

Supreme Court, U.S.
FILED

JUN 24 2020

OFFICE OF THE CLERK

No. 19-1283

**IN THE
SUPREME COURT OF THE UNITED STATES**

JAMES TOLLE,

Petitioner,

vs.

GOVERNOR RALPH NORTHAM
AND THE COMMONWEALTH OF VIRGINIA,

Respondents.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT*

MOTION FOR EXPEDITED HEARING OF PETITION

James Tolle
pro se
11171 Soldiers Court
Manassas, VA 20109
(703) 232-9970
jtmail0000@yahoo.com

Governor Ralph Northam
Office of the Governor
1111 East Broad Street
Richmond, Virginia 23219

Commonwealth of Virginia
Mark Herring
Attorney General
Toby Heytens
Solicitor of General
Office of the Attorney General
202 North Ninth Street
Richmond, Virginia 23219

RECEIVED

JUN 29 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Petitioner's Motion for Expedited Hearing

Petitioner's present motion requests an expedited hearing of his Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit. The intent of the original Petition in this case was to seek emergency relief from the Court to stay Respondent Northam's Executive Orders which are continuing, even now, to deny Petitioner's fundamental Constitutional rights. The Court has recently granted an extension until July 27, 2020, for Respondents to address Petitioner's complaints, delaying the Court's hearing of Petitioner's request for at least one more month. Petitioner attempted to oppose the Court's extension due to the ongoing, irreparable harm to his Constitutional rights, but the Court failed to consider the response. In light of the additional delays due to the Court's extension, Petitioner respectfully requests that the Court will review Petitioner's request for relief after July 27, 2020, without delay for the following reasons.

Respondent Northam's Orders are Continuing to Cause Injury to Petitioner

1. Despite the fact that Respondent Northam has replaced his original Executive Order which was the subject of Petitioner's original complaint with new orders intended to lessen the restrictions on business in Virginia, the latest Executive Orders of Respondent Northam continue to enforce an overreach of the Governor's executive powers which are still denying Petitioner's fundamental Constitutional rights and even adding more restrictions to Petitioner's freedoms beyond the previous orders. Respondent Northam's Order "Amended Number Sixty-Five (2020) and Amended Order of Public Health Emergency Six" (hereinafter, "EO-65", see Appendix A) which has replaced his earlier stay-at-home orders still illegally

abridges the fundamental Constitutional rights of citizens like Petitioner for the following reasons:

a) Respondent Northam's orders violate the First and Fourteenth Amendments by continuing to enforce an illegal quarantine without invoking an order of quarantine as required by the Virginia legislature under Va. Code § 44.146-17 and § 32.1-48.05 and restrict the free assembly of citizens with unwarranted restrictions on the gathering of healthy individuals. These restrictions on the free assembly of American citizens have been shown to be unwarranted because of recent guidance from medical authorities which have supported Petitioner's arguments that the consensus of science does not warrant restrictions on healthy persons. Furthermore, these restrictions have been shown to be unwarranted and also underscored the unequal treatment of citizens in violation of the Fourteenth Amendment when Respondent Northam failed to enforce his orders on his political allies who were violating the restrictions on outdoor gatherings during the recent protests in Richmond, Virginia Beach and in Petitioner's own county of Prince William County.

b) Respondent Northam's orders continue to violate Petitioner's rights under the Fourth Amendment by perpetuating the Governor's improper extension of the State's authority to how persons exercise their constitutional rights on their private property. The only justification for the extension of State powers against private actions on private property which are not subject to business licensing are for law enforcement purposes during the commission of a crime (see *Jones v. United States* 357 U.S. 493 (1958); *United States v. Rabinowitz* 339 U.S. 56 (1950)) or when the legislature has determined that there is a direct and immediate threat to public safety (see *Camara v. Municipal Court*, 387 U.S. 523 (1967)). Petitioner's filings have provided evidence and arguments showing that Respondent Northam's claim that persons gathering on private property are more of a threat to public health than the same number of

persons gathering at an essential business is not supported by the consensus of science. For these reasons, Respondent Northam's current orders exceed the authority of the State to infringe on the right of citizens to be secure in their person, houses, papers, and effects under *Jones, Rabinowitz* and *Camara*.

