

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202 (720) 865-8301	DATE FILED: September 23, 2021 6:02 PM FILING ID: 2BB677DB1D74C CASE NUMBER: 2021CV33007
JONATHAN CHRISTIAN, DEWAYNE RODGERS, BART STARK, RICH ZIEGLER, NICK ELLIOTT, DAVID CURTIS, LES TUCKER, Plaintiffs, v. MICHAEL B. HANCOCK , in only his official capacity as Mayor of the City of Denver, DENVER DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, ROBERT M. MCDONALD , in only his official capacity as Executive Director of Denver Department of Public Health and Environment, PAUL M. PAZEN , in only his official capacity as Chief of the Denver Police Department, Defendants.	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> Case Number: Division:
Attorneys for Plaintiffs Randy B. Corporon, #29861 Beth Chambers, #53474 The Law Offices of Randy B. Corporon, P.C. 2821 S. Parker Rd., Suite 555 Aurora, Colorado 80014 Phone Number: (303) 749-0062	
VERIFIED COMPLAINT FOR JUDICIAL REVIEW PURSUANT TO C.R.S. § 25-1-515 AND INJUNCTIVE RELIEF	

The above named Plaintiffs, by and through their attorneys, and for their Complaint against the above named Defendants, in their official capacities, allege and aver as follows:

I. JURISDICTION AND VENUE

1. This Court has personal jurisdiction over each of the Plaintiffs because they are Colorado citizens and are currently employed in Denver County, Colorado. Colo. Const. art. VIII, § 2.

2. This Court has personal jurisdiction over the Defendants because each of them is a public officer, the claims brought against them are in virtue of the discharge of their respective duties as a public officer, and each Defendant is located and performs government functions in the State of Colorado.

3. This Court has subject matter jurisdiction over this action pursuant to the Constitution of the State of Colorado, Article VI, Section 9, and C.R.C.P. 106.

4. This Court has jurisdiction over the parties and the subject matter of this case because Plaintiffs are entitled to judicial review in this district court in accord with C.R.S. § 25-1-515. The fundamental civil rights and liberty interests of Plaintiffs have been implicated and injured by the August 2nd Order issued by Defendants' Hancock and McDonald, as well as the enforcement actions of Defendant Pazen, which are premised upon an error of law.

5. Venue is proper in this Court under C.R.C.P. 98(b)(2) because each of the Defendants Hancock, Pazen, and McDonald is a public officer, and the claims brought against each of them are in virtue of the discharge of their duties as a public officer.

II. PARTIES

6. Plaintiff Jonathan Christian is, and at all times pertinent to this cause was, an individual residing in Douglas County and employed by Denver Police Department for over 6 years.

7. Plaintiff Dewayne Rodgers is, and at all times pertinent to this cause was, an individual residing in Weld County and employed by Denver Police Department for over 16 years.

8. Plaintiff Bart Stark is, and at all times pertinent to this cause was, an individual residing in Weld County and employed by Denver Police Department for over 16 years.

9. Plaintiff Rich Ziegler is, and at all times pertinent to this cause was, an individual residing in

Arapahoe County and employed by Denver Police Department for over 16 years.

10. Plaintiff Nick Elliott is, and at all times pertinent to this cause was, an individual residing in Adams County and employed by Denver Police Department for over 2 years.

11. Plaintiff David Curtis is, and at all times pertinent to this cause was, an individual residing in Arapahoe County and employed by Denver Police Department for over 21 years.

12. Plaintiff Les Tucker is, and at all times pertinent to this cause was, an individual residing in Adams County and employed by Denver Police Department for over 21 years.

13. Defendant Michael B. Hancock is, and at all times pertinent to this cause, the Mayor of the City of Denver, acting in his official capacity.

14. Defendant Robert M. McDonald is, and at all times pertinent to this cause, the Executive Director of the Denver Department of Public Health and Environment, acting in his official capacity.

15. Defendant Paul Pazen is, and at all times pertinent to this cause, the Chief of the Denver Police Department, acting in his official capacity.

III. GENERAL ALLEGATIONS

16. On March 12, 2020, Mayor Hancock declared a state of local disaster emergency due to the presence of COVID-19 in the City and County of Denver (“March 12th Emergency Declaration”). The March 12th Emergency Declaration was coded pursuant to its activation number DEN20200304-001 and expired on March 19, 2020. The Denver City Council has continued to consent to Mayor Hancock’s March 12th Emergency Declaration for over 18 months.

17. Contemporaneously to the March 12th Emergency Declaration, Governor Polis verbally declared a disaster emergency on March 10, 2020, and on March 11, 2020, due to the presence of

COVID-19 in Colorado. Governor Polis' verbal order of March 10, 2020, declaring a disaster emergency, pursuant to C.R.S. § 24-33.5-704(4), was memorialized by Executive Order ("EO") D 2020 003.

