

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT

DAWN DESROSIERS, and DAWN DESROSIERS d/b/a HAIR 4 YOU, and SUSAN KUPELIAN, and NAZARETH KUPELIAN, and NAZ KUPELIAN SALON, and CARLA AGRIPPINO-GOMES, and TERRAMIA, INC., and ANTICO FORNO, INC., and JAMES P. MONTORO, and PIONEER VALLEY BAPTIST CHURCH INCORPORATED, and, KELLIE FALLON, and BARE BOTTOM TANNING SALON, and THOMAS E. FALLON, and THOMAS E. FALLON d/b/a UNION STREET BOXING, and ROBERT WALKER, and APEX ENTERTAINMENT LLC, and DEVENS COMMON CONFERENCE CENTER LLC, and LUIS MORALES, and VIDA REAL EVANGELICAL CENTER, and BEN HASKELL, and TRINITY CHRISTIAN ACADEMY OF CAPE COD,

Plaintiffs,

v.

CHARLES D. BAKER, JR., in his official capacity as Governor of Massachusetts,

Defendant.

Civil Action No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs submit this Complaint for Declaratory and Permanent Injunctive Relief to end Defendant Governor Charles D. Baker, Jr.'s *ultra vires* and unconstitutional actions, and allege as follows:

INTRODUCTORY STATEMENT

A health crisis—even one the magnitude of the COVID-19 pandemic—does not empower a chief executive to make law. Undeniably, COVID-19 is a contagious and sometimes deadly virus. It is cause for great public concern and warrants action to protect those at risk. But fear of the virus cannot justify suspending the constitutional order of Massachusetts government.

Yet, on March 10, 2020, Governor Baker did just that when he declared a state of emergency pursuant to the Civil Defense Act, to “mitigate the spread of COVID-19 to protect the health and welfare of the people of the Commonwealth[.]”¹ The Civil Defense Act is a Cold War-era statute designed to aid in the defense of Massachusetts from foreign invasions, insurrections, and catastrophic events like hurricanes and fires. These are events that pose an immediate threat to the “public peace, health, security and safety” of the people of Massachusetts where all citizens face the same problems posed by destruction of infrastructure and a potential loss of clean water, unadulterated food, and safe shelter. The Civil Defense Act gives the governor sweeping authority because civil defense authority is necessary in such dire circumstances of cataclysm “to preserve the lives *and property* of the people of the commonwealth[.]”²

The Public Health Act, on the other hand, is a turn-of-the-century-era (Nineteenth to Twentieth Century) statute predating the Civil Defense Act by almost 50 years. The legislature has amended it from time to time, with most of those amendments post-dating the Civil Defense Act. The Public Health Act’s purpose is to control and prevent infectious diseases dangerous to the public health.³ Among other things, it allows local boards of health to establish “isolation

¹ Mass. Exec. Order No. 591 (Mar. 10, 2020).

² See Spec. L. c. S31, § 5, cl. 1 (emphasis added).

³ See G.L. c. 111, § 6.

hospitals,” to forcibly quarantine the sick and infected, to prohibit travel within the state of anyone entering from an infected out-of-state area, and to report to the Department of Public Health (DPH) the names and locations of the sick and infected. Pursuant to the authority delegated to the Department of Public Health by the Act, the Department has promulgated infectious disease control regulations “to establish reporting, surveillance, isolation and quarantine requirements.”⁴

But Governor Baker is not acting pursuant to the Public Health Act, despite its obvious applicability to the COVID-19 health crisis.⁵ He has instead used the inapposite Civil Defense Act state of emergency and its wide-ranging civil defense authority to issue more than 30 orders that waive or modify laws validly enacted by the state legislature. He has arbitrarily declared which businesses are “essential” and he has closed those that he has deemed to fall outside of that category. He has prohibited gatherings of more than ten people without regard to the location or health risk posed by those gatherings. He has closed beaches despite the health benefits of outdoor activities. He has closed all primary and secondary schools despite the ability of some to implement infection-mitigating measures. He has closed childcare programs regardless of size or nature of the facility. He has unilaterally waived statutory duties of public and private parties. He has mandated face masks for all. These are not the lawful powers of a governor.

Even where Governor Baker has deigned to permit some activities to resume, such as the reopening of churches and some businesses, or the reopening of beaches, there remain

⁴ Code of Mass. Regs., 105 CMR 300.001.

⁵ DPH adopted an Infectious Disease Emergency Response Plan *more than two weeks prior* to the Civil Defense State of Emergency declaration, pursuant to Chapter 111 of the Public Health Act. *See* Mass. Dept. of Pub. Health, Infectious Disease Emergency Response Plan (Feb. 24, 2020). Indeed, the disease, “coronavirus,” first appeared in the Code of Massachusetts Regulations *at least 16 years ago*. *See, e.g.*, Code of Mass. Regs., 100 CMR 300.100 (requiring reporting of “novel coronavirus” to local boards of health) *and* 100 CMR 300.170 (requiring labs to report “novel coronavirus” to DPH).

restrictions including limitations on capacity and restrictions allowing only “passive recreational activities.” Because his orders are being made pursuant to a statute designed to defend against foreign invaders and civil unrest in the wake of cataclysms, violations of his orders are criminal. In addition, and in part because he is proceeding under the wrong legal authority, Governor Baker has done these things with blanket orders across wide swaths of Massachusetts, without regard to the specific health and welfare needs of individual communities.

John Adams, the principal architect of the Massachusetts Constitution of 1780, insisted upon a robust and unequivocal separation of powers in the Massachusetts Constitution, so that the Constitution would establish “a government of laws and not of men.”⁶ Governor Baker has ignored the separation of powers by usurping the police power—the Commonwealth’s authority to regulate the health and welfare of its people—from the General Court. The police power is the exclusive prerogative of the legislature, and only the legislature may exercise it, or delegate its authority to the executive branch.⁷ However well-intentioned his motives, by invoking the Civil Defense Act instead of the Public Health Act, the governor has wrought extensive constitutional damage, and Massachusetts now has a government of men, not laws. The citizens of the Commonwealth threw off that brand of government once before, under King George III, and they wrote the Massachusetts Constitution to prevent its return.

In the case of infectious disease, the General Court has delegated authority to the Department of Public Health, its Commissioner, its Council, and local boards of health. Their authority does not extend to the subject matters of Governor Baker’s decrees, and they cannot

⁶ See Mass. Const. Decl. of Rights art. XXX.

⁷ *Abdow v. Attorney General*, 468 Mass. 478, 489 (2014) (quoting *Boston Elevated Ry. v. Commonwealth*, 310 Mass. 528, 552 (1942)) (“The core police power ‘includes the right to legislate in the interest of the public health, the public safety and the public morals.’”) (emphasis added).

suspend or amend other laws. So, to the extent that it may be necessary to suspend laws to address the COVID-19 health crisis, only the legislature may enact law to make it so.

Fear of a virus, even one that targets a vulnerable population (such as the elderly in the case of coronavirus), does not and cannot justify abandoning constitutional governance. The legislature has the authority to enact laws, not the executive, no matter how well-intentioned the executive may be. If COVID-19 rebounds, or when the next pandemic arises, Governor Baker's executive overreach must not be repeated by him, nor by his successor. Judicial intervention to return constitutional order to Massachusetts will ensure that this government remains the "government of laws and not of men" that Adams built.

JURISDICTION AND VENUE

1. Pursuant to Massachusetts General Laws chapter 212, §§ 3 & 4, this Court has original jurisdiction over claims implicated by this matter. This Court also has original and concurrent jurisdiction over this matter pursuant to Massachusetts General Laws chapter 214, § 1, because the claims stated herein are equitable in nature.

2. Pursuant to Massachusetts General Laws chapter 231A, § 1, this Court has the power to make declaratory determinations regarding the issues raised in this lawsuit, which raise questions regarding the scope of executive and administrative authority under state law, and protection of the civil rights of Massachusetts citizens as protected by the state and United States Constitutions.

3. Pursuant to Massachusetts General Laws chapter 214, § 5, this Court is the proper venue for this action, as it is situated in the county in which one or more of the plaintiffs reside or conduct business.

PARTIES

4. Plaintiff Dawn Desrosiers resides in Rutland, Massachusetts. Ms. Desrosiers is the owner and employee of Plaintiff Dawn Desrosiers d/b/a Hair 4 You, a hair salon with a principal place of business in Hubbardston, Massachusetts. Hair 4 You has two employees.

5. Plaintiffs Susan and Nazareth Kupelian reside in Medford, Massachusetts. Ms. and Mr. Kupelian are owners and employees of Plaintiff Naz Kupelian Salon, a hair salon with a principal place of business in Lexington, Massachusetts. Naz Kupelian Salon has 11 employees, four of whom are family members.

6. Plaintiff Carla Agrippino-Gomes resides in Canton, Massachusetts. Ms. Gomes is the owner and employee of Plaintiff Terramia, Inc. (Terramia Ristorante) and Plaintiff Antico Forno, Inc. (Antico Forno Cucina a Legna), restaurants with principal places of business in Boston, Massachusetts. Terramia Ristorante has nine employees and Antico Forno employs 24.

7. Plaintiff James P. Montoro resides in Westfield, Massachusetts. Mr. Montoro is the pastor of Plaintiff Pioneer Valley Baptist Church Incorporated, a church located in, and principally serving and ministering to, the community of Westfield, Massachusetts. Pioneer Valley Baptist Church has about 150 members and provides faith-based addiction recovery counseling to the Westfield community.

8. Plaintiffs Kellie Fallon and Thomas E. Fallon reside in Burlington, Massachusetts. Ms. Fallon is the owner and employee of Plaintiff Bare Bottom Tanning Salon, a tanning salon with a principal place of business in Burlington, Massachusetts. Mr. Fallon is the owner and employee of Plaintiff Thomas E. Fallon d/b/a Union Street Boxing, a gym with a principal place of business in Billerica, Massachusetts. Bare Bottom Tanning Salon has two employees and Union Street Boxing has one employee.

