

APPENDIX A

Fourth Circuit Court of Appeals Order of April 28, 2020

Appendix A

FILED: April 28, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-1419
(1:20-cv-00363-LMB-MSN)

JAMES TOLLE,

Plaintiff - Appellant,

v.

GOVERNOR RALPH NORTHAM; COMMONWEALTH OF VIRGINIA,

Defendants - Appellees.

ORDER

Upon considerations of Appellant's motion for an injunction or stay pending appeal and the motion for leave to file a response and opposition to the motion for an injunction or stay pending appeal filed by Americans United for Separation of Church and State, the court denies the motions.

Entered at the direction of the panel: Judge Keenan, Judge Thacker, and Senior Judge Shedd.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX B

District Court's Order of April 8, 2020

expedited hearing warranted, given that the Chief Judge for this district has issued General Order 2020-07, which postpones all civil and criminal in-person proceedings through May 1, 2020 due to the virus.” [Dkt. No. 5]. Plaintiff has moved for reconsideration, arguing in part that the Court’s order is similar to Korematsu v. United States, 323 U.S. 214 (1944) in which the Supreme Court upheld the internment of Japanese-Americans during World War II. For the reasons that follow, this motion will be denied.

“The grant of a [temporary restraining order (TRO)] or a preliminary injunction is an ‘extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.’” Fowler v. Wells Fargo Home Mortg., Inc., No. 15-cv-1084, 2015 WL 2342377, at *2 (D. Md. May 13, 2015) (quoting Dewhurst v. Century Aluminum Co., 649 F.3d 287, 290 (4th Cir. 2011)). “The party seeking a preliminary injunction must . . . demonstrate all of the following: (1) that [he] is likely to succeed on the merits of its claim; (2) that [he] is likely to suffer irreparable harm in the absence of a preliminary injunction; (3) that the balance of equities tips in [his] favor; and (4) that the injunction is in the public interest.” Accident, Injury & Rehab., PC v. Azar, 943 F.3d 195, 201 (4th Cir. 2019) (emphasis in original) (citing Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008)).

Even if plaintiff were likely to succeed on the merits and to suffer irreparable harm in the absence of preliminary relief, his motion for injunctive relief fails because he has not established that the balance of equities tip in his favor or that an injunction is in the public interest. The alleged harms to plaintiff include the temporary inability to participate in public worship at his church and to conduct his duties as a practicing member of his church’s lay ministry for the brief period that remains before the Executive Order expires. Although the Court recognizes plaintiff’s constitutional concerns, those concerns do not outweigh the severe harm defendants would suffer

if they could not enforce the Executive Order. Moreover, it is no exaggeration to recognize that the stakes for residents of the Commonwealth are life-or-death. Granting plaintiff's motion for injunctive relief at this time would also disserve the public interest, because enabling large groups to gather in April and May 2020 without practicing social distancing, as Tolle seems to be requesting, could facilitate the spread of the virus and endanger the lives of many Virginians, particularly given that Coronavirus cases in the Commonwealth are expected to peak during that period.

None of plaintiff's other arguments in support of his motion are persuasive. For example, plaintiff suggests that the Executive Order is unprecedented. Although that may be true, the crisis imposed by the Coronavirus is also unprecedented, and the danger this crisis poses to the welfare of all residents in this Commonwealth as well as its neighboring states, fully justifies denial of plaintiff's motion.

Plaintiff also argues that a hearing on the motion should be held on Friday, April 24, 2020; however, under the local rules "the Court may rule upon motions without an oral hearing," Local Civ. R. 7(J), and a hearing would not aid in the decisional process. Finally, plaintiff continues to argue that the Court should order the United States Marshals Service to serve his complaint on defendants. Under Federal Rule of Civil Procedure 4(c)(3), service by the United States Marshals Service is not required. Rule 4(c)(3) provides that "[a]t the plaintiff's request, the court may order that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court." *Id.* (emphasis added). "If the plaintiff is proceeding in forma pauperis . . . , service by the United States Marshal is mandatory If the plaintiff is not proceeding in forma pauperis . . . , the decision falls within the discretion of the court."

Blackburn v. Catawba Cty., N. Carolina, No. 5:19-cv-101, 2020 WL 718272, at *3 (W.D.N.C.

Feb. 12, 2020) (citing Fed. R. Civ. P. 4(c)(3)). Plaintiff is not proceeding in forma pauperis. Accordingly, it is within the Court's discretion to determine whether to order service by the United States Marshals Service. For the reasons articulated in the Court's previous order denying plaintiff's motion for preliminary injunction, and because of the ongoing threats posed by the Coronavirus, the Court finds that service by United States Marshals Service personnel is inappropriate at this time.³ For all of these reasons, it is hereby

ORDERED that plaintiff's Motion for Reconsideration of Court Order Denying Preliminary Injunction, Expedited Hearing and Service of Complaint by United States Marshal [sic] Service [Dkt. No. 7] be and is DENIED; and it is further

ORDERED that the hearing requested for Friday, April 24, 2020 be and is CANCELLED.

The Clerk is directed to forward copies of this Order to plaintiff, pro se.

To appeal this decision, plaintiff must file a written notice of appeal with the Clerk of the Court within thirty (30) days of the date of entry of this Order. A notice of appeal is a short statement indicating a desire to appeal, including the date of the order plaintiff wants to appeal. Plaintiff need not explain the grounds for appeal until so directed by the court of appeals. Failure to file a timely notice of appeal waives plaintiff's right to appeal this decision.

Entered this 8th day of April, 2020.

Alexandria, Virginia



Leonie M. Brinkema
United States District Judge

³ Plaintiff's complaint states that it is difficult "to find civilian process servers who can effect service" during this period, [Dkt. No. 1] ¶ 7, which underscores the dangers inherent in serving process at this time. This danger applies equally to the United States Marshals Service. Moreover, the resources of the United States Marshals Service are limited and must be reserved for courthouse security and other urgent matters.

APPENDIX C

District Court's Order of April 1, 2020

Appendix C

and Expedited Hearing, in which he seeks a whole or partial stay of execution of the Executive Order. He also seeks declaratory relief, a permanent injunction, and damages and fees. Finally, he requests that the Court order service of the complaint on defendants by the United States Marshals Service pursuant to Federal Rule of Civil Procedure 4(c)(3).

It is clear from a review of plaintiff's complaint and motion that the only current emergency is the one caused by the Coronavirus. In these exigent and extraordinary circumstances, putting members of the United States Marshals Service at risk to serve this complaint would be inappropriate. Nor is an expedited hearing warranted, given that the Chief Judge for this district has issued General Order 2020-07, which postpones all civil and criminal in-person proceedings through May 1, 2020 due to the virus. Accordingly, it is hereby

ORDERED that plaintiff's Motion for Preliminary Injunction and Expedited Hearing [Dkt. No. 3] be and is DENIED; and it is further

ORDERED that plaintiff's Motion for Service of Complaint by U.S. Marshal Service [Dkt. No. 2] be and is DENIED.

The Clerk is directed to forward copies of this Order to plaintiff, pro se.

Entered this 1st day of April, 2020.

Alexandria, Virginia

/s/ LMB
Leonie M. Brinkema
United States District Judge

APPENDIX D

Defendant Northam's Executive Order 55 (2020) of March 30, 2020



Commonwealth of Virginia
Office of the Governor

Executive Order

NUMBER FIFTY-FIVE (2020)

**TEMPORARY STAY AT HOME ORDER
DUE TO NOVEL CORONAVIRUS (COVID-19)**

To reinforce the Commonwealth's response to COVID-19 and in furtherance of Executive Orders 51 (March 12, 2020) and 53 (March 23, 2020) and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia, by § 44-146.17 of the *Code of Virginia*, I order the following:

1. All individuals in Virginia shall remain at their place of residence, except as provided below by this Order and Executive Order 53. To the extent individuals use shared or outdoor spaces, whether on land or on water, they must at all times maintain social distancing of at least six feet from any other person, with the exception of family or household members or caretakers. Individuals may leave their residences for the purpose of:
 - a. Obtaining food, beverages, goods, or services as permitted in Executive Order 53;
 - b. Seeking medical attention, essential social services, governmental services, assistance from law enforcement, or emergency services;
 - c. Taking care of other individuals, animals, or visiting the home of a family member;
 - d. Traveling required by court order or to facilitate child custody, visitation, or child care;
 - e. Engaging in outdoor activity, including exercise, provided individuals comply with social distancing requirements;
 - f. Traveling to and from one's residence, place of worship, or work;

- g. Traveling to and from an educational institution;
 - h. Volunteering with organizations that provide charitable or social services; and
 - i. Leaving one's residence due to a reasonable fear for health or safety, at the direction of law enforcement, or at the direction of another government agency.
2. All public and private in-person gatherings of more than ten individuals are prohibited. This includes parties, celebrations, religious, or other social events, whether they occur indoor or outdoor. This restriction does not apply:
 - a. To the operation of businesses not required to close to the public under Executive Order 53; or
 - b. To the gathering of family members living in the same residence.
 3. Institutions of higher education shall cease all in-person classes and instruction, and cancel all gatherings of more than ten individuals. For purposes of facilitating remote learning, performing critical research, or performing essential functions, institutions of higher education may continue to operate, provided that social distancing requirements are maintained.
 4. Effective April 1, 2020 at 11:59 p.m., cessation of all reservations for overnight stays of less than 14 nights at all privately-owned campgrounds, as defined in § 35.1-1 of the *Code of Virginia*.
 5. Closure of all public beaches as defined in § 10.1-705 of the *Code of Virginia* for all activity, except exercising and fishing. Social distancing requirements must be followed.
 6. All relevant state agencies shall continue to work with all housing partners to execute strategies to protect the health, safety, and well-being of Virginians experiencing homelessness during this pandemic and to assist Virginians in avoiding evictions or foreclosures.
 7. As provided in Executive Order 53, nothing in this Order shall limit: (a) the provision of health care or medical services; (b) access to essential services for low-income residents, such as food banks; (c) the operations of the media; (d) law enforcement agencies; or (e) the operation of government.

