



## LITIGATION AGAINST GOVERNOR WALZ ON BEHALF OF BAR/RESTAURANT OWNERS

### FREQUENTLY ASKED QUESTIONS

Thank you for your interest in participating in the litigation Chestnut Cambronne PA is pursuing against Governor Walz in relation to his recent Executive Orders which ordered Minnesota bars and restaurants to close. Following is some basic information about this matter.

#### **1. Who are we?**

Chestnut Cambronne is a Minneapolis-based law firm with a large practice in the food and beverage industry, representing several well known bars, restaurants, breweries and distilleries. The firm also is well-regarded for its civil litigation practice.

Our firm had previously been engaged to prepare and file a lawsuit against Governor Walz this past spring. When the Governor re-opened bars and restaurants in Minnesota, we did not proceed further with the litigation.

#### **2. Who do we represent?**

The plaintiffs in this litigation are several Minnesota bar and restaurant owners of various sizes and revenues.

#### **3. Where is the lawsuit being filed?**

We will be filing in state court. Lawsuits against the Governor must be filed with the Ramsey County District Court (St. Paul).

#### **4. What are the claims being made against Governor Walz?**

The basis of our complaint is that the Governor violated the equal protection provisions of the Minnesota Constitution by treating bars/restaurants differently than other retail businesses and has exceeded the authority granted to him under the emergency powers statute.

**5. What is the relief being sought?**

We intend to file a motion for injunctive relief to enjoin further enforcement of Governor Walz's closure order.

We are not, however, challenging the other restrictions that bars and restaurants were required to follow prior to the most-recent closure order, such as wearing masks when not seated, social distancing, restricting bar seating and/or use of plexiglass shields at the bar area.

**6. Who are the plaintiffs?**

The Willy McCoys chain of bar/restaurants and Keys Café & Bakery are the best known plaintiffs thus far. Also included are a variety of bar/restaurant owners from throughout the State of Minnesota (including Roseau, Moorhead, Albertville and St. Joseph), and we continue to add new owners to the suit.

**7. When will the lawsuit be filed?**

We anticipate the complaint to be served and filed early in the week of December 21. It is likely, however, that a hearing on an injunction would not be held prior to the Christmas holiday, and we therefore intend to file the injunction papers within the following week.

**8. How much will this cost?**

We estimate \$20,000.00 for the initial phase of the litigation in district court, with appeals (if needed) to run approximately \$25,000.00 per appeal (Court of Appeals and then Minnesota Supreme Court). Willy McCoys has already contributed a substantial portion of the \$20,000.00 and we are asking each party to contribute \$1,000.00.

**9. How is this lawsuit different from the other lawsuits which have been filed?**

Every court that has heard a challenge to Governor Walz' authority pursuant to Minn. Stat. § 12.31 has held that COVID-19 qualifies as the kind of public health crisis that the United States Supreme Court contemplated in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905). Under the *Jacobson* standard, state action is susceptible to constitutional challenge only if the state action has "no real or substantial relation to the object of protecting the public health, safety, or morals" or "is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law."

During the previous shutdown of bars and restaurants for indoor dining from March 16, 2020 – June 1, 2020, given that these businesses were ordered to close at the outset of the pandemic, challenging Governor Walz’s actions as not bearing substantial relation to the public health was near impossible. Now, however, we have had five months of data when bars/restaurants were open in Minnesota which we can compare to the data following the closure order. This data shows the following:

- The Minnesota Department of Health (“MDH”) has shifted its metrics from “Confirmed Cases” vs. “Cases From Outbreaks.”
- MDH’s Contact Tracing Questions are skewed to justify Governor Walz’ Closure Order.
- Cases were declining in Minnesota prior to the Closure Order.
- Minnesota cases have declined in unison with states such as South Dakota, where no mitigation efforts have been imposed
- The most significant impact that EO 20-99 has had was to encourage Minnesotans to travel to neighboring states to eat and drink.

#### **10. How do bar/restaurant owners join the lawsuit?**

If you would like to join the lawsuit as a plaintiff, attached is a retainer agreement for your signature. Payment of the \$1,000.00 retainer deposit can be made via check or credit card. We have attached a credit card authorization form, or you can call our office at (612) 336-2928 to pay over the phone.

For more information or if you have other questions, please contact Jeff O’Brien at (612) 336-2198 or via email at [jobrien@chestnutcambronne.com](mailto:jobrien@chestnutcambronne.com).