DOC. NO.: X06-UWY-CV-20-6055406-S	:	SUPERIOR COURT
KRISTINE CASEY AND BLACK SHEEP ENTERPRISE, LLC	:	JUDICIAL DISTRICT OF WATERBURY
v.	:	COMPLEX LITIGATION DOCKET
GOVERNOR NED LAMONT	:	SEPTEMBER 16, 2020

MEMORANDUM OF DECISION RE THE PLAINTIFFS' INJUNCTION AND DECLARATORY JUDGMENT APPLICATION

FACTS

In this action, the plaintiffs, Kristine Casey and Black Sheep Enterprise, LLC,[1] have brought suit against the defendant, Governor Ned Lamont (governor), in order to request that the court declare the governor acted beyond his statutory and constitutional authority when he issued certain COVID-19 related executive orders. The plaintiffs' operative amended verified complaint filed on June 30, 2020 (docket entry number 111) sounds in two counts. In their first count, the plaintiffs seek a temporary and permanent injunction against the enforcement of executive orders number 7D, 7G, 7N, 7T, 7MM and 7ZZ.[2] The plaintiffs request a declaratory judgment stopping enforcement of these same executive orders in count two. The underlying factual background is relatively undisputed, and the parties have submitted a joint stipulation of facts (docket entry number 122).

According to this stipulation, Casey is the sole member of Black Sheep Enterprise, LLC, through which she owns and operates a bar located in Milford named Casey's Irish Pub (pub).

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[1] The plaintiffs will both be referred to collectively as "the plaintiffs" and separately by their names when appropriate.

[2] Throughout this memorandum of decision, the text of these executive orders will only be referenced as necessary.

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Casey is the permittee of a café liquor permit for her pub, which has fifteen stools at the bar, two high-top tables, a pool table and a maximum capacity of fifty-nine patrons. The pub does not regularly serve hot full-course meals and it derives approximately 90 percent of its revenue from the sale of alcohol. Due to the physical location of the pub, the parties agree that "[o]utdoor service is not a viable option . . . because the tables would completely block the sidewalk and there would be no protection from cars approaching to park . . . ." Furthermore, the parties also stipulate that "[p]reparing takeout meals and sealed alcoholic beverages for off-premises consumption is not a viable option . . . as Casey knows from her experience in operating the [p]ub and dealing with her customer base that without the pub atmosphere there would be insufficient interest from her clientele to justify the expense of providing such service."

Following the onset of the COVID-19 pandemic, the governor promulgated a series of executive orders in an attempt to stem the spread of the disease. Specifically, on March 10, 2020, the governor issued a declaration of "a public health emergency and civil preparedness emergency throughout the [s]tate, pursuant to Sections 19a-131a and 28-9 of the Connecticut General Statutes. Such public health emergency and civil preparedness emergency shall remain in effect through September 9th, 2020, unless terminated earlier by me."[3] Thereafter, on March 16, 2020, the governor issued executive order number 7D, which, inter alia, stated that "any location licensed for on-premise consumption of alcoholic liquor in the [s]tate of Connecticut . . . shall only serve food or non-alcoholic beverages for off-premises consumption." In compliance with this executive order, Casey closed her pub at 8 p.m. on March 16, 2020. The governor has since promulgated a series of executive orders modifying executive order 7D. For instance, on

[3] On September 1, 2020, the governor extended the state of emergency until February 9, 2021.

May 12, 2020, via executive order number 7MM, the governor began allowing restaurants to serve food outside and ordered that "[a]lcoholic liquor may be served only in connection with outdoor dining . . . ." Further, on June 12, 2020, the governor issued executive order number 7ZZ, which allowed the resumption of indoor dining except that the bans on "the sale of alcohol by certain permittees without the sale of food, shall remain in effect and are extended through July 20, 2020." Subsequently, on July 6, 2020, the governor announced that he was suspending phase 3 of the Reopen Connecticut plan, which was previously scheduled to start on July 20, 2020. To date, the governor has not announced a new date for the resumption of phase 3 of the reopening plan. Accordingly, the pub remains closed and the parties stipulate that "it is not economically or physically feasible for Casey to reopen the [p]ub." In fact, since the March 16, 2020 shutdown, Black Sheep Enterprise, LLC has continued to pay rent in the amount of $3,200 a month and operating expenses of approximately $14,000 a month without any income stream.

