

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS**

**Stir of Fayetteville, Inc. d/b/a BIG;  
Shotz, Inc., d/b/a Shotz;  
Yee-Hawg, Inc. d/b/a Yee-Hawg;  
OKP, LLC d/b/a The Piano Bar;  
WWDD, LLC d/b/a Cannibal & Craft  
Fayetteville, Arkansas; Sideways, Inc.  
d/b/a Sideways Bar; Block 23, LLC d/b/a  
Pinpoint Fayetteville; MPT, Inc. d/b/a  
Buster Bellys Bar; Kingfish; Speakeasy, Inc.  
d/b/a C4 Night Club and Lounge;  
Gitwith Bubbly, LLC d/b/a Maxines Taproom;  
Ryleighs Inc., d/b/a Ryleighs Bar;  
WPGL, INC. d/b/a Boar's Nest BBQ,  
Bar and Grill; S. DrewTurner, LLC d/b/a  
On the Mark Sports Bar and Grill;  
Van and Company, LLC d/b/a Z330;  
Arkansas Black, d/b/a Smoke & Barrell;  
CT124 d/b/a Crossroads Tavern;  
Bugsy's, Inc. d/b/a Bugsy's**

**PETITIONERS**

**V. 60CV-2021-**

**JOSE ROMERO, MD  
Secretary of the Arkansas Department of Health,  
In his official capacity,**

**ASA HUTCHINSON,  
Governor of the State of Arkansas,  
In his official capacity, and**

**DORALEE CHANDLER,  
Director of the Alcohol Beverage  
Control Commission,  
In her official capacity**

**RESPONDENTS**

**PETITIONERS' MOTION FOR EX-PARTE TEMPORARY RESTRAINING  
ORDER AND/OR TEMPORARY INJUNCTION  
OR TEMPORARY RESTRAINING ORDER AND/OR TEMPORARY INJUNCTION**

Comes now the Petitioners by and through its attorneys Gary J. Barrett and B.C.

Pickett and for their Motion for Preliminary Injunction states as follows:

1. Petitioners have filed a Complaint for Preliminary and Permanent Injunction and Damages against Respondents. Petitioner affirmatively incorporates by reference the allegations set forth in the Complaint.

2. As demonstrated in the incorporated brief, Petitioner will likely succeed on the merits of its complaint and suffer irreparable harm in the absence of preliminary injunctive relief. The balance between any harm caused by an order granting this Motion is far outweighed by the certain harm that will result if it is denied. The public interest will also be served by granting this Motion.

3. Pursuant to Arkansas Rule of Civil Procedure 65, Petitioner is entitled to a *ex parte* temporary restraining order and preliminary injunction enjoining Respondents from the Orders.

4. A supporting brief is incorporated into this Motion.

5. This Motion is also accompanied by the following exhibits:

- a. Affidavits from the Petitioners;
- b. Governors Proclamation; and
- c. Directive for hours of operation to Alcohol Beverage Control on-premise permitted locations.

**MEMORANDUM OF LAW IN SUPPORT**

Pursuant to Rule 65 of the Arkansas Rules of Civil Procedure, Petitioners move for a temporary restraining order and/or a temporary injunction to enjoin Arkansas Governor Hutchinson's executive order, Secretary Romero's directive and Director Chandler's enforcement regarding 11 p.m. closure of bars. In determining whether to issue a preliminary injunction pursuant to Rule 65, the trial court must consider two things: (1) whether irreparable harm will result in the absence of an injunction or restraining order, and (2) whether the moving party has demonstrated a likelihood of success on the merits. *Three Sisters Petroleum, Inc. v. Langley*, 348 Ark 167, 72 S.W.3d 95 (2002).

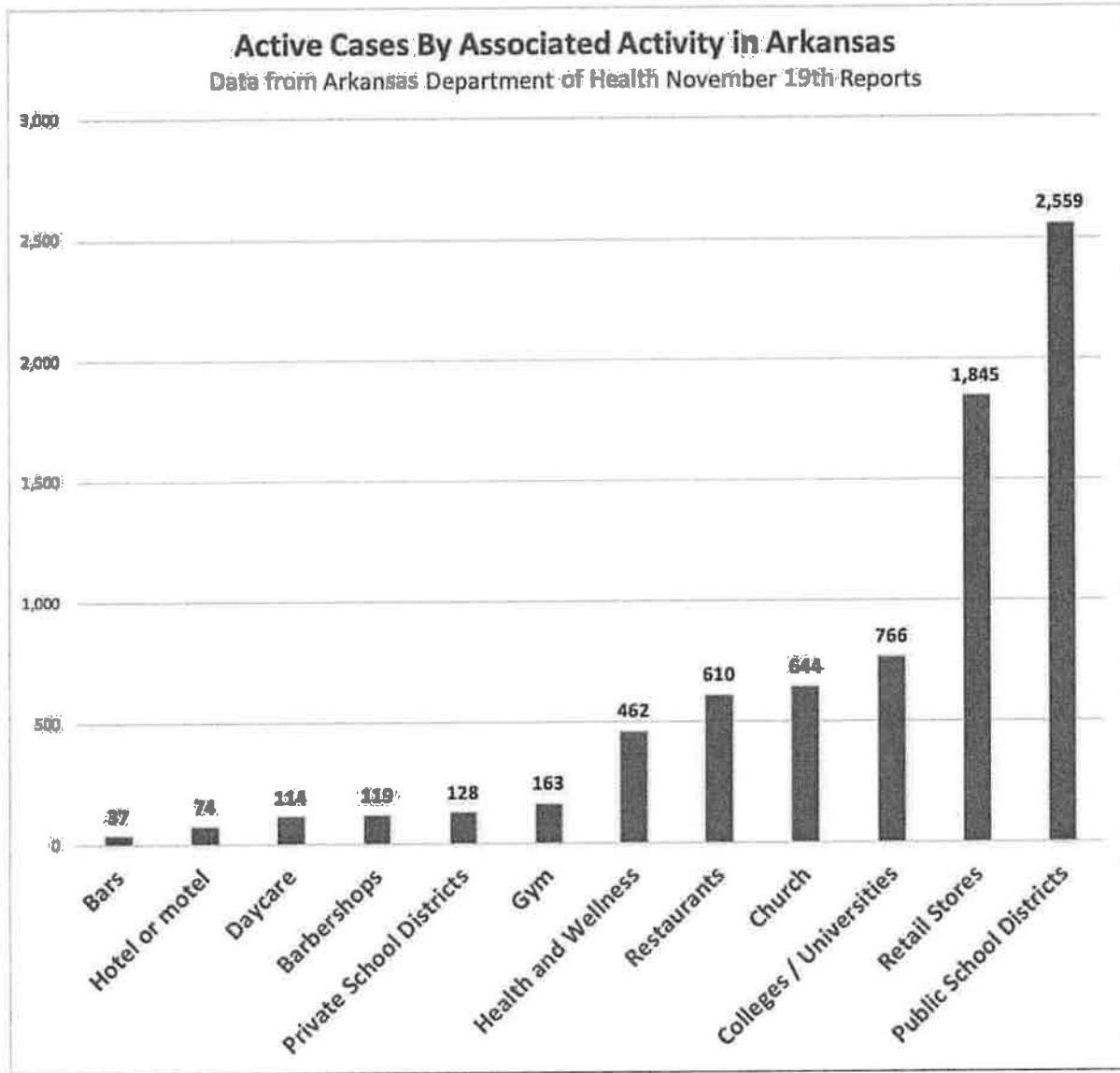
The decision to grant or deny a preliminary injunction falls within the sound discretion of the trial court. *Smith v. Am. Trucking Assoc.*, 300 Ark. 594, 597, 781 S.W.2d 3, 5 (1989).

