29, 2020.

17. Executive Order Nos. 17, 21, 22, 23, 27, and 30 were attested and published by Defendant Secretary Hargett.

18. Defendant's Governor Lee and Secretary Hargett claim the authority to issue these Executive Orders and make them binding upon Tennesseans and carry the force and weight of law emanates from TCA §58-2-107.

19. Beginning on March 30, 2020, and in effect at the time Plaintiffs have signed this lawsuit, Plaintiffs have been prohibited from operating their roller skating rink business due to the issuance and publication of Executive Order Nos. 17, 21, 22, 27, and 30.

20. Beginning on April 2, 2020, Tennesseans were required to stay at home except when engaging in Essential Activity or Essential Services due to the issuance and publication of Executive Order No. 23. Tennesseans are still prohibited from patronizing roller skating rinks due to Executive Order No. 30.

21. Because a roller skating rink is not considered Essential Activity nor providing an Essential Service, even if Executive Order Nos. 17 and 21 had not been operative, plaintiffs' roller skating rinks would have been effectively prohibited from operating because no

Tennessean could have legally patronized Plaintiff's' roller skating rinks, due to Executive Order 23. Tennesseans continue to be prohibited from patronizing, due to Order No. 30.

22. Plaintiffs have suffered a combined loss of \$135,000 in revenue because they were prohibited from being open to the public or members either directly by Executive orders No. 17, 21, 22, 27, and 30, or indirectly by EO Nos. 23 and 30, yet Plaintiffs have had to pay approximately \$20,000 in expenses, such as insurance, utilities, taxes, and payment of staff.

23. Plaintiffs have an interest in the construction and validity of TCA §58-2-107, because the statute is the source of authority for EO Nos. 17, 21, 22, 23, 27, and 30.

24. Plaintiffs have an interest in the construction and validity of TCA §58-2-105, because the statute contends that any Tennessee governor, including Defendant Gov. Lee, has the power to proclaim martial law, and thus commandeer private property and control the conduct of civilians, the movement and cessation of movement of pedestrian and vehicular traffic prior to, during, and subsequent to drills and actual or threatened emergencies, the calling of public meetings and gatherings, and the evacuation and reception of civilian population, etc., as described in TCA §58-2-107(e)(4),(5),(7),(11).

25. Plaintiffs aver that TCA §58-2-107 as applied to the Plaintiffs does not give authority to Defendant Gov. Lee to prohibit otherwise lawfully operating businesses from operating, and in any event is unconstitutional because it violates the separation of powers doctrine and for other reasons more specifically pleaded hereinbelow.

26. Plaintiffs aver that to the extent that TCA §58-2-105 is construed to give any powers whatsoever to Defendant Gov. Lee to declare martial law or have unrestricted power to dispose of Plaintiffs, their liberties, or their property, or their customers and their customers' liberties, the statute violates the Tennessee Constitution.

27. Executive Order Nos. 17, 21, 22, 23, 27 and 30 are likewise invalid and unenforceable against Plaintiffs, because the underlying source of authority for these orders is invalid, and for other reasons more particularly stated below.

## **B. Allegations**

28. Article II, Sec. 1 of the Tennessee Constitution provides that the Tennessee government consists of three branches, legislative, executive, and judicial.

29. Article II, Sec. 2 of the Tennessee Constitution provides that person or persons belonging to one branch shall exercise the powers of the other branch, except as otherwise laid out in the Tennessee Constitution.

30. Article II of the Tennessee Constitution grants the legislative power, i.e. the power of making law, to the legislature, which is the General Assembly, as demonstrated in Sections 3, 17 – 20.

31. A Tennessee governor, and Defendant Gov. Lee in particular, is the supreme executive power of the state, and his duties, inter alia, are to execute the valid laws of the state of Tennessee, as described in Article III, Sections 1 and 10 of the Tennessee Constitution.

32. The only role that Defendant Governor Lee plays in the making of law is the power of approval or veto, discussed in Article II, Sec. 18 and Article III, Sec. 18, however, a veto may be overcome by the General Assembly.