On July 20, 2020, the plaintiffs filed their initial brief in support of their application for permanent injunction and declaratory judgment (docket entry number 123). The governor submitted his opposition brief (docket entry number 126) on August 14, 2020. On August 21, 2020, the plaintiffs filed a reply brief (docket entry number 127), and the governor submitted a sur-reply on August 28, 2020 (docket entry number 130). The court conducted a telephonic oral argument on September 8, 2020.

DISCUSSION

In Connecticut, the legal test for obtaining a permanent injunction is well settled. "A party seeking injunctive relief has the burden of alleging and proving irreparable harm and lack of an adequate remedy at law. . . A prayer for injunctive relief is addressed to the sound

discretion of the court and the court's ruling can be reviewed only for the purpose of determining whether the decision was based on an erroneous statement of law or an abuse of discretion." (Internal quotation marks omitted.) *Commissioner of Correction* v. *Coleman*, 303 Conn. 800, 810, 38 A.3d 84 (2012), cert denied, 568 U.S. 1235, 133 S.Ct. 1593, 185 L.Ed. 2d 589 (2013). Additionally, "[b]efore a permanent injunction can issue it must be decided upon facts proved at trial. . . . Success on the merits requires the party seeking permanent injunctive relief to demonstrate actual success on the merits rather than likelihood of success, as is required when a preliminary injunction is requested." (Citation omitted.) *Connecticut State Police* v. *Rovella*, Superior Court, judicial district of Hartford, Docket No. CV-19-6120210-S (August 7, 2020, *Noble, J.*). Essentially, the governor[4] does not dispute that the plaintiffs are suffering irreparable harm and that they lack an adequate remedy at law. Therefore, the sole issue for the court to determine is whether the plaintiffs can demonstrate that they will be successful on the merits of their legal arguments. Distilled to their essence, the plaintiffs raise two challenges to the legality of the governor's executive orders. First, the plaintiffs contend that the governor has acted in excess of this statutory authority. Second, the plaintiffs argue that even if the governor's executive orders were valid under existing statutes, that the governor's actions violate the separation of powers provisions of the Connecticut constitution. Each of these arguments will be addressed in turn.

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[4] The governor is being sued in his official capacity. Although such a suit would ordinarily implicate the doctrine of sovereign immunity, "[t]he sovereign immunity enjoyed by the state is not absolute. There are [three] exceptions . . . [one of which is] when an action seeks declaratory or injunctive relief on the basis of a substantial claim that the state or one of its officers has violated the plaintiff's constitutional rights . . . ." (Citation omitted; internal quotation marks omitted.) *Columbia Air Services, Inc.* v. *Dept. of Transportation*, 293 Conn. 342, 349, 977 A.2d 636 (2009). Therefore, this court has subject matter jurisdiction over this case.

I

THE GOVERNOR'S STATUTORY AUTHORITY UNDER GENERAL STATUTES § 28-9

The parties disagree over whether the governor has the authority to issue the subject executive orders under General Statutes § 28-9.[5] Given that the parties' arguments revolve around the precise wording of the statute, an examination of the text of § 28-9 is appropriate before moving onto their differing positions. Section § 28-9 provides, in relevant part: "(a) In the event of *serious disaster*, enemy attack, sabotage or other hostile action or in the event of the imminence thereof, the Governor may proclaim that a state of civil preparedness emergency exists, in which event the Governor may personally take direct operational control of any or all parts of the civil preparedness forces and functions in the state. . . (b) Upon such proclamation, the following provisions of this section and the provisions of section 28-11 shall immediately become effective and shall continue in effect until the Governor proclaims the end of the civil preparedness emergency . . . (1) Following the Governor's proclamation of a civil preparedness emergency pursuant to subsection (a) of this section or declaration of a public health emergency pursuant to section 19a-131a, the Governor may modify or suspend in whole or in part, by order as hereinafter provided, any statute, regulation or requirement or part thereof whenever the Governor finds such statute, regulation or requirement, or part thereof, is in conflict with the efficient and expeditious execution of civil preparedness functions or the protection of the public health. . . . (7) The Governor may take such other steps as are reasonably necessary in the light of the emergency to protect the health, safety and welfare of the people of the state, to prevent or