9. Plaintiff Robert Walker resides in Westford, Massachusetts. Mr. Walker is the owner of Plaintiff Apex Entertainment LLC, a family entertainment center with a principal place of business in Marlborough, Massachusetts, and Plaintiff Devens Common Conference Center LLC, a convention facility with a principal place of business in Devens, Massachusetts. Apex Entertainment has 175 full and part-time employees and Devens Common Conference Center employs three full-time and 20 part-time employees.

10. Plaintiff Luis Morales resides in Somerville, Massachusetts. Mr. Morales is the pastor of Plaintiff Vida Real Evangelical Center, a church located in, and principally serving and ministering to, the community of Somerville, Massachusetts. Vida Real Evangelical Center has about 1,100 congregants.

11. Plaintiff Ben Haskell resides in Centerville, Massachusetts. Mr. Haskell is the Headmaster of Plaintiff Trinity Christian Academy of Cape Cod, a school providing private education to children from kindergarten through 12th grade, with roughly 160 students enrolled, with a principal place of learning in Barnstable, Massachusetts.

12. Defendant Charles D. Baker, Jr. is the Governor of the Commonwealth of Massachusetts. He is sued in his official capacity.

STATEMENT OF FACTS

A. COVID-19 Is a Serious Health Crisis in Massachusetts

13. The novel coronavirus, COVID-19, is a highly contagious viral disease spread mainly through close person-to-person contact. Centers for Disease Control and Prevention, How to Protect Yourself & Others *available at* <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

14. The Massachusetts Department of Public Health announced the first case of COVID-19 in the Commonwealth on March 2, 2020. Mass. Dept. of Pub. Health, Press Release (Mar. 2, 2020).

15. On May 30, 2020, DPH reported 96,301 confirmed cases of COVID-19 in Massachusetts. Mass. Dept. of Pub. Health, COVID-19 Dashboard (May 30, 2020), *available at* <https://www.mass.gov/doc/covid-19-dashboard-may-30-2020/download>.

16. Thus, COVID-19 presents a serious health crisis in Massachusetts.

B. The Massachusetts Constitution Divides Government into Three Branches to Protect Citizens' Health and Safety in Times of Crisis, While Simultaneously Protecting Their Civil Liberties

17. The Supreme Judicial Court has explained that “[t]he core police power ‘includes the right to *legislate* in the interest of the public health, the public safety and the public morals.’” *Abdow v. Attorney General*, 468 Mass. 478, 489 (2014) (quoting *Boston Elevated Ry. v. Commonwealth*, 310 Mass. 528, 552 (1942)) (emphasis added).

18. Massachusetts may recognize an even broader police power that includes “‘the right to *legislate* for the public welfare,’ and arguably encompasses the full breadth of State power.” *Id.* (emphasis added).

19. Whether viewed narrowly or broadly, the police power is a legislative power.

20. To protect civil liberties from the arbitrary and capricious decrees of individual executive officers, the Constitution of the Commonwealth of Massachusetts establishes a strict separation of governmental powers:

In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: *to the end it may be a government of laws and not of men.*

Mass. Const. Decl. of Rights art. XXX (emphasis added).

21. The General Court of Massachusetts is the legislative department of the Commonwealth. Mass. Const. c. I, § I, art. I. The General Court has, among other things, “full power and authority,”

from time to time, to make, ordain, and establish, all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions and instructions, either with penalties or without; so as the same be not repugnant or contrary to this constitution, as they shall judge to be for the good and welfare of this commonwealth, and for the government and ordering thereof, and of the subjects of the same, and for the necessary support and defence [*sic*] of the government thereof[.]

Mass. Const. c. I, § I, art. IV.

22. While the government’s legislative power is vested exclusively in the General Court of Massachusetts, the Massachusetts Constitution provides that

the people reserve to themselves the popular initiative, which is the power of a specified number of voters to submit constitutional amendments and laws to the people for approval or rejection; and the popular referendum, which is the power of a specified number of voters to submit laws, enacted by the general court, to the people for their ratification or rejection.

Mass. Const. Arts. of Amend. art. XLVIII.

23. The Governor of the Commonwealth of Massachusetts is the state’s “supreme executive magistrate.” Mass. Const. c. II, § I, art. I. The governor’s role in enacting legislation is constitutionally limited:

No bill or resolve of the senate or house of representatives shall become a law, and have force as such, until it shall have been laid before the governor for his revisal; and if he, upon such revision, approve thereof, he shall signify his approbation by signing the same. But if he have any objection to the passing of such bill or resolve, he shall return the same, together with his objections thereto, in writing, to the senate or house of representatives, in whichever the same shall have originated; who shall enter the objections sent down by the governor, at large, on their records, and proceed to reconsider the said bill or resolve.

Mass. Const. c. I, § I, art. II. *See also* Mass. Const. Arts. of Amend. art. LXIII, § 5 (granting the governor a line-item veto for appropriations bills).

24. Administrative agencies are created to assist the executive’s enforcement of the law. Mass. Admin. Law & Prac. § 2.01.

25. An administrative agency does not have the inherent authority to promulgate regulations—such authority must be lawfully conferred by the legislature. *Telles v. Commissioner of Ins.*, 410 Mass. 560, 565 (1991).

26. It is the General Court alone which may lawfully exercise Massachusetts’ police power to address a serious health crisis.

C. The Civil Defense Act Does Not Grant Governor Baker the Authority to Declare a Civil Defense State of Emergency to Address a Health Crisis

27. On March 10, 2020, in response to the COVID-19 health crisis, Governor Baker issued Executive Order No. 591, declaring a state of emergency in the Commonwealth of Massachusetts (“Civil Defense State of Emergency”). *See* Mass. Exec. Order No. 591 (Mar. 10, 2020).

28. The principal purpose of the Governor’s declaration of a Civil Defense State of Emergency was “to take additional steps to prepare for, respond to, and mitigate the spread of COVID-19 to protect the health and welfare of the people of the Commonwealth[.]” *See* Mass. Exec. Order No. 591.

29. Governor Baker’s Executive Order claimed authority to declare a Civil Defense State of Emergency under Chapter 639 of the Acts of 1950. Mass. Exec. Order No. 591. Chapter 639, entitled “Civil Defense Act,” is a special law not codified in the General Laws. *See* Spec. L. c. S31, §§ 1-22.

30. Under the Civil Defense Act, “the governor may issue a proclamation or proclamations setting forth a state of emergency.” Spec. L. c. S31, § 5. He or she may declare such a state of emergency for only the following reasons:

because of the existing possibility of the occurrence of disasters of unprecedented size and destructiveness *resulting from* [1] enemy attack, [2] sabotage or [3] other hostile action, in order to insure that the preparations of the commonwealth will be adequate to deal with *such disasters*, and generally to provide for the common defense and to protect the public peace, health, security and safety, and to preserve the lives and property of the people of the commonwealth[.]

Spec. L. c. S31, § 5, cl. 1 (emphasis added).

31. The COVID-19 health crisis is not one “such disaster[],” as it is not an attack, sabotage, or hostile action that could justify the declaration of a Civil Defense State of Emergency.

32. Indeed, nothing in the statute could be read to suggest that a health crisis is the equivalent of a Civil Defense crisis.

33. The Civil Defense Act lists seven specific events that trigger a governor’s authority to declare a Civil Defense State of Emergency, which depend upon

[1] if and when the congress of the United States shall declare war, [2] or if and when the President of the United States shall by proclamation or otherwise inform the governor that the peace and security of the commonwealth are endangered by belligerent acts of any enemy of the United States or of the commonwealth or by the imminent threat thereof; [3] or upon the occurrence of any disaster or catastrophe resulting from attack, sabotage or other hostile action; [4] or from riot or other civil disturbance; [5] or from fire, flood, earthquake or other natural causes; [6] or whenever because of absence of rainfall or other cause a condition exists in all or any part of the commonwealth whereby it may reasonably be anticipated that the health, safety or property of the citizens thereof will be endangered because of fire or shortage of water or food; [7] or whenever the accidental release of radiation from a nuclear power plant endangers the health, safety, or property of people of the commonwealth[.]

Spec. L. c. S31, § 5, cl. 1.

34. As the Executive Order and subsequent orders and guidance issued by Defendants make clear, none of the triggering events identified in Spec. L. c. S31, § 5, cl. 1, has befallen Massachusetts. That fact is not surprising because COVID-19 is a health crisis, not a Civil Defense crisis.

35. All of Governor Baker’s subsequent COVID-19 related orders have likewise been issued based upon his claimed powers as set forth in “Sections 5, 6, 7, 8, and 8A of Chapter 639 of the Acts of 1950, as amended, and other provisions of law[.]” Mass. Exec. Order No. 591.

36. The Governor’s Civil Defense State of Emergency powers include, but are not limited to:

- a. taking possession of real and personal property (Spec. L. c. S31, § 5(b));
- b. taking measures to effectuate presidential requests related to the national defense or the public safety (Spec. L. c. S31, § 6);
- c. exercising “any and all authority over persons and property, necessary or expedient for meeting said state of emergency, which the general court in the exercise of its constitutional authority may confer upon him” (Spec. L. c. S31, § 7);
- d. enforcing Civil Defense State of Emergency executive orders with imprisonment of up to one year, a fine up to \$500, or both (Spec. L. c. S31, § 8); and
- e. suspending any “general or special law or of any rule, regulation, ordinance or by-law to the extent that such provision is inconsistent with any order or regulation issued or promulgated” pursuant to Civil Defense State of Emergency executive orders (Spec. L. c. S31, § 8A).