33. In legislating TCA §58-2-107, the General Assembly purported to give any Tennessee Governor, including Defendant Governor Lee, the power to enact new law, amend existing law, suspend existing law, or repeal existing law through executive orders, proclamations, and rules by virtue of TCA §58-2-107(a), so long as an emergency has been declared pursuant to TCA §58-2-107(b).

34. The delegation to the Tennessee governor, including Defendant Gov. Lee, of lawmaking power via TCA §58-2-107 is a violation of the separation of powers doctrine described in Article II, Sections 1 and 2 of the Tennessee Constitution.

35. The General Assembly unconstitutionally delegated lawmaking power to a Tennessee governor, including Defendant Gov. Lee via TCA §58-2-107(a), and therefore TCA §58-2-107(a) is invalid as applied to Plaintiffs.

36. Executive Order Nos. 17, 21, 22, 23, 27, and 30 promulgated by Defendant Gov. Lee and published by Defendant Sec. Hargett, are unenforceable against plaintiffs, because Defendant Gov. Lee has no power under the Tennessee Constitution to proclaim, edict, decree or otherwise make law without the General Assembly first legislating said law, even under emergency circumstances.

37. The only powers granted to a Tennessee governor, including Defendant Gov. Lee, under the Tennessee Constitution for extraordinary occasions, i.e., emergencies, are 1) he may convene the General Assembly by proclamation, as provided by Article III, section 9, and 2) he may also call into service the Militia in case of rebellion or invasion, but only when the General Assembly declares that the public safety requires it.

38. The General Assembly passed no law declaring that Plaintiffs' roller skating rinks should be closed to the public or members beginning on March 30, 2020, or any time before or thereafter.

39. At the time of the signing of this complaint, there is no currently valid law that prohibits Plaintiffs from operating their roller skating rinks.

40. Additionally, pursuant to Tennessee Constitution Article I, Sec. 25, a Tennessee Governor has no unrestricted power to dispose of the persons, liberties, or property of Plaintiffs.

41. Therefore, any of the Executive Orders, even if valid law, that purport to limit the circumstances under which Plaintiffs or their customers can travel outside their home, operate businesses open to the public, or patronize certain businesses, whether essential or nonessential as defined by defendant Gov. Lee, violate the prohibition on martial law found in Article 1, Sec. 25.

42. Plaintiffs aver that although civil liberties for individuals have been curtailed in times of pandemic, the power to quarantine individually does not translate to blanket curtailing the civil liberties of all, and restricting the travel of all Tennesseans and prohibiting the operation of all businesses within the State of Tennessee of a certain category or categories is tantamount to martial law.

43. To the extent that Defendant Gov. Lee has the ability to enforce existing valid laws and thus the power to regulate, the power to regulate does not fairly mean the power to blanketly prohibit. Andrews v. State, 50 Tenn. 165, 181 (Tenn. 1871).

44. Even if Executive Order Nos. 17, 21, 22, 23, 27, and 30 were otherwise valid, they are overbroad and not narrowly tailored, and unconstitutionally implement martial law, as Tennessee Constitution Article I, Sec. 25 states, “. . . martial law, in the sense of the unrestricted power of military officers, or others, to dispose of the persons, liberties or property of the citizen, is inconsistent with the principles of free government, and is not confided to any department of the government of this state.” (Emphasis added).

45. As provided by Tennessee Constitution Article XI, Section 16, which states, “The declaration of rights hereto prefixed is declared to be a part of the Constitution of the state, and shall never be violated on any pretense whatever. And to guard against transgression of the high powers we have delegated, we declare that everything in the bill of rights contained, is excepted

out of the general powers of the government, and shall forever remain inviolate,” the rights acknowledged in the Declaration of Rights appearing in Tennessee Constitution Article I eclipse any police powers afforded to the state of Tennessee, and Defendant Gov. Lee in particular.

46. Therefore, To the extent that TCA §58-2-107(e)(4),(5),(7),(11) are the statutory bases for Executive Order Nos. 17, 21, 22, 23, 27, and 30 these statutes as applied to Plaintiffs and their customers violate the constitutional proscription against martial law.