[5] In his March 10, 2020 public health and civil preparedness emergency declaration, the governor referenced both General Statutes §§ 19a-131a and 28-9. The governor's briefs in this matter, however, only cite to § 28-9 as a legal basis for his executive orders. Accordingly, the court considers any reliance on § 19a-131a to be abandoned.

minimize loss or destruction of property and to minimize the effects of hostile action." (Emphasis added.)

In his memoranda, the governor argues that the COVID-19 pandemic is a "serious disaster" within the meaning of § 28-9 (a). The parties agree that "serious disaster" is defined neither in § 28-9 nor any of the surrounding statutes. Additionally, the court's research has failed to find any case law that analyzes the specific meaning of "serious disaster." Nevertheless, the term "major disaster" is defined in General Statutes § 28-1 (2) to mean "any catastrophe including, but not limited to, any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm or drought, or, regardless of cause, any fire, flood, explosion, or man-made disaster in any part of this state that . . . (B) in the determination of the Governor, requires the declaration of a civil preparedness emergency pursuant to section 28-9." According to the plaintiffs, this definition "addresses only catastrophes which are caused by weather conditions, seismic activity, fire, explosion and man-made conditions. There is no language therein which indicates any legislative intent to include the contagion of disease." Therefore, the plaintiffs contend that the COVID-19 pandemic cannot constitute either a "major disaster" or a "serious disaster." In contrast, the [g]overnor argues that "whenever the [g]overnor determines that a 'catastrophe' warrants a declaration of a civil preparedness emergency, that catastrophe becomes a 'major disaster.' Section 28-9 (a) also authorizes the [g]overnor to declare a civil preparedness emergency 'in the event of serious disaster.' . . . Hence, when the [g]overnor makes such a declaration, that event will be considered a 'serious disaster.'" (Citation omitted.)

When analyzing the import of a statute, the court is influenced by Connecticut's well-settled plain meaning rule. "General Statutes § 1-2z directs us first to consider the text of the

statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . The test to determine ambiguity is whether the statute, when read in context, is susceptible to more than one reasonable interpretation." (Internal quotation marks omitted.) *Graham* v. *Friedlander*, 334 Conn. 564, 571 n.6, 223 A.3d 796 (2020). Moreover, the court is "guided by the principle that the legislature is always presumed to have created a harmonious and consistent body of law . . . . [T]his tenet of statutory construction . . . requires us to read statutes together when they relate to the same subject matter . . . . Accordingly, [i]n determining the meaning of a statute . . . we look not only at the provision at issue, but also to the broader statutory scheme to ensure the coherency of our construction." (Internal quotation marks omitted.) *Independent Party of CT- State Central* v. *Merrill*, 330 Conn. 681, 706, 200 A.3d 1118 (2019).

The plain language of § 28-1 (2) is clear. This statute states that a "major disaster" is defined as "any catastrophe" that "(B) in the determination of the Governor, requires the declaration of a civil preparedness emergency pursuant to section 28-9." The "including, but not limited to" language found in § 28-1 (2) means that, contrary to the plaintiffs' position, a "major disaster" is not limited to the delineated list of events provided in the statute. Section 28-1 (2) (B) also affords the governor broad discretion in determining what constitutes a "catastrophe." Although there also is no definition of "catastrophe" in § 28-1, a common definition of the word is "a momentous tragic event ranging from extreme misfortune to utter overthrow or ruin."

