No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ELIM ROMANIAN PENTECOSTAL CHURCH, and
LOGOS BAPTIST MINISTRIES,

Applicants,

v.

JAY R. PRITZKER,
in his official capacity as Governor of the State of Illinois,

Respondent.

To The Honorable Brett M. Kavanaugh,
Associate Justice of the United States Supreme Court
and Circuit Justice for the Seventh Circuit

EMERGENCY APPLICATION FOR WRIT OF INJUNCTION
RELIEF REQUESTED BEFORE MAY 31, 2020

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PARTIES AND DISCLOSURE STATEMENT

Applicants are Elim Romanian Pentecostal Church ("ERPC") and Logos Baptist Ministries ("Logos"), neither of which has any parent corporation or publicly held shareholder. Respondent is Jay R. Pritzker, in his official capacity as Governor of the State of Illinois.

RELIEF REQUESTED AND GROUNDS FOR EMERGENCY

"Neither a state nor the Federal Government can set up a church. . . . Neither can force nor influence a person to go to or to remain away from church against his will."
***Everson v. Bd. of Educ. of Ewing Twp.*, 330 U.S. 1, 15 (1947).**

ERPC and Logos (collectively, "Churches"), pursuant to Sup. Ct. Rules 20, 22 and 23, and 28 U.S.C. § 1651, request an emergency writ of injunction **before this Sunday, May 31—the Christian holy day of Pentecost**—against enforcement of Governor Pritzker's stay-at-home executive orders and Reopen Illinois plan (collectively, the "Orders") which impose a unique 10-person limit on religious worship services that is not imposed on customers or employees of 'big box' retail stores, liquor stores, restaurants, office buildings, warehouses, factories, or other businesses and activities which, like worship services, have been deemed "Essential" by Governor Pritzker. The Orders' arbitrary and discriminatory treatment of houses of worship cannot satisfy strict scrutiny, and therefore violate Churches' rights under, *inter alia*, the Free Exercise and Establishment Clauses of the First Amendment to the United States Constitution, the Religious Land Use and Institutionalized Persons Act (RLUIPA), and the Illinois Religious Freedom Restoration Act (IRFRA), and Churches are suffering irreparable injury each day the Orders remain enforceable.

Local officials have enforced the Orders against Churches with criminal citations and notices to appear for hearing, and have threatened additional enforcement, even though Churches have demonstrably employed social distancing and sanitization protocols exceeding the requirements imposed on other "Essential" activities not subject to numerical limits. This past Saturday, May 23, Chicago officials, still pursuant to Governor Pritzker's Orders, escalated their enforcement threats against Applicant ERPC, declaring ERPC a "public health nuisance" and threatening action up to and including "Summary Abatement" (*i.e.*, destruction of property without process).

Churches' prior motions for injunction pending appeal (IPA) to both the district court and the Seventh Circuit were denied. The circuit court has expedited the briefing and argument of Churches' appeal from the district court's denial of preliminary injunctive relief, with briefing ending on June 5, and oral argument scheduled for June 12. Due to the accelerating and intensifying enforcement actions against Churches under the Governor's Orders, however, Churches seek this Court's writ of injunction before their respective services this Sunday, May 31, to remain in effect pending disposition of Churches' appeal to the Seventh Circuit, and thereafter pending Churches' subsequent petition to this Court for a writ of certiorari to the Seventh Circuit, if necessary.

As still further demonstrated *infra*, there is a deepening circuit split as to the constitutionality of emergency executive orders like the Governor's Orders imposing restrictions on religious worship services that do not apply to similarly situated

commercial and non-religious activities. Three decisions, from the Fifth and Sixth Circuits, have enjoined such orders as unconstitutional, *see First Pentecostal Church of Holly Springs v. City of Holly Springs, Mississippi*, No. 20-60399, 2020 WL 2616687 (5th Cir. May 22, 2020); *Roberts v. Neace*, No. 20-5465, 2020 WL 2316679 (6th Cir. May 9, 2020); *Maryville Baptist Church, Inc. v. Beshear*, No. 20-5427, 2020 WL 2111316 (6th Cir. May 2, 2020), and two decisions, from the Seventh and Ninth Circuits, have denied injunctive relief, *see* Order, *Elim Romanian Pentecostal Church v. Pritzker*, No. 20-1811 (7th Cir. May 16, 2020) ("Circuit IPA Order," attached hereto as Exhibit A); *South Bay United Pentecostal Church v. Newsom*, No. 20-55533, 2020 WL 2687079 (9th Cir. May 22, 2020).[1] These decisions also differ as to whether such orders trigger strict scrutiny under *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993), and *Emp't Div. v. Smith*, 494 U.S. 872 (1990). These contradictory decisions demonstrate serious confusion exists within the federal courts as to the correct constitutional standards to apply to emergency executive orders restricting religious worship. Thus, this application presents important questions of federal law which have divided the circuits and should be settled by this Court.