37. Protecting residents of the Commonwealth from the dangers of the COVID-19 health crisis—or any pandemic, for that matter—does not require powers of the immense and

pervasive scope of Civil Defense State of Emergency powers. Since there is no invasion, civil unrest, or destroyed infrastructure, there is no need to suspend law—the legislature is free to amend or annul any statute, as the health crisis warrants. It should be apparent that there is no need to assist the president’s efforts to defend the nation or for Governor Baker to take possession of private property.

38. As the Governor’s declaration of a Civil Defense State of Emergency notes, the World Health Organization has declared a “**Public Health Emergency** of International Concern[.]” U.S. Health and Human Services declared a “**public health emergency** for the entire United States[.]” and Massachusetts DPH had already formed a “**Public Health Incident Management Team** to manage the public health aspects of the incident[.]” Mass. Exec. Order No. 591 (emphasis added).

39. Thus, a Civil Defense crisis—and the extensive power to abrogate statutes granted to the governor to address a true Civil Defense crisis—are incongruous with the challenges posed by the COVID-19 health crisis. Health authorities were mobilized well before the Governor’s declaration, armed with valid statutory authority to directly address the challenges posed by an infectious disease outbreak that is dangerous to the public health. Governor Baker is applying the wrong law to address the crisis at hand and, by doing so, he has unlawfully exercised legislative police power.

D. Health Crises Are Not “Other Natural Causes” that Justify Declaration of a Civil Defense State of Emergency

40. COVID-19 is not an “other natural cause” as prescribed by the Civil Defense Act.

41. As explained in the Civil Defense Act’s definitions, “civil defense” is

the preparation for and the carrying out of all emergency functions, other than functions for which military forces other than the national guard are primarily responsible, for the purpose of minimizing and repairing injury

and damage resulting from disasters caused by attack, sabotage or other hostile action; or by riot or other civil disturbance; or by fire, flood, earthquake or other natural causes.

Spec. L. c. S31, § 1.

42. “Other natural cause” can mean “**only** those things that share the characteristics of the terms that appear before it[.]” *See Commonwealth v. Escobar*, 479 Mass. 225, 229 (2018) (emphasis added).

43. The characteristics of attack, sabotage, riot, fire, flood, and earthquake are devastation to infrastructure and generalized and universal deprivation of the population’s access to the necessities of life: clean water, unadulterated food, and safe and sanitary shelter. These are the common concerns of an **entire** population in a civil defense state of emergency, where a threat to peace jeopardizes **everyone’s** health, security, **and** safety. The characteristics of attack, sabotage, riot, fire, flood, and earthquake are such that **no person or property is immune**—literally or figuratively—from the many dangers posed by the cataclysmic event triggering the crisis.

44. The Civil Defense Act’s scope is limited by the “emergency functions” it lists. The Act explains that “emergency functions”

shall include specifically, but without limiting the generality of the foregoing, firefighting and police services other than the actual control or suppression of riot or other civil disturbance, medical and health services, rescue, engineering and air-raid warning services, evacuation of persons and household pets and service animals, as defined by the Federal Emergency Management Agency, pursuant to 42 U.S.C. Section 5170b, from stricken areas, emergency welfare services, communications, radiological, chemical and other special weapons of defense, emergency transportation, existing or properly assigned functions of plant protection, temporary restoration of public utility services and other functions.

Spec. L. c. S31, § 1.

45. “Medical and health services” refer to access to critical medical care that could be obstructed by the triggering cataclysmic event—an event that may or may not require air-raid warnings or emergency transportation services. The term’s meaning is apparent from the characteristics of the other terms that appear in the statute, including rescue, firefighting, police services, and evacuation “from stricken areas.” *See id.*

46. Thus, as the Executive Order and subsequent orders and guidance issued by Defendant make clear, the Civil Defense Act does not apply to the COVID-19 health crisis because it is not a consequence of attack, sabotage, riot, fire, flood, earthquake, or anything else that shares their characteristics. It poses a serious health risk, but it does not pose a generalized or universal threat to “public peace, health, security *and* safety.”

E. Massachusetts Governors Have Never Before Declared a Civil Defense State of Emergency to Address a Health Crisis

47. Since the General Court of the Commonwealth of Massachusetts enacted the Civil Defense Act in 1950, Massachusetts governors have only declared 11 civil defense states of emergency, before COVID-19:

- a. January 12, 2011: Winter storm
- b. June 1, 2011: Tornadoes
- c. August 26, 2011: Hurricane Irene
- d. October 29, 2011: Nor’easter
- e. October 27, 2012: Hurricane Sandy
- f. February 8, 2013: Winter storm
- g. January 26, 2015: Winter storm
- h. February 9, 2015: Winter storm
- i. March 3, 2018: Coastal storm

- j. September 14, 2018: Merrimack Valley gas explosion
- k. October 4, 2018: Continuation of Merrimack Valley gas explosion

See Mass. Emergency Mgmt. Agency, State of Emergency Info., *available at*

<https://www.mass.gov/service-details/state-of-emergency-information>.

48. In each of the 11 instances listed above, “fire, flood, earthquake or other natural causes” threatened “public peace, health, security and safety,” empowering governors “to preserve the lives and property of the people of the commonwealth” through a declaration of a civil defense state of emergency.

49. In each of the 11 instances listed above, the crisis threatened the integrity of infrastructure and property; first responders’ access to victims; and the general population’s access to clean water, unadulterated food, and safe and sanitary shelter.

50. The Civil Defense Act contemplates that a crisis falling within its rubric would likely involve “military forces.” *See* Spec. L. c. S31, § 1 (defining “civil defense” as those emergency functions that do not include military forces but may include the national guard).

51. In other words, all prior crises that precipitated declarations of civil defense states of emergency manifested generalized and universal harms like those posed by an invasion or armed insurrection. They required a civil defense response.

52. COVID-19 marks the first time in history that a Massachusetts governor has applied the Civil Defense Act to a health crisis.

F. The General Court Has Delegated Executive Authority to Mitigate the Spread of Infectious Disease in the Public Health Act

53. The General Court delegated to the executive branch the authority to act decisively in the event of an infectious disease outbreak. The statutory authority is not the Civil Defense Act, but rather the Public Health Act, Massachusetts General Laws Chapter 111.

54. The Public Health Act tasks the Department of Public Health, its Commissioner, its Council, and local boards of public health, with the responsibility of protecting the public from “disease dangerous to the public health.” G.L. c. 111, § 1.

55. The Commissioner “may direct any executive officer or employee of the department to assist in the study, *suppression or prevention of disease* in any part of the commonwealth.” G.L. c. 111, § 2 (emphasis added).

56. DPH has the duty to investigate “the causes of disease, and *especially of epidemics*[.]” G.L. c. 111, § 5 (emphasis added). It has the “power to define ... what diseases shall be deemed dangerous to the public health, and *shall make such rules and regulations* consistent with law for the *control and prevention of such diseases* as it deems advisable for the protection of the public health.” G.L. c. 111, § 6 (emphasis added).

57. If DPH declares a contagious or infectious disease dangerous to the public health “or it is likely to exist in any place within the commonwealth,” DPH must investigate the means of preventing the spread of the disease and consult with local authorities. G.L. c. 111, § 7.

58. The Public Health Act addresses some infectious diseases by name, delegating to DPH the “responsibility for conducting programs aimed at controlling and eradicating tuberculosis in the commonwealth.” G.L. c. 111, § 81. For instance, it allows local health boards to transform hospitals’ tuberculosis facilities into divisions “for the care and treatment of persons suffering from other diseases of the chest[.]” G.L. c. 111, § 91C.

59. DPH may require towns to establish “hospitals for the reception of persons having smallpox, diphtheria, scarlet fever, or other diseases dangerous to the public health[.]” G.L. c. 111, § 92. These “isolation hospitals,” as Public Health Act calls them, are subject to the orders and regulations of local boards of health. *Id.*

60. In the event of an infectious disease outbreak that is dangerous to the public health, the Public Health Act directs local boards of public health to “provide such hospital or place of reception and such nurses and other assistance and necessities as is judged best for his accommodation and for the safety of the inhabitants[.]” G.L. c. 111, § 95. The statute focuses on the importance of isolation of “sick or infected” individuals. *See id.*

61. In some circumstances, a local board of health may seek a magistrate’s warrant “to remove any person infected with a disease dangerous to the public health or who is a carrier of the causative agent thereof, or to take control of convenient houses and lodgings, and to impress into service and use such convenient houses, lodgings, nurses, attendants and other necessities.” G.L. c. 111, § 96.

62. The Public Health Act prohibits transportation of people infected with a disease dangerous to the public health to other towns without first obtaining assent from the receiving town’s board of health, except for transportation to a hospital. G.L. c. 111, § 96A.

63. “Boards of health may grant permits for the removal of any nuisance, infected articles or sick person within the limits of their towns.” G.L. c. 111, § 98. Warrants may be issued to seize infected personal property. G.L. c. 111, § 99.

64. “If a disease dangerous to the public health exists in a town, the selectmen and board of health shall use all possible care to prevent the spread of the infection and may give public notice of infected places by such means as in their judgment may be most effectual for the common safety.” G.L. c. 111, § 104. The statute sets the penalty for obstructing health notices between \$10 and \$100. *Id.*

65. Local boards of health may “examine” and “restrain” travelers entering Massachusetts from infected places outside the Commonwealth. G.L. c. 111, § 106. Boards

may allow travelers to continue their journeys upon receipt of a board-issued license. Upon command by a board, a traveler coming from an infected place who does not return from where he or she came is subject to a fine up to \$100. *Id.*

66. If a physician examines a patient and believes the patient is infected with a disease dangerous to the public health, the physician must send written notice to the local board of health of the town in which the patient resides. G.L. c. 111, § 111. Upon receipt of such a notification, the board must then send a copy of the notice to the board of health in the town in which the patient contracted the disease, and to the board of health of each town in which the patient has exposed anyone to the disease. *Id.* Failure of a physician to satisfy this obligation will result in a fine of \$50 to \$200. *Id.*

67. First responders must report unprotected exposure capable of transmitting infectious disease. G.L. c. 111, § 111C.

68. If DPH declares a disease dangerous to the public health, local boards of health must give notice to DPH of any person's name and location of people afflicted with the disease. G.L. c. 111, § 112. Local boards of health must keep records regarding the names and locations of all people infected. G.L. c. 111, § 113.