Merriam-Webster's Collegiate Dictionary (11th Ed. 2003).[6] Given the vast disruption to everyday life and the hundreds of thousands of people who have died in this country alone, the COVID-19 pandemic certainly fits this definition. Therefore, the court determines that the COVID-19 pandemic clearly is a "major disaster" as defined in § 28-1 (2).

The more difficult question for the court to decide is whether a "major disaster" under § 28-1 (2) automatically constitutes a "serious disaster" under § 28-9 (a). Although common sense would probably dictate that the terms are substantially similar, it is a familiar tenant of statutory construction that a court "assume[s] that the legislature has a different intent when it uses different terms in the same statutory scheme." *Southern New England Telephone Co.* v. *Cashman*, 283 Conn. 644, 662, 931 A.2d 142 (2007) (*Katz, J.*, concurring). That being said, the fact that § 28-1 (2) defines "major disaster" as a "catastrophe" that "in the determination of the Governor, requires the declaration of a civil preparedness emergency pursuant to section 28-9," necessarily implies that a "major disaster" under § 28-1 (2) qualifies as a "disaster" for the purposes of § 28-9 (a). Otherwise, the "in the determination of the Governor, requires the declaration of a civil preparedness emergency pursuant to section 28-9" phrase found in § 28-1 (2) (B) would make no sense. Additionally, it is worth noting that one of the dictionary definitions of the word "major" is "involving grave risk: serious." Merriam-Webster's Collegiate Dictionary (11th Ed. 2003). Accordingly, the court concludes that the terms "major disaster" and "serious disaster" are largely synonymous, and once the governor determines that a

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[6] "In the absence of a definition of terms in the statute itself, [w]e may presume . . . that the legislature intended [a word] to have its ordinary meaning in the English language, as gleaned from the context of its use. . . . Under such circumstances, it is appropriate to look to the common understanding of the term as expressed in a dictionary." (Internal quotation marks omitted.) *Middlebury* v. *Connecticut Siting Council*, 326 Conn. 40, 49, 161 A.3d 537 (2017).

"catastrophe" constitutes a "major disaster" under § 28-1 (2), it qualifies as a "serious disaster" pursuant to § 28-9 (a).

Having reached this conclusion, the next issue for the court to decide is whether the governor's executive orders were authorized by § 28-9. The plaintiffs contend that there is no language in the statute that allows the governor to issue executive orders to shut down a bar such as the plaintiffs' pub. In contrast, the governor argues that pursuant to § 28-9 (b) (1) and (7), he had the authority to issue executive orders to protect the public health.

This dispute between the parties is once against resolved by looking at the plain language of § 28-9, which provides that once the governor proclaims the existence of a state of civil preparedness emergency, he may "modify or suspend in whole or in part . . . any statute, regulation or requirement or part thereof whenever the Governor finds such statute, regulation or requirement, or part thereof, is in conflict with the efficient and expeditious execution of civil preparedness functions or the protection of the public health"; § 28-9 (b) (1); and he "may take such other steps as are reasonably necessary in the light of the emergency to protect the health, safety and welfare of the people of the state . . . ." § 28-9 (b) (7). Certainly, the governor's executive orders closing indoor drinking establishments that are not serving food acted to protect the general health, safety and welfare of the people of Connecticut. It is by now common knowledge that COVID-19 is spread by people who are in close physical contact with each other, and it is also well-known that people who are drinking alcohol in bars tend to gather in close proximity in order to socialize. Accordingly, on this basis and for the reasons previously explained, the court concludes that the governor's executive orders were validly executed pursuant to his statutory authority found in § 28-9 (b) (1) and (7).