**III. COUNT II – DECLARATORY JUDGMENT; EXECUTIVE ORDER NOS. 17, 21, 22, 23, AND 27 ARE UNENFORCEABLE AS LAW BECAUSE TCA §58-2-107(a)(2) IS FACIALLY UNCONSTITUTIONAL**

47. TCA §58-2-107(a)(2) purports to grant a Tennessee Governor, including Defendant Gov. Lee, any successor to the Governor, or any delegatee of the Governor, acting under the auspices of the executive department of the State of Tennessee, the power to make executive orders, proclamations, and rules that carry the force and effect of law, in times of emergency, without any action by the General Assembly to first authorize through legislation the particular executive order, proclamation, or rule.

48. Under the Tennessee Constitution, there are no circumstances under which the Governor, any successor to the Governor, or any delegatee of the Governor, acting under the auspices of the executive department of the State of Tennessee, can issue executive orders, proclamations, and rules, without any action by the General Assembly to first authorize through legislation the particular executive order, proclamation, or rule.

49. TCA §58-2-107(a)(2) violates the separation of powers doctrine articulated in Tennessee Constitution, Article II, Sections 1-2.

50. TCA §58-2-107(a)(2) is facially unconstitutional, and therefore invalid.

#### **IV. COUNT III — INJUNCTIVE RELIEF**

51. Plaintiffs have suffered a distinct injury since March 30, 2020, not suffered by all other Tennessee citizens – Plaintiffs have been forced into cessation of their business by virtue of Executive Order Nos. 17, 21, 22, 23, 27, and 30.

52. As pleaded hereinabove, Plaintiffs have lost significant revenue and therefore profits as a result of these Executive Orders, and will continue to lose significant revenue and therefore profits, so long as these Executive Orders, or any like them, continue to be in effect.

53. Defendant Gov. Lee inflicted this injury by issuing Executive Order Nos. 17, 21, 22, 23, 27, and 30.

54. If Executive Order Nos. 17, 21, 22, 23, 27, and 30 are unenforceable, due to the declaration of invalidity of the statutes authorizing these Executive Orders, then Plaintiffs will be able to reopen their businesses without threat of prosecution, albeit unlawful, for operating.

55. Plaintiffs have a liberty interest to conduct their businesses under the Tennessee Constitution, Article I, Sections 7, 8, 17, 21, 25, and 33, as well as the 14<sup>th</sup> Amendment of the United States Constitution.

56. In addition to the loss of revenue that Plaintiffs suffered by virtue of these Executive Orders, Executive Order Nos. 17, 21, 22, 23, 27, and 30 encroach upon Plaintiff's liberty interests pleaded hereinabove, and this encroachment in and of itself is immediate and irreparable injury. Elrod v. Burns, 427 U.S. 347, 373-374 (1976).

57. Plaintiffs aver that they will continue to be subject to immediate and irreparable injury before a full hearing can be held in this matter, or before Defendants can be heard in this matter.

58. Defendants will suffer no financial prejudice as a result of a temporary restraining order issued against them, and therefore Plaintiff's aver that the cost bond for issuance of a temporary restraining order should be nominal, no more than \$1000.

59. Plaintiffs aver that this court should issue a Temporary Restraining Order against Defendants, restraining the issuance of any further Executive Orders reliant upon TCA §58-2-107 for authority, that affect Plaintiffs' liberties to travel, operate their businesses, or patronize other businesses currently prohibited from operating, or Plaintiffs' customers' liberties to travel and patronize plaintiffs' businesses, and restrain the publication of any such further Executive Orders; except that in the discretion of Defendants, Defendant Governor Lee may issue an Executive Order revoking Executive Order No. 30.

#### **V. MOOTNESS DOCTRINE INAPPLICABLE**

60. Executive Order Nos. 17, 21, 22, 23, 27, were superseded and repealed by Executive Order No. 30 on April 28, 2020, and Executive Order No. 30 is set to expire on May 29, 2020.

61. Whether Executive Order No. 30 expires, is revised as provided in Section 18, or repealed before this litigation is concluded, this court should continue to entertain this litigation pursuant to exceptions to the mootness doctrine for the following reasons: 1) this issue is of great public importance; 2) the challenged conduct of issuing Executive Orders based upon TCA §58-2-107 is capable of repetition and of such duration that these actions will evade judicial review; 3) although this action does not seek to reach to the State's treasury, nevertheless, collateral consequences of lost revenue and encroachment upon civil liberties remains.