69. And the foregoing says nothing of the regulations promulgated by DPH pursuant to the authority delegated to it by the Public Health Act, set forth in Chapter 300.00 of Title 105 of the Code of Massachusetts Regulations:

The purpose of 105 CMR 300.000 is to list diseases dangerous to the public health as designated by the Department of Public Health and ***to establish reporting, surveillance, isolation and quarantine requirements.*** 105 CMR 300.000 is intended for application by local boards of health, hospitals, laboratories, physicians and other health care workers, veterinarians, education officials, recreational program health service providers, food industry officials, and the public.

Code of Mass. Regs., 105 CMR 300.001 (emphasis added).

70. For instance, DPH regulations promulgated pursuant to the Act—*at least 16 years prior to COVID-19*—address mitigation of “novel coronavirus,” by name. *See, e.g.*, Code of Mass. Regs., 100 CMR 300.100 (“Cases or suspect cases of the diseases listed as follows shall be reported [to local boards of health] ... Respiratory infection thought to be due to any *novel coronavirus*[.]”) (emphasis added) *and* 100 CMR 300.170 (“[A]ll laboratories, including those outside of Massachusetts, performing examinations on any specimens derived from Massachusetts residents that yield evidence of infection due to the organisms listed below shall report such evidence of infection directly to the Department [of Public Health] ... *Novel coronaviruses* causing severe disease[.]”) (emphasis added).

71. Through the Public Health Act, the General Court delegated limited authority to the executive branch for infectious disease control and mitigation. It did not delegate any infectious disease control and mitigation authority in the Civil Defense Act. The Public Health Act predates the Civil Defense Act, in one form or another, the by almost *50 years*. *See* Acts of 1907, c. 183, § 1 (requiring the state board of health to define what diseases are “dangerous to the public health”). Indeed, the Public Health Act’s section “Definitions” (G.L. c. 111, § 1) alone has been amended 11 times since first appearing as its own section in the Act in 1938—nine of those amendments coming after enactment of the Civil Defense Act.

72. It is apparent that the General Court did not enact two conflicting sources of statutory authority to combat pandemics.

G. Governor Baker's Executive Orders Violate Civil Liberties and Unilaterally Waive or Modify Laws and Regulations

73. Governor Baker's orders issued pursuant to his Civil Defense State of Emergency have profoundly impacted every aspect of residents' lives and flipped the constitutional design of Massachusetts government on its head.

74. Governor Baker's orders have indefinitely suspended civil liberties or subjected them to executive whim. His orders have waived or modified legislative enactments and duly promulgated regulations without statutory or constitutional authority.

i. Governor Baker Has, by Executive Decree, Unilaterally Suspended Civil Liberties Including But Not Limited to the Rights to Peaceably Assemble and to Engage in One's Chosen Profession, and Has Waived or Modified Laws and Regulations Protecting Those Rights

75. Three days after Governor Baker declared a Civil Defense State of Emergency, he issued an order prohibiting assemblies of more than 250 people. *See* Mass. Gov. Order, Order Prohibiting Gatherings of More Than 250 People (Mar. 13, 2020) (citing authority granted by Spec. L. c. S31, §§ 7, 8 & 8A). His March 13, 2020 order suspended civil liberties and waived or modified laws or regulations that previously protected the right to peaceably assemble. *See id.*

76. Two days after the initial order prohibiting public gatherings of more than 250 people, Governor Baker issued a new order severely limiting assemblies of more than 25 people. *See* Mass. Gov. Order, Order Prohibiting Gatherings of More Than 25 People and On-Premises Consumption of Food or Drink (Mar. 15, 2020) (citing authority granted by Spec. L. c. S31, §§ 7, 8 & 8A). He also suspended civil liberties and waived or modified laws and regulations by prohibiting businesses from offering on-premises consumption of food or drink. *See id.*

77. The Governor’s March 15, 2020 order suspended civil liberties and waived or modified laws or regulations that previously protected the rights to peaceably assemble, to engage in one’s chosen profession, and to freely exercise one’s religion, among others. *See id.*

78. Governor Baker further decreed that violations of his order may be subject to criminal penalties under the Civil Defense Act. *See id.* (citing criminal penalties in Spec. L. c. S31, § 8).

79. Barely a week after the first modification, Governor Baker further reduced the number of people allowed to assemble to ten. *See* Mass. Gov. COVID-19 Order No. 13, Order Assuring Continued Operation of Essential Services in the Commonwealth, Closing Certain Workplaces, and Prohibiting Gatherings of More Than 10 People (Mar. 23, 2020) (citing authority granted by Spec. L. c. S31, §§ 7, 8 & 8A). He also declared certain businesses “essential” businesses, which he allowed to remain open, and certain other businesses “non-essential” businesses, which he forced to close. *See id.*

80. The Governor’s March 23, 2020 order aggravated the harm caused by the initial suspension of civil liberties and continued to waive or modify laws or regulations that previously protected the rights to peaceably assemble, to engage in one’s chosen profession, and to freely exercise one’s religion, among others. Governor Baker further decreed that violation of his order could result in civil penalties of \$300 per violation, or criminal penalties under the Civil Defense Act. *See id.* (citing criminal penalties in Spec. L. c. S31, § 8).

81. Just eight days after his March 23, 2020 modified order, Governor Baker issued another order extending his limitations on peaceful assemblies of more than ten people and his closure of “non-essential” businesses, and identified potential civil and criminal penalties for violating his March 31, 2020 order. *See* Mass. Gov. COVID19 Order No. 21, Order Extending

the Closing of Certain Workplaces and the Prohibition on Gatherings of More Than 10 People (Mar. 31, 2020) (citing authority granted by Spec. L. c. S31, §§ 7, 8 & 8A).

82. None of the “non-essential” businesses or organizations were provided with any notice or an opportunity to challenge the order. *See id.*

83. On April 28, 2020, Governor Baker again extended his limitations on assemblies of more than ten people and his closure of “non-essential” businesses, along with potential civil and criminal penalties for violating his order. *See* Mass. Gov. COVID-19 Order No. 30, Order Further Extending the Closing of Certain Workplaces and the Prohibition on Gatherings of More Than 10 People (Apr. 28, 2020) (citing authority granted by Spec. L. c. S31, §§ 7, 8 & 8A).

84. Governor Baker’s COVID-19 Order No. 30 attached a modified list of “essential” businesses. *See id.* Again, none of the “non-essential” businesses or organizations were provided with any notice or an opportunity to challenge the order. *See id.*

85. On May 15, 2020, Governor Baker once again extended his limitations on assemblies of more than ten people and his closure of “non-essential” businesses, along with potential civil and criminal penalties for violating his order. *See* Mass. Gov. COVID-19 Order No. 32, Order Temporarily Extending COVID-19 Order No. 13 (May 15, 2020) (citing authority granted by Spec. L. c. S31, §§ 7, 8 & 8A).

86. Three days later, on May 18, 2020, Governor Baker issued the most recent order restricting assemblies of more than ten people and the operation of “non-essential” closed businesses. *See* Mass. Gov. COVID-19 Order No. 33, Order Implementing a Phased Reopening of Workplaces and Imposing Workplace Safety Measures to Address COVID-19 (May 18, 2020) (citing authority granted by Spec. L. c. S31, §§ 7, 8 & 8A). The new order partly rescinded or modified COVID-19 Order Nos. 13, 21, 30, and 32. *See id.* Nevertheless, Governor Baker’s

modification of his prior orders kept in place substantial restrictions on individuals and businesses (keeping many “non-essential” businesses closed). Moreover, gatherings of ten or more people and COVID-19 Order No. 13’s attendant suspension of civil liberties and waiver or modification of laws or regulations remained in place. *See id.* (citing Mass. Gov. COVID-19 Order No. 13, Order Assuring Continued Operation of Essential Services in the Commonwealth, Closing Certain Workplaces, and Prohibiting Gatherings of More Than 10 People (Mar. 23, 2020)). So, too, did the civil fines up to \$300 per violation, but Governor Baker added that his order could be enforced by injunction. *See id.* (citing authority granted by Spec. L. c. S31, §§ 7, 8 & 8A).

87. Governor Baker also closed or significantly restricted access to beaches for otherwise lawful activities pursuant to his Civil Defense State of Emergency. *See* Mass. Gov. COVID-19 Order No. 22, Order Limiting Access to and Use of State Beaches (Apr. 2, 2020) (citing authority granted by Spec. L. c. S31, §§ 7, 8 & 8A). The April 2, 2020 order suspended civil liberties and waived or modified laws or regulations that previously protected the right to peaceably assemble. *See id.* Governor Baker further decreed that violations of his order may be subject to criminal penalties under the Civil Defense Act or civil fines. *See id.* (citing criminal and civil penalties in Spec. L. c. S31, § 8, G.L. c. 266, § 123, G.L. c. 92, § 37, and G.L. c. 132A, § 7).

88. A month and a half later, Governor Baker issued an order partly rescinding or modifying his order that closed state beaches. *See* Mass. Gov. COVID-19 Order No. 34, Order Expanding Access to and Use of State Beaches and Addressing Other Outdoor Recreational Activities (May 18, 2020) (citing authority granted by Spec. L. c. S31, §§ 7, 8 & 8A). Nevertheless, Governor Baker instructed the Department of Conservation and Recreation to

establish rules for “passive recreational activities.” *See id.* By identifying specific passive activities that are permitted—leaving unenumerated but otherwise lawful activities prohibited—Governor Baker continued to suspend civil liberties and waive or modify laws or regulations designed to protect the right to peaceably assemble. *See id.* Violation of the Governor’s May 18, 2020 order could result in civil or criminal penalties, including imprisonment. *See id.* (citing authority granted by Spec. L. c. S31, § 8, G.L. c. 266, § 123, G.L. c. 92, § 37, and G.L. c. 132A, § 7).