II

SEPARATION OF POWERS

Next, the plaintiffs argue that even if § 28-9 authorizes the governor's executive orders, the statute is unconstitutional "because it purports to cloak the [g]overnor with the power to legislate– a power denied to him by the state constitution– by modifying or suspending existing laws." Therefore, the plaintiffs contend that § 28-9 is unconstitutional because the statute operatives as an improper delegation of the General Assembly's legislative authority to the executive branch. In contrast, the governor argues that § 28-9 is legally valid because the statute sets forth a specific legislative policy, and "[o]nce the General Assembly has made its policy determination and, therefore, performed its lawmaking function, it may delegate a portion of its legislative power to the executive branch for that policy to be carried out." According to the governor, because § 28-9 establishes the legislature's policy that public health should be quickly protected during a "serious disaster," it is legally permissible for the legislature to delegate to him the authority to implement that policy. Consequently, the governor argues that § 28-9 is not constitutionally infirm.

The principle of separation of powers is established in the constitution of Connecticut, article second, which provides: "The powers of government shall be divided into three distinct departments, and each of them confided to a separate magistracy, to wit, those which are legislative, to one; those which are executive, to another; and those which are judicial, to another." "[T]he primary purpose of [the separation of powers] doctrine is to prevent commingling of different powers of government in the same hands. . . . The constitution achieves this purpose by prescribing limitations and duties for each branch that are essential to each branch's independence and performance of assigned powers. . . . It is axiomatic that no branch of government organized under a constitution may exercise any power that is not

explicitly bestowed by that constitution or that is not essential to the exercise thereof. . . . [Thus] [t]he separation of powers doctrine serves a dual function: it limits the exercise of power within each branch, yet ensures the independent exercise of that power." (Internal quotation marks omitted.) *Persels & Associates, LLC* v. *Banking Commissioner*, 318 Conn. 652, 668-69, 122 A.3d 592 (2015).

Nevertheless, "[r]ecognizing that executive, legislative and judicial powers frequently overlap, [our Supreme Court has] consistently held that the doctrine of the separation of powers cannot be applied rigidly." *Bartholomew* v. *Schweizer*, 217 Conn. 671, 676, 587 A.2d 1014 (1991). "As [our Supreme Court has] recognized, the great functions of government are not divided in any such way that all acts of the nature of the function of one department can never be exercised by another department; such a division is impracticable, and if carried out would result in the paralysis of government. Executive, legislative and judicial powers, of necessity overlap each other, and cover many acts which are in their nature common to more than one department." (Internal quotation marks omitted.) *Seymour* v. *Elections Enforcement Commission*, 255 Conn. 78, 107, 762 A.2d 880 (2000), cert. denied, 533 U.S. 951, 121 S.Ct. 2594, 150 L.Ed. 2d 752 (2001).

When a party brings a challenge to the constitutionality of a validly enacted statute, "[t]his court has a duty to construe statutes, whenever possible, to avoid constitutional infirmities . . . . [W]hen called [on] to interpret a statute, we will search for an effective and constitutional construction that reasonably accords with the legislature's underlying intent. . . . [A] validly enacted statute carries with it a strong presumption of constitutionality, [and] those who challenge its constitutionality must sustain the heavy burden of proving its unconstitutionality beyond a reasonable doubt. . . . The court will indulge in every presumption in favor of the

statute's constitutionality . . . . Therefore, [w]hen a question of constitutionality is raised, courts must approach it with caution, examine it with care, and sustain the legislation unless its invalidity is clear. . . . In other words, we will search for an effective and constitutional construction that reasonably accords with the legislature's underlying intent." (Citations omitted; internal quotation marks omitted.) *Estate of Brooks* v. *Commissioner of Revenue Services*, 325 Conn. 705, 728, 159 A.3d 1149 (2017), cert. denied, 138 S.Ct. 1181, 200 L.Ed. 2d 314 (2018).