Violation of paragraphs 2, 3, 4, and 5 of this Order shall be a Class 1 misdemeanor pursuant to § 44-146.17 of the *Code of Virginia*.

Effective Date of this Executive Order

This Executive Order shall be effective March 30, 2020, amends Amended Order of the Governor and State Health Commissioner Declaration of Public Health Emergency, Order of Public Health Emergency One and Executive Order 53, and shall remain in full force and in effect until June 10, 2020, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 30th day of March, 2020.



Ralph S. Northam

Ralph S. Northam, Governor

Attest:

Kelly Thomasson

Kelly Thomasson, Secretary of the Commonwealth

APPENDIX E

Petitioner's Complaint of April 1, 2020

Appendix E

9. Tolle respectfully requests leave of the Court to cure any error or defect in service related to this complaint prior to final consideration of Plaintiff's complaint, which is requested in order to serve the interests of justice and to avoid injury to Plaintiff's due process rights.

10. Tolle respectfully requests leave of the Court to correct any other errors found in the present complaint and cure any other defects or omissions by amendment prior to final consideration of Plaintiff's complaint by the Court, which is requested in order to serve the interests of justice and to avoid injury to Plaintiff's due process rights.

FACTUAL ALLEGATIONS

Declaration of National Emergency due to Corona Virus

11. On or around March 13, 2020, President Trump issued the Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (hereinafter, the "Declaration of National Emergency"). Upon information and belief, this declaration does/did not authorize Defendants' actions which have violated Tolle's Constitutional rights. Specifically, the Declaration of National Emergency stated: "This proclamation shall be implemented consistent with applicable law and subject to the availability of appropriations."

12. On or around March 16, 2020, the Whitehouse and Centers for Disease Control issued the "President's Coronavirus Guidelines for America 15 Days to Control the Spread" (hereinafter, the "President's Guidelines). Upon information and belief, the President's Guidelines are non-binding rules recommended for voluntary action by States and the American people. Upon information and belief, the President's Guidelines did not/do not require any specific action by Defendant Governor Northam or any other Virginia official. Upon information and belief, the President's Guidelines do not contain any medical recommendations which would apply to healthy people or people infected by the COVID-19 virus. Upon information and belief,

the President's Guidelines do not make any actions by the American people a criminal offense

13. On or around March 17, 2020, over 1 million people gathered together in groups often greater than 10 people to conduct the Democratic primary elections in Florida, Arizona and Illinois. Upon information and belief, the President's Guidelines did not see a significant threat from COVID-19 such that the President's Guidelines were used to prevent these people from carrying out their Constitutional right to travel assemble and vote. Upon information and belief, Defendant Northam never made any public statement expressing concern for the citizens of these other states so flagrantly exceeding the restrictions suggested by the President's guidelines.

14. Upon information and belief, there is no consensus of medical science that shows that healthy people or people who appear healthy and do not have symptoms can communicate the virus to others in close contact less than six feet apart. Upon information and belief, Defendant Northam's orders and actions are not based on a consensus of medical science about the modes of transmission of COVID-19.

15. On or around February 7, 2020, the Director of the National of Allergy and Infectious Disease, Dr. Anthony Fauci stated that the basis of his belief that a person appearing healthy may transmit the COVID-19 virus was from anecdotal reports from the Chinese, stating: "I made a call to a person who I know very well who is a highly respected scientist and public health official in China, and I said, it's important for us to get the answer...can an asymptomatic person transmit it? [they said] Absolutely, we've seen it...it's not driving the outbreak, but it occurs."

16. According to the public information at the Centers for Disease Control (hereinafter, "CDC"), the consensus of current medical science believes that the main mode of transmission of the COVID-19 virus is through contact with persons who have symptoms, which is stated on the CDC's "How Coronavirus Spreads" website as follows:

“The virus is thought to spread mainly from person-to-person.

- Between people who are in close contact with one another (within about 6 feet).
- Through respiratory droplets produced when an infected person coughs or sneezes.”

17. According to the public information at the CDC, the consensus of medical science has not shown that the transmission of COVID-19 from a healthy person or an asymptomatic person who may have the virus is a definite mode or threat of transmission, with the “How Coronavirus Spreads” website stating:

“People are thought to be most contagious when they are most symptomatic (the sickest)
Some spread might be possible before people show symptoms...but this is not thought to be the main way the virus spreads.”

18. On or around March 20, 2020, Dr. Fauci stated “It’s still not quite clear....” when asked about the CDC’s science behind his belief that COVID-19 can be transmitted by asymptomatic individuals.

Governor’s Executive Order Number Fifty-Five (2020)

19. Defendant Northam signed and issued Executive Order Number Fifty-Five (2020) (hereinafter, “EO-55”) on or around March 30, 2020.

20. EO-55 states it “shall be effective March 30, 2020...and shall remain in full force and in effect until June 10, 2020....”

21. Upon information and belief, EO-55 requires all individuals in Virginia to remain in their place of residence and only allows individuals to leave their residences for the purpose of: obtaining essential services, seeking medical or other essential services, taking care of individuals or animals, court ordered travel, outdoor activity while staying at least six feet from any other person, traveling to place of worship, work or school, volunteering to help charitable services, or due to fear of health or safety or upon direction by a government representative.

22. EO-55 states: “To the extent individuals use shared or outdoor spaces...they must at all times maintain social distancing of at least six feet from any other person....”

23. In paragraph 2, EO-55 prohibits: “All public and private in-person gatherings of more than ten individuals....This includes parties, celebrations, religious or other social events, whether they occur indoor or outdoor”.

24. In paragraph 5, EO-55 orders the closure “of all public beaches...for all activity, except exercising and fishing.”

25. EO-55 states: “Violation of paragraphs 2, 3, 4, and 5 of this Order shall be a Class 1 misdemeanor pursuant to § 44-146.17 of the *Code of Virginia*.”

26. Upon information and belief, the powers which Defendant Northam’s orders under EO-55 have granted government authorities to act against and restrain United States citizens is unprecedented in American history. These actions and orders of Defendant Northam are far greater than any previous actions under emergency powers or during time of national emergency, at least since the unconstitutional involuntary internment of Japanese-American citizens under President Roosevelt. Furthermore, Defendant Northam’s actions and orders under EO-55 are far more sweeping and abusive than any quarantine powers used by elected officials in all of the history of our Republic because Defendant Northam’s orders are the first time that the quarantine power has been used against innocent, healthy citizens who are located in any part of Virginia, even in locations which do not show any evidence of the disease.

CAUSES OF ACTION

AS AND FOR A FIRST CAUSE OF ACTION

VIOLATION OF FIRST AMENDMENT’S FREE EXERCISE OF RELIGION

27. Tolle re-alleges and incorporates the above allegations of this complaint as if set forth fully herein.

28. The First Amendment of the United States Constitution states “Congress shall

make no law respecting an establishment of religion, or prohibiting the free exercise thereof....”

29. 42 U.S.C § 1983 states: “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....”

30. Defendant Northam’s order under EO-55 prohibits the free exercise of religion by United States citizens in Virginia by prohibiting all “public and private in-person gatherings of more than ten individuals....”, explicitly including “religious or other social events, whether they occur indoor or outdoor”. Furthermore, Defendant Northam’s order makes it a crime to exercise one’s religion in violation of his prohibitions. This is substantiated by facts in paragraphs 23 and 25.

31. Defendant Northam’s order under EO-55 was/is a regulation, custom or usage which causes Tolle and every United States citizen in Virginia to be deprived of his or her right to exercise his or her religion, even in settings where all individuals appear healthy or individuals are observing a safe distance of 6 feet separation, such right, privilege or immunity being explicitly guaranteed by the First Amendment of the United States Constitution. Tolle’s Church has already stopped offering public services because of Defendant Northam’s orders. Furthermore, Defendant Northam’s order under EO-55 was/is an action under the color of statute or ordinance which violates Tolle’s Constitutional rights because Defendant Northam’s order makes it a crime under § 44-146.17 for an individual to violate his order. This is substantiated by facts in paragraph 5, 23 and 25.

32. Defendants’ orders under EO-55 which prohibit the exercise of religion under the

United States Constitution disproportionately deprive healthy people of their rights and are an unreasonable restriction on the religious rights of citizens to practice their religion because there is no consensus in medical science that persons not showing symptoms can endanger others or transmit the COVID-19 virus. Defendant Northam's orders under EO-55 are unnecessary since citizens can reasonably ensure that people without symptoms or those who are most vulnerable to the COVID-19 virus are not present in any gathering for religious purposes and it is possible for the government to find other means to protect the health and safety of citizens without depriving them of their Constitutional rights. Defendant Northam's orders under EO-55 are also an unnecessary intrusion on the rights of citizens because by prohibiting all gatherings inside and outside, it ignores the fact that many locations inside and outside provide the space for religious gatherings to allow a safe separation of over 6 feet between citizens and thereby abide by the President's Guidelines. This is substantiated by facts in paragraphs 12, 13, 14, 15, 16, 17, and 18.

33. Defendant Northam's orders under EO-55 are arbitrary and unprecedented because they ignore the fact that the President's guidelines did not restrict people's right to travel and assemble during the Democratic primaries in three states after the President's Guidelines were released and Defendant Northam's support of allowing persons to exercise their right to travel and assemble for his Democratic party events while restricting the right of healthy Virginians to travel and assemble for rights guaranteed under the United States Constitution which are just as sacred as Democratic party primary voting is to our nation is hypocritical, arbitrary and shows how unnecessary Defendant Northam's orders under EO-55 are. Furthermore, Defendant Northam's orders under EO-55 are arbitrary and subjectively punish a vast number of citizens because Defendant Northam's orders impose moral values on the subjects of his order based on Defendant Northam subjective moral judgment, such as making

exceptions for some activities on public beaches while prohibiting others; such as making a moral evaluation that religious gatherings are not as essential as voting in primaries. This is supported by the facts in paragraph 13, 14, 23, 24, 25 and 26.