89. Governor Baker has not only restricted Bay Staters’ gatherings and closed their businesses and organizations, he has also issued an order dictating what Massachusetts residents must wear by requiring the use of face masks in some situations. *See* Mass. Gov. Order, Order Requiring Face Coverings in Public Places Where Social Distancing Is Not Possible (May 1, 2020) (citing authority granted by Spec. L. c. S31, §§ 7, 8 & 8A). The penalties for not wearing a mask could include civil fines of \$300 per violation. *See id.* (citing G.L. c. 40, § 21D). While not expressly stated in his order, a violation could conceivably be prosecuted as a criminal offense, since the purported authority for the order is the Civil Defense Act. *See id.* (providing for criminal penalties under Spec. L. c. S31, § 8). The order has suspended civil liberties and waived or modified laws or regulations that previously protected the right to free expression.

ii. Governor Baker Has, by Executive Decree, Unilaterally Suspended Civil Liberties Including But Not Limited to the Right to Educate One’s Children and to Engage in One’s Chosen Profession, and Has Waived or Modified Laws and Regulations Protecting Those Rights

90. On March 15, 2020, Governor Baker issued an order closing all public and private elementary and secondary schools. *See* Mass. Gov. Order, Order Temporarily Closing All Public and Private Elementary and Secondary Schools (Mar. 15, 2020) (citing authority granted by Spec. L. c. S31, §§ 7, 8 & 8A). Governor Baker declared that violation of his unilateral

suspension of education laws and regulations is a criminal offense under the Civil Defense Act. None of the “non-essential” educational businesses or organizations were provided with any notice or an opportunity to challenge the order. *See id.* (citing criminal penalties in Spec. L. c. S31, § 8). The order suspended civil liberties and waived or modified laws or regulations that previously protected parents’ rights to raise their children, the rights of children to receive an education, and the rights of teachers to engage in the profession of their choice.

91. Governor Baker reissued his order closing all public and private elementary and secondary schools on March 25, 2020. *See* Mass. Gov. COVID-19 Order No. 16, Order Extending the Temporary Closure of All Public and Private Elementary and Secondary Schools (Mar. 25, 2020) (citing authority granted by Spec. L. c. S31, §§ 7, 8 & 8A). Possible criminal penalties for violating the order remained in place. *Id.* None of the “non-essential” educational businesses or organizations were provided with any notice or an opportunity to challenge the order. *See id.* (citing criminal penalties in Spec. L. c. S31, § 8).

92. Governor Baker also issued an order closing childcare programs, *See* Mass. Gov. Order, Order Temporarily Closing All Child Care Programs and Authorizing the Temporary Creation and Operation of Emergency Child Care Programs (Mar. 18, 2020) (citing authority granted by Spec. L. c. S31, §§ 7, 8 & 8A). While not expressly stated in his order, a violation could conceivably be prosecuted as a criminal offense, since the purported authority for the order is the Civil Defense Act. *See id.* None of the “non-essential” businesses or organizations were provided with any notice or an opportunity to challenge the order. *See id.* (providing for criminal penalties under Spec. L. c. S31, § 8). The order suspended civil liberties and waived or modified laws or regulations that previously protected parents’ rights to raise their children and the rights of childcare providers to engage in the profession of their choice.

93. Governor Baker reissued his order closing childcare programs on March 25, 2020. *See* Mass. Gov. COVID-19 Order No. 15, Order Extending the Temporary Closing of all Non-Emergency Child Care Programs (Mar. 25, 2020) (citing authority granted by Spec. L. c. S31, §§ 7, 8 & 8A). Possible criminal penalties for violating the order remained in place. None of the “non-essential” childcare businesses or organizations were provided with any notice or an opportunity to challenge the order. *See id.* (citing criminal penalties in Spec. L. c. S31, § 8).

iii. Governor Baker Has, by Executive Decree, Unilaterally Waived or Modified Statutory Obligations of Massachusetts Officials and Private Parties

94. On March 12, 2020, Governor Baker issued an order waiving or modifying portions of Massachusetts’ Open Meeting Law. *See* Mass. Gov. Order, Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, § 20 (Mar. 12, 2020) (citing authority granted by Spec. L. c. S31, §§ 7, 8 & 8A).

95. On March 30, 2020, Governor Baker issued an order waiving or modifying Massachusetts General Laws Chapter 156D, §§ 7.05 and 7.08 regarding shareholder meetings of public companies. *See* Mass. Gov. COVID-19 Order No. 19, Order Regarding the Conduct of Shareholder Meetings by Public Companies (Mar. 30, 2020) (citing authority granted by Spec. L. c. S31, §§ 7, 8 & 8A).

96. Later that same day, Governor Baker issued an order waiving or modifying laws and regulations regarding health care provider rates. *See* Mass. Gov. COVID-19 Order No. 20, Order Authorizing the EOHHS to Adjust Essential Provider Rates During the COVID-19 Public Health Emergency (Mar. 30, 2020) (citing authority granted by Spec. L. c. S31, §§ 7, 8 & 8A).

97. Governor Baker issued guidance on April 2, 2020 related to the enforcement of COVID-19 procedures for construction sites, adding to or modifying existing health and safety laws or regulations related to construction sites. *See* Mass. Gov. Guidance, Enforcement of the

COVID-19 Safety Guidelines and Procedures for Construction Sites (Apr. 2, 2020) (citing authority granted by COVID-19 Order No. 13). The Governor’s guidance requires certain enforcement procedures by state agencies who engage in or manage construction projects and recommends that cities and towns use the enforcement procedures for public and private construction projects. None of the “non-essential” businesses or organizations were provided with any notice or an opportunity to challenge the order. *See id.* The guidance included an addendum regarding COVID-19 exposure which further adds to or modifies existing health and safety laws and regulations related to construction sites. *See Mass. Gov. Guidance, Suppl. Guidelines for Construction Sites, Addendum 1 (Apr. 2, 2020).*

98. On April 9, 2020, Governor Baker issued an order waiving or modifying laws or regulations regarding health insurance companies’ coverage of “all medically necessary emergency department and inpatient services[.]” *See Mass. Gov. COVID-19 Order No. 25, Order Expanding Access to Inpatient Services (Apr. 9, 2020)* (citing authority granted by Spec. L. c. S31, §§ 7, 8 & 8A).

99. One week later, Governor Baker issued an order waiving or modifying laws or regulations regarding the creation and operation of emergency residential programs and emergency placement agencies for children. *See Mass. Gov. Order, Order Authorizing the Creation and Operation of Emergency Residential Programs and Emergency Placement Agencies for Children (Apr. 16, 2020)* (citing authority granted by Spec. L. c. S31, §§ 7, 8 & 8A).

100. On April 28, 2020, Governor Baker issued an order waiving or modifying laws and regulations regarding Governor’s Council members’ remote participation in Assemblies and public access to Assemblies. *See Mass. Gov. COVID-19 Order No. 29, Revised Order Allowing*

for Remote Participation for the Governor’s Council (Apr. 28, 2020) (citing authority granted by Spec. L. c. S31, §§ 7, 8 & 8A).

iv. Governor Baker Has, by Executive Decree, Unilaterally Waived or Modified Laws or Regulations Related to Licensure and Permitting

101. On March 17, 2020, Governor Baker issued two orders. In the first, Governor Baker waived or modified laws or regulations regarding licensing requirements of physicians practicing medicine in the Commonwealth. *See* Mass. Gov. Order, Order Expanding Access to Physician Services (Mar. 17, 2020) (citing authority granted by Spec. L. c. S31, §§ 7, 8 & 8A).

102. In his second March 17, 2020 order, Governor Baker waived or modified laws and regulations regarding registrations of registered nurses, temporarily abandoning the training and educational requirements of the Boards of Registration for Nursing, Pharmacy, and Physician Assistants, and permitting the use of “telemedicine” irrespective of and contrary to the boards’ rules on the matter. *See* Mass. Gov. Order, Order Extending the Registration of Certain Licensed Health Care Professionals (Mar. 17, 2020) (citing authority granted by Spec. L. c. S31, §§ 7, 8 & 8A).

103. The next day, Governor Baker issued an order waiving or modifying laws or regulations regarding registrations of occupational and professional licensing issued by a state agency or board of registration. *See* Mass. Gov. Order, Order Extending the Registrations of Certain Licensed Professionals (Mar. 18, 2020) (citing authority granted by Spec. L. c. S31, §§ 7, 8 & 8A).

104. Governor Baker subsequently reissued the order waiving or modifying laws or regulations regarding registrations of occupational and professional licensing issued by state agencies or boards of registration. *See* Mass. Gov. COVID-19 Order No. 18, Order Extending

Certain Professional Licenses, Permits, and Registrations Issued by Commonwealth Agencies (Mar. 26, 2020) (citing authority granted by Spec. L. c. S31, §§ 7, 8 & 8A).

105. On March 20, 2020, Governor Baker issued an order waiving or modifying Massachusetts General Laws Chapter 148, §§ 26F and 26F^{1/2} regarding the inspection of some real estate. *See* Mass. Gov. Order, Order Permitting the Temporary Conditional Deferral of Certain Inspections of Residential Real Estate (Mar. 20, 2020) (citing authority granted by Spec. L. c. S31, §§ 7, 8 & 8A).

106. Later that same day, Governor Baker issued a second order waiving or modifying laws or regulations regarding motor vehicle registration in-person transactions. *See* Mass. Gov. Order, Order Authorizing Actions to Reduce In-Person Transactions Associated with the Licensing, Registration, and Inspection of Motor Vehicles (Mar. 20, 2020) (citing authority granted by Spec. L. c. S31, §§ 7, 8 & 8A).