"A [party] who challenges a statute as a violation of the constitutional doctrine of separation of powers bears the heavy burden of establishing the statute's invalidity beyond a reasonable doubt. . . . In order to sustain this burden, the [party] must negate every conceivable basis which might support the statute in question." (Citation omitted; internal quotation marks omitted.) *State* v. *Morrison*, 39 Conn. App. 632, 633-34, 665 A.2d 1372, cert. denied, 235 Conn. 939, 668 A.2d 376 (1995). Accordingly, in a case where the plaintiffs challenged the constitutionality of a statue based on a purported improper delegation of the legislative function from the General Assembly to the governor, our Supreme Court stated that "[a] statute will be declared unconstitutional [on separation of powers grounds] if it (1) confers on one branch of government the duties which belong exclusively to another branch . . . or (2) if it confers the duties of one branch of government on another branch which duties significantly interfere with the orderly performance of the latter's essential functions." (Citation omitted.) *University of Connecticut Chapter, AAUP* v. *Governor*, 200 Conn. 386, 394-95, 512 A.2d 152 (1986).

When applying these legal standards to § 28-9, it becomes apparent that the plaintiffs cannot meet their heavy burden to establish that the statute is unconstitutional because it delegates legislative authority to the executive branch. Section 28-9 sets forth the General

Assembly's policy that the state should be quickly protected in the event of a "serious disaster," and the legislature has decided to rely on the governor to implement this objective. Under Connecticut law, although "[t]he law-making power is in the legislative branch of our government and cannot constitutionally be delegated . . . the General Assembly may carry out its legislative policies within the police power of the state by delegating to an administrative agency the power to fill in the details." (Internal quotation marks omitted.) *Rudy's Limousine Service, Inc.* v. *Dept. of Transportation*, 78 Conn. App. 80, 89, 826 A.2d 1161 (2003). The General Assembly chose to do exactly this when it enacted § 28-9. Importantly, when passing this statute, the legislature provided a mechanism for a special committee of the General Assembly to disapprove the governor's civil preparedness emergency declaration (at least with respect to man-made disasters); § 28-9 (a);[7] and the legislature placed a six month time limitation on any such proclamation. § 28-9 (b) (1). A special committee of the legislature also has the statutory authority to disapprove and nullify the governor's declaration of a public health emergency. General Statutes § 19a-131a (b) (1).[8] Therefore, the General Assembly has not completely ceded

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[7] Section 28-9 (a) provides, in relevant part: "Any such [civil preparedness emergency] proclamation, or order issued pursuant thereto, issued by the Governor because of a disaster resulting from man-made cause may be disapproved by majority vote of a joint legislative committee consisting of the president pro tempore of the Senate, the speaker of the House of Representatives and the majority and minority leaders of both houses of the General Assembly, provided at least one of the minority leaders votes for such disapproval. Such disapproval shall not be effective unless filed with the Secretary of the State not later than seventy-two hours after the filing of the Governor's proclamation with the Secretary of the State. As soon as possible after such proclamation, if the General Assembly is not then in session, the Governor shall meet with the president pro tempore of the Senate, the speaker of the House of Representatives, and the majority and minority leaders of both houses of the General Assembly and shall confer with them on the advisability of calling a special session of the General Assembly."

[8] General Statutes § 19a-131a (b) (1) provides, in relevant part: "Any such declaration [of a public health emergency] issued by the Governor may be disapproved and nullified by majority vote of a committee consisting of the president pro tempore of the Senate, the speaker of the House of Representatives, the majority and minority leaders of both houses of the General

all of its authority to the governor. In fact, following Governor Lamont's recent decision to extend the state of emergency until February 9, 2021, a majority of the special legislative committee authorized under § 19a-131a (b) (1) approved the governor's decision. Therefore, it cannot be said that § 28-9 operates as a constitutionally impermissible delegation of the legislature's lawmaking authority.

This conclusion is further supported by a recent decision issued by the Michigan Court of Appeals. In *House of Representatives & Senate* v. *Governor*, Michigan Court of Appeals, Docket No. 353665 (August 21, 2020) (2020 WL 4931701), a majority of the Michigan legislature brought suit against that state's governor challenging, inter alia, the executive orders promulgated by her in relation to the COVID-19 pandemic. The Michigan governor had issued her executive orders pursuant to her authority found in Michigan's Emergency Powers of the Governor Act, Mich. Comp. Laws § 10.31 et seq. (EPGA).[9] This statute is roughly analogous to § 28-9. On appeal, the legislature argued that the EPGA was unconstitutional because "the

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Assembly and the cochairpersons and ranking members of the joint standing committee of the General Assembly having cognizance of matters relating to public health. Such disapproval shall not be effective unless filed with the Secretary of the State not later than seventy-two hours after the filing of the Governor's declaration with the Secretary of the State."