Claim related to First Cause of Action

34. For these reasons, Defendant Northam's actions and the Commonwealth's actions which issued Defendant Northam's EO-55 orders were actions under color of statute, ordinance, regulation, custom, and/or usage, of the State organized as the Commonwealth of Virginia, which subjected (or subjects), or caused (or causes) to be subjected, Tolle and all other citizens of the United States or other persons within the jurisdiction of Virginia to the deprivation of the rights, privileges, or immunities secured by the First Amendment of the Constitution. Such actions of Defendants' are a violation of 42 U.S.C § 1983 which have caused Tolle to suffer injuries and damages, including, but not limited to, loss of right to exercise his Constitutionally protected rights, liberties and freedoms, loss of right to use his property as desired, and other damages in an amount to be proved at trial according to proof, including but not limited due to, damage to his reputation, injury to his profession and business, emotional harm, and exposure to distrust, contempt, and unfair treatment.

35. If the facts presented in this First Cause of Action are taken as true, it is probable that the Defendant Northam's orders under EO-55 prohibits the exercise of religion of Tolle and all other healthy United States citizens in Virginia without a consensus of medical science justifying action against healthy citizens. Based on the fact that the pleaded factual content should allow the Court to draw a reasonable inference that Defendants' actions in ordering EO-55 or carrying out EO-55 were/are actions under color of a regulation, custom, and/or usage, of the Commonwealth of Virginia which serves to deprive Tolle and other citizens in Virginia the

rights, privileges and immunities secured by the First Amendment of the United States Constitution, the claims included within this First Cause of Action are based on non-conclusory statements of fact and are facially plausible.

36. Tolle requests award of attorney's fees pursuant to 42 U.S.C § 1988.

AS AND FOR A SECOND CAUSE OF ACTION

VOLATION OF FIRST AMENDMENT'S RIGHT TO ASSEMBLE

37. Tolle re-alleges and incorporates the above allegations of this complaint as if set forth fully herein.

38. The First Amendment of the United States Constitution states "Congress shall make no law...abridging...the right of the people peaceably to assemble...."

39. 42 U.S.C § 1983 states: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...."

40. Defendant Northam's order under EO-55 prohibits all "public and private in-person gatherings of more than ten individuals....", explicitly including "whether they occur indoor or outdoor" and makes it a crime if individuals violate this order. This is substantiated by facts in paragraph 23 and 25.

41. Defendant Northam's order under EO-55 abridges the ability of persons to assemble by requiring no persons to come less than six feet apart: "To the extent individuals use shared or outdoor spaces...they must at all times maintain social distancing of at least six feet

from any other person....” This is substantiated by facts in paragraph 22.

42. Defendant Northam’s order under EO-55 was/is a regulation, custom or usage which causes Tolle and every United States citizen in Virginia to be deprived of his or her right to freely gather or assemble, even in settings where all individuals appear healthy or individuals are observing a safe distance of 6 feet separation, such right, privilege or immunity being explicitly guaranteed by the First Amendment of the United States Constitution. Furthermore, Defendant Northam’s order under EO-55 was/is an action under the color of statute or ordinance which violates Tolle’s Constitutional rights because Defendant Northam’s order makes it a crime under § 44-146.17 for an individual to violate his order. This is substantiated by facts in paragraph 23 and 25.

43. Defendant Northam’s actions and orders under EO-55 directly and unreasonably restrict the Constitutional rights of Tolle and other Virginians because his orders make it a crime for persons who express political opposition to Defendant Northam’s actions to gather more than 10 persons in any place throughout the entire Commonwealth of Virginia to publicly express their political opposition. This is supported by the facts in paragraphs 23 and 25.

44. Defendants’ orders under EO-55 which abridges the rights of citizens in Virginia to gather and come within 6 feet of each other under the United States Constitution disproportionately deprive healthy people of their rights and are an unreasonable restriction on the right of citizens to assemble because there is no consensus in medical science that persons not showing symptoms can endanger others or transmit the COVID-19 virus. Furthermore, defendant Northam’s orders under EO-55 which prohibit the gathering of more than 10 people, even outside, are unnecessary since citizens can reasonably ensure that people without symptoms or those who are most vulnerable to the COVID-19 virus are not present in any gathering and it is possible for the government to find other means to protect the health and safety of citizens

without depriving them of their Constitutional rights. Defendant Northam's orders under EO-55 are also an unnecessary intrusion on the rights of citizens because by prohibiting all gatherings inside and outside, it ignores the fact that many locations inside and outside provide the space for gatherings to allow a safe separation of over 6 feet between citizens and thereby abide by the President's Guidelines. This is substantiated by facts in paragraphs 12, 13, 14, 15, 16, 17, and 18.

45. Defendant Northam's orders under EO-55 are arbitrary and unprecedented because they ignore the fact that the President's guidelines did not restrict people's right to travel and assemble during the Democratic primaries in three states after the President's Guidelines were released and Defendant Northam's support of allowing persons to exercise their right to travel and assemble for his Democratic party events while restricting the right of healthy virginians to travel and assemble for rights guaranteed under the United States Constitution which are just as sacred as Democratic party primary voting is to our nation is hypocritical, arbitrary and shows how unnecessary Defendant Northam's orders under EO-55 are, based on actions by Defendant Northam which favor his political party while restricting the political activities of his opponents. Furthermore, Defendant Northam's orders under EO-55 are arbitrary and subjectively punish a vast number of citizens because Defendant Northam's orders impose moral values on the subjects of his order based on Defendant Northam subjective moral judgment, such as making exceptions for some activities on public beaches while prohibiting others; such as making a moral evaluation that religious gatherings are not as essential as voting in primaries. This is supported by the facts in paragraph 13, 14, 23, 24, 25 and 26.

Claim related to Second Cause of Action

46. **For these reasons, Defendant Northam's actions and the Commonwealth's actions which issued Defendant Northam's EO-55 orders were actions under color of**

statute, ordinance, regulation, custom, and/or usage, of the State organized as the Commonwealth of Virginia, which subjected (or subjects), or caused (or causes) to be subjected, Tolle and all other citizens of the United States or other persons within the jurisdiction of Virginia to the deprivation of the rights, privileges, or immunities secured by the First Amendment of the Constitution. Such actions of Defendants' are a violation of 42 U.S.C § 1983 which have caused Tolle to suffer injuries and damages, including, but not limited to, loss of right to exercise his Constitutionally protected rights, liberties and freedoms, loss of right to use his property as desired, and other damages in an amount to be proved at trial according to proof, including but not limited due to, damage to his reputation, injury to his profession and business, emotional harm, and exposure to distrust, contempt, and unfair treatment.

47. If the facts presented in this Second Cause of Action are taken as true, it is probable that the Defendant Northam's orders under EO-55 abridges the right of Tolle and all other healthy United States citizens in Virginia to assemble without a consensus of medical science justifying action against healthy citizens. The facts show that Defendant Northam's orders under EO-55 severely and unnecessarily restrict the freedom of Tolle and others to assemble such that Defendant Northam's orders make it a crime for Tolle and others to gather more than 10 people together at any location to publicly oppose the Defendants' actions. Based on the fact that the pleaded factual content should allow the Court to draw a reasonable inference that Defendants' actions in ordering EO-55 or carrying out EO-55 were/are actions under the color of a statute, regulation, custom, and/or usage, of the Commonwealth of Virginia which serves to deprive Tolle and other citizens in Virginia the rights, privileges and immunities secured by the First Amendment of the United States Constitution, the claims included within this Second Cause of Action are based on non-conclusory statements of fact and are facially

plausible.

48. Tolle requests award of attorney's fees pursuant to 42 U.S.C § 1988.

AS AND FOR A THIRD CAUSE OF ACTION

VIOLATION OF FOURTH AMENDMENT

49. Tolle re-alleges and incorporates the above allegations of this complaint as if set forth fully herein.

50. The Fourth Amendment of the United States Constitution states: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...."

51. 42 U.S.C § 1983 states: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...."

52. Defendant Northam's order under EO-55 prohibits all "public and private in-person gatherings of more than ten individuals....", explicitly including "whether they occur indoor or outdoor" and makes it a crime if individuals violate this order. This is substantiated by facts in paragraph 23 and 25.

53. By prohibiting private all in-person private gatherings on the personal property and even within the homes of United States citizens in Virginia, making it a crime if such gathering is greater than 10 persons and includes any person who is not a family member, Defendant Northam's order intends to intrude into the personal property and homes of United

States citizens farther than any author of the Fourth Amendment ever dreamed and to a greater extent than any elected official has ever done before in American history. The only effective way for Defendant Northam to carry out the prohibitions in the order is to invade the private domicile of American citizens with the full force of the State, as was once possible in the American colonies under the tyrannical rule of an all-powerful monarch, such act being the very thing that the authors of the Fourth Amendment intended to prevent American executives from ever having the power to do. For these reasons, Defendant Northam's order under EO-55 was/is a regulation, custom or usage which causes Tolle and every United States citizen in Virginia to be deprived of his or her right to be secure in his person, house, property and effects, such right, privilege or immunity being explicitly guaranteed by the Fourth Amendment of the United States Constitution. Furthermore, Defendant Northam's order under EO-55 was/is an action under the color of statute or ordinance which violates Tolle's Constitutional rights because Defendant Northam's order makes it a crime under § 44-146.17 for an individual to violate his order. This is substantiated by facts in paragraph 23 and 25.

54. Defendants' orders under EO-55 which abridges the rights of citizens in Virginia to be safe from the unrestrained power of government authorities on their own property and in their own home is an unnecessary abuse of the executive emergency power granted by the legislature to respond to medical crises. Never before has the quarantine power been used to such an extent against healthy people, with Defendant Northam's order allowing the invasion of any home throughout the entirety of the Commonwealth of Virginia without any requirement for probable cause other than the Governor's warped theory that more than ten persons indoors, in a space of any size, is itself a crime. Defendant Northam's orders also ignore the fact that larger properties and home can safely accommodate groups of more than ten people without even violating the President's guidelines of safe distance. This is supported by the facts in paragraph

26.

