



the U.S. Constitution ("Count II"),<sup>1</sup> violation of Massachusetts General Laws Chapter 639 of the Acts of 1950, the Civil Defense Act, and Articles XX and XXX of the Massachusetts Declaration of Rights ("Count III"), violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and Article I of the Massachusetts Declaration of Rights ("Count IV"), and violation of the First, Fifth, Ninth, and Fourteenth Amendments to the U.S. Constitution and Articles I, IV, X, and XII of the Massachusetts Declaration of Rights ("Count V"). Id. ¶¶ 255-286.

On July 31, 2020, Delaney filed a motion for a preliminary injunction and, pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, moved to dismiss Count III entirely and Counts IV and V partially insofar as those counts raised matters of state law. Pl.'s Mot. Prelim. Inj. 1-2, ECF No. 13; Pl.'s Mem. Supp. Pl.'s Mot. Prelim. Inj. ("Pl.'s Mem."), ECF No. 14; Pl.'s Stipulation Dismissal 1, ECF No. 15.

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<sup>1</sup> Delaney also claims that Governor Baker infringed upon the Establishment Clause and his First Amendment right of peaceable assembly. See Pl.'s Mem. Opp'n Mot. Dismiss & Reply Def.'s Opp'n Mot. Prelim. Inj. 10-14 ("Pl.'s Opp'n Mem."), ECF No. 22. On the same grounds that Delaney lacks standing to challenge the orders under the Free Exercise Clause, Delaney lacks standing to challenge the orders under the Assembly Clause, see infra Part III.A.2. (lack of concrete and particularized injury) and Establishment Clause, see infra Part III.A.3. (lack of redressability).

Governor Baker opposed the preliminary injunction and moved to dismiss the complaint on four grounds: (1) Delaney lacked standing to challenge Governor Baker's actions, (2) notwithstanding Delaney's lack of standing, Delaney failed to establish a likelihood of success on the merits of his challenges, (3) Delaney failed to demonstrate irreparable harm, and (4) the balance of hardships and the public interest strongly favored upholding Governor Baker's orders. Mot. Dismiss, ECF No. 18; Def.'s Mem. Supp. Mot. Dismiss. & Opp'n Mot. Prelim. Inj. ("Def.'s Mem.") 10-30, ECF No. 19. Delaney filed an opposition to Governor Baker's motion to dismiss. Pl.'s Opp'n Mot. Dismiss, ECF No. 21; Pl.'s Mem. Opp'n Mot. Dismiss & Reply Def.'s Opp'n Mot. Prelim. Inj. ("Pl.'s Opp'n Mem."), ECF No. 22.

On September 2, 2020, after hearing argument of counsel by video conference, this Court granted Governor Baker's motion to dismiss as to Counts I, IV, and V. Elec. Clerk's Notes (Sept. 2, 2020), ECF No. 23. This Court also collapsed the motion for preliminary injunction with trial on the merits in accordance with Rule 65(a) of the Federal Rules of Civil Procedure and set a bench trial for October 2, 2020. Id. On October 1, 2020, Delaney and Governor Baker jointly filed stipulated findings of fact. Joint Proposed Finding Fact ("Joint Finding"), ECF No. 24. On October 5, 2020, the Court held a remote hearing on

Count II, and, after hearing argument of counsel, took the matter under advisement. Elec. Clerk's Notes (Oct. 5, 2020), ECF No. 25.

On December 10, 2020, the Massachusetts Supreme Judicial Court held that Governor Baker's declaration of an emergency arising from the COVID-19 pandemic, and his issuance of orders pursuant to that declaration, are authorized under Massachusetts's Civil Defense Act, that the emergency orders do not violate the principle of separation of powers in Article 30 of the Massachusetts Declaration of Rights, and that the emergency orders do not violate the plaintiffs' federal<sup>2</sup> or state constitutional rights to procedural and substantive due process or free assembly. Desrosiers v. Governor, 486 Mass. 369 (2020).

After considering the record and parties' arguments, this Court rules in favor of Governor Baker.

## II. FINDINGS OF FACT

The parties filed a joint finding of fact for trial on the merits. See generally Joint Finding. The joint finding, as stipulated by the parties, is substantially reproduced below and

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<sup>2</sup> The Supreme Judicial Court is, of course, the final word on matters of state law (none of which are present here). Delaney, however, is not bound by its federal law rulings in a case to which he was not a party. He is entitled to this Court's independent adjudication in this separate opinion.

supplemented by Governor Baker's subsequent executive orders and evidence subject to judicial notice.<sup>3</sup>

**A. Governor Baker's Orders Governing Gatherings and Occupancy Limits**

On March 10, 2020, Governor Baker declared a state of emergency for the Commonwealth of Massachusetts, and Massachusetts remains in a state of emergency to date. Joint Finding ¶ 1. In connection with the state of emergency, Governor Baker issued a series of executive orders. Id. ¶ 2. On March 23, 2020, Governor Baker issued Order 13, which prohibited gatherings of ten or more persons in any confined indoor or outdoor space throughout Massachusetts. Id. ¶ 3. Order 13 enumerated a list of "essential services" to combat the pandemic and temporarily closed the brick-and-mortar premises of all "non-essential businesses." 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), Ex. A. The ten-person limitation did not apply to businesses identified in the Order as "essential services," which could continue operation under social distancing and occupancy guidelines issued by the Commissioner of Public Health on March 25, 2020.

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<sup>3</sup> A list of Governor Baker's orders can be found at COVID-19 State of Emergency, mass.gov, <https://www.mass.gov/info-details/covid-19-state-of-emergency> (last visited Jan. 5, 2021).

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