[9] Mich. Comp. Laws § 10-31 (1) provides, in relevant part: "During times of great public crisis, disaster, rioting, catastrophe, or similar public emergency within the state, or reasonable apprehension of immediate danger of a public emergency of that kind, when public safety is imperiled . . . the governor may proclaim a state of emergency and designate the area involved. After making the proclamation or declaration, the governor may promulgate reasonable orders, rules, and regulations as he or she considers necessary to protect life and property or to bring the emergency situation within the affected area under control. Those orders, rules, and regulations may include, but are not limited to, providing for the control of traffic, including public and private transportation, within the area or any section of the area; designation of specific zones within the area in which occupancy and use of buildings and ingress and egress of persons and vehicles may be prohibited or regulated; control of places of amusement and assembly and of persons on public streets and thoroughfares; establishment of a curfew; control of the sale, transportation, and use of alcoholic beverages and liquors; and control of the storage, use, and transportation of explosives or inflammable materials or liquids deemed to be dangerous to public safety."

lawmaking power rests exclusively with the [l]egislature, that the [g]overnor is unilaterally making laws, that the crisis does not diminish the separation of powers doctrine, and that the EPGA's supposed delegation of power to the [g]overnor cannot save the [executive orders]." Id., *12. When rejecting this argument, the Michigan Court of Appeals determined that "the EPGA contains standards that are as reasonably precise as the subject matter—public emergencies—requires or permits, such that the [l]egislature, by enacting the EPGA, safely availed itself of the resources and expertise of the executive branch to assist in the execution of legislative policy. Accordingly, the EPGA does not violate the [s]eparation of [p]owers [c]lause, and the [l]egislature did not prove otherwise. The standards found in the EPGA are sufficiently broad to permit the efficient administration of carrying out the policy of the [l]egislature with regard to addressing a public emergency but not so broad as to leave Michiganders unprotected from uncontrolled, arbitrary power." Id., *14. A similar result is mandated in this case. When our General Assembly passed § 28-9, it set forth a clear legislative policy that the state should be protected during a "serious disaster," and it gave the governor the ability to implement measures to achieve this goal. Accordingly, the court concludes that § 28-9 is not unconstitutional due to a violation of the separation of powers doctrine.

Having made this determination, the court must consequently deny the plaintiffs' injunction and declaratory judgment application. In making this decision, the court feels great sympathy for the economic plight of the plaintiffs and other similarly situated individuals. The COVID-19 pandemic has caused immense disruptions not only to our public health system, but also to the state's economy as a whole. Nevertheless, in our constitutional system of governance, "[i]t is up to the legislatures, not courts, to decide on the wisdom and utility of legislation. . . . [C]ourts do not substitute their social and economic beliefs for the judgment of legislative

bodies, who are elected to pass laws." (Internal quotation marks omitted.) *Davis* v. *Forman School*, 54 Conn. App. 841, 858, 738 A.2d 697 (1999). In enacting § 28-9, the General Assembly made a policy determination that in the event of a "serious disaster" resulting in a declaration of a civil preparedness emergency, the governor of this state would be vested with broad powers to take steps to protect the public health. Given that the governor has complied with the requirements of § 28-9 and the statute does not violate the state's constitutional requirements regarding separation of powers, the court is constrained to rule in favor of the governor.

CONCLUSION

For all of the reasons stated above, the court denies the plaintiffs' application for injunctive and declaratory relief and enters judgment accordingly in favor of the governor.

BY THE COURT,

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Bellis, J.

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9/16/2020