#### **STATEMENT OF FACTS**

On November 17<sup>th</sup>, 2020 Governor Hutchinson held a press conference in which he states, "Decisions to restrict businesses should be data driven. And that the data says it is small gatherings that are our challenge."

On November 19<sup>th</sup>, 2020 Dr. Romero, MD issued a directive stating that Alcohol Beverage Control on-premises permitted locations shall close at 11:00 p.m. On November

9<sup>th</sup>, 2020, the Arkansas Department of Health published the following graph:



The graph reflects that lowest number of active cases by associated activity in Arkansas is Bars with the highest being Public School Districts.

The only business type that was regulated under the November 19<sup>th</sup>, 2020 directive was Bars. The supermajority of a Bars business is between 10:30 and 1:45 a.m. and the operation during these hours is how a Bar business can survive. Separate Respondents Hutchinson and Romero used the most restrictive means to regulate the Bar business.

At no point did the Separate Respondents regulate the hours of business for any other industry. The current regulation of hours to the bar business is tantamount to regulating a hotel business from 7 p.m. to 7 a.m., a daycare from 7 a.m. to 3 p.m., a barbershop from 10 a.m. to 5 p.m., a church from 10:30 a.m. to 1 p.m. and a school from 10 a.m. to 2 p.m.

On or about November 20<sup>th</sup>, 2020, of the roughly 18,000 active cases in Arkansas, only 3% (610) people say they visited a restaurant in the window of 2 weeks since testing positive. While that number is still higher than we would like, consider this. Most restaurants close well before 11pm. So it is only late night restaurants and bars that are being restricted against. Bars (the most impacted category) accounted for 00.2% (37 cases). Churches account for 4%, retail stores (which does include grocery) account for a whopping 10%. In fact, based on the report, a bar is about the safest place you can go. Yet no other category is being suggested at shutting down. The big elephant in the room, however, is schools. Of the cases reported, 3,453 are identified as active cases from either a student, teacher, or faculty. That is nearly 20% of all cases that are directly tied to a school. This does not take into account contact tracing where parents, relatives, or other associated people contracted COVID from a student who was asymptomatic.<sup>1</sup>

The Separate Respondents have set the most restrictive hours of operation in the industry that has the least number of active cases by activity.

On December 29<sup>th</sup>, 2020 Governor Hutchinson issued his 7<sup>th</sup> Amended Executive Order. The Governor cited A.C.A. §§ 12-75-101, *et seq* and A.C.A § 20-7-110 as his authority

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<sup>1</sup> Greg Henderson, <https://www.rockcityeats.com/food-for-thought-closing-down-or-closing-early-restaurants-for-covid/>

for issuing this order. At the same time Dr. Romero issued a renewal of the directive for hours of operation until February 3<sup>rd</sup>, 2021.

On January 5<sup>th</sup>, 2021, Governor Hutchinson stated, "Makes no sense to burden a business operating on slim margins or cost people jobs if restrictions are not based on the data showing where infections are happening." Dr. Romero went on to say, "Data show bars, restaurants aren't sources of infection."

Without proper justification the Separate Respondents have effectively restrained the trade and commerce of the Petitioners for the last 45 days and the next 30 days.

As recently as January 5<sup>th</sup>, 2021 a contact tracer has contacted an individual with COVID trying to pressure the individual into stating the individual was at a bar in the last two weeks and the individual responded that she was not at a bar at a gathering and the contact tracer stated, "she wasn't concerned with any gathering in residential homes and that she didn't take down data for that only for public places." The contact tracer continued to pressure the individual to tell the tracer that she had been to a bar/restaurant. The Director of the Department of health, a sole, unelected bureaucrat within the Arkansas Department of Health, has been authorized to impose criminal penalties on citizens of the State of Arkansas, and the Alcohol Beverage Control Division through its Director, Doralee Chandler have been charged with enforcement of the Director's directives. Separate Respondent Director Chandler through her office has issued citations to businesses in response to violations of the Orders.

Separate Respondents Hutchinson and Romero used the most restrictive means to regulate the Bar business.