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[1] The Plaintiffs–Appellants in *South Bay Pentecostal Church* have likewise made emergency application to the Honorable Elena Kagan, Circuit Justice for the Ninth Circuit, for a writ of injunction against enforcement of California Governor Gavin Newsom's executive orders restricting religious worship, and have made a supplemental filing in support thereof. *See* No. 19A1044, https://www.supremecourt.gov/search.aspx?filename=/docket/DocketFiles/html/Public/19A1044.html. Churches adopt the *South Bay Pentecostal Church* applicants' arguments in their filings and incorporate them herein by this reference.

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All decisions in the lower courts are styled *Elim Romanian Pentecostal Church v. Pritzker*. The Order of the Seventh Circuit Court of Appeals denying Applicants' motion for injunction pending appeal (the "Circuit IPA Order") and expediting briefing in the appeal is attached hereto as Exhibit A, and also available at 2020 WL 2517093. The minute entry order of the United States District Court for the Northern District of Illinois denying Applicants' motion for injunction pending appeal (the "District IPA Order") is attached hereto as Exhibit B. The district court Memorandum Opinion and Order denying Applicants' motion for temporary restraining order and preliminary injunction (the "TRO/PI Order"), which is the order on appeal in the circuit court, is attached hereto as Exhibit C, and also available at 2020 WL 2468194.

JURISDICTION

Applicants have a pending interlocutory appeal in the U.S. Court of Appeals for the Seventh Circuit, from the order of the United States District Court for the Northern District of Illinois denying Applicants a preliminary injunction. This Court has jurisdiction under 28 U.S.C. § 1651.

STATEMENT OF THE CASE

I. INTRODUCTION.

Churches are two of several Romanian-American Christian churches in the Chicago metropolitan area. Their congregations include many who long ago fled their native Romania and its former communist oppression that targeted their exercise of faith and gathering for corporate worship. Having now chosen Chicago as their

homeland, Churches treasure their God-given and constitutionally protected liberties, including the free exercise of their faith, expressed most fully in their selfless, obedient worship to God according to His commands. Churches also love their congregants and their Chicago communities, whom they have faithfully served for decades. Thus, Churches have undertaken extraordinary efforts to protect the well-being of their congregants and communities, even as they seek to avail themselves of the same rights to gather responsibly with more than 10 people as Governor J.B. Pritzker has conferred on other "Essential Activities" under his arbitrary and discriminatory COVID-19 executive orders. Churches do not seek to undermine Illinois' unquestionable interest in protecting its citizenry, or to be wholly exempt from reasonable restrictions imposed for the good of their congregants and communities—whom they love. Rather, Churches are before this Court to vindicate their cherished liberties, and to restrain the troubling transgression of their free exercise wrought by the imposition of Governor Pritzker's arbitrary and discriminatory executive orders, which inflict irreparable harm on Churches with each passing Sunday that their worship services are threatened by criminal and regulatory enforcement actions. Governor Pritzker should be enjoined from enforcing his executive orders' arbitrary and discriminatory restrictions on Churches' worship services. (Doc. 25 at 77–80.[2])

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[2] References to record materials not in the Appendix attached to this application are by their Seventh Circuit Document number and pdf page number. Thus, a reference to the letter filed at Appendix II.D in the Seventh Circuit, which Appendix is Document 25 consisting of 102 pages, would be as follows: "Doc. 25 at 77–80 [of 102]").

II. FACTUAL AND PROCEDURAL BACKGROUND.

A. Restrictions and Exemptions Under Governor Pritzker's Executive Orders.

Governor Pritzker has issued and re-issued a series of executive orders and pronouncements in response to COVID-19 (the "Orders"). (Doc. 25 at 14–18, ¶¶ 27–50.) Currently effective, and most relevant to this appeal, are Executive Order 2020-32 ("Order 32," Doc. 25 at 53–64, also attached hereto as Exhibit D),[3] and *Restore Illinois, A Public Health Approach To Safely Reopen Our State* ("Restore Illinois," Doc. 25 at 66–75, also attached hereto as Exhibit E). Order 32 tells Illinoisans what Governor Pritzker allows them to do now, and Restore Illinois tells Illinoisans what Governor Pritzker may allow them to do in the future. (Doc. 25 at 16–18, ¶¶ 39–43, 45–49.)

Order 32 is a "stay at home" order, requiring "all individuals currently living within the State of Illinois . . . to stay at home or at their place of residence except as allowed in this Executive Order." (Order 32 § 2.1.) Order 32 also prohibits "any gathering of more than ten people . . . unless exempted by this Executive Order."[4] (Order 32 § 2.3.) Accompanying these few sentences generally requiring all Illinoisans to stay home and limit gathering to 10 people, however, are 10 pages of specific and

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[3] Order 32 continues and effectively replaces Executive Order 2020-10 issued March 20, 2020, as previously continued by Executive Order 2020-18 issued April 1, 2020. (7th Cir. Doc. 25 at 15–16, ¶¶ 33–36.)