55. Furthermore, Defendant Northam's unprecedented power to restrict any citizen within the privacy of his or her own home disproportionately deprives healthy people of their rights and are an unreasonable restriction on the right of citizens to be safe and secure within their own property and homes with whomever they choose to invite in because there is no consensus in medical science that persons not showing symptoms can endanger others or transmit the COVID-19 virus. Defendant Northam's orders under EO-55 which prohibit the gathering of more than 10 people, even outside, are unnecessary since citizens can reasonably ensure that people without symptoms or those who are most vulnerable to the COVID-19 virus are not present in any gathering within their homes or on their property and it is possible for the government to find other means to protect the health and safety of citizens without depriving them of their Constitutional rights. This is substantiated by facts in paragraphs 12, 13, 14, 15, 16, 17, and 18.

Claim related to Third Cause of Action

56. **For these reasons, Defendant Northam's actions and the Commonwealth's actions which issued Defendant Northam's EO-55 orders were actions under color of statute, ordinance, regulation, custom, and/or usage, of the State organized as the Commonwealth of Virginia, which subjected (or subjects), or caused (or causes) to be subjected, Tolle and all other citizens of the United States or other persons within the jurisdiction of Virginia to the deprivation of the rights, privileges, or immunities secured by the Fourth Amendment of the Constitution. Such actions of Defendants' are a violation of 42 U.S.C § 1983 which have caused Tolle to suffer injuries and damages, including, but not limited to, loss of right to exercise his Constitutionally protected rights, liberties and freedoms, loss of right to use his property as desired, and other damages in an amount to be**

proved at trial according to proof, including but not limited due to, damage to his reputation, injury to his profession and business, emotional harm, and exposure to distrust, contempt, and unfair treatment.

57. If the facts presented in this Third Cause of Action are taken as true, it is probable that the Defendant Northam's orders under EO-55 abridges the right of Tolle and all other healthy United States citizens in Virginia to be secure in their property, homes, papers and effects. The facts show that Defendant Northam's orders under EO-55 severely and unnecessarily restrict the freedom of Tolle and others to act in the privacy of their own homes when more than ten persons are gathered who include non-family members and Defendant Northam's orders make it a crime for Tolle and others to choose to exercise their freedom within the security and privacy of their own home, even if Tolle is ensuring all persons in his home are following the President's guidelines. Based on the fact that the pleaded factual content should allow the Court to draw a reasonable inference that Defendants' actions in ordering EO-55 or carrying out EO-55 were/are actions under the color of a statute, regulation, custom, and/or usage, of the Commonwealth of Virginia which serves to deprive Tolle and other citizens in Virginia the rights, privileges and immunities secured by the Fourth Amendment of the United States Constitution, the claims included within this Third Cause of Action are based on non-conclusory statements of fact and are facially plausible.

58. Tolle requests award of attorney's fees pursuant to 42 U.S.C § 1988.

AS AND FOR A FOURTH CAUSE OF ACTION

VIOLATION OF FOURTEENTH AMENDMENT

59. Tolle re-alleges and incorporates the above allegations of this complaint as if set forth fully herein.

60. The Fourteenth Amendment of the United States Constitution states: “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

61. 42 U.S.C § 1983 states: “Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....”

62. Defendant Northam’s order under EO-55 substantially, unnecessarily and arbitrarily violates the Constitutional rights of Tolle and other citizens in Virginia for several reasons as shown in the preceding, including direct and immediate violation of rights under the First and Fourth Amendments, *supra*.

63. By depriving Tolle and other citizens of the liberty to travel to and conduct their religion, by depriving Tolle and other citizens of the liberty to travel outside their residences and to gather and assemble as they choose, and by depriving Tolle and other citizens their right to have the liberty to do what they choose on their own property and deny Tolle and other citizens of the free use of their own homes, Defendant Northam and the Defendants who carry out EO-55 are causing direct violation of Tolle and other United States citizens rights under the Fourteenth Amendment. This is substantiated by the facts given in the previous sections showing violations of the rights of Tolle and others under the First and Fourth Amendments, *supra*.

64. Furthermore, by arbitrarily, unnecessarily and disproportionately directing his orders against citizens who are healthy or have no evidence of being infected with the COVID-

19 virus, Defendant Northam is unfairly treating healthy people the same as sick people and using his quarantine and emergency powers against all in an unprecedented and extreme way. This is akin to using the criminal powers of the Commonwealth's government against innocent people. Such action violates the right to equal protection under the law as guaranteed under the Fourteenth Amendment. Furthermore, by not allowing any healthy person to escape from the severe restrictions and powers of the Virginia government in any reasonable way, Defendant Northam is violating the substantive due process rights of all healthy people in the Commonwealth of Virginia. This is substantiated by the facts in paragraph 21, 22, 23, 24, 25, and 26.

65. For these reasons, Defendant Northam's order under EO-55 was/is a regulation, custom or usage which causes Tolle and every United States citizen in Virginia to be deprived of his or her liberty and property, such right, privilege or immunity being explicitly guaranteed by the Fourteenth Amendment of the United States Constitution.

66. Defendant Northam's order under EO-55 is also a violation of the right of Tolle and other citizens who are healthy to have equal protection under the law and deprives Tolle and other citizens who are healthy substantive due process rights to avoid being penalized under Defendant Northam's orders. Furthermore, Defendant Northam's order under EO-55 was/is an action under the color of statute or ordinance which violates Tolle's Constitutional rights because Defendant Northam's order makes it a crime under § 44-146.17 for an individual to violate his order. This is substantiated by facts in paragraph 25.

67. Defendants' orders under EO-55 which are unprecedented and abridge the rights of citizens in Virginia to be treated as innocent, healthy individuals with due process rights and equal protection under the law and the deprivation of these individual citizens' rights to liberty and property, are an unnecessary abuse of the executive emergency power granted by the

legislature to respond to medical crises. Never before has the quarantine power been used to such an extent against healthy people, with Defendant Northam's order all persons within the entirety of the Commonwealth of Virginia without any requirement for probable cause or due process. This is supported by the facts in paragraph 26.

68. Furthermore, Defendant Northam's unprecedented power to deprive any citizen of the rights guaranteed under the Fourteenth Amendment simply because a person may be sick, even a person without symptoms, disproportionately deprives healthy people of their rights because there is no consensus in medical science that persons not showing symptoms can endanger others or transmit the COVID-19 virus. This is substantiated by facts in paragraphs 12, 13, 14, 15, 16, 17, and 18.

Claim related to Fourth Cause of Action

69. **For these reasons, Defendant Northam's actions and the Commonwealth's actions which issued Defendant Northam's EO-55 orders were actions under color of statute, ordinance, regulation, custom, and/or usage, of the State organized as the Commonwealth of Virginia, which subjected (or subjects), or caused (or causes) to be subjected, Tolle and all other citizens of the United States or other persons within the jurisdiction of Virginia to the deprivation of the rights, privileges, or immunities secured by the Fourteenth Amendment of the Constitution. Such actions of Defendants' are a violation of 42 U.S.C § 1983 which have caused Tolle to suffer injuries and damages, including, but not limited to, loss of right to exercise his Constitutionally protected rights, liberties and freedoms, loss of right to use his property as desired, and other damages in an amount to be proved at trial according to proof, including but not limited due to, damage to his reputation, injury to his profession and business, emotional harm, and exposure to distrust, contempt, and unfair treatment.**

APPENDIX F

**Petitioner's Motion for Preliminary Injunction and Expedited Hearing of
April 1, 2020**

d) Injury to his right to due process and equal protection under the law, including the right not to be deprived his liberty or property as guaranteed under the Fourteenth Amendment.

ARGUMENT

2. The Supreme Court has set the standard for preliminary motion in the last decade by holding that a party seeking an injunction “must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U. S. 7, 129 S. Ct. 365, 172 L. Ed. 2D 249, 21 Fla. L. Weekly Fed. S. 547 (2008) (hereinafter, “*Winters*”).

3. Plaintiff argues that he is likely to succeed on the merits because he has standing and his complaint has presented a *prima facie* case for violations of his Constitutional rights. The Supreme Court has based Constitutional standing for judicial review on three factors: (i) concrete, particularized and actual or imminent; (ii) fairly traceable to the challenged action; and (iii) redressable by a favorable ruling. (see *Lujan v. Defenders of Wildlife*, 504 U. S. 555 (1992)) Each element can be addressed separately to establish Tolle’s Constitutional standing. Although the Defendant Northam’s order is not directed specifically against Tolle, the fact that the prohibitions in the order have an immediate effect on the personal behaviors of every family in Virginia and undoubtedly, almost every individual including Tolle. In Tolle’s case, Defendant Northam’s order specifically calling for restrictions on worship at Churches has led to Tolle’s Church closing their public worship and Tolle being told that he can no longer practice the duties of the his position in the Church which was directly involved with public worship. Furthermore, Tolle is directly impacted by requiring him to change his behavior when he is outside and he is prohibited from assembling with like-minded healthy people who oppose Defendant Northam’s

administration. Furthermore, the threat of criminal charges should Tolle violate restrictions under Defendant Northam's orders has personal jurisdiction for every citizen in Virginia. Tolle is currently healthy and the harm to Tolle's reputation which causes the government to treat Tolle like he is carrying the COVID-19 virus without any evidence has a direct personal impact to Tolle's behavior, mental anguish and welfare. All of these effects on Tolle's life are also actually realized since Defendant Northam's order. For these reasons, Defendants' injury to Tolle is a concrete and particularized invasion because the orders have an recognizable and immediate affect on Tolle which is specific to his person and will vary from how others are affected in individual ways based on Tolle's current life situation.