c) Furthermore, the police power of the State found in *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), in the interest of public health does not empower a violation of the rights of citizens on private property under the Fourth Amendment because: i) the facts in *Jacobson* involved State action against citizens outside of their private property and was based on the Fourteenth Amendment, not the Fourth Amendment; ii) even in *Jacobson*, the Court found that "the mode or manner of exercising its [the State's] police power is wholly within the discretion of the State so long as...any right granted or secured thereby [the Constitution and Fourth Amendment] is not infringed" *Id.*, 11; iii) the *Jacobson* Court was not dealing with Executive power as in this case, but with the State power enacted by the legislature, stating: "[i]t is within the police power of a State to enact a compulsory vaccination law, and it is for the legislature, and not for the courts, to determine", *Id.*, 11; iv) even if this Court finds the police power of the Executive for public health reasons supported by *Jacobson*, such powers are not proper when the Executive circumvents and/or purposely violates the requirements and intentions of the legislature for use of that power to enforce a quarantine during a public health emergency, as in Petitioner's case. For these reasons, Respondent Northam's orders against healthy persons for which there is no consensus of science or good reason to believe that they threaten other members of the public during a public health emergency still violate the Fourth Amendment.

d) Responent Northam's current orders are continuing to violate Petitioner's rights under the Fourteenth Amendment by subjecting healthy persons to restrictions under a quarantine without due process and without invoking the quarantine laws, which would statutorily provide

due process, as required by the Virginia legislature. Furthermore, Respondent Northam's current orders during the virus panic continue to enforce an improper use of emergency powers against innocent citizens without due process in violation of the Fourteenth Amendment, similar to how the Exclusion Orders in the *Korematsu v. United States* violated the Constitutional rights of innocent citizens without due process because of the panic of war.

e) Despite the fact that Respondent Northam's current orders allow religious services to begin, Respondent Northam's orders continue to infringe on Petitioner's First Amendment rights by adding restrictions on how religious services are practiced. Specifically, the restrictions in paragraph B.2.a.iv and B.2.a.v are so invasive to the free practice of religion that Petitioner, who is a Catholic, cannot receive Holy Communion without violating these rules and being subject to criminal penalties.

The Consensus of Science still does not Justify Respondent Northam's Extreme Orders

2. Petitioner's complaint against Respondent Northam's orders has shown that the extreme actions against healthy persons like Petitioner which deny them due process and their Constitutional rights are not justified by the consensus of science concerning how healthy persons without symptoms do not transmit the virus. The original Petition included facts and data showing that the main mode of transmission of the COVID-19 virus is via persons who have symptoms and can pass droplets containing the virus through coughing or sneezing. Petitioner has argued that there is no settled science that proves that persons without symptoms can infect others. Petitioner has shown that Respondent Northam's own orders, which have never restricted large gatherings of healthy persons at essential businesses, demonstrate that even Respondents do not believe that healthy persons are a threat to others.

3. Although it is true that more people have tragically died from COVID-19 since

Petitioner's filing, more information has come out recently which supports Petitioner's argument that the consensus of science does not justify the extreme actions of Respondent Northam. On June 8, 2020, the World Health Organization's leading epidemiologist reported at a press briefing that asymptomatic transmission of COVID-19 is "very rare" based on the data to date.

Subsequent comments by Dr. Van Kerkhove stated that there is no clear answer on whether COVID-19 is spread by asymptomatic persons.¹ Even though the large number of deaths reported to date due to COVID-19 in the United States is dramatic, the COVID-19 pandemic is still not as horrific as the 1918 pandemic which, as noted in Petitioner's filings, is estimated by the CDC to have killed 675,000 Americans. But even the data used to determine the scope of the COVID-19 is not supported by solid science. First, no one has adequately explained how the data reported for the United States is radically higher than all other countries.² However, one possible reason is that in the United States, the methods for reporting deaths have been changed under Centers for Disease Control guidelines to report cause of death as COVID-19 without a definitive diagnosis and when a COVID-19 cause is only "suspected" or "presumed".³

According to the New York Times, hospitals are reporting 40 to 60 percent less admissions for heart attacks during the COVID-19 pandemic.⁴ Unless the Court believes that heart attacks have magically disappeared in our time, it should be clear that the way statistics are being reported for COVID-19 is having an impact on the health data and death statistics reported. Based on this, Petitioner believes that the current official statistics being quoted in the media are probably

1 See Time article at <https://www.time.com/5850256/who-asymptomatic-spread/>

2 As of June 16, 2020, Johns Hopkins University reports deaths for the United States 119,719, while deaths reported for other large countries are significantly lower, even when accounting for population differences: German (8,466 deaths), Canada (7,992 deaths), Japan (837 deaths), South Korea (260 deaths).