[4] In an apparent inconsistency, Order 32 also purports to prohibit "[a]ll public and private gatherings of any number of people," but in the next sentence imposes the 10-person limit on gatherings. (Order 32 § 2.3.)

detailed exemptions, exceptions, and requirements for those who do not have to stay home or limit their gathering to 10 people. (Order 32 at 3–12.)

Order 32's specific exemptions, exceptions, and requirements for travel and gathering are categorized according to purpose, with an overarching category of "Essential Activities" for which Illinoisans can leave home. (Order 32 § 2.5.) Essential Activities include, *inter alia*, patronizing and working at "Essential Businesses or Operations" ("EBOs"), performing "Minimum Basic Operations" ("MBOs") for non-essential businesses, and "engag[ing] in the free exercise of religion." (Order 32 §§ 2.1, 2.2, 2.5(b), (d), (f).) EBOs, in turn, comprise several other "Essential" and designated exempt entities, including "Healthcare and Public Health Operations, Human Services Operations, Essential Governmental Functions, and Essential Infrastructure" (Order 32 §§ 2.5(d), 2.12), as well as **23 expansive categories** of commercial and non-religious entities such as grocery stores, liquor stores, hardware stores, cannabis stores, gas stations, law firms and professional businesses, news and media operations, financial institutions, labor unions, hotels, laundry businesses, airlines, and funeral services, and also warehouse, supercenter, and 'big box' stores combining several categories. (Order 32 § 2.12.) "Essential Travel" includes any travel, including by airplane, to do Essential Activities. (Order 32 § 2.14.)

Engaging in Essential Activities requires following Order 32's "Social Distancing Requirements," which include maintaining six-foot distancing between individuals, frequent handwashing, and regular sanitization of surfaces. (Order 32 § 2.15.) Additionally, EBOs and those engaged in MBOs must, "where possible,"

"[p]rovid[e] employees with appropriate face coverings and require[e] that employees wear face coverings **where maintaining a six-foot social distance is not possible at all times**."[5] (Order 32 § 2.15.a.v (emphasis added).)

B. Unique Requirements for Religious Worship Under Governor Pritzker's Orders.

Order 32 added "[t]o engage in the free exercise of religion" to the category of Essential Activities for which Illinoisans can leave home. (Order 32 § 2.5.f.) And as with other Essential Activities, engaging in religious worship (*i.e.*, free exercise of religion) requires compliance with Order 32's Social Distancing Requirements. (*Id.*) **Unlike other Essential Activities, however, religious worship is singled out and subjected to "the limit on gatherings of more than ten people.**" (*Id.* (emphasis added).) **None** of the myriad other Essential Activities in Order 32 is subject to the 10-person limit imposed on religious worship. (Order 32 § 2.5.) The only restriction remotely similar is the requirement that retail store EBOs, "to the greatest extent possible," "cap occupancy at 50 percent of store capacity." (Order 32 § 1.2.) The 50% occupancy limit, however, is not available to Churches for worship services as an alternative to the 10-person limit.

Although Order 32 subjects churches to the 10-person limit for worship services, the order treats churches as EBOs without numerical limits for other

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[5] *Cf.* Order 32 § 1.1 ("Any individual . . . shall be required to cover their [sic] nose and mouth with a face-covering when in a public place and **unable to maintain a six-foot social distance**." (emphasis added)); Executive Orders, State of Ill. Coronavirus (COVID-19) Response, https://coronavirus.illinois.gov/s/resources-for-executive-orders (last visited May 26, 2020) (summarizing Order 32 mask requirements: "Individuals are required to wear a face covering in public places **when they are unable to maintain a six-foot social distance, such as in stores**." (emphasis added).)

approved purposes, such as "providing food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities." (Order 32 § 2.12.c.)

Governor Pritzker has no plans to remove the 10-peson limit on worship anytime soon. On May 5, 2020, Governor Pritzker released his 5-phase Restore Illinois plan, continuing to subject churches to the 10-person limit through Phases 1, 2, and 3, upping the limit to 50 under Phase 4, and eventually removing limits in Phase 5— **no sooner than 12 to 18 months from now**, and all subject to change, at any time. (Restore Illinois 2–10; Doc. 25 at 12–13, ¶¶ 45–49.)