4. It should be clear that the alleged injuries to Tolle's Constitutional rights are fairly traceable to Defendant Northam's orders under EO-55 since without the orders, Tolle would not face criminal charges for non-compliance and he would have the freedom to choose which safe practices he would follow to avoid spreading the COVID-19 virus. Furthermore, since it is possible that Tolle's Church would open to public services again before the ending date of Defendant Northam's order if the order was stayed or modified to allow safe worship, it should be clear that the injury to Tolle's rights caused by Defendant Northam's actions and orders are redressable by obtaining injunctive relief. For all of these reasons, Plaintiff believes he has Constitutional standing which will allow him to prevail on the merits of his case.

5. In addition to having Constitutional standing, Tolle believes he has presented a *prima facie* case based on the facts presented in his complaint such that his claims are non-conclusory and of sufficient basis in uncontested facts that it is likely his arguments will survive any motion for directed verdict. It is also likely that Tolle will be able to convince a trial by jury that the preponderance of his peers agree that Defendant Northam's orders are an unprecedented invasion of their important Constitutional rights. Furthermore, Tolle believes that he will at least

be likely to secure a partial injunction for the injuries which are beyond repair, which he has no other adequate remedy at law if the Defendant Northam's orders should stand in tact, a partial injunction provides equitable remedy and is in the public's interest in protecting their own rights. For these reasons, Tolle believes that his request for a Preliminary Injunction meets the first element of *Winters* and that he is "likely to succeed on the merits".

6. The next element of *Winters* calls for irreparable harm. The Second Circuit has found a presumption of irreparable harm where the actions have directly limited the rights of the plaintiff. *Bronx Household of Faith v. Bd. of Educ., N.Y.*, 331 F. 3d 342 (2d Cir. 2003). By this standard, the Court should find that a presumption of irreparable harm is warranted because Defendant Northam's orders directly limit Tolle's rights in several ways as delimited in his complaint. Putting aside the presumption of irreparable harm, Tolle also argues that Defendant Northam's actions are actually causing irreparable harm which increases for every day that the EO-55 orders are allowed to stand. Tolle is no longer able to practice the ministerial duties of his religion because Defendant Northam's orders have caused Tolle's Church to stop offering the public services which he participated in and there is no likelihood that Tolle will be able to practice this ministry as long as Defendant Northam's orders under EO-55 end. Each day that passes with Tolle's Church services closed due to the social distancing orders of Defendant Northam, Tolle is deprived of offering meaningful services to other Church members, some of whom may die before Defendant Northam's orders end. Furthermore, Tolle's ability to assemble and interact with like-minded people to oppose Defendant Northam's actions are critically crippled by Defendant Northam's restrictions on political gatherings. Every day that Defendant Northam's orders under EO-55 are in effect, Tolle and other citizens who are healthy will be unfairly treated like sick people and forced to forfeit their liberty by being quarantined without any medical consensus requiring it or any due process to allow Tolle or others to be removed

from suspicion. Additionally, if Tolle is charged criminally during the period of Defendant Northam's order for exceeding one of the restrictions, any criminal conviction will follow him for years as irreparable harm. For all of these reasons, Plaintiff believes that without preliminary relief, Defendant Northam's orders are causing him irreparable harm.

7. As far as *Winters*' element of equity siding with the Plaintiff, Tolle believes that the facts presented in his complaint show that Defendant Northam's actions and orders under EO-55 are so unprecedented and extreme in the history of the Republic that equity clearly calls for a tempering of at least some of the restrictions. As noted in the complaint, no use of emergency powers have been so sweeping and swept up so many innocent people not affected by the immediate crisis as Defendant Northam's actions, with the possible exception of the unconstitutional involuntary internment of Japanese-American citizens under President Roosevelt. If Defendant Northam's current actions and orders approach the inequities of that time, it should be clear that the Plaintiff's arguments should receive the balance of equity in this case. Furthermore, Tolle's complaint makes it clear that Defendant Northam's orders under EO-55 are an unprecedented abuse of the executive's quarantine powers. At no time in our history has the quarantine power been used to deprive so many healthy people in locations where there is not even any evidence of the virus as Defendant Northam's orders do today. For these reasons, Plaintiff believes that the balance of equity sides with his arguments in this case.

8. Finally, Plaintiff believes that his request for preliminary relief meets the *Winters* criteria for being in the public interest. Defendants can attempt to argue that it is in the public interest to quarantine every citizen in the entirety of Virginia out of an abundance of caution, even if there is no consensus of science to prove that persons who appear healthy are a threat to the public's health. However, if the Court accepts this extreme argument, our nation might as well void the Bill of Rights. The power to quarantine must be limited by a balance between what

is in the best interest of avoiding an outbreak and the interest of protecting the rights of persons who are not sick. A blanket quarantine over the entire Commonwealth and millions of persons who are not sick or even threatened yet by the disease cannot be considered a balance. Defendant Northam's orders should be considered extreme by any measure. At this time, it is the Court's role to restore some balance between the power of the executive and the rights of healthy citizens to receive their Constitutional rights. If the protection of individual rights to the maximum extent possible is viewed in the public interest, then preliminary relief from Defendant Northam's orders, even if only in part, must be part of the public interest.

CONCLUSION

9. For the foregoing reasons, Plaintiff believes that the facts and the law support his request for preliminary relief. Therefore, Plaintiff seeks a Preliminary Injunction to stay the execution of all or parts of Defendant Northam's orders under Executive Order 55 (2020) (hereinafter, "EO-55") and TRO requiring Defendants to publicly stay the execution of Defendant Northam's EO-55 and stop all enforcement of such EO-55. Alternatively, Plaintiff seeks a Preliminary Injunction and/or TRO which partially stays Defendant Northam's orders under EO-55, including one or all of the parts of the order as follows:

- a) All of paragraph 1;
- b) Part of paragraph 1 stating "they must at all times maintain social distancing";
- c) Paragraph 2;
- d) Sub-paragraphs 2a and 2b;
- e) Paragraph 5; and/or
- f) The section stating "Violation of paragraphs 2, 3, 4 and 5 of this Order shall be a

Class 1 misdemeanor pursuant to § 44-146.17 of the *Code of Virginia*."

10. If the Court does not grant relief to Plaintiff in the form of an immediate

APPENDIX G

**Petitioner's Motion for Reconsideration of Court Order Denying
Preliminary Injunction, Expedited Hearing and
Service of Complaint by United States Marshal Service of
April 6, 2020**

Plaintiff's motion requested a TRO claiming irreparable harm and it was accompanied by a verified complaint which showed immediate and irreparable loss of Plaintiff's fundamental Constitutional rights. The complaint also provided evidence of why it was difficult during the State of Emergency to give notice, to the point of requiring assistance from the United States Marshal, giving reason why notice should not be required while the offices of the government are closed. The Court's failure to consider granting Plaintiff temporary relief from the injury caused by Defendants without a hearing during the "extraordinary circumstances" of these times is an error in law and an abuse of discretion.

b) To the extent that Defendant Northam's Executive Order 55 (2020) (hereinafter, "EO-55") is a quarantine of individuals like Tolle and orders all (who do not meet the exceptions for essential business) to home confinement. EO-55 provides no due process to individuals affected by the order and the Court's Order denies Plaintiff any timely procedural due process during a quarantine, which is an error in law and violates Tolle's rights under the Fifth and Fourteenth Amendments. ("The Constitution requires some kind of hearing before the State deprives a person of liberty or property.", *Zinermon v. Burch*, 494 U.S. 113, 127 (1990); see *O'Connor v. Donaldson*, 422 U.S. 563 (1975) for discussion of due process for involuntary confinement for any reason.) Most states, including Virginia provide due process under statutes authorizing confinement due to isolation or quarantine. In Virginia, Va. Code § 32.1-48.010 provides for petition to Virginia Circuit Courts for redress of the abuse of quarantine powers:

"A. Any person or persons subject to an order of quarantine or a court-ordered extension of any such order pursuant to this article may file an appeal of the order of quarantine as such order applies to such person or persons in the circuit court for the city or county in which the subject or subjects of the order reside or are located or the circuit court for the jurisdiction or jurisdictions for any affected area."

However in this case, Defendant Northam's orders under EO-55 do not avail citizens quarantined under the stay-at-home order any due process opportunity provided under Va. Code § 32.1-

48.010, as it would for all proper quarantine actions. In fact, EO-55 does not provide any citizen due process to avoid unnecessary quarantine restrictions. If this Court denies Tolle an opportunity for timely redress of the onerous restrictions which are depriving Tolle and other citizens of their liberty and property due to the virus, Tolle's due process rights under the Constitution will be summarily denied.

c) Even if Defendant Northam's actions and orders under EO-55 are not considered a quarantine, the Court's Order which extinguishes Tolle's opportunity for any timely due process in light of protracted injury and the most unprecedented and draconian measures under emergency powers probably since the Civil War is an error in law. Due process is an essential safeguard established over the course of centuries used by society to obtain fair judgment. ("This Court is not alone in recognizing that the right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society" *Joint Anti-Fascist Refugees Committee v. McGrath*, 341 U.S. 123, 168 (1951).) Even when the government authority is acting to deprive a citizen of property or liberty rights through its executive power, due process calls for procedural protections. ("Such a hearing need not take the form of a judicial or *quasi*-judicial trial, but the recipient must be provided with timely and adequate notice detailing the reasons for termination, and an effective opportunity to defend by confronting adverse witnesses and by presenting his own arguments and evidence orally before the decisionmaker." *Goldberg v. Kelly*, 397 U.S. 254, 254 (1970); "It has been said so often by this Court and others as not to require citation of authority that due process is flexible, and calls for such procedural protections as the particular situation demands....Its flexibility is its scope once it has been determined that some process is due; it is a recognition that not all situations calling for procedural safeguards call for the same kind of procedure." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)) Even if the scope or form of

due process varies depending on the situation, it is clear that denial of fundamental property and liberty freedoms by the Defendants must include due process. In the infamous decision of *Korematsu v. United States*, the Supreme Court dealt with the denial of a U. S. citizens rights to liberty and property under emergency orders of government authorities. As in this case, where every healthy person is assumed to be guilty of being a possible transmitter of COVID-19 and must give up their rights to liberty and property to protect the interests of the State, the Exclusion Order in *Karamatsu* was based on the belief that all Japanese-American citizens were assumed to be guilty of being a collaborator with the Japanese empire and deprived these citizens their liberty and property under the guise of a State interest. The injustice of that decision is embodied in the following, which reminds the Petitioner of how Defendant Northam's orders is being applied to every person within the entire population, which makes it easy for Virginia to circumvent due process and avoid having to worry about segregating the sick from the healthy in today's environment:

“Like curfew, exclusion of those of Japanese origin was deemed necessary because of the presence of an unascertained number of disloyal members of the group, most of whom we have no doubt were loyal to this country. It was because we could not reject the finding of the military authorities that it was impossible to bring about an immediate segregation of the disloyal from the loyal that we sustained the validity of the curfew order as applying to the whole group.” (*Korematsu v. United States*, 323 U.S. 214, 219 (1944))

The dissenting opinion of Justice Jackson provided an echo of the traditions of our Republic at the time when the war panic of World War II (not too unlike the virus panic of today) was depriving vast numbers of U. S. citizens their Constitutional rights to property and liberty unjustly:

“Korematsu was born on our soil, of parents born in Japan. The Constitution makes him a citizen of the United States by nativity, and a citizen of California by residence. No claim is made that he is not loyal to this country. There is no suggestion that, apart from the matter involved here, he is not law-abiding and well disposed. Korematsu, however, has been convicted of an act not commonly a crime. It consists merely of being present in the state whereof he is a citizen, near the place where he was born, and where all his life he

has lived.” (Justice Jackson dissent, *Korematsu v. United States*, 323 U.S. 214, 243 (1944))

The *Korematsu* decision is a perfect example of a Court willing to sacrifice the fundamental rights of the Constitution for the expediency of a National Emergency. It is hoped that this Court would not want to issue rulings which are in keeping with the view of emergency powers that the Court in *Koramatsu* embraced. If this Court wants to view the use and abuse of the Executive’s emergency powers against citizens differently than how the majority in *Koramatsu* did, granting Plaintiff’s request for reconsideration of a TRO which immediately addresses the Constitutional questions in Defendant Northam’s orders or proceedings for a Preliminary Injunction which will provide preliminary relief will go a long way towards demonstrating that.

d) Failure of the Court to grant Plaintiff’s requests for preliminary relief without reviewing the merits is an error in law (see *Reilly v. City of Harrisburg*, No. 16-3722, (3d Cir. 2017)).

e) Plaintiff’s Orig. Motion requested an expedited Preliminary Injunction hearing due to the “irreparable harm which increases for every day that the EO-55 orders are allowed to stand.” (Orig. Motion & Br., p. 5.) The Court’s Order which bases denial of Plaintiff’s request for preliminary relief and expedited preliminary-injunction hearing on General Order 2020-07 is an error in fact and/or abuse of discretion. The Chief Judge’s General Order 2020-07 (hereinafter, “EDVA G.O. 2020-7”) does not preclude hearings where a “manifest injustice would result if such proceeding were not conducted on an expedited basis”. (EDVA G.O. 2020-7, p. 5). Plaintiff’s Orig. Motion & Br. requested expedited hearing despite the COVID-19 restrictions for the very purpose of seeking relief from injury to fundamental rights where a manifest injustice to Plaintiff and many other citizens would result if a proceeding were not expedited and Plaintiff makes such request again with this present motion. The Chief Judge’s Order also does not

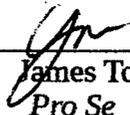
Plaintiff believes that the inclusion of the section shown in item (f) above in Defendant Northam's EO-55 orders which makes violation of the other parts of the order a criminal offense is particularly harmful to the exercise of the Constitutional rights of Tolle and other citizens and if the Court fails to grant preliminary relief from any other part of Defendant Northam's orders, Plaintiff respectfully requests the Court to grant a TRO or Preliminary Injunction which at least stays the section stating: "Violation of paragraphs 2, 3, 4 and 5 of this Order shall be a Class 1 misdemeanor pursuant to § 44-146.17 of the *Code of Virginia*." Plaintiff believes that if the Court is so disposed, this action would make Defendant Northam's Executive Orders commensurate with what many other States are implementing under their stay-at-home orders and would represent a reasonable balance between the urgent need for preliminary relief and the needs of public health.

If the Court does not grant relief to Plaintiff in the form of an immediate TRO and/or Preliminary Injunction, Plaintiff respectfully requests for an expedited preliminary-injunction hearing to address Plaintiff's need for urgent relief from Defendants' injury to his Constitutional rights. Plaintiff respectfully requests an expedited hearing as an exception under the Chief Judge's General Orders in order to avoid a manifest injustice which would result if such proceeding were not conducted on an expedited basis. Should the Court prefer to avoid an in-person hearing, Plaintiff respectfully requests the use of alternative hearing procedures under the Chief Judge's orders including the use of telephone or video conference.

Dated: April 4, 2020

Respectfully submitted,

By: _____


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APPENDIX H

**Petitioner's Emergency Motion for TRO or Preliminary Injunction/
Stay of Defendant Northam's Executive Order 55 (2020) of April 16, 2020**

*Consideration of the Consensus of Science before the Winter
Balancing and Public Interest Criteria are Evaluated*

11. The argument on the balancing of equities and public interest in this case are necessarily conflated with the arguments on whether healthy, asymptomatic people can transmit the virus and whether social distancing is an effective defense against epidemics. Both of these issues are highly debatable and are not, like the District Court seems to conclude, settled by a consensus of science. Appellant's complaint provided evidence showing the contrary: that the consensus of science does not prove that persons without symptoms can transmit the virus. (See Appellant's Complaint, paragraphs 14 through 18.) The latest information made available to the public by the CDC continues to fail to show conclusive evidence that this is settled science, making it still unclear if persons without symptoms can transmit the virus:

"The onset and duration of viral shedding and the period of infectiousness for COVID-19 are not yet known"¹

"The virus is thought to spread mainly from person-to-person. Between people who are in close contact with one another (within about 6 feet). Through respiratory droplets produced when an infected person coughs, sneezes or talks. These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs. Some recent studies have suggested that COVID-19 may be spread by people who are not showing symptoms."²

1 From <https://www.cdc.gov/coronavirus/2019-ncov/hcp/faq.html>

2 From https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fprepare%2Ftransmission.html

12. Furthermore, leading scientists and doctors have come forward lately to question the assumptions behind the scientific understanding of COVID-19 and the effectiveness of Virginia's social distancing measures:

“There is no evidence that the mitigation does anything but prolonging the ordeal. In fact we have evidence that the mitigation does nothing and the most prominent [evidence] is comparing Sweden to the three neighboring countries Norway, Denmark and Finland and if you look at the epidemiologic curve in the two regions, Sweden and the surrounding countries, there's no difference.” [Public comments by Dr. Knut Wittkowski, Former Head of Department of Research Design and Biostatistics at Rockefeller University given on WMAL on or around April 10, 2020.]³

13. Furthermore, Defendant Northam’s orders also reflect that the consensus of science does not show that all healthy people should be quarantined. Despite the unprecedented restrictions on many Virginians, the EO-55 orders allow thousands of Virginians to leave their homes every day and gather in numbers much greater than 10 at places of essential business. There is no evidence that the work by thousands of healthy people at essential businesses every day have any impact on the increase in the spread of the virus or the threat to the public health.

³ Also, John Ioannidis, Professor of Epidemiology and Population Health, Co-Director of Meta-Research Information Center at Stanford University has written about the ineffectiveness of the social distancing and stay-at-home orders (“we are making decisions without reliable data”, <http://www.statnews.com/2020/03/17/a-fiasco-in-the-making-as-the-coronavirus-pandemic-takes-hold-we-are-making-decisions-without-reliable-data>); Dr. David Katz, the Founding Director of Yale University's Yale-Griffin Prevention Research Center, has written a widely read op-ed in the New York Times in March highlighting the failures of the current COVID-19 response and the dangerous impacts of sending everyone home and disrupting society.

But how can this be if gatherings of healthy people are supposed to be unacceptably dangerous? Most essential businesses exclude people with symptoms and the evidence to-date is that people without symptoms have not demonstrated a risk at these places of business. If the Defendants truly believed that gatherings of healthy people greater than 10 was a serious threat for transmission of this virus, it is hypocritical and irresponsible of them to place many thousands of Virginians who work in essential business in harms way every day. By their own actions, Defendants seem to acknowledge that the consensus of science does not show that healthy people outside of their homes, at work, are a threat to others.

Balancing of Equities under Winter

14. The District Court is wrong on the law because the consideration of equities of both parties and the public interest requires a balancing of the concerns and needs of all parties. This is shown in *Winter*: "In each case, courts 'must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.' [*Winter*, Section B, quoting *Amoco Production Co.*, 480 U. S., at 542.] For Constitutional injuries, this "balancing" must consider if the un-enjoined actions of the government are based on the minimum injury to citizen rights as the situation allows. Blind acceptance of the executive's un-amended action as the only way to achieve the needs of the

contrary to Defendant Northam's orders and an increase in the infection threat in Virginia. This follows from the facts supporting argument (a).

c) Appellant's Motion to Reconsider has recommended a balanced approach to mitigating the injuries from Defendant Northam's current orders by staying the portion of his orders which make it criminal for the exercise of the constitutional rights of the citizens of Virginia. Appellant believes that this would not seriously impact the Commonwealth's achievement of its public health goals for the following reasons:

1. This mitigation would make Virginia's stay-at-home orders more in line with several other states (Motion to Reconsider, page 9);
2. There is broad public support for reducing the spread of the virus;
3. The President's Coronavirus guidelines to "Control the Spread" are voluntary and do not call for the states to enforce criminal penalties for compliance (Appellant's Complaint, page 4)

d) Upon information and belief, the Defendants have not had to use criminal charges to enforce Defendant Northam's orders up to the date of this filing.