**A. Petitioners are Substantially Likely to Succeed on the Merits of Their Due Process Claims and Takings Claim.**

**1. Procedural Due Process**

Petitioner seeks a judicial declaration that the Orders violate procedural due process because the underlying basis to issue and enforce the Orders is capricious and not based upon any facts that support the decision process and in violation of Petitioners constitutional rights. Petitioners also seek a temporary restraining order and/or temporary injunction to stop Respondents from enforcing the Orders.

The Arkansas Constitution provides that “[n]o person shall be deprived.... of his life, liberty, or property” without due process of law. Ark. Const. art. 2 § 21. Due process requires at a minimum that a person be given notice and a reasonable opportunity for a hearing before he or she is deprived of property by state action. *See State of Wash. v. Thompson*, 339 Ark. 417, 425, 6 S.W.3d 82, 87 (1999). Further, an agency's action is considered arbitrary and capricious when it is not supported on any rational basis. *See Arkansas Bd. of Registration for Prof'l Geologists v. Ackley*, 64 Ark. App. 325, 984 S.W.2d 67 (1998).

A valid due-process claim consists of four elements: action under color of state law; a right, privilege, or immunity secured by the constitution such as property; a loss of property amounting to a deprivation; and an absence of due process. *City of Little Rock v. Alexander Apartments, LLC, et al*, 2020 Ark. 12 (2020) citing *Sanford v. Walther*, 2015 Ark. 285, at 9, 467 S.W.3d 139, 146.

The ability to sell alcohol pursuant to a license issued by the Alcohol Beverage Control Board is a property right that must be afforded due process.

The Respondents action is causing irreparable harm and will continue to cause irreparable harm to the Petitioners. The Arkansas Supreme Court has held that a “statute authorizing a temporary or permanent injunction without notice and an opportunity to be heard fails to meet the fundamental requirements of the due process clause of ...article 2, section 21 of the Constitution of the State of Arkansas.” *Franklin v. State*, 267 Ark. 311, 316, 590 S.W. 2d 28, 31 (1979).

The Respondents actions of taking away the legal right to sell alcohol until 2 a.m. without a hearing or factual investigation is a violation of the Petitioners Due Process.

## **2. Substantive Due Process**

Arkansas has “a rich and compelling tradition” of protecting individual liberties guaranteed by its Constitution. *Jegley v. Picado*, 349 Ark. at 631-62, 80 S.W.3d at 349-50.

Among the rights explicitly guaranteed to all Arkansans under the State Constitution is the enjoyment of life and liberty and individual happiness. Section 2, titled “Freedom and Independence,” provides: “All men are created equally free and independent, and have certain inherent and inalienable rights, amongst which are those of enjoying and defending life and liberty; of acquiring, possessing and protecting property and reputation; and of pursuing their own happiness. To secure these rights governments are instituted among men, deriving their just powers from the consent of the governed.” Ark. Const. art. II, § 2.

The Arkansas Supreme Court has explained that the right to life, liberty, and property embraces “all of our liberties, civic, personal and political; in short all that makes life worth living,” and that each of these rights “carries with it, as natural and necessary coincident, all that effectuates and renders complete and full, unrestrained enjoyment of that right.” *Carroll v. Johnson*, 263 Ark. 280, 289, 565 S.W.2d 10 (1978)



The Orders shock the conscience, interfered with, and continue to interfere with Petitioners deeply-rooted liberty and property rights, including the right to work, right to contract, and right to engage in commerce. Preventing Petitioners from exercising their right to engage in commerce. Preventing Petitioners from exercising their right to enjoy the gains of their own industry through lawless and arbitrary enforcement of Respondents fiats is a clear violation of the Arkansas Constitution.

### **3. Takings Clause of the Arkansas Constitution**

Respondents have seized, without compensation, Plaintiff's real and personal property by forcing material limitations on their businesses. These uncompensated seizures violate the takings clause of the Arkansas Constitution, which states "The right of property is before and higher than any constitutional sanction; and private property shall not be taken, appropriated or damaged for public use, without just compensation therefore. Ark. Const. art. 2 § 22. The United States Supreme court has held that "when the owner of real property has been called upon to sacrifice all economically beneficial uses in the name of the common good, that is, to leave his property economically idle, he has suffered a taking." *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1019, 112 S. Ct. 2886, 2895, 120 L. Ed. 2d 798 (1992). The Arkansas Supreme Court has declared that "[s]tatutes relating to the exercise of the right of eminent domain, especially where there is an alleged delegation of the power, should be strictly construed in favor of the landowner and against the condemnor, largely because they are in derogation of the common right." *Little Rock v. Raines*, 241 Ark. 1071, 1079-1080 (Ark. 1967).

The Arkansas Constitution's takings clause does not prohibit the government's authority to interfere with private property, but it does require the government to pay adequate compensation for a taking.

The Orders state that the resources of Arkansas are committed "to protect the public health." Therefore, the regulation was clearly done for public use. This regulation of businesses caused a de facto shutdown of Plaintiff's businesses at 11:00 p.m. Respondents have placed the cost of any public benefit on the shoulders of the private businesses such as Petitioners and have failed to offer appropriate compensation for these takings. This is a complete taking of Petitioners Property because it has rendered Petitioners property useless after 11:00 p.m.

The Orders materially and substantially jeopardize the sustainability of Petitioners businesses and Petitioners rights to property ownership. As a result of the Orders, Petitioners, and those similarly situated will lose the economically beneficial use of their real and personal property. The Orders are effectively an unconstitutional taking without just compensation.

Each Petitioner could and can conduct business in full compliance with CDC recommendations and other safe measures tailored to the unique nature of their operations. Indeed, most businesses in Arkansas are free to operate however after 11:00 p.m. There is no restriction on grocery stores or convenience stores selling food or beverages. The mandates in the Orders lead to truly bizarre outcomes. This is illogical, arbitrary, and in no way furthers the goals Respondents are purportedly seeking to achieve.