18. After roughly 16 months of various lockdowns, mask mandates, social distancing requirements, and 434 executive orders, Gov. Polis issued EO D 2021 122 on July 8, 2021. He declared: "I, Jared Polis, Governor of the State of Colorado, hereby rescind EO D 2020 003, as amended and extended, which declared a state of disaster emergency due to the presence of coronavirus disease 2019 (COVID-19) and issue this Colorado COVID-19 Disaster Recovery Executive Order. This Executive Order focuses the State's efforts on recovery, as most of the measures directed toward responding to the pandemic emergency are no longer needed. This EO also rescinds: EO's D 2020 011, as amended and extended; D 2020 038, as amended and extended; D 2020 068, as amended and extended; D 2020 100, as amended and extended; D 2021 016, as amended and extended; D 2021 088, as amended and extended; and D 2021 104, as extended."

19. Despite Governor Polis rescinding the emergency declaration, and signaling a clear departure from the original concerns of the COVID-19 pandemic and transmissibility, on August 2, 2021, Robert McDonald, the Executive Director of Denver County Public Health and Environment issued a Public Health Order requiring personnel of the following entities or types of entities to be fully vaccinated by September 30, 2021: (a) the City and County of Denver; (b) care facilities; (c) hospitals; (d) clinical settings; (e) limited healthcare settings; (f) homeless shelters; (g) schools; (h) childcare centers and services; (i) any entity providing home care to patients; and (j) any entity providing first responder services ("August 2nd Order" attached hereto as Exhibit 1).

20. Executive Director McDonald issued the August 2nd Order to mandate the still

“experimental” COVID inoculations on numerous personnel in Denver County.

21. The legal basis cited for this August 2nd Order was the Governor’s March 12th Emergency Declaration, pursuant to C.R.S. § 24-33.5-701 *et seq*, also referred to as the Colorado Disaster Emergency Act (“CDEA”).

22. The CDEA establishes a framework under which the Governor may operate in the event of a declared disaster emergency, including a disease epidemic. C.R.S. § 24-33.5-704(2) provides that “...the governor may issue executive orders, proclamations, and regulations and amend or rescind them. Executive orders, proclamations, and regulations have the force and effect of law.”

23. Additionally, the CDEA authorizes declarations of local disaster emergency orders pursuant to C.R.S. § 24-33.5-709(1), which states: “A local disaster may be declared only by the principal executive officer of a political subdivision. It shall not be continued or renewed for a period in excess of seven days except by or with the consent of the governing board of the political subdivision. Any order or proclamation declaring, continuing, or terminating a local disaster emergency shall be given prompt and general publicity and shall be filed promptly with the county clerk and recorder, city clerk, or other authorized record-keeping agency and with the office of emergency management.”

24. Subsequently, Defendant Pazen enforced the August 2nd Order. After having his unvaccinated police officers working in the trenches of a pandemic for roughly 18 months, Defendant Pazen required all Denver Police Department personnel to be fully compliant to the August 2nd Order by September 30th, 2021.

Validity of the August 2nd Order

25. The August 2nd Order is not directed at any specific individual or property. Instead, it

is directed generally to “personnel” of 10 categories of employment. “Personnel” is defined so broadly that it would include, for example, the vending machine service company to the police department. Indeed, “personnel” is defined as: (1) employees of the entities or types of entities listed above; and (2) individuals who provide services onsite and/or in the field to or on behalf of the entities or types listed above on a contractual or volunteer basis.

26. Additionally, while Director McDonald titles the August 2nd directive as an Order, the directive is actually analogous to the State Administrative Procedure Act’s definition of a rule. C.R.S. § 24-4-101 *et seq.* C.R.S. § 24-4-102 (15) defines the term rule as follows: “Rule” means the whole or any part of every agency statement *of general applicability and future effect implementing, interpreting, or declaring law or policy* or setting forth the procedure or practice requirements of any agency. “Rule” includes “regulation.” (Emphasis added).

27. Comparatively, C.R.S. § 24-4-102 (10) defines the term, “order,” as follows: Order means the whole or any party *of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) by any agency in any matter other than rulemaking.* (Emphasis added).

28. The August 2nd Order is nothing more than a series of “rules” couched as an “order.” Simply put, Director McDonald does not have the authority to issue the rules set forth in the August 2nd Order, and the Order is without legal effect.

29. The August 2nd Order cites the CDEA, or C.R.S. §§24-33.5-701, *et seq.* for its legal authority. However, the only applicable statute is C.R.S. § 24-33.5-709. Yet, this statute does not give Mayor Hancock the legal authority to issue rules of general applicability to address COVID-19. Perhaps that is why he directed Director McDonald to issue the August 2nd Order, figuring he must have the authority to issue a public health order full of rules without going through the rulemaking

procedures set forth in C.R.S. §24-4-103.