107. On March 26, 2020, Governor Baker issued an order waiving or modifying laws or regulations regarding approvals, deadlines, appeals, and tolling of permits issued by state agencies. *See* Mass. Gov. COVID-19 Order No. 17, Order Suspending State Permitting Deadlines and Extending the Validity of State Permits (Mar. 26, 2020) (citing authority granted by Spec. L. c. S31, §§ 7, 8 & 8A).

108. On April 9, 2020, Governor Baker issued an order waiving or modifying laws or regulations regarding the expedited licensure of physicians who graduated from international medical schools. *See* Mass. Gov. COVID-19 Order No. 23, Order Providing Accelerated Licensing of Physicians Educated in Foreign Medical Schools (Apr. 9, 2020) (citing authority granted by Spec. L. c. S31, §§ 7, 8 & 8A).

109. Later that same day, Governor Baker issued an order waiving or modifying Massachusetts General Laws Chapter 112, §§ 80, 80A, 80B regarding the practice of nursing by unlicensed nurses. *See* Mass. Gov. COVID-19 Order No. 24, Order Authorizing Nursing Practice by Graduates and Senior Students of Nursing Education Programs (Apr. 9, 2020) (citing authority granted by Spec. L. c. S31, §§ 7, 8 & 8A).

H. The Plaintiffs Have Experienced, and Will Continue to Experience, Concrete and Particularized Harm as a Direct Consequence of Governor Baker’s Civil Defense State of Emergency Declaration and His Orders Decreed Pursuant to the Declaration

110. As a direct result of the Governor’s Civil Defense State of Emergency and his subsequent orders, each of the Plaintiffs has suffered harm, and is threatened with additional future harm.

111. Plaintiffs Dawn Desrosiers, Hair 4 You, Susan Kupelian, Nazareth Kupelian, Naz Kupelian Salon, Carla Agrippino-Gomes, Terramia Ristorante, Antico Forno, Kellie Fallon, Bare Bottom Tanning Salon, Thomas E. Fallon, Union Street Boxing, Robert Walker, Apex Entertainment LLC, and Devens Common Conference Center LLC, have been forced to close and have suffered, and continue to suffer, significant economic losses.

112. To the extent that Governor Baker has “allowed” some of these Plaintiffs to reopen, the limitations placed on them and their businesses perpetuate the economic harm caused by the declaration of a Civil Defense State of Emergency. These economic losses are permanent and cannot be mitigated or recovered.

113. Plaintiffs Dawn Desrosiers, Hair 4 You, Susan Kupelian, Nazareth Kupelian, Naz Kupelian Salon, Carla Agrippino-Gomes, Terramia Ristorante, Antico Forno, Kellie Fallon, Bare Bottom Tanning Salon, Thomas E. Fallon, Union Street Boxing, Robert Walker, Apex Entertainment LLC, and Devens Common Conference Center LLC, have been forced to close

and have suffered, and continue to suffer, deprivation of their civil liberties. Specifically, the Governor has deprived them of their rights to engage in the professions of their choice, the enjoyment of their property rights in state licensure to operate lawful businesses, and their rights to peaceably assemble, among others. To the extent that Governor Baker has “allowed” some of these Plaintiffs to reopen, the limitations placed on them and their businesses perpetuate the harm to their civil liberties. The financial and other consequences from the loss of their civil liberties are permanent and cannot be mitigated or recovered.

114. Plaintiffs Jim Montoro, Pioneer Valley Baptist Church, Luis Morales, and Vida Real Evangelical Center have been forced to close and have suffered, and continue to suffer, deprivation of their civil liberties. Specifically, the Governor has deprived them of their rights to engage in the professions of their choice, the enjoyment of their property rights in state licensure to operate lawful organizations, their rights to free exercise of their religious beliefs and practices, and their rights to peaceably assemble, among others. To the extent that Governor Baker has “allowed” some of these Plaintiffs to reopen, the limitations placed on them and their businesses perpetuate the harm to their civil liberties. The loss of their civil liberties is permanent and cannot be mitigated or recovered.

115. Plaintiffs Ben Haskell and Trinity Christian Academy of Cape Cod have been forced to close and have suffered, and continue to suffer, deprivation of their civil liberties. Specifically, the Governor has deprived them of their rights to engage in the professions of their choice, the enjoyment of their property rights in state licensure to operate lawful organizations, their rights to free exercise of their religious beliefs and practices, their rights to peaceably assemble, and their rights to educate, among others. The loss of their civil liberties is permanent and cannot be mitigated or recovered.

**COUNT I: *ULTRA VIRES* GOVERNMENTAL ACTION
(ALL PLAINTIFFS AGAINST DEFENDANT GOVERNOR BAKER)
GOVERNOR'S CIVIL DEFENSE STATE OF EMERGENCY IS INVALID**

116. Plaintiffs reallege and incorporate by reference the allegations contained in their Introductory Statement and paragraphs 1 through 115, as if fully set forth herein.

117. Each of Governor Baker's orders is predicated upon his assertion that he has statutory authority to declare a Civil Defense State of Emergency.

118. As explained above, the Civil Defense Act is inapplicable to the COVID-19 health crisis because COVID-19 does not present a civil defense crisis, within the meaning of the Civil Defense Act. Thus, Governor Baker could not lawfully declare Massachusetts to be in a Civil Defense State of Emergency.

119. "[A] state officer may be said to act *ultra vires* only when he acts 'without any authority whatever.'" *New Hampshire Ins. Guar. Ass'n v. Markem Corp.*, 424 Mass. 344, 353 (1997).

120. Because Governor Baker could not lawfully declare Massachusetts in a Civil Defense State of Emergency, Governor Baker's orders issued pursuant to the Civil Defense State of Emergency are "without any authority whatever."

121. Additionally, the General Court never delegated to Governor Baker the authority to establish civil fines for violations of his orders. At least three orders, Nos. 13, 31, and 33, provide for civil fines as possible alternatives to the criminal penalties under the Civil Defense Act.

122. Where a state officer acts *ultra vires*, his or her acts are void. *See New England Power Generators Ass'n, Inc. v. Depart. of Env'tl. Prot.*, 480 Mass. 398, 407-08 (2018).

123. Thus, Governor Baker acted *ultra vires* by applying a law incongruous to the health crisis at hand, and his orders issued pursuant to that purported authority are void and must fail.

**COUNT II: VIOLATION OF THE SEPARATION OF POWERS
(ALL PLAINTIFFS AGAINST DEFENDANT GOVERNOR BAKER)
GOVERNOR’S ORDERS VIOLATE MASS. CONST. DECL. OF RIGHTS ART. XXX**

124. Plaintiffs reallege and incorporate by reference the allegations contained in their Introductory Statement and paragraphs 1 through 123, as if fully set forth herein.

125. The General Court has exclusive governmental authority to make law in Massachusetts. Mass. Const. c. I, § I, art. IV. The only other process for making law in Massachusetts is through public referendum. Mass. Const. Arts. of Amend. art. XLVIII.

126. The Governor is the chief executive and he or she is tasked with executing the law, not making it. *See* Mass. Const. c. II, § I, art. I.

127. Governor Baker has unilaterally suspended civil liberties and waived or modified numerous validly enacted laws and regulations without legislative enactment.

128. “[A] state officer may be said to act *ultra vires* only when he acts ‘without any authority whatever.’” *New Hampshire Ins. Guar. Ass’n*, 424 Mass. at 353.

129. The Massachusetts Constitution “prohibits the executive department from exercising legislative power.” *Opinion of the Justices*, 430 Mass. 1201, 1203-04 (1999) (citing Mass. Const. Decl. of Rights art. XXX). *See also* Mass. Const. Decl. of Rights art. XX (“The power of suspending the laws, or the execution of the laws, ought never to be exercised, but by the legislature or, by authority derived from it, to be exercised in such particular cases only, as the legislature shall expressly provide for.”). Where executive action “deprive[s] the Legislature

of its full authority to pass laws[,]” the executive action violates the separation of powers provision of the Massachusetts Constitution. *Id.*

130. Where a state officer acts *ultra vires*, his or her acts are void. *See New England Power Generators Ass’n, Inc.*, 480 Mass. at 407-08.

131. Thus, Governor Baker acted *ultra vires* by unilaterally waiving or amending valid legislative enactments, violating the separation of powers, so his acts are void and must fail.

**COUNT III: VIOLATION OF FEDERAL SUBSTANTIVE DUE PROCESS
(PLAINTIFFS DESROSIERS, HAIR 4 YOU, S. AND N. KUPELIAN, NAZ KUPELIAN SALON, GOMES,
TERRAMIA, ANTICO FORNO, K. FALLON, BARE BOTTOM TANNING SALON, T. FALLON, UNION
STREET BOXING, ROBERT WALKER, APEX ENTERTAINMENT, AND DEVENS COMMON
CONFERENCE CENTER AGAINST DEFENDANT GOVERNOR BAKER)
RIGHT TO ENGAGE IN ONE’S CHOSEN PROFESSION | U.S. CONST. AMEND. XIV**

132. Plaintiffs reallege and incorporate by reference the allegations contained in their Introductory Statement and paragraphs 1 through 131, as if fully set forth herein.

133. “Established case law clearly identifies the right to follow one’s chosen profession as a constitutionally-protected liberty interest.” *Baillargeon v. DEA*, 638 F. Supp. 2d 235, 238 (D.R.I. 2009) (citing *Greene v. McElroy*, 360 U.S. 474, 492 (1959)).