C. Governor Pritzker's Threatened Enforcement of Orders.

By its own terms, Order 32 is enforceable by state and local police. (Order 32 § 2.17.) The Illinois State Police has issued enforcement guidance for the Orders, advising its officers they are "free to use their training to disperse the crowd" and that non-compliance may result in misdemeanor criminal citations for Reckless Conduct and Disorderly Conduct. (Doc. 6-5 at 220, 222.) Governor Pritzker himself has overtly threatened criminal and regulatory enforcement, stating at press conferences, "Local law enforcement and the Illinois State Police can and will take action," and, "[T]here are enforcement mechanisms here that we will be using against them," 5/13/20 Illinois Governor J. B. Pritzker COVID-19 Press Briefing, https://www.youtube.com/watch?v=RkkbHgfaqS0 (at 23:54, 25:58), and, "[T]here will be consequences. . . . [T]hey'll be subject to liability as a result," 5/14/20 Illinois

Governor J. B. Pritzker COVID-19 Press Briefing, https://www.youtube.com/watch?v=AglD5LyplMA (at 21:30).

Governor Pritzker's enforcement threats are backed up by the Illinois constitution and statutes. As cited in Order 32 and others (*see, e.g.*, Order 32 at 3), the Illinois Constitution provides that "the Governor shall have the supreme executive power, and shall be responsible for the faithful execution of the laws." Ill. Const. Art. V, § 8. And, the Illinois Emergency Management Agency Act, 20 ILCS 3305, gives the Governor the power to "make, amend, and rescind all lawful necessary **orders**, rules, and regulations to carry out" his emergency powers. 20 ILCS 3305/6(c)(1) (emphasis added). The same statutory scheme provides that the Governor "shall have and may exercise" the power to "utilize all available resources of the State government" to cope with a proclaimed disaster, and to take over direction of all state agencies to coordinate the response to a declared disaster. 20 ILCS 3305/7(2), (3). And during a disaster "the Governor is commander-in-chief of the organized and unorganized militia and of all other forces available for emergency duty." 20 ILCS 3305/7(13). Thus, Governor Pritzker has express constitutional and statutory grants of power supporting his public statements of intent to enforce Order 32 and his other Orders.

D. Churches Are Continually Suffering Enforcement Actions and Threats Against Their Constitutionally Protected Worship Gatherings Even Though They Have Employed Extensive Safety and Social Distancing Measures.

Churches observe sincerely held religious beliefs, rooted in Scripture's commands (*e.g.*, *Hebrews* 10:25), that Christians are not to forsake the assembling of

themselves together for worship, and that they are to do so even more in times of peril and crisis. (Doc. 25 at 21, 32, 37, 38, ¶¶ 85, 169, 204, 215.) Nonetheless, Churches initially complied with Governor Pritzker's orders, even foregoing worship on Palm Sunday and Easter Sunday, their most treasured Christian holidays. (Doc. 25 at 10, ¶ 9.) But on May 2, 2020, Churches joined several other Romanian-American churches in a letter to Governor Pritzker, challenging the legality of his arbitrary 10-person limit for churches, requesting accommodation, and stating their intentions to reopen for in-person worship on May 10. (Doc. 25 at 19, ¶ 55; Doc. 25 at 77–80.) The letter also reiterated, however, their desire to protect the well-being of their congregations, and committed to exceeding the distancing and hygiene requirements applicable to other "Essential" entities by voluntarily incorporating 10 safety initiatives, including strictly enforced social distancing of non-family members, reduced seating by removal of chairs or cordoning off pews, sanitization before and after services, offering masks and gloves, discouraging hand-shaking and physical contact, placing hand sanitizer at entrances and throughout the building, enforcing one-way foot traffic, and issuing stay-home admonitions to anyone who is COVID-19 symptomatic or in contact with someone who is, or who is at heightened risk due to age or health. (*Id.*)

Churches commenced this action in the Northern District of Illinois on May 7, 2020, by filing their Verified Complaint for Declaratory Relief, Temporary Restraining Order, Preliminary and Permanent Injunctive Relief, and Damages. (Doc. 25 at 1–46 (without exs.); Doc. 6-5 (with exs.).) Churches also filed a motion for

temporary restraining order (TRO) and preliminary injunction, seeking to enjoin enforcement of Governor Pritzker's Orders before their impending May 10 Sunday services. (Doc. 6-6 at 1.) The district court declined to issue a TRO prior to the May 10 Sunday services, but ordered expedited briefing over the weekend. (TRO/PI Order 1–3.)

Nonetheless, Churches more than kept their promises to exceed the hygiene and social distancing requirements applicable to other "Essential" entities that accommodate more than 10 people. (Doc. 25 at 82–86, ¶¶ 2–6 (containing photographs and video links); Doc. 25 at 89–93, ¶¶ 3–12 (containing photographs).) For example, for the May 10 worship service of Plaintiff–Appellant Elim Romanian Pentecostal Church ("ERPC"), **the church strictly complied with or surpassed each of the 10 safety initiatives promised to Governor Pritzker**, hiring an industrial cleaning company to thoroughly clean and disinfect its premises, including treatment for microbial and virologic agents, and imposing social distancing even between members of the same household. (Doc. 25 at 82–86, ¶¶ 2–6.) In addition**, ERPC took the temperature of every person seeking admittance with contactless thermometers, and turned away anyone with a temperature above 99.5 degrees** (plus anyone who arrived after the church reached its self-limited capacity

of 120 seats out of an available 750 (15%)).[6] (Doc. 25 at 83–84, ¶¶ 6(a), (d), (e).) The seriousness of ERPC's effort is depicted in these photographs:

[6] The district court below chastised Churches because none of the ERPC congregants "were wearing face coverings, contrary to CDC guidelines." (TRO/PI Order 8.) But neither the CDC nor Governor Pritzker's Orders **require** masks **where distancing is maintained**. (Order 32 § 1.1 ("when in a public place and unable to maintain a six-foot social distance"); *id.* § 15.a.v ("where maintaining a six-foot social distance is not possible at all times"); Restore Illinois at 7 ("when social distancing is not possible"); CDC, *Use of Cloth Face Coverings to Help Slow the Spread of COVID-19,* https://www.cdc.gov/coronavirus/2019-ncov/downloads/DIY-cloth-face-covering-instructions.pdf (last visited May 26, 2020) (**recommending** "wearing cloth face coverings in public **where other social distancing measures are difficult**" (emphasis added); CDC, *Interim Guidance for Communities of Faith*, https://www.cdc.gov/coronavirus/2019-ncov/php/faith-based.html (last visited May 26, 2020) ("**[E]ncourage** use of cloth face coverings among staff and congregants. Face coverings are most essential **when social distancing is difficult**). To be sure, the State's dedicated COVID-19 website summarizes Order 32's mask provisions: "Individuals are required to wear a face covering in public places **when they are unable to maintain a six-foot social distance, such as in stores**." Executive Orders, State of Ill. Coronavirus (COVID-19) Response, https://coronavirus.illinois.gov/s/resources-for-executive-orders (last visited May 26, 2020).

Order 32 does not mandate that Churches require congregants to wear masks, or even that Churches provide masks. Rather, EBOs and non-essential businesses performing MBOs must provide **employees** with masks, but need not require them to be worn except "where maintaining a six-foot social distance is not possible at all times." (Order 32 § 2.15.a.v.) Churches, nonetheless, kept their promises and offered masks to all. (Doc. 25 at 79; Doc. 25 at 84, ¶ 6)f.)

(Doc. 25 at 85, ¶¶ 6(h), (*i*).)

ERPC held its May 10 Sunday service under the threat of interruption and enforcement action by police under the authority of Governor Pritzker's Orders. (Doc. 25 at 86–87, ¶¶ 7–12.) Concerns about being fined, arrested, hauled off to jail, or subjected to other punitive measures have interfered with and diminished its collective worship experience, to a much greater extent than COVID-19 and the resulting precautionary measures it has voluntarily employed, ever could. (Doc. 25 at 86, ¶ 9.) This diminishment of Churches' exercise of their sincerely held beliefs will continue as long as Governor Pritzker's Orders disparately single out in-person religious services for more restrictive treatment. (Doc. 25 at 86–87, ¶¶ 8–12.) Nevertheless, the measures Churches voluntarily took in the past, they are willing to voluntarily take again—and will take again. (Doc. 25 at 86, ¶ 10.)

Following the May 10 services, enforcement of Governor Pritzker's Orders against Churches accelerated, and Churches' efforts to obtain emergency relief from

the Orders intensified. The district court entered its order denying preliminary injunctive relief the following Wednesday, May 13. (TRO/PI Order 1–3.) Churches appealed the preliminary injunction denial to the Seventh Circuit the same day, and simultaneously sought an emergency injunction pending appeal (IPA) from the district court. (Doc. 6-1 at 2.) The district court denied the IPA motion on May 14 (Dist. IPA Order), and on May 15 Churches filed an emergency motion for IPA and to expedite appeal in the Seventh Circuit. (Doc. 6-1 at 2.)

Also on May 15, 2020, the Commissioner of the Chicago Department of Public Health sent a letter to Pastor Cristian Ionescu of ERPC, threatening, *inter alia*, criminal sanctions and closure of his church under the authority of Order 32. (Doc. 25 at 95–96.) Moreover, on Sunday, May 17, Churches' respective pastors each were issued two **Disorderly Conduct citations** by police for violation of the 10-person limit of Order 32 in their respective morning and evening services that day—ERPC's citations from the City of Chicago, and Logos Baptist Ministries' citations from the Village of Niles. (Doc. 25 at 98–99, 101–102.) The citations impose monetary fines and mandatory court appearances. (*Id.*) In the meantime, on May 16 the Seventh Circuit denied the IPA, but granted expedited briefing and argument of Churches' appeal. (Cir. IPA Order 2–3.)