30. Indeed, Director McDonald could have enacted rules through emergency rulemaking as allowed in C.R.S. § 24-4-103(6)(a), which states:

(6)(a) A temporary or emergency rule may be adopted without compliance with the procedures prescribed in subsection (4) of this section and with less than the twenty days' notice prescribed in subsection (3) of this section, or where circumstances imperatively require, without notice, ***only if the agency finds that immediate adoption of the rule is imperatively necessary to comply with a state or federal law or federal regulation or for the preservation of public health, safety, or welfare and compliance with the requirements of this section would be contrary to the public interest and makes such a finding on the record. Such findings and a statement of the reasons for the action shall be published with the rule.*** A temporary or emergency rule may be adopted without compliance with subsections (2.5) and (2.7) of this section, but shall not become permanent without compliance with such subsections (2.5) and (2.7). A temporary or emergency rule shall become effective on adoption or on such later date as is stated in the rule, shall be published promptly, and shall have effect for not more than one hundred twenty days after its adoption or for such shorter period as may be specifically provided by the statute governing such agency, unless made permanent by compliance with subsections (3) and (4) of this section. (Emphasis added).

31. Additionally, if Director McDonald had wanted to deal with COVID 19 as an “epidemic disease” or “communicable disease” pursuant to C.R.S. §25-1.5-102, his agency was required by C.R.S. § 25-1.5-102(1)(a)(II) to go through rulemaking:

(1) The department has, in addition to all other powers and duties imposed upon it by law, the powers and duties provided in this section as follows:

(a)(I) To investigate and control the causes of epidemic and communicable diseases affecting the public health.

(II) For the purposes of this paragraph (a), ***the board shall determine, by rule and regulation, those epidemic and communicable diseases and conditions that are dangerous to the public health.*** The board is authorized to require reports relating to such designated diseases in accordance with the provisions of section 25-1-122 and to have access to medical records relating to such designated diseases in accordance with the provisions of section 25-1-122. (Emphasis added).

32. Yet instead, Defendant McDonald, chose to rely on an unlawful grant of executive power from Mayor Hancock that had been drafted 18 months prior. Indeed, the circumstances that applied in March of 2020 are significantly different than the landscape today. Yet, Mayor Hancock has relied on the same emergency circumstances, even though Governor Polis has rescinded the Colorado statewide emergency declaration. Moreover, Defendant McDonald circumvented the rule making paths required by the Administrative Procedures Act and promulgated his own generally directed order which demanded public and private businesses force a medical procedure on their employees.

33. Defendant Hancock's declaration of a local disaster emergency pursuant to C.R.S. § 24-33.5-709, does not grant executive power to Defendant McDonald to promulgate public health orders which in turn mandate COVID inoculations.

34. Simply put, the August 2nd Order is void because it is clearly beyond the scope of any authority properly invested in Defendants' Hancock and McDonald pursuant to the Colorado Constitution, the CDEA, or any valid statute.

35. It is tragic and inexplicable that a 7-day grant of statutory power by Mayor Hancock could evolve into an 18-month continuous state of emergency for the City and County of Denver, with no end in sight. Moreover, Defendant McDonald has subsequently relied on this executive overreach to decree an edict of unlawful rules couched as an order, whereby he demands public and private employers terminate employees who refuse to comply with his decree. With caution thrown to the winds, everyone – the young and healthy, the old, the previously recovered and naturally immune, even pregnant and breastfeeding women -- is currently being pressured by governments, businesses and educational institutions to submit to a COVID inoculation with no assessment of the risks or benefits for each individual or any consideration of medical necessity or contraindication in each

particular case.

36. Plaintiffs have dedicated a combined 98 years of service to Denver. Moreover, many of them are decorated officers who are held in high regard by the Denver Police Department. During the pandemic each of these Plaintiffs loyally worked the front lines, yet now, they are precipitously placed on the edge of unemployment.

**FIRST CLAIM FOR RELIEF
(Plaintiffs as Against Each Defendant)**

**Plaintiffs are Entitled to Judicial Review of the August 2nd Public Health Order
Pursuant to C.R.S. § 25-1-515**

37. Plaintiffs incorporate by reference all prior allegations as though fully set forth herein.

38. C.R.S. § 25-1-515(1), states any person affected by a decision of a county or district board of health or a public health director... shall be entitled to judicial review by filing in the district court of any county over which the county or district board or public health director has jurisdiction an appropriate action requesting the review within 90 days after the public announcement of the decision.

39. Plaintiffs are employed by Denver Police Department and are affected by the August 2nd Order. Specifically, Plaintiffs are required to be compliant with the August 2nd Order by September 30, 2021 or be terminated from their employment.

40. Plaintiffs' respectfully request that this Honorable Court review the August 2nd Order pursuant to C.R.S. § 25-1-515(1)(b), (c), & (d). The August 2nd Order is void because: (1) it clearly is beyond the scope of the three types of valid executive orders described *supra*; and (2) it is clearly beyond the scope of any authority properly invested in the Mayor pursuant to the Colorado

Constitution, the CDEA, or any valid statute.

IV. PRAYER

WHEREFORE, each Plaintiff respectfully prays that this Court enter an order:

- A. Judicial Review of the August 2, 2021 Order;
- B. a finding that the August 2, 2020 Order was promulgated unlawfully and is subsequently nullified; and
- C. any other Relief this Court deems just and proper.

Respectfully submitted via CCEF on September 23, 2021.

LAW OFFICES OF
RANDY B. CORPORON, P.C.

/s/ Randy B. Corporon

Randy B. Corporon
Beth Chambers
ATTORNEYS FOR PLAINTIFFS