Thus, the Orders are not narrowly tailored to achieve a compelling governmental interest. There is also no rational basis to deprive Petitioners of their liberty and property interests in performing services for willing customers when they can do so safely and in the same (or reasonably safe equivalent) manner as other businesses allowed to operate. In the alternative, the Orders are not reasonably related to a legitimate governmental interest.

Plaintiffs seek a declaration that the Orders violate the substantive component of the due process clause and an injunction against further infringements of their rights under this clause.

#### **4. Summary**

Petitioners are substantially likely to win on all claims because Respondents simply have no response to the issues raised by the Petitioners. There is no factual basis (by the Respondents own admissions) to limit the closing hours of the bars to 11 p.m.

#### **B. Plaintiffs Will Suffer Irreparable Harm if the Orders Continue to be Enforced.**

Plaintiffs will suffer serious and irreparable harm in the absence of a temporary restraining order and temporary injunction. The Orders have been in effect for over 45 days and Petitioners have already been significantly harmed. The harm is not nominal, theoretical, or speculative. Each Petitioner has suffered harm in the thousands of dollars that is directly attributable to the Orders. The harm involves real people and businesses suffering real financial loss. Any assertion that Petitioners have not suffered harm as a result of the Orders flies in the face of all logic and common sense. Petitioners are normally open until 2:00 a.m. It is well known that the supermajority of the beverage sales at bars are from 10:30 to 1:45. As a result of the Respondents actions the Petitioners cannot stay

open past 11 to earn and any past earnings are forever gone. As is clear from the harm detailed below, the damage and loss are immediate and irreparable.

Stir of Fayetteville, Inc. d/b/a BIG is a business located in Fayetteville, Arkansas. Prior to the Orders BIG was open until 2:00 a.m. After being threatened with fines and imprisonment BIG has closed significantly earlier than its normal closing time and completely during the month of December. As a direct result of the Orders, revenue on beverage sales at BIG has decreased significantly and continues to decrease.

OKP, LLC d/b/a The Piano Bar (The Piano Bar) is a business located in Fayetteville, Arkansas. Prior to the Orders The Piano Bar was open until 2:00 a.m. After being threatened with fines and imprisonment The Piano Bar has closed significantly earlier than its normal closing time. As a direct result of the Orders, revenue on beverage sales at The Piano Bar has decreased significantly and continues to decrease.

WWDD, LLC d/b/a Cannibal & Craft Fayetteville Arkansas (C&C) is a business located in Fayetteville, Arkansas. Prior to the Orders C&C was open until 2:00 a.m. After being threatened with fines and imprisonment C&C has closed significantly earlier than its normal closing time. As a direct result of the Orders, revenue on beverage sales at C&C has decreased significantly and continues to decrease.

Sideways, Inc. d/b/a Sideways Bar is a business located in Fayetteville, Arkansas. Prior to the Orders the Sideways Bar was open until 2:00 a.m. After being threatened with fines and imprisonment The Sideways Bar has closed significantly earlier than its normal closing time. As a direct result of the Orders, revenue on beverage sales at The Sideways Bar has decreased significantly and continues to decrease.

Block 23, LLC d/b/a Pinpoint Fayetteville is a business located in Fayetteville, Arkansas. Prior to the Orders Pinpoint was open until 2:00 a.m. After being threatened with fines and imprisonment Pinpoint has closed significantly earlier than its normal closing time. As a direct result of the Orders, revenue on beverage sales at Pinpoint has decreased significantly and continues to decrease.

MPT, Inc. d/b/a Buster Bellys Bar (Busters) is a business located in Fayetteville, Arkansas. Prior to the Orders Busters was open until 2:00 a.m. After being threatened with fines and imprisonment Busters has closed significantly earlier than its normal closing time. As a direct result of the Orders, revenue on beverage sales at Busters has decreased significantly and continues to decrease.

Petitioner CT124 d/b/a Crossroads Tavern is a business located in Fayetteville, Arkansas. Prior to the Orders Crossroads was open until 2:00 a.m. After being threatened with fines and imprisonment Crossroads has closed significantly earlier than its normal closing time. As a direct result of the Orders, revenue on beverage sales at Crossroads has decreased significantly and continues to decrease.

Speakeasy, Inc. d/b/a C4 Night Club & Lounge (C4) is a business located in Fayetteville, Arkansas. Prior to the Orders C4 was open until 2:00 a.m. After being threatened with fines and imprisonment C4 has closed significantly earlier than its normal closing time. As a direct result of the Orders, revenue on beverage sales at C4 has decreased significantly and continues to decrease.

Gitwith Bubbly, LLC d/b/a Maxines Taproom (Maxines) is a business located in Fayetteville, Arkansas. Prior to the Orders Maxines was open until 2:00 a.m. After being threatened with fines and imprisonment Maxines has closed significantly earlier than its

normal closing time. As a direct result of the Orders, revenue on beverage sales at Maxines has decreased significantly and continues to decrease.

Ryleighs, Inc. d/b/a Ryleighs Bar (Ryleighs) is a business located in Fayetteville, Arkansas. Prior to the Orders Ryleighs was open until 2:00 a.m. After being threatened with fines and imprisonment Ryleighs has closed significantly earlier than its normal closing time. As a direct result of the Orders, revenue on beverage sales at Ryleighs has decreased significantly and continues to decrease.

Shotz, Inc. d/b/a Shotz (Shotz) is a business located in Fayetteville, Arkansas. Prior to the Orders Shotz was open until 2:00 a.m. After being threatened with fines and imprisonment Shotz has closed significantly earlier than its normal closing time and completely during the month of December. As a direct result of the Orders, revenue on beverage sales at Shotz has decreased significantly and continues to decrease.