On Friday, May 22, Churches filed their initial brief in the Seventh Circuit in accordance with the circuit court's expedited briefing schedule. But on Saturday, May 23, the Chicago Public Health Commissioner sent a second letter to Pastor Ionescu of ERPC, **declaring ERPC a "public health nuisance,"** and threatening further

enforcement action, up to and including **"Summary Abatement."**[7] (A copy of the May 23 letter ("Summary Abatement Letter") is attached hereto as Exhibit F.[8]) On May 24, Village of Niles police issued two more Disorderly Conduct citations and notices to appear to Logos. (A copy of the May 24 Logos citations are attached hereto as Exhibit G.) This escalation and acceleration of enforcement action against Churches necessitates Churches' application to this Circuit Justice now, rather than waiting for the Seventh Circuit to complete its expedited consideration of Churches' appeal sometime after June 12, 2020.

REASONS FOR GRANTING THE APPLICATION

With respect to both a stay and an affirmative injunction, they may be issued by a Circuit Justice "[i]f there is a 'significant possibility' that the Court would" grant certiorari "and reverse, and if there is a likelihood that irreparable injury will result if relief is not granted." *Am. Trucking Associations, Inc. v. Gray*, 483 U.S. 1306, 1308 (1987). Generally, "[t]o obtain injunctive relief from a Circuit Justice, an applicant must demonstrate that 'the legal rights at issue are "indisputably clear."'" *Lux v. Rodrigues*, 561 U.S. 1306, 1306 (2010) (Roberts, C. J.) (quoting *Turner Broadcasting System, Inc. v. FCC*, 507 U.S. 1301, 1303 (1993) (Rehnquist, C. J.)). However, the

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[7] "Summary abatement would mean **to put down or destroy without process**. This means the inspector can, upon his own judgment, cause the alleged nuisance to stop on his own authority and effect a destruction of property at his discretion." *City of Kankakee v. New York Cent. R. Co.*, 55 N.E.2d 87, 90 (1944) (emphasis added).

[8] The Court may take judicial notice of the Summary Abatement Letter as a matter of public record. *See, e.g., Ross v. Blake*, 136 S. Ct. 1850, 1862 (2016) (Thomas, J, concurring). Under the expedited circumstances of this case, Churches respectfully request that the Court take judicial notice of the Summary Abatement Letter.

Court may also issue an injunction, "based on all the circumstances of the case," without having its order "construed as an expression of the Court's views on the merits." *Little Sisters of the Poor Home for the Aged, Denver, Colorado v. Sebelius*, 571 U.S. 1171 (2014). The Court may also consider "a traditional ground for certiorari," such as whether "[t]he Circuit Courts have divided on whether to enjoin the requirement." *Wheaton Coll. v. Burwell*, 573 U.S. 958 (2014).

Given the circuit split shown herein and the resulting inconsistency of decisions on matters of fundamental constitutional importance, it is likely that four justices of this Court would favor granting certiorari in this case to provide guidance on how free exercise rights should be treated in an emergency. Moreover, given the superior constitutional reasoning of the courts holding unconstitutional executive orders that arbitrarily and discriminatorily restrict religious worship, it is likely that five justices would vote to reverse the contrary lower court decisions.

I. THERE IS A "SIGNIFICANT POSSIBILITY" THAT THIS COURT WOULD GRANT CERTIORARI AND REVERSE BECAUSE THE VIOLATION OF CHURCHES' RIGHTS IS INDISPUTABLY CLEAR.

A. The Governor's Orders Violate Churches' Free Exercise Rights Under the First Amendment.

1. The better reasoned decisions have applied strict scrutiny to hold executive orders restricting religious worship unconstitutional under the Free Exercise Clause.

a. *Roberts v. Neace*, and other circuit court decisions granting relief.

Twice in two weeks the Sixth Circuit Court of Appeals enjoined enforcement of executive orders like Governor Pritzker's, determining that restrictions on drive-in

and in-person worship services violated the First Amendment. *See Roberts v. Neace*, No. 20-5465, 2020 WL 2316679 (6th Cir. May 9, 2020) (**in-person** worship services); *Maryville Baptist Church, Inc. v. Beshear*, No. 20-5427, 2020 WL 2111316 (6th Cir. May 2, 2020) (holding plaintiffs likely to succeed on merits of free exercise and Kentucky RFRA claims for both drive-in and **in-person** services). And within the last week the Fifth Circuit Court of Appeals granted an IPA to a Mississippi church enjoining enforcement of the Mississippi Governor's order restricting worship in *First Pentecostal Church v. City of Holly Springs, Miss.*, No. 20-60399, 2020 WL 2616687 (5th Cir. May 22, 2019).