Consideration of the Public Interest

20. The *Winter* criteria also calls for consideration of the public interest. The public interest considerations in this case do not only involve the interest in keeping people at home. The very definition of essential business which is found

in Defendant Northam's orders also shows that there is a fundamental public interest in many healthy people not staying at home. By requiring some businesses to remain open during the State of Emergency, the Defendants are acknowledging that it is in the public interest for healthy people to have the freedom to travel and to work in order to conduct the essential business of the public.

Balancing of Equities and the Public Interest Related to Korematsu

21. Appellant's pleadings include the example of the abuse of government's emergency powers under the Supreme Court's decision in *Korematsu v. United States*, 323 U.S. 214 (Appellant's Motion to Reconsider, paragraph c).⁶ As in this case, the Court in *Korematsu* relied on the determinations of the authorities that it was easier to strip a vast number of innocent Americans their rights under the Constitution because it was difficult to find those actually guilty of disloyalty:

“It was because we could not reject the finding of the military authorities that it was impossible to bring about an immediate segregation of the disloyal from the loyal that we sustained the validity of the curfew order as applying to the whole group. (*Korematsu v. United States*, 323 U.S. 214, 219 (1944))

⁶ The District Court mentions Appellant's reference to *Korematsu* without specifically rebutting it. [D. Ct. Ruling, page 2] Indeed, the unquestioning belief that the District Court expresses in the inerrancy of the Governor [*ibid.*, pages 2-3] sounds very reminiscent of the reliance that the Supreme Court in *Korematsu* put into the inerrancy of the authorities then.

unlawful detainment for more than 20 without a habeus corpus reply. The Courts do not think this is a “brief period” for taking away someone’s right to liberty. How many months can the Courts countenance the denial of other rights under the First, Fourth and Fourteenth Amendments?

29. The District Court's ruling erred on the facts by ignoring the facts presented in appellant's complaint and stating that "the crisis imposed by the Coronavirus is also unprecedented". (D. Ct. Ruling, p. 3.) This statement reflects an incredible ignorance of the history of public health emergencies. The CDC reports that the 1918 pandemic commonly known as the Spanish Influenza infected as many as 500 million people world-wide and killed as many as 675,000 people in the United States alone.⁷ There is no way to argue that the Coronavirus crisis, even it approaches the extent predicted in the most extreme current models will reach the extent of the 1918 pandemic, or can be considered "unprecedented" compared to the crisis that the 1918 pandemic caused. Furthermore, the current Coronavirus outbreak does not yet exceed the annual estimates for the extent of the impacts of seasonal influenza outbreaks. For this year alone, the CDC estimates over 35 million infections of the flu in the United States with the number of deaths between 24,000 and 62,000.⁸ Until the current Coronavirus outbreak exceeds the impacts of

7 From <https://www.cdc.gov/flu/pandemic-resources/1918-commemoration/1918-pandemic-history.htm>

8 From <https://www.cdc.gov/flu/about/burden/preliminary-in-season-estimates.htm>

the seasonal flu, it is difficult to see how this Court can accept the District Court's assertion that the current Coronavirus is "unprecedented" as anything but clearly false.

CONCLUSION AND RELIEF REQUESTED

30. For the foregoing reasons, Appellant believes that the District Court erred on the law and the facts of this case and that a *de novo* review supports his request for preliminary relief under the four criteria in *Winter*. Appellant respectfully requests that the Court grant Appellant such emergency and preliminary relief as soon as possible. Appellant respectfully requests injunctive relief which will stay the execution of all or parts of Defendant Northam's orders under EO-55 and stop all enforcement temporarily. If the Court does not grant a full stay of Defendant Northam's orders, Appellant respectfully requests a partial stay which will address the constitutional concerns of the orders, including staying the inclusion of religious activities in Paragraph 2 and staying the effect of the section stating: "Violation of paragraphs 2, 3, 4 and 5 of this Order shall be a Class 1 misdemeanor pursuant to § 44-146.17 of the *Code of Virginia*."

31. If the Court does not immediately grant some form of preliminary relief to Appellant, Appellant respectfully requests for an expedited preliminary-injunction hearing to address Appellant's need for urgent relief from Defendants' injury to his Constitutional rights. If this Court does not ensure Appellant has the

APPENDIX I

**Defendant Northam's Amended Order of the Governor and State Health Commissioner
Extending Order of Public Health Emergency Two of
April 23, 2020**

Appendix I



COMMONWEALTH of VIRGINIA

Executive Department

AMENDED ORDER OF THE GOVERNOR AND STATE HEALTH COMMISSIONER

Extending Order of Public Health Emergency Two

WHEREAS, the State Health Commissioner declared COVID-19 a disease of public health threat on February 7, 2020; and

WHEREAS, Virginia Governor Ralph S. Northam declared a state of emergency due to COVID-19 on March 12, 2020 in Executive Order No. 51 by virtue of the authority vested in the Governor by Article V, Section 7 of the Constitution of Virginia and by §§ 44-146.17 and 44-75.1 of the *Code of Virginia*; and

WHEREAS, the Governor and State Health Commissioner issued Order of Public Health Emergency One on March 17, 2020, as amended on March 20, 2020, declaring a public health emergency; and

WHEREAS, COVID-19 spreads from person-to-person, transmitted via respiratory droplets, and can be spread from an infected person who does not have symptoms to another person; and

WHEREAS, no current vaccine or known treatment options exist at this time; and

WHEREAS, the supply chain in the Commonwealth for health care personal protective equipment (PPE), to include gowns, masks, face shields and respirators, has been severely disrupted by the significant increased use of such equipment worldwide in response to COVID-19, such that there are now critical shortages of this equipment for health care workers; and

WHEREAS, it is anticipated that due to the continuing spread of COVID-19, a critical shortage of needed hospital beds will result; and

WHEREAS, the Commonwealth of Virginia seeks to curtail the spread of the COVID-19 pandemic in the Commonwealth, protect our health care workers, and ensure sufficient hospital beds necessary to serve Virginians' medical needs; and

WHEREAS, pursuant to § 32.1-13 of the *Code of Virginia*, the State Health Commissioner, acting for the State Board of Health when it is not in session pursuant to § 32.1-20 of the *Code of Virginia*, is vested with authority to make separate orders to meet any emergency not provided for by general regulations, for the purpose of suppressing conditions dangerous to the public health and communicable, contagious, and infectious diseases.

NOW THEREFORE, the Governor and State Health Commissioner hereby issue this Order prohibiting all inpatient and outpatient surgical hospitals licensed under 12 VAC 5-410, free-standing endoscopy centers, physicians' offices, and dental, orthodontic, and endodontic offices in

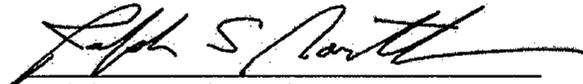
the Commonwealth from providing procedures and surgeries that require PPE, which if delayed, are not anticipated to cause harm to the patient by negatively affecting the patient's health outcomes, or leading to disability or death. This does not include outpatient visits delivered in hospital-based clinics.

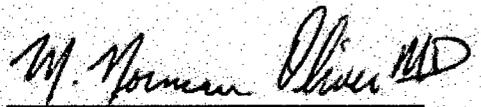
This Order does not apply to the full suite of family planning services and procedures nor to treatment for patients with emergency or urgent needs. Inpatient and outpatient surgical hospitals licensed under 12 VAC 5-410, free-standing endoscopy centers, physicians' offices, and dental, orthodontic, and endodontic offices may perform any procedure or surgery that if delayed or canceled would result in the patient's condition worsening. Outpatient surgical hospitals are encouraged to work with their local inpatient hospitals to assist with surge capacity needs.

Any willful violation or refusal, failure, or neglect to comply with this Order, issued pursuant to § 32.1-13 of the *Code of Virginia*, is punishable as a Class 1 misdemeanor pursuant to § 32.1-27 of the *Code of Virginia*. The State Health Commissioner may also seek injunctive relief in circuit court for violation of this Order pursuant to § 32.1-27 of the *Code of Virginia*.

WHEREAS, this Order shall remain in full force and effect until 11:59 p.m., April 30, 2020. Citation of this Order shall be Commonwealth of Virginia Order of Public Health Emergency Two.

Given under my hand and under the Seal of the Office of the State Health Commissioner of the Commonwealth of Virginia this 23rd Day of April, 2020.


Ralph S. Northam, Governor


M. Norman Oliver, MD, MPH
State Health Commissioner

APPENDIX J

Relevant Constitutional References

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX K
Relevant Statutes

Appendix K

This Appendix includes Sections within the
Code of Virginia

§ 44-146.17. Powers and duties of Governor.

The Governor shall be Director of Emergency Management. He shall take such action from time to time as is necessary for the adequate promotion and coordination of state and local emergency services activities relating to the safety and welfare of the Commonwealth in time of disasters.

The Governor shall have, in addition to his powers hereinafter or elsewhere prescribed by law, the following powers and duties:

(1) To proclaim and publish such rules and regulations and to issue such orders as may, in his judgment, be necessary to accomplish the purposes of this chapter including, but not limited to such measures as are in his judgment required to control, restrict, allocate or regulate the use, sale, production and distribution of food, fuel, clothing and other commodities, materials, goods, services and resources under any state or federal emergency services programs.

He may adopt and implement the Commonwealth of Virginia Emergency Operations Plan, which provides for state-level emergency operations in response to any type of disaster or large-scale emergency affecting Virginia and that provides the needed framework within which more detailed emergency plans and procedures can be developed and maintained by state agencies, local governments and other organizations.

He may direct and compel evacuation of all or part of the populace from any stricken or threatened area if this action is deemed necessary for the preservation of life, implement emergency mitigation, preparedness, response or recovery actions; prescribe routes, modes of transportation and destination in connection with evacuation; and control ingress and egress at an emergency area, including the movement of persons within the area and the occupancy of premises therein.

Executive orders, to include those declaring a state of emergency and directing evacuation, shall have the force and effect of law and the violation thereof shall be punishable as a Class 1 misdemeanor in every case where the executive order declares that its violation shall have such force and effect.