Yee-Hawg, Inc. d/b/a Yee-Hawg (Yee-Hawg) is a business located in Fayetteville, Arkansas. Prior to the Orders Yee-Hawg was open until 2:00 a.m. After being threatened with fines and imprisonment Yee-Hawg has closed significantly earlier than its normal closing time. As a direct result of the Orders, revenue on beverage sales at Yee-Hawg has decreased significantly and continues to decrease.

S. DrewTurner, LLC d/b/a On the Mark Sports Bar and Grille (OTM) is a business located in Fayetteville, Arkansas. Prior to the Orders OTM was open until 2:00 a.m. After being threatened with fines and imprisonment OTM has closed significantly earlier than its normal closing time. As a direct result of the Orders, revenue on beverage sales at OTM has decreased significantly and continues to decrease.

WPGL, Inc. d/b/a Boar's Nest BBQ, Bar and Grill (Boar's Nest) is a business located in Fayetteville, Arkansas. Prior to the Orders Boar's Nest was open until 2:00 a.m. After being threatened with fines and imprisonment Boar's Nest has closed significantly earlier than its normal closing time. As a direct result of the Orders, revenue on beverage sales at Boar's Nest has decreased significantly and continues to decrease.

Van and Company, LLC d/b/a Z330 is a business located in Fayetteville, Arkansas. Prior to the Orders Z330 was open until 2:00 a.m. After being threatened with fines and imprisonment Z330 has closed significantly earlier than its normal closing time. As a direct result of the Orders, revenue on beverage sales at Z330 has decreased significantly and continues to decrease.

Bugsy's, Inc. d/b/a Bugsy's is a business located in Fayetteville, Arkansas. Prior to the Orders Bugsy's was open until 2:00 a.m. After being threatened with fines and imprisonment Infusion has closed significantly earlier than its normal closing time. As a direct result of the Orders, revenue on beverage sales at Bugsy's has decreased significantly and continues to decrease.

CT124 d/b/a Crossroads Tavern is a business located in Fayetteville, Arkansas. Prior to the Orders Crossroads was open until 2:00 a.m. After being threatened with fines and imprisonment Crossroads has closed significantly earlier than its normal closing time. As a direct result of the Orders, revenue on beverage sales at Crossroads has decreased significantly and continues to decrease.

Arkansas Black, LLC d/b/a Smoke & Barrel is a business located in Fayetteville, Arkansas. Prior to the Orders Smoke & Barrel was open until 2:00 a.m. After being threatened with fines and imprisonment Smoke & Barrel has closed significantly earlier

than its normal closing time. As a direct result of the Orders, revenue on beverage sales at Smoke & Barrel has decreased significantly and continues to decrease.

Petitioner Los Bobos, LLC d/b/a Los Bobos is a business located in Fayetteville, Arkansas. Prior to the Orders Los Bobos was open until 2:00 a.m. After being threatened with fines and imprisonment Los Bobos has closed significantly earlier than its normal closing time. As a direct result of the Orders, revenue on beverage sales at Los Bobos has decreased significantly and continues to decrease.

West End Bar, LLC d/b/a West End is a business located in Fayetteville, Arkansas. Prior to the Orders West End was open until 2:00 a.m. After being threatened with fines and imprisonment West End has closed significantly earlier than its normal closing time. As a direct result of the Orders, revenue on beverage sales at West End has decreased significantly and continues to decrease.

1947, LLC d/b/a The Amendment and Roger's Rec is a business located in Fayetteville, Arkansas. Prior to the Orders The Amendment and Roger's Rec was open until 2:00 a.m. After being threatened with fines and imprisonment The Amendment and Roger's Rec has closed significantly earlier than its normal closing time. As a direct result of the Orders, revenue on beverage sales at The Amendment and Roger's Rec has decreased significantly and continues to decrease.

Kingfish of Fayetteville, Inc. d/b/a Kingfish is a business located in Fayetteville, Arkansas. Prior to the Orders Kingfish was open until 2:00 a.m. After being threatened with fines and imprisonment Kingfish has closed significantly earlier than its normal closing time. As a direct result of the Orders, revenue on beverage sales at Kingfish has decreased significantly and continues to decrease.



The trend Petitioners are experiencing will continue each day that the Orders remain in effect. Therefore, the sooner the Orders end, the sooner the bleeding will stop. Petitioners losses are irreplaceable. Respondents have neither a plan nor the ability to reimburse Petitioners for these losses.

Rule 65(a) permits the Court to grant a preliminary injunction upon notice to the adverse party and a hearing conducted on the motion for a preliminary injunction. Ark. R. Civ. P. 65(a). Pursuant to Rule 65(a)(2), Petitioners request that an immediate hearing be set on the merits and that this matter be advanced on the docket due to the immediate and irreparable harm and loss chance the Petitioners continue to incur and the immediacy of the businesses needlessly going out of business. Pursuant to Rule 65(c), Plaintiffs request a reduce no bond in light of the public interest and to protect the integrity and independence of the businesses and because such injunction does not impinge on any ongoing business enterprise nor will the entry of a restraining order cost the Respondents any money.

Respectfully submitted,  
Stir of Fayetteville, Inc. d/b/a BIG, et al.

/s/Gary J. Barrett  
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AFFIDAVIT IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING  
ORDER AND/OR TEMPORARY INJUNCTION

STATE OF ARKANSAS )

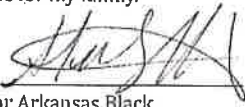
) ss.