134. “[T]he Due Process Clause protects one’s right to pursue a livelihood of one’s choice.” *Advance Am. v. FDIC*, 257 F. Supp. 3d 56, 61 (D.D.C. 2017). Moreover, the Due Process Clause’s guarantee of a right to hold private employment and to pursue one’s chosen profession is a right to be free from unreasonable government interference. *See Mead v. Indep. Ass’n*, 684 F.3d 226, 232 (1st Cir. 2012) (citing *Greene*, 360 U.S. at 492). “The ability to pursue a different livelihood is no substitute—*i.e.*, it would be of little consolation to an attorney, driven from his practice by improper governmental stigma, that McDonalds is still hiring.” *Advance Am.*, 257 F. Supp. 3d at 66.

135. Indeed, the Fourteenth Amendment has “long included the liberty to follow a trade or calling[.]” *Lawson v. Sheriff of Tippecanoe County*, 725 F.2d 1136, 1138 (7th Cir. 1984). So, “if a state excludes a person from a trade or calling, it is depriving him of liberty, which it may not do without due process of law.” *Id.*

136. Additionally, the Due Process Clause protects interests that a person has already acquired in specific benefits, defined by existing rules that stem from independent sources, such as state law. *LG Elecs. USA, Inc. v. Dep’t of Educ.*, 679 F. Supp. 2d 18, 33 (D.D.C. 2010). Therefore, “a license to operate a business is a protected property interest under the due process clause if it cannot be taken away from its holder before a time certain and in the absence of misconduct.” *Yankee Atomic Electric Co. v. Sec. of Commonwealth*, 403 Mass. 203, 215 n.1 (1988) (Lynch, J., dissenting) (citing *Baer v. Wauwatosa*, 716 F.2d 1117, 1122 (7th Cir. 1983)). “Suspension of issued licenses . . . involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment.” *Konstantopoulos v. Whately*, 384 Mass. 123, 132 (1981) (quoting *Barry v. Barchi*, 443 U.S. 55, 69-70 (1979) (Brennan, J., concurring in part) (internal quotations omitted)).

137. Thus, Governor Baker’s past, present, and continuing closures of, and restrictions to, Plaintiffs’ businesses have denied Plaintiffs their individual rights to due process. He has completely or substantially precluded them from engaging in the professions of their choosing and he has denied them the enjoyment of the valid state occupational and business licenses they hold. As a direct consequence of Governor Baker’s Civil Defense State of Emergency and orders, he has denied Plaintiffs’ due process rights, which has caused and will continue to cause

irreparable harm to Plaintiffs' civil liberties, as well as irreparable professional, personal, and financial hardship.

**COUNT IV: VIOLATION OF STATE SUBSTANTIVE DUE PROCESS
(PLAINTIFFS DESROSIERS, HAIR 4 YOU, S. AND N. KUPELIAN, NAZ KUPELIAN SALON, GOMES,
TERRAMIA, ANTICO FORNO, K. FALLON, BARE BOTTOM TANNING SALON, T. FALLON, UNION
STREET BOXING, ROBERT WALKER, APEX ENTERTAINMENT, AND DEVENS COMMON
CONFERENCE CENTER AGAINST DEFENDANT GOVERNOR BAKER)
RIGHT TO ENGAGE IN ONE'S CHOSEN PROFESSION | MASS. CONST. DECL. OF RIGHTS ART. X**

138. Plaintiffs reallege and incorporate by reference the allegations contained in their Introductory Statement and paragraphs 1 through 137, as if fully set forth herein.

139. The Supreme Judicial Court of Massachusetts has explained that “no one questions the existence of the right of every person to follow any legitimate calling for the purpose of earning his own living, or for any other lawful purpose.” *See Commonwealth v. Beaulieu*, 213 Mass. 138, 141 (1912). Moreover, “[i]t is a **sacred right** and is protected both by the Federal Constitution and that of this Commonwealth.” *Id.* at 141 (1912) (citing U.S. Const. amend XIV and Mass. Decl. of Rights art. X) (emphasis added). Sacred rights may not be absolute, but they may only be burdened by **valid** exercises of state authority. *See id.*

140. Moreover, it is “clear that the right to engage in any lawful occupation is an aspect of the liberty and property interests protected by the substantive reach of the due process clause of the Fourteenth Amendment to the United States Constitution and analogous provisions of our State Constitution.” *Blue Hills Cemetery, Inc. v. Bd. of Reg. in Embalming & Funeral Dir.*, 379 Mass. 368, 372 (1979). It is “the most precious liberty that man possesses.” *Id.* (internal quotations and citations omitted). As such, holders of valid occupational and business licenses have a liberty interest that cannot be denied without due process. *See id.* at 375-76.

141. Thus, Governor Baker's past, present, and continuing closures of, and restrictions to, Plaintiffs' businesses have denied Plaintiffs their rights to due process. He has completely or

substantially precluded them from engaging in the professions of their choosing and he has denied them the enjoyment of the valid state occupational and business licenses they hold. As a direct consequence of Governor Baker's Civil Defense State of Emergency and orders, he has denied Plaintiffs' due process rights, which has caused and will continue to cause irreparable harm to Plaintiffs' civil liberties and irreparable professional, personal, and financial hardship.

**COUNT V: VIOLATION OF FEDERAL SUBSTANTIVE DUE PROCESS
(BEN HASKELL AND TRINITY CHRISTIAN ACADEMY OF CAPE COD
AGAINST DEFENDANT GOVERNOR BAKER)
RIGHT TO EDUCATE AND TO OBTAIN AN EDUCATION | U.S. CONST. AMEND. XIV**

142. Plaintiffs reallege and incorporate by reference the allegations contained in their Introductory Statement and paragraphs 1 through 141, as if fully set forth herein.

143. Certain government actions are invalid, even where the actions may be procedurally fair, because they violate the substantive component of due process. *Brown v. Hot, Sexy & Safer Prods.*, 68 F.3d 525, 531 (1st Cir. 1995). That is because substantive due process rights touch upon the most fundamental freedoms of living one's life without governmental interference:

Without doubt, [the Fourteenth Amendment] denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.

Meyer v. Nebraska, 262 U.S. 390, 399 (1923). Among these rights is the right to teach. *See id.* at 400.

144. The Due Process Clause of the Fourteenth Amendment also protects "the liberty of parents and guardians to direct the upbringing and education of children under their control." *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534–35 (1925) (citing *Meyer*, 262 U.S. at 399). "The

child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.” *Id.* at 535.

145. Therefore, there is a substantive due process right both to educate and to obtain an education. *Burt v. Rumsfeld*, 354 F. Supp. 2d 156, 188 (D.C. Conn. 2005) (citing *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923)). Moreover, these rights are inextricably intertwined. *See id.* (explaining that a “school’s right to educate” includes setting curriculum and admissions standards, making academic decisions, regulating students’ First Amendment rights, and funding student organizations) (citing numerous Supreme Court decisions).

146. Governor Baker’s orders closing all public and private elementary and secondary schools and childcare programs have violated Plaintiffs’ rights to educate and to obtain an education. The orders do not take into account school size or ability to provide a healthy learning environment. Parents have had no input. The curriculum and educational methodology employed (distance learning versus hands-on classroom) to teach children is not in the hands of parents, teachers, or even local school boards. Governor Baker has claimed it unto himself.

147. Thus, Governor Baker’s past, present, and continuing closures of, and restrictions to, Plaintiffs’ school has denied Plaintiffs their rights to due process. He has completely or substantially precluded them from engaging in education, and he has denied them the enjoyment of the valid state occupational and educational licenses they hold. As a direct consequence of Governor Baker’s Civil Defense State of Emergency and orders, he has denied Plaintiffs’ due process rights, which has caused, and will continue to cause, irreparable harm to Plaintiffs’ civil liberties.

**COUNT VI: VIOLATION OF STATE SUBSTANTIVE DUE PROCESS
(BEN HASKELL AND TRINITY CHRISTIAN ACADEMY OF CAPE COD
AGAINST DEFENDANT GOVERNOR BAKER)
RIGHT TO EDUCATE AND TO OBTAIN AN EDUCATION | MASS. CONST. DECL. OF RIGHTS ART. X**

148. Plaintiffs reallege and incorporate by reference the allegations contained in their Introductory Statement and paragraphs 1 through 147, as if fully set forth herein.

149. Article X of the Massachusetts Declaration of Rights affords *greater* protection of rights than the Due Process Clause of the Fourteenth Amendment, but Massachusetts courts' analysis of Article X due process claims adhere to the same standards as federal due process analyses. *Gillespie v. City of Northampton*, 460 Mass. 148, 153 n.12 (2011).

150. Therefore, Massachusetts recognizes that there is a substantive due process right both to educate and to obtain an education. *Burt*, 354 F. Supp. 2d at 188 (citing *Meyer*, 262 U.S. at 400).

151. Governor Baker's orders closing all public and private elementary and secondary schools and childcare programs have violated Plaintiffs' rights to educate and to obtain an education. The orders do not take into account school size or ability to provide a healthy learning environment. Parents have had no input. The curriculum and educational methodology employed (distance learning versus hands-on classroom) to teach children is not in the hands of parents, teachers, or even local school boards. Governor Baker has claimed it unto himself.

152. Thus, Governor Baker's past, present, and continuing closures of, and restrictions to, Plaintiffs' school has denied Plaintiffs their rights to due process. He has completely or substantially precluded them from engaging in education and he has denied them the enjoyment of the valid state occupational and educational licenses they hold. As a direct consequence of Governor Baker's Civil Defense State of Emergency and orders, he has denied Plaintiffs' due

process rights guaranteed under Declaration of Rights Article X, which has caused, and will continue to cause, irreparable harm to Plaintiffs' civil liberties.

**COUNT VII: VIOLATION OF FEDERAL RIGHT TO PEACEABLY ASSEMBLE
(ALL PLAINTIFFS AGAINST DEFENDANT GOVERNOR BAKER)
PEACEABLE ASSEMBLY CLAUSE | U.S. CONST. AMEND. I**

153. Plaintiffs reallege and incorporate by reference the allegations contained in their Introductory Statement and paragraphs 1 through 152, as if fully set forth herein.