In *Roberts*, the Sixth Circuit granted an IPA enjoining the Kentucky Governor from enforcing executive orders prohibiting a church's in-person worship services when "serial exemptions for secular activities pose comparable public health risks." 2020 WL 2316679, at *3. 6. In determining the plaintiffs' likely success on the merits of their free exercise claims, the court recognized, "On one side of the line, a generally applicable law that incidentally burdens religious practice usually will be upheld." *Id.* at *2 (citing *Emp't Div. v. Smith*, 494 U.S. 872, 879–79 (1990)). But, the court concluded the Kentucky orders "likely fall on the prohibited side of the line," where "a law that discriminates against religious practices usually will be invalidated because it is the rare law that can be 'justified by a compelling interest and is narrowly tailored to advance that interest.'" *Id.* (quoting *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 553 (1993)).

Expanding on the problems with Kentucky's orders, the court explained,

> **Do the four pages of exceptions in the orders, and the kinds of group activities allowed, remove them from the safe harbor for generally applicable laws? We think so.** As a rule of thumb, the more exceptions to a prohibition, the less likely it will count as a generally applicable, non-discriminatory law. At some point, **an exception-ridden policy takes on the appearance and reality of a system of individualized exemptions, the antithesis of a neutral and generally applicable policy and just the kind of state action that must run the gauntlet of strict scrutiny.**

Id. at *3 (cleaned up) (emphasis added). Continuing, the court reasoned, "Assuming all of the same precautions are taken, why can someone safely walk down a grocery store aisle but not a pew? And why can someone safely interact with a brave deliverywoman but not with a stoic minister? The Commonwealth has no good answers." *Id.* at *4. Thus, the court rejected the Governor's suggestion "that the explanation for these groups of people to be in the same area—intentional worship—creates greater risks of contagion than groups of people, say, in an office setting or an airport," *id.* at *5, further explaining,

> the reason a group of people go to one place has nothing to do with it. Risks of contagion turn on social interaction in close quarters; the virus does not care why they are there. So long as that is the case, why do the orders permit people who practice social distancing and good hygiene in one place but not another for similar lengths of time? It's not as if law firm office meetings and gatherings at airport terminals always take less time than worship services.

Id.

The *Roberts* court also rejected the notion that the Governor's orders were justified because congregants could simply worship online, reasoning,

> Who is to say that every member of the congregation has access to the necessary technology to make that work? Or to say that every member of the congregation must see it as an adequate substitute for what it means when "two or three gather in my Name," Matthew 18:20, or what it means when "not forsaking the assembling of ourselves together," Hebrews 10:25.
>
> [T]he Free Exercise Clause does not protect sympathetic religious practices alone. And that's exactly what the federal courts are not to judge—how individuals comply with their own faith as they see it.

Id. at *4–5 (citation omitted).

In awarding the injunction, the *Roberts* court brought into sharp relief the Governor's disparate treatment of churchgoers under his orders:

> Keep in mind that the Church and its congregants just want to be treated equally. . . . They are willing to practice social distancing. They are willing to follow any hygiene requirements. . . . **The Governor has offered no good reason for refusing to trust the congregants who promise to use care in worship in just the same way it trusts accountants, lawyers, and laundromat workers to do the same**.
>
> Come to think of it, aren't the two groups of people often the *same people*—going to work on one day and going to worship on another? **How can the same person be trusted to comply with social-distancing and other health guidelines in secular settings but not be trusted to do the same in religious settings? The distinction defies explanation, or at least the Governor has not provided one.**

Id. at *3 (emphasis added). Thus, because the Kentucky worship restrictions were not generally applicable, due to their myriad exceptions for non-religious gatherings, the orders were subject to strict scrutiny, which they could not survive because there were "plenty of less restrictive says to address these public health issues," such as

"insist[ing] that the congregants adhere to social-distancing and other health requirements and leav[ing] it at that—just as the Governor has done for comparable secular activities." *Id.* at * 4; *see also Maryville Baptist Church*, 2020 WL 2111316, at *4–5.

b. *Berean Baptist Church v. Cooper*, and other district court decisions granting injunctive relief.

Twice in April, and three times (so far) in May, federal district courts have enjoined COVID-19 executive prohibitions on religious worship. A week after the Sixth Circuit's *Roberts* decision, *supra*, the Eastern District of North Carolina issued a TRO enjoining the North Carolina Governor from enforcing a 10-person limit on religious worship because it violated the Free Exercise Clause. *See Berean Baptist Church v. Cooper*, No. 4:20-cv-81-D, 2020 WL 2514313 (E.D.N.C. May 16, 2020) [hereinafter *Berean Baptist*]. In granting the TRO, the court noted upfront, "**There is no pandemic exception to the Constitution of the United States or the Free Exercise Clause of the First Amendment**." 2020 WL 2514313, at *1 (emphasis added).

The North Carolina "stay at home" orders challenged in *Berean Baptist*, much like Order 32 here, provided pages of "Essential Business and Operations" (EBOs) divided into 30 categories. *Id.* at *3. (Factual and Procedural Background, *supra* (hereinafter, "Facts"), A–B.) The orders categorized church worship services as EBOs, but like Order 32, the North Carolina orders subjected worship services to a 10-person limit that was not imposed on any other EBO. 2020 WL 2514313, at *4. (Facts A–B.)