COUNTY OF WASHINGTON )

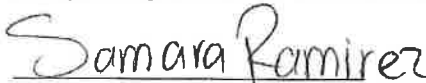
Al Shaffer for Arkansas Black being first duly sworn upon his oath, states:

1. I am a Petitioner in the above-referenced cause of action.
2. I have personal knowledge of the matters contained in this Affidavit and I have read Petitioners' verified Petition.
3. All statements and allegations included in the verified Petition are adopted herein by reference.
4. Respondent Governor Hutchison issued executive orders on November 19, 2020 and December 31<sup>st</sup>, 2020. These Orders unlawfully regulate my business. Respondent has unlawfully acted as the enforcement authority for the Orders.
5. By reason of the Respondents' wrongful and improper conduct I, along with the other Petitioners, have suffered substantial and irreparable injury. I have already lost significant income due to the Imposition of the Issuing of and enforcement of the Orders. I will suffer greater injury every day that the Orders remain in effect.
6. A temporary restraining order and injunction are necessary and appropriate because Petitioners are likely to prevail on the merits of Petitioners' claims.
7. We have no other adequate remedy at law.
8. The interest of the public will not be disserved by granting an Injunction because Petitioners, Respondents, as well as state and national governing bodies, already have protective measures in place to combat the spread of Covid-19. The businesses we operate or work in can continue to operate safely in a way that does not destroy my ability to earn a living, pay my bills, and provide for my family.

\_\_\_\_\_  
Alan Shaffer

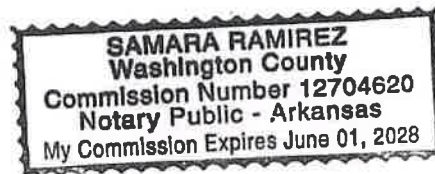
  
Al Shaffer for Arkansas Black

Subscribed and sworn to me this 7<sup>th</sup> day of January, 2021 by Al Shaffer for Arkansas Black

  
Notary Public

My Commission No:

*My Commission Expires: June 01, 2028*



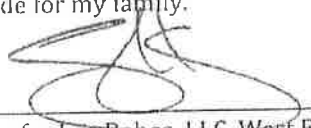


**AFFIDAVIT IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING  
ORDER AND/OR TEMPORARY INJUNCTION**

STATE OF ARKANSAS                    )  
  ) ss.  
COUNTY OF WASHINGTON            )

Shawn Gray for Los Bobos, LLC, West End Bar, LLC, and 1947, LLC. being first duly sworn upon his oath, states:

1. I am a Petitioner in the above-referenced cause of action.
2. I have personal knowledge of the matters contained in this Affidavit and I have read Petitioners' verified Petition.
3. All statements and allegations included in the verified Petition are adopted herein by reference.
4. Respondent Governor Hutchison issued executive orders on November 19, 2020 and December 31<sup>st</sup>, 2020. These Orders unlawfully regulate my business. Respondent has unlawfully acted as the enforcement authority for the Orders.
5. By reason of the Respondents' wrongful and improper conduct I, along with the other Petitioners, have suffered substantial and irreparable injury. I have already lost significant income due to the imposition of the issuing of and enforcement of the Orders. I will suffer greater injury every day that the Orders remain in effect.
6. A temporary restraining order and injunction are necessary and appropriate because Petitioners are likely to prevail on the merits of Petitioners' claims.
7. We have no other adequate remedy at law.
8. The interest of the public will not be disserved by granting an injunction because Petitioners, Respondents, as well as state and national governing bodies, already have protective measures in place to combat the spread of Covid-19. The businesses we operate or work in can continue to operate safely in a way that does not destroy my ability to earn a living, pay my bills, and provide for my family.



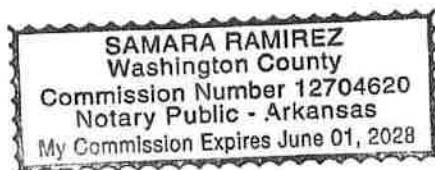
Shawn Gray for Los Bobos, LLC, West End Bar, LLC, and 1947, LLC.

Subscribed and sworn to me this 7<sup>th</sup> day of January, 2021 by Shawn Gray for Los Bobos, LLC, West End Bar, LLC, and 1947, LLC.

  
Notary Public

My Commission No:

My Commission Expires: June 01, 2028







**AFFIDAVIT IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING  
ORDER AND/OR TEMPORARY INJUNCTION**

STATE OF ARKANSAS )

) ss.

COUNTY OF WASHINGTON )

Dave Bass for Stir of Fayetteville, Inc., Shetz, Inc., and Yee Hwang, Inc. being first duly sworn upon his oath, states:

1. I am a Petitioner in the above referenced cause of action.
2. I have personal knowledge of the matters contained in this Affidavit and I have read Petitioners' verified Petition
3. All statements and allegations included in the verified Petition are adopted herein by reference.
4. Respondent Governor Hutchison issued executive orders on November 19, 2020 and December 31<sup>st</sup>, 2020. These Orders unlawfully regulate my business. Respondent has unlawfully acted as the enforcement authority for the Orders.
5. By reason of the Respondents' wrongful and improper conduct I, along with the other Petitioners, have suffered substantial and irreparable injury. I have already lost significant income due to the imposition of the issuing of and enforcement of the Orders. I will suffer greater injury every day that the Orders remain in effect.
6. A temporary restraining order and injunction are necessary and appropriate because Petitioners are likely to prevail on the merits of Petitioners' claims.
7. We have no other adequate remedy at law.
8. The interest of the public will not be disserved by granting an injunction because Petitioners, Respondents, as well as state and national governing bodies, already have protective measures in place to combat the spread of Covid-19. The businesses we operate or work in can continue to operate safely in a way that does not destroy my ability to earn a living, pay my bills, and provide for my family.



Dave Bass for Stir of Fayetteville, Inc., Shetz, Inc., and Yee-Hwang, Inc.

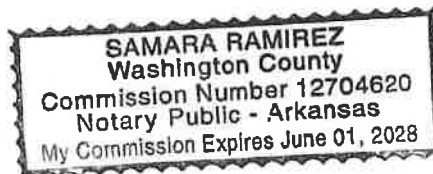
Subscribed and sworn to me this 7<sup>th</sup> day of January, 2021 by Dave Bass for Stir of Fayetteville, Inc., Shetz, Inc., and Yee Hwang, Inc.