3 See "Guidance for Certifying Deaths Due to Coronavirus Disease 2019 (COVID-19)", Vital Statistics Reporting Guidance, Report No. 3, National Center for Health Statistics, April 2020

4 "Where Have All the Heart Attacks Gone?", Harian Krumholtz, April 6, 2020, New York Times (Updated May 14, 2020)

innacurate and likely inflated due to including conditions which are not confirmed to be actual COVID-19 cases.

4. For the above reasons, Petitioner believes that the scientific basis for Respondent Northam's actions is not sound and that it is becoming more clear as time passes that the consensus of science does not justify Respondent Northam's emergency orders which have deprived healthy people like Petitioner of their Constitutional rights.

Reasons to Expedite Hearing of Petitioner's Request for Relief

5. The foregoing facts and arguments have established that Petitioner's case is not moot due to the ongoing actions by Respondents which cause continuing injury to Petitioner's rights and have established why Respondent Northam's orders are not justified by the current data or the consensus of science. The reasons why the Court should grant Petitioner an expedited review of his case after July 27, 2020, are as follows.

a) The Petition before the Court has provided evidence of the serious injury to Petitioner's Constitutional rights by Respondents and the errors in the lower Courts which have denied Petitioner a preliminary injunction, stay or any mitigation of Respondents' actions through mis-application of the balancing test of *Winter v. Natural Resources Defense Council*, 555 U. S. 7 (2008) have perpetuated this injury.

b) The recent actions by Respondent Northam to amend his orders have failed to cease the injury to Petitioner's constitutional rights. Respondent Northam's orders continue to deny Petitioner's fundamental rights and there is no fixed date for an end to Respondent Northam's orders.

c) Petitioner's complaints have included the failure of the lower Courts to provide emergency relief during an improper State of Emergency imposed by Respondents and Petitioner

has raised questions of due process under the Fifth Amendment when the Courts fail to act during a State of Emergency. Expediting Petitioner's case would help to cure any due process errors in the lower Courts.

d) Other individual appeals to this Court for emergency relief due to constitutional violations by Executive Orders responding to COVID-19 have been taken up and reviewed by the Court without delay. However unlike those other cases which involved violation of a single Constitutional right, this case involves the violation of multiple Constitutional rights by an Executive's exercise of emergency powers during a quarantine.

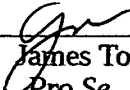
CONCLUSION

6. For the above reasons, Petitioner respectfully requests that the Court expedite the hearing of his case after the July 27, 2020, deadline for Respondent action and grant Petitioner emergency relief from Respondent Northam's orders. Should the Court not expedite the hearing of Petitioner's case after July 27, 2020, Petitioner respectfully requests that the Court grant a full or partial stay of Respondent Northam's orders while Petitioner's request for Writ of Certiorari is pending before the Court. A stay during consideration of Petitioner's case would serve the interests of justice by restoring the status quo and allowing healthy persons to exercise their constitutional freedoms. If the Court considers only a partial injunction or stay, Petitioner respectfully requests that the Court at least stays enforcement of the criminal penalties against Petitioner when exercising any of his rights under the First, Fourth, and Fourteenth Amendments while Petitioner's case is pending. Alternatively, if the Court leaves the questions raised by Petitioner unanswered but remands the case to the lower Courts for decision, Petitioner respectfully requests that the Court still grant Petitioner a full or partial stay of Respondent Northam's orders during the time that the case will be considered by the lower Courts in order to

mitigate the irreparable harm being done to Petitioner by Respondents currently and to restore the status quo, allowing Petitioner and other healthy citizens to be free to exercise their Constitutional rights again while the case is pending.

Dated: June 24, 2020

Respectfully submitted,

By: 
James Tolle
Pro Se
11171 Soldiers Court
Manassas, VA 20109
703-232-9970,
jtmail0000@yahoo.com