Such executive orders declaring a state of emergency may address exceptional circumstances that exist relating to an order of quarantine or an order of isolation concerning a communicable disease of public health threat that is issued by the State Health Commissioner for an affected area of the Commonwealth pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1.

Except as to emergency plans issued to prescribe actions to be taken in the event of disasters and emergencies, no rule, regulation, or order issued under this section shall have any effect beyond June 30 next following the next adjournment of the regular session of the General Assembly but the same or a similar rule, regulation, or order may thereafter be issued again if not contrary to law;

(2) To appoint a State Coordinator of Emergency Management and authorize the

appointment or employment of other personnel as is necessary to carry out the provisions of this chapter, and to remove, in his discretion, any and all persons serving hereunder;

(3) To procure supplies and equipment, to institute training and public information programs relative to emergency management and to take other preparatory steps including the partial or full mobilization of emergency management organizations in advance of actual disaster, to insure the furnishing of adequately trained and equipped forces in time of need;

(4) To make such studies and surveys of industries, resources, and facilities in the Commonwealth as may be necessary to ascertain the capabilities of the Commonwealth and to plan for the most efficient emergency use thereof;

(5) On behalf of the Commonwealth enter into mutual aid arrangements with other states and to coordinate mutual aid plans between political subdivisions of the Commonwealth. After a state of emergency is declared in another state and the Governor receives a written request for assistance from the executive authority of that state, the Governor may authorize the use in the other state of personnel, equipment, supplies, and materials of the Commonwealth, or of a political subdivision, with the consent of the chief executive officer or governing body of the political subdivision;

(6) To delegate any administrative authority vested in him under this chapter, and to provide for the further delegation of any such authority, as needed;

(7) Whenever, in the opinion of the Governor, the safety and welfare of the people of the Commonwealth require the exercise of emergency measures due to a threatened or actual disaster, he may declare a state of emergency to exist;

(8) To request a major disaster declaration from the President, thereby certifying the need for federal disaster assistance and ensuring the expenditure of a reasonable amount of funds of the Commonwealth, its local governments, or other agencies for alleviating the damage, loss, hardship, or suffering resulting from the disaster;

(9) To provide incident command system guidelines for state agencies and local emergency response organizations; and

(10) Whenever, in the opinion of the Governor or his designee, an employee of a state or local public safety agency responding to a disaster has suffered an extreme personal or family hardship in the affected area, such as the destruction of a personal residence or the existence of living conditions that imperil the health and safety of an immediate family member of the employee, the Governor may direct the Comptroller of the Commonwealth to issue warrants not to exceed \$2,500 per month, for up to three calendar months, to the employee to assist the employee with the hardship.

§ 32.1-48.05. Application of article; determination of exceptional circumstances; regulations; duties of the State Health Commissioner not be delegated.

A. Upon a determination by the State Health Commissioner that exceptional circumstances exist relating to one or more persons in the Commonwealth who are known to have been exposed to or infected with or reasonably suspected to have been exposed to or infected with a communicable disease of public health threat and that such exceptional circumstances render the procedures of Article 3.01 (§ 32.1-48.01 et seq.) of this chapter to be insufficient control measures or that the individuals have failed or refused to comply voluntarily with the control measures directed by the State Health Commissioner in response to a communicable disease of public health threat, the State Health Commissioner may invoke the provisions of this article relating to quarantine and isolation.

B. The Board of Health shall promulgate regulations for the implementation of this article that shall (i) address the circumstances that are subject to the application of Article 3.01 (§ 32.1-48.01 et seq.) of this chapter and the exceptional circumstances in which this article may be invoked by the State Health Commissioner; (ii) provide procedures to assure that any quarantine or isolation is implemented in the least restrictive environment; (iii) ensure that the essential needs of persons subject to an order of isolation issued pursuant to this article shall be met, including, but not limited to, food, water, and health care, e.g., medications, therapies, testing, and durable medical equipment; (iv) provide procedures for proper notice of orders of quarantine and orders of isolation; (v) provide procedures for the State Health Commissioner to issue an emergency detention order for persons for whom he has probable cause to believe that they may fail or refuse to comply with an order of quarantine or an order of isolation; and (vi) address any other issue or procedure covered herein that the Board deems to be properly the subject of regulation.

C. The powers granted to the State Health Commissioner pursuant to this article shall not be delegated to or invoked by any local or district health department director. However, in the event the State Health Commissioner, duly appointed and confirmed pursuant to § 32.1-17, shall be unable to perform his duties pursuant to this article, any Deputy Commissioner, appointed by the State Health Commissioner and approved by the Board pursuant to § 32.1-22, shall be authorized to invoke the provisions of this article.

§ 32.1-48.08. Declaration of quarantine.

A. The State Health Commissioner may declare a quarantine of any person or persons or any affected area after he finds that the quarantine is the necessary means to contain a communicable disease of public health threat as defined in § 32.1-48.06 to which such person or persons or the people of an affected area have been or may have been exposed and thus may become infected.

B. The State Health Commissioner shall record his findings and any information on which he has relied in making the finding required for quarantine pursuant to subsection A. The State Health Commissioner's record of findings concerning any communicable disease of public health threat shall be confidential and shall not be disclosed in accordance with subdivision 12 of § 2.2-3705.5.

C. The State Health Commissioner may order the quarantined person or persons to remain in their residences, to remain in another place where they are present, or to report to a place or places designated by the State Health Commissioner for the duration of their quarantine. An electronic device may be used to enforce any such quarantine. The Commissioner's order of quarantine shall be for a duration consistent with the known incubation period for such disease or, if the incubation period is unknown, for a period anticipated as being consistent with the incubation period for other similar infectious agents.

§ 32.1-48.010. Appeal of any order of quarantine.

A. Any person or persons subject to an order of quarantine or a court-ordered extension of any such order pursuant to this article may file an appeal of the order of quarantine as such order applies to such person or persons in the circuit court for the city or county in which the subject or subjects of the order reside or are located or the circuit court for the jurisdiction or jurisdictions for any affected area. Any petition for appeal shall be in writing, shall set forth the grounds on which the order of quarantine is being challenged vis-a-vis the subject person or persons or affected area, and shall be served upon the State Health Commissioner or his legal representative.

B. A hearing on the appeal of the order of quarantine shall be held within 48 hours of the filing of the petition for appeal or, if the 48-hour period terminates on a Saturday, Sunday, legal holiday or day on which the court is lawfully closed, the hearing shall be held on the next day that is not a Saturday, Sunday, legal holiday or day on which the court is lawfully closed.

In extraordinary circumstances, for good cause shown, the Commissioner may request a continuance of the hearing, which the court shall only grant after giving due regard to the rights of the affected individuals, the protection of the public health and safety, the severity of the emergency, and the availability of witnesses and evidence.

C. Any person appealing an order of quarantine shall have the burden of proving that he is not properly the subject of the order of quarantine.

D. The filing of an appeal shall not stay any order of quarantine.

E. Upon receiving multiple appeals of an order of quarantine that applies to a group of persons or an affected area, the court may, on the motion of any party or on the court's own motion, consolidate the cases in a single proceeding for all appeals when (i) there are common questions of law or fact relating to the individual claims or rights to be determined; (ii) the claims of the consolidated cases are substantially similar; and (iii) all parties to the appeals will be adequately represented in the consolidation.

F. The circuit court shall not conduct a de novo review of the order of quarantine; however, the court shall consider the existing record and such supplemental evidence as the court shall consider relevant. The court shall conduct the hearing on an appeal of an order of quarantine in a manner that will protect the health and safety of court personnel, counsels, witnesses, and the general public and in accordance with rules of the Supreme Court of Virginia pursuant to subsection C of § 17.1-503. The court may, for good cause shown, hold all or any portion of the hearings in camera upon motion of any party or upon the court's own motion.

G. Upon completion of the hearing, the court may (i) vacate or modify the order of quarantine as such order applies to any person who filed the appeal and who is not, according to the record and the supplemental evidence, appropriately subject to the order of quarantine; (ii) vacate or modify the order of quarantine as such order applies to all persons who filed an appeal and who are not, according to the record and the supplemental evidence, appropriately subject to the order of quarantine; (iii) confirm the

order of quarantine as it applies to any person or all appealing parties upon a finding that such person or persons are appropriately subject to the order of quarantine and that quarantine is being implemented in the least restrictive environment to address the public health threat effectively, given the reasonably available information on effective control measures and the nature of the communicable disease of public health threat; or (iv) confirm the order of quarantine as it applies to all persons subject to the order upon finding that all such persons are appropriately subject to the order of quarantine and that quarantine is being implemented in the least restrictive environment to address the public health threat effectively, given the reasonably available information on effective control measures and the nature of the communicable disease of public health threat.

In any case in which the court shall vacate the order of quarantine as it applies to any person who has filed a request for review of such order and who is subject to such order or as it applies to all persons seeking judicial review who are subject to such order, the person or persons shall be immediately released from quarantine unless such order to vacate the quarantine shall be stayed by the filing of an appeal to the Supreme Court of Virginia. Any party to the case may file an appeal of the circuit court decisions to the Supreme Court of Virginia. Parties to the case shall include any person who is subject to an order of quarantine and has filed an appeal of such order with the circuit court and the State Health Commissioner.

H. Appeals of any final order of any circuit court regarding the State Health Commissioner's petition for review and confirmation or extension of an order of quarantine or any appeal of an order of quarantine by a person or persons who are subject to such order shall be appealable directly to the Supreme Court of Virginia, with an expedited review in accordance with the rules of the court pursuant to subsection C of § 17.1-503.

I. Appeals of any circuit court order relating to an order of quarantine shall not stay any order of quarantine.

J. Persons requesting judicial review of any order of quarantine shall have the right to be represented by an attorney in all proceedings. If the person is unable to afford an attorney, counsel shall be appointed for the person by the circuit court for the jurisdiction in which the person or persons who are subject to the order of quarantine reside or, in the case of an affected area, by the circuit court for the jurisdiction or jurisdictions for the affected area. Counsel so appointed shall be paid at a rate established by the Supreme Court of Virginia from the Commonwealth's criminal fund.