Notary Public

My Commission No:

My Commission Expires: June 01, 2028















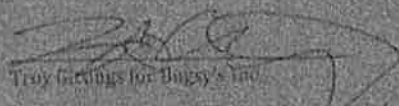
AFFIDAVIT IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR TEMPORARY INJUNCTION

STATE OF ARKANSAS

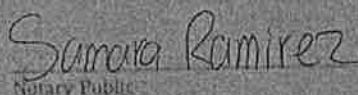
COUNTY OF WASHINGTON

Troy Gittings for Buggy's Inc. being first duly sworn up in the said county.

1. I am a Petitioner in the above referenced cause of action.
2. I have personal knowledge of the matters contained in this Affidavit and I have read Petitioner's verified Petition.
3. All statements and allegations included in the verified Petition are adopted in their entirety.
4. Respondent Governor Harris on issued executive orders on November 19, 2020 and December 31, 2020. These Orders unlawfully regulate my business. Respondent has unlawfully acted as the enforcement authority for the Orders.
5. By reason of the Respondent's wrongful and improper conduct, along with the other Petitioners, have suffered substantial and irreparable injury. I have already lost significant income due to the imposition of the signing of and enforcement of the Orders. I will suffer greater injury every day that the Orders remain in effect.
6. A temporary restraining order and injunction are necessary and appropriate because Petitioners are likely to prevail on the merits of Petitioners' claims.
7. We have no other adequate remedy at law.
8. The interests of the public will not be disserved by granting an injunction because Petitioners, Respondents, as well as state and national governing bodies already have protective measures in place to combat the spread of Covid-19. The businesses we operate or work in can continue to operate safely in a way that does not deny, by my ability to earn a living, pay my bills, and provide for my family.

  
Troy Gittings for Buggy's Inc.

Subscribed and sworn to me this 1st day of January, 2021 by Troy Gittings for Buggy's Inc.

  
Notary Public

My Commission No.

My Commission Expires June 01, 2028

**SAMARA RAMIREZ**  
Washington County  
Commission Number 12704620  
Notary Public - Arkansas  
My Commission Expires June 01, 2028









**STATE OF ARKANSAS**  
**EXECUTIVE DEPARTMENT**  
**PROCLAMATION**

EO 20 - 53

TO ALL TO WHOM THESE PRESENTS COME – GREETINGS:

**EXECUTIVE ORDER TO RENEW THE DISASTER AND PUBLIC HEALTH EMERGENCY TO MITIGATE THE SPREAD AND IMPACT OF COVID-19**

- WHEREAS: An outbreak of coronavirus disease 2019 (COVID-19) has spread throughout the world resulting in a global pandemic; and
- WHEREAS: On March 11, 2020, by Executive Order 20-03, an emergency was declared in the state as a result of COVID-19, pursuant to the Emergency Services Act at Ark. Code Ann. §§ 12-75-101, *et seq.*; and
- WHEREAS: On March 26, 2020, Executive Order 20-10, amending Executive Order 20-03, declared the entire State of Arkansas a disaster area in which ingress and egress to and from, the movement of persons within, and the occupancy of premises therein, may be controlled, pursuant to Ark. Code Ann. § 12-75-114(e)(7); and
- WHEREAS: On May 5, 2020, by Executive Order 20-25, the emergency was renewed, pursuant to Ark. Code Ann. § 12-75-107 (b)(2), for forty-five (45) additional days, until June 19, 2020; and
- WHEREAS: On June 18, 2020, by Executive Order 20-37, the emergency declared pursuant to Executive Order 20-03, and its amendments was terminated, and the public health and disaster emergency and declaration of the State of Arkansas as a disaster area resulting from the state-wide impact of COVID-19 was declared anew, pursuant to the Emergency Services Act at Ark. Code Ann. §§ 12-75-101, *et seq.*; and
- WHEREAS: On August 14, 2020, by Executive Order 20-45, the emergency declared in Executive Order 20-37 was renewed pursuant to Ark. Code Ann. § 12-75-107 (b)(2) for sixty (60) additional days; and
- WHEREAS: On October 13, 2020, by Executive Order 20-48, the emergency declared in Executive Order 20-37 was renewed pursuant to Ark. Code Ann. § 12-75-107 (b)(2) for sixty (60) additional days; and
- WHEREAS: On December 11, 2020, by Executive Order 20-51, the emergency declared in Executive Order 20-37 was renewed pursuant to Ark. Code Ann. § 12-75-107 (b)(2) for twenty (20) additional days; and
- WHEREAS: The current state of emergency, declared by Executive Order 20-37, and renewed by Executive Orders 20-45, 20-48, and 20-51 expires on December 31, 2020, unless it is renewed by the Governor pursuant to Ark. Code Ann. § 12-75-107 (b)(2); and
- WHEREAS: COVID-19 continues to spread throughout the United States and Arkansas; and
- WHEREAS: Pursuant to Act 96 of 1913, Ark. Code Ann. §§ 20-7-101 *et seq.*, and the rules promulgated therefore, the Secretary of Health has the authority to impose such quarantine restrictions and regulations upon commerce and travel by railway, common carriers or any other means, and upon all



introduction of communicable disease into the State, or from one place to another within the State; and

WHEREAS: In response to COVID-19, I, as Governor, pursuant to the Emergency Services Act at Ark. Code Ann. §§ 12-75-101, *et seq.*, have taken reasonable and necessary measures by Executive Order to provide Arkansans with resources to mitigate the impact of COVID-19. For example, the executive orders enabled the Department of Education to suspend rules so that children may attend school virtually, they made telemedicine more accessible to all Arkansans, and they made it possible for the Department of Human Services to authorize Medicaid reimbursements for children utilizing telemedicine. Hospitals have been given flexibility to rapidly respond to needs in their facilities by reallocating resources and utilizing medical personnel to the maximum extent of licensure. Arkansans are able to execute last wills and testaments through video witnessing; and