62. This issue is of great public importance, because Defendant Governor Lee has suppressed the civil liberties of Plaintiffs, their customers, and Tennesseans in general, in a manner unprecedented since implementation of the current Tennessee Constitution.

63. Although the scope of actions taken by Defendant Governor Lee are unprecedented, the duration of these Executive Orders, approximately 15-30 days at a time, is too short to allow for a litigation to take place under current procedural rules, even if a lawsuit was ready and served on the first day of the Executive Order, because procedural rules allow 30 days to respond to a complaint. The challenged conduct is capable of repetition, particularly in light of anticipated additional waves of Wuhan Covid-19. As further example, Defendant Lee repealed EO Nos. 17, 21, 22, 23, and 27 several hours after Plaintiffs gave notice of this lawsuit by facsimile on April 28, 2020, when this lawsuit was initially predicated on only those EOs.

64. As stated above, a violation of constitutional liberties, apart from the loss of revenue, is in and of itself an irreparable injury, and therefore collateral consequences remain, even if Defendant Governor Lee ceases to violate plaintiffs' constitutional rights with Executive Orders.

## **VI. SUBJECT MATTER JURISDICTION, PERSONAL JURISDICTION, VENUE**

65 Davidson County Chancery Court has subject matter jurisdiction pursuant to TCA §16-11-101, 102, as well as TCA §29-1-101, et seq.

66. Furthermore, the propriety of challenging the constitutionality of a statute by a declaratory judgment action in Chancery Court is recognized in Waters v. Farr, 291 SW3d 873, 903 (Tenn. 2009).

67 Plaintiffs do not seek in this case to reach to the state, its treasury, funds or property, and therefore the doctrine of sovereign immunity does not lie in this case.

68 Davidson County Chancery Court has personal jurisdiction over all three defendants, as they are residents of Tennessee and hold office with the state of Tennessee.

69. Davidson County Chancery Court is the proper venue, as all three defendants conduct their business within Davidson County.

WHEREFORE, Plaintiffs pray for the following relief:

1. This court would issue process and the Defendants be served with the complaint.  
2. This court would enter the Temporary Restraining Order submitted contemporaneous with this complaint, and have the same issued as process to be served upon the Defendants.

3. This court would entertain a hearing on a Temporary Injunction, extending the relief granted in the Temporary Restraining Order until a final hearing, and include the findings 1) that Executive Order No. 30 is unenforceable and does not carry the force and effect of law; 2) that TCA §58-2-107(a)(2) is facially unconstitutional and unconstitutional as applied to Plaintiffs and their customers, and therefore is invalid and cannot be the basis for Executive Orders; 3) that TCA §58-2-107(e)(4),(5),(7),(11) is unconstitutional as applied to Plaintiffs and their customers, and therefore is invalid cannot be the basis for Executive Orders affecting Plaintiffs and their customers; that any construction of TCA §58-2-105 that would extend the power of Defendant Governor Lee to declare any martial law is invalid.

4. This court would hold a final hearing and in a final judgment, grant judgment to Plaintiffs including findings, inter alia, set out in prayer for relief paragraph 3, hereinabove.

5. This court would tax costs to the Defendants pursuant to TCA §29-14-111.

6. Grant such other relief pursuant to TCA § 29-14-110, and such other, good, and further relief to which this court finds Plaintiffs may be entitled.

THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF

Respectfully submitted this 29 day of April, 2020.

Roller Express, Inc. by:

---

Perry Allen, President

---

Perry Allen

/s W. Andrew Fox  
W. Andrew Fox, BPR #017356  
Attorney for Plaintiffs  
Gilbert & Fox Law Firm  
625 S. Gay Street, Ste. 540  
Knoxville, TN 37902  
(865)525-8800  
andy@andrewfoxlaw.com

### **COST BOND**

The Cost Bond is uploaded separately from the complaint, pursuant to Local E-filing rules.

Roller Express, Inc. by:

---

Perry Allen, President

---

Perry Allen

/s W. Andrew Fox  
W. ANDREW FOX