154. The First Amendment guarantees “the right of the people peaceably to assemble[.]” U.S. Const. amend. I.

155. The First Amendment right to peaceably assemble is a fundamental right safeguarded by the Due Process Clause of the Fourteenth Amendment of the United States Constitution. *De Jonge v. State of Oregon*, 299 U.S. 353, 364–65 (1937).

156. Thus, Governor Baker’s past, present, and continuing prohibition of, and restrictions to, Plaintiffs’ enjoyment of businesses, schools, churches, parks, beaches, leisure activities, and personal gatherings (to name just a few) have denied Plaintiffs their rights to peaceably assemble. He has done so without lawful authority and without regard to less restrictive means of controlling or mitigating the health crisis at hand, even assuming for the sake of argument that Governor Baker has some measure of lawful authority to restrict peaceable assembly to protect public health. As a direct consequence of Governor Baker’s Civil Defense State of Emergency and orders, he has denied Plaintiffs’ rights to peaceably assemble, which has caused, and will continue to cause, irreparable harm to Plaintiffs’ civil liberties.

**COUNT VIII: VIOLATION OF STATE RIGHT TO PEACEABLY ASSEMBLE
(ALL PLAINTIFFS AGAINST DEFENDANT GOVERNOR BAKER)
PEACEABLE ASSEMBLY CLAUSE | MASS. CONST. DECL. OF RIGHTS ART. XIX**

157. Plaintiffs reallege and incorporate by reference the allegations contained in their Introductory Statement and paragraphs 1 through 156, as if fully set forth herein.

158. Article XIX guarantees that the “people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good[.]” Mass. Const. Decl. of Rights art. XIX.

159. The Article XIX right to peaceably assemble is a fundamental right. *Bowe v. Secretary of Commonwealth*, 320 Mass. 230, 249-50 (1946) (discussing the right to peaceably assemble under the Declaration of Rights in the context of fundamental rights to freedoms of speech and press).

160. Thus, Governor Baker’s past, present, and continuing prohibition of, and restrictions to, Plaintiffs’ enjoyment of businesses, schools, churches, parks, beaches, leisure activities, and personal gatherings (to name just a few) have denied Plaintiffs their rights to peaceably assemble. He has done so without lawful authority and without regard to less restrictive means of controlling or mitigating the health crisis at hand, even assuming for the sake of argument that Governor Baker has some measure of lawful authority to restrict peaceable assembly to protect public health. As a direct consequence of Governor Baker’s Civil Defense State of Emergency and orders, he has denied Plaintiffs’ rights to peaceably assemble, which has caused, and will continue to cause, irreparable harm to Plaintiffs’ civil liberties.

**COUNT IX: VIOLATION OF FEDERAL PROCEDURAL DUE PROCESS
(ALL PLAINTIFFS AGAINST DEFENDANT GOVERNOR BAKER)
DENIAL OF INTERESTS WITHOUT PROCESS | U.S. CONST. AMEND. XIV**

161. Plaintiffs reallege and incorporate by reference the allegations contained in their Introductory Statement and paragraphs 1 through 160, as if fully set forth herein.

162. The Fourteenth Amendment to the United States Constitution guarantees that states cannot “deprive any person of life, liberty, or property, without due process of law[.]” U.S. Const. amend. XIV.

163. “Procedural due process imposes constraints on governmental decisions which deprive individuals of ‘liberty’ or ‘property’ interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment.” *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976).

164. “[D]ue process is flexible and calls for such procedural protections as the particular situation demands.” *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972).

165. The Supreme Court “consistently has held that some form of hearing is required before an individual is finally deprived of a property interest.” *Mathews*, 424 U.S. at 332. Moreover, an opportunity “to be heard in one’s defense” is essential to the due process of law. *Boddie v. Conn.*, 401 U.S. 371, 377-78 (1971) (quoting *Hovey v. Elliott*, 167 U.S. 409, 417 (1897)).

166. Governor Baker has not provided Plaintiffs with *any* process whatsoever—much less that which is constitutionally “due” to them—whereby Plaintiffs would have the opportunity to defend against deprivation of their liberty and property interests.

167. Thus, Governor Baker’s past, present, and continuing prohibition of, and restrictions to, Plaintiffs’ enjoyment of their liberty and property interests have denied Plaintiffs’ rights to procedural due process. This denial comes as a direct consequence of Governor Baker’s

Civil Defense State of Emergency and orders which have caused, and will continue to cause, irreparable harm to Plaintiffs' civil liberties.

**COUNT X: VIOLATION OF STATE PROCEDURAL DUE PROCESS
(ALL PLAINTIFFS AGAINST DEFENDANT GOVERNOR BAKER)
DENIAL OF INTERESTS WITHOUT PROCESS | MASS. CONST. DECL. OF RIGHTS ART. X**

168. Plaintiffs reallege and incorporate by reference the allegations contained in their Introductory Statement and paragraphs 1 through 167, as if fully set forth herein.

169. The Tenth Article of the Massachusetts Declaration of Rights guarantees that “[e]ach individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws.” Mass. Const. Decl. of Rights art. X. Interests in liberty and property are protected by procedural due process. *See School Comm. of Hatfield v. Bd. of Educ.*, 372 Mass. 513, 514-15 n.2 (1977).

170. Under the Declaration of Rights, a state official violates procedural due process when he or she deprives a citizen of a constitutionally protected liberty or property interest and does so without constitutionally adequate procedure. *See Gillespie*, 460 Mass. at 156.

171. The analysis of denial of procedural due process under the Declaration of Rights and the Fourteenth Amendment are identical. *Id.* at 153 n.12 (“Although art. 10 [of the Massachusetts Declaration of Rights] may afford greater protection of rights than the due process clause of the Fourteenth Amendment [to the United States Constitution], our treatment of due process challenges adheres to the same standards followed in Federal due process analysis.”) (internal quotations and citations omitted).

172. As demonstrated above, Governor Baker has not provided Plaintiffs with *any* process whatsoever—much less that which is constitutionally “due” to them—whereby Plaintiffs

would have the opportunity to defend against deprivation of their substantial liberty and property interests.

173. Thus, Governor Baker's past, present, and continuing prohibition of, and restrictions to, Plaintiffs' enjoyment of their liberty and property interests have denied Plaintiffs' rights to procedural due process. This denial comes as a direct consequence of Governor Baker's Civil Defense State of Emergency and orders which have caused, and will continue to cause, irreparable harm to Plaintiffs' civil liberties.

PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for the following relief against Defendants:

A. Declaratory judgment that the Civil Defense Act does not confer any authority upon Governor Baker during a pandemic or other health emergency, at least where said health emergency is not incident to any of the catastrophes congruous with the Civil Defense Act.

B. Declaratory judgment that Governor Baker's Civil Defense State of Emergency is void.

C. Declaratory judgment that, since Governor Baker's declaration of the Civil Defense State of Emergency is void, all orders Governor Baker has issued pursuant to his Civil Defense State of Emergency are void.

D. Declaratory judgment that, since Governor Baker's declaration of the Civil Defense State of Emergency is void, his orders that waive or amend laws or regulations or that purport to be binding on citizens pursuant to his Civil Defense State of Emergency are void.

E. Declaratory judgment that, since Governor Baker's declaration of the Civil Defense State of Emergency is void, his orders that purport to impose criminal penalties on citizens pursuant to the Civil Defense State of Emergency violate the separation of powers.

F. Declaratory judgment that, alternatively and regardless of whether Governor Baker's declaration of the Civil Defense State of Emergency is void, his orders that purport to impose civil penalties pursuant to the Civil Defense State of Emergency are void as violative of the separation of powers.

G. Declaratory judgment that, alternatively and regardless of whether Governor Baker's declaration of the Civil Defense State of Emergency is void, his orders that waive or amend law pursuant to his Civil Defense State of Emergency are void as violative of the separation of powers.

H. Declaratory judgment that, alternatively and regardless of whether Governor Baker's declaration of the Civil Defense State of Emergency is void, his orders that waive or amend regulations pursuant to his Civil Defense State of Emergency are void as violative of the separation of powers.

I. Declaratory judgment that Governor Baker's Civil Defense State of Emergency and orders have violated Plaintiffs' Fourteenth Amendment and Article X rights to engage in their chosen professions.

J. Declaratory judgment that Governor Baker's Civil Defense State of Emergency and orders have violated Plaintiffs' Fourteenth Amendment and Article X rights to property interests in occupational and business licensing.

K. Declaratory judgment that Governor Baker's Civil Defense State of Emergency and orders have violated Plaintiffs' Fourteenth Amendment and Article X rights to educate and to obtain an education.

L. Declaratory judgment that Governor Baker’s Civil Defense State of Emergency and orders have violated Plaintiffs’ First Amendment and Article XIX rights to peaceably assemble.

M. Declaratory judgment that Governor Baker’s Civil Defense State of Emergency and orders have violated Plaintiffs’ Fourteenth Amendment and Article X rights to procedural due process prior to deprivation of their liberty and property interests.

N. Permanent injunctive relief prohibiting Governor Baker from enforcing his Civil Defense State of Emergency.

O. Permanent injunctive relief prohibiting Governor Baker from enforcing any and all orders issued pursuant to his Civil Defense State of Emergency.

P. For an award for all reasonable attorneys’ fees incurred herein, as applicable.

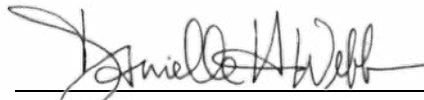
Q. For costs of this suit incurred herein, as applicable.

R. For such other relief as the Court deems just and proper.

JURY DEMAND

The Plaintiffs hereby demand a trial by jury on all issues triable by a jury in the above-entitled action.

Respectfully submitted,



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Dated: June 1, 2020