WHEREAS: I, as Governor, in consultation with the Secretary of Health, have determined that the public health and disaster emergency resulting from COVID-19 should be renewed to enable the State of Arkansas to use all available resources under the Emergency Services Act. Further, executive orders and amendments thereto regarding the suspension of rules and statutes by state agencies, telehealth, suspension of in-person witnessing and notarization of legal documents, suspension of prohibitions for banks and corporations to hold shareholder meetings solely or partially by remote communication, authorization for health care professionals to eliminate obstacles to medical care, enabling of workers' compensation due to COVID-19, the protection for businesses from COVID-19 related liability, and the mandate to the Department of Health for a face covering directive should continue to have force and effect to provide Arkansans with the tools necessary to protect against the spread and impact of COVID-19;

NOW, THEREFORE, I, ASA HUTCHINSON, Governor of the State of Arkansas, acting under the authority vested in me by Ark. Code Ann. §§ 12-75-101, *et seq.* and Ark. Code Ann. § 20-7-110, in consultation with Secretary of Health, do hereby declare upon the signing of this Executive Order that the emergency declared pursuant to Executive Order 20-37, and renewed by Executive Orders 20-45 and 20-48, is again renewed pursuant to Ark. Code Ann. § 12-75-107 (b)(2), and the public health and disaster emergency and declaration of the State of Arkansas as a disaster area resulting from the state-wide impact of COVID-19 shall continue for an additional sixty (60) days from the signing of this order. The emergency shall expire after sixty (60) days unless it is renewed in whole or in part by a subsequent executive order.

FURTHERMORE, in conjunction with the directives of the Secretary of Health, I order the following:

- (1) The following executive orders are adopted and incorporated herein, as if set out word for word, and shall remain in effect until the expiration of this order or its renewal:
  - a. Executive Order 20-05, regarding telehealth;

- b. Executive Order 20-06, extended by Executive Order 20-16, regarding the suspension of rules and statutes by state agencies;
  - c. Executive Order 20-14, regarding the suspension of in-person witnessing and notarization of legal documents;
  - d. Executive Order 20-15, regarding suspension of prohibitions for banks and corporations to hold shareholder meetings solely or partially by remote communication;
  - e. Executive Order 20-18 and Executive Order 20-52, regarding access to healthcare resources;
  - f. Executive Order 20-22 and Executive Order 20-35, regarding Workers' Compensation protections;
  - g. Executive Order 20-33, regarding the protection of businesses from liability related to COVID-19; and
  - h. Executive Order 20-43 regarding the issuance of a face covering directive by the Arkansas Department of Health.
- (2) All public and private gatherings of any number of people occurring outside a single household or living unit shall adhere to applicable directives or guidelines issued by the Secretary of Health.
- (3) All businesses, manufacturers, construction companies, long-term care facilities, medical and dental providers, community and school-sponsored team sports, and places of worship shall adhere to applicable directives or guidelines issued by the Secretary of Health.
- (4) K-12 schools and extracurricular activities shall adhere to the applicable directives or guidelines of the Secretary of Education or Secretary of Health.
- (5) The Secretary of Health may issue orders of isolation and quarantine as necessary and appropriate to control the spread of COVID-19 in Arkansas. Pursuant to the Arkansas State Board of Health's promulgated, *Rules and Regulations Pertaining to Reportable Disease*, the Secretary of Health, in consultation with the Governor, shall have sole authority over all instances of quarantine, isolation, and restrictions on commerce and travel throughout the state. Cities and counties shall not impose any restriction of commerce or travel that is more restrictive than a directive or guideline issued by the Secretary of Health, in consultation with the Governor.
- (6) A state of emergency continues, and a regional emergency is declared pursuant to 49 C.F.R. Section 390.23, as applied to commercial vehicles transporting essential items of commerce during this emergency, including but not limited to, groceries, pharmacy items, medical equipment, goods, commodities, fuel, poultry, and livestock.

- (7) Executive Orders of the Governor issued pursuant Ark. Code Ann. §§ 12-75-101, *et seq.*, have the force and effect of law. Additionally, pursuant to Ark. Code Ann. § 20-7-101, violation of a directive from the Secretary of Health during this public health emergency is a misdemeanor offense, and upon conviction thereof is punishable by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or by imprisonment not exceeding one (1) month, or both. All law enforcement officers within this state shall enforce the directives of this order and those of the Secretary of Health to preserve the health and safety of all Arkansans during this emergency.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Arkansas to be affixed this 29<sup>th</sup> day of December, in the year of our Lord 2020.



  
Asa Hutchinson, Governor



# Arkansas Department of Health

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4815 West Markham Street • Little Rock, Arkansas 72205-3867 • Telephone (501) 661-2000  
Governor Asa Hutchinson  
José R. Romero, MD, Secretary of Health

## **Directive for hours of operation to Alcoholic Beverage Control on-premise permitted locations**

Issued November 19, 2020  
Effective November 20, 2020  
Updated December 31, 2020  
Until February 3, 2021

The Secretary of Health, in consultation with the Governor, has sole authority over all instances of quarantine, isolation, and restrictions on commerce and travel throughout Arkansas, as necessary and appropriate to control disease in the state of Arkansas as authorized by Ark. Code Ann. §20-7-101 et seq., and the Rules Pertaining to Reportable Disease (2019). Based on available scientific evidence, and in order to encourage the use of face coverings and social distancing, it is necessary and appropriate to take further action to ensure that COVID-19 remains controlled and that residents and visitors in Arkansas remain safe.

The Secretary of Health issues this Directive in conjunction with Executive Order 20-53.

Alcoholic Beverage Control on-premise permitted locations shall close at 11:00 p.m.

Pursuant to Ark. Code Ann. § 20-7-101, any person violating a directive from the Secretary of Health during this public health emergency may be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or by imprisonment not exceeding one (1) month, or both.