The 10-person limit ostensibly provided an exception when it was "impossible" to hold services outdoors. 2020 WL 2514313, at *4.

Although the North Carolina orders superficially treated religious worship the same as other gatherings, the *Berean Baptist* court observed that the uniquely restrictive 10-person limit for worship gatherings "represent[s] precisely the sort of 'subtle departures from neutrality' that the Free Exercise Clause is designed to prevent." *Id.* at *6 (quoting *Gillette v. United States*, 401 U.S. 437, 452 (1971)). The court observed further,

> Eleven men and women can stand side by side working indoors Monday through Friday at a hospital, at a plant, or at a package distribution center and be trusted to follow social distancing and hygiene guidance, but those same eleven men and women cannot be trusted to do the same when they worship inside together on Saturday or Sunday. "The distinction defies explanation . . . ."

Id. at *8 (quoting *Roberts*, 2020 WL 2316679, at *3). Thus, the court concluded, "These **glaring inconsistencies** between the treatment of religious entities and individuals and non-religious entities and individuals take [the orders] outside the 'safe harbor for generally applicable laws.'" *Id.* (emphasis added) (quoting *Roberts*, 2020 WL 2316679, at *3). Nor did the North Carolina orders' "impossibility" exception to the 10-person limit alleviate the court's constitutional concerns:

> who decides whether a religious organization or group of worshipers correctly determined that their religious beliefs dictated the need to have more than 10 people inside to worship? Under [the orders], the answer is a sheriff or another local law enforcement official. This court has grave concerns about how that answer comports with the Free Exercise Clause.

Id. at *7.

Ultimately, in concluding the North Carolina orders could not pass strict scrutiny, the *Berean Baptist* court recognized that the plaintiffs "simply want the Governor to afford them the same treatment as they and their fellow non-religious citizens receive when they work at a plant, clean an office, ride a bus, shop at a store, or mourn someone they love at a funeral." *Id.* at *9 (citing *Lukumi*, 508 U.S. at 546 ("The proffered objectives are not pursued with respect to analogous non-religious conduct, and those interests could be achieved by narrower ordinances that burdened religion to a far lesser degree.")). The same is true here.

Other district courts have likewise enjoined similar executive orders under the Free Exercise Clause as unable to satisfy strict scrutiny. *See On Fire Christian Ctr., Inc. v. Fisher*, No. 3:20-CV-264-JRW, 2020 WL 1820249 (W.D. Ky. Apr. 11, 2020) [hereinafter *On Fire*] (enjoining ban on drive-in worship services because the government "**may not ban its citizens from worshipping**." (emphasis added)); *First Baptist Church. v. Kelly*, No. 20-1102-JWB, 2020 WL 1910021 (D. Kan. Apr. 18, 2020) [hereinafter *First Baptist*] ("[C]hurches and religious activities appear to have been **singled out among essential functions for stricter treatment.** It appears to be the **only essential function whose core purpose—association for the purpose of worship—had been basically eliminated**." (emphasis added)); *Maryville Baptist Church, Inc. v. Beshear*, No. 3:20-cv-278-DJH-RSE, 2020 WL 2393359 (W.D. Ky. May 8, 2020) (after previously denying TRO, granting preliminary injunction upon finding Governor failed to meet burden to prove narrow tailoring

under strict scrutiny standard—"The Governor fails, however, to present any evidence or even argument that there was no other, less restrictive, way to achieve the same goals."); *Tabernacle Baptist Church, Inc. v. Beshear*, No. 3:20-cv-00033-GFVT, 2020 WL 2305307, (E.D. Ky. May 8, 2020) (statewide TRO) ("There is ample scientific evidence that COVID-19 is exceptionally contagious. But **evidence that the risk of contagion is heightened in a religious setting any more than a secular one is lacking.** If social distancing is good enough for Home Depot and Kroger, it is good enough for in-person religious services, which, unlike the foregoing, **benefit from constitutional protection**." (emphasis added)).[9]

2. The Governor's Orders substantially burden Churches' free exercise of religion under the First Amendment.

There can be no question that the Orders, on their face and as applied, impose direct burdens and substantial burdens on Churches' assembled worship in conformance with their sincerely held religious beliefs. (Facts D.) *See On Fire*, 2020 WL 1820249, at *8 ("[T]he Greek word translated church . . . literally means **assembly**." (cleaned up) (emphasis added)). Limiting church services to 10 people while allowing other Essential Activities with no such limits "**violat[es] the Free Exercise Clause beyond all question**." *On Fire*, 2020 WL 1820249, at *6 (emphasis added). Governor Pritzker, the police, and public health officials, all under the authority of the Orders, have threatened and imposed criminal sanctions, and further threatened closure and even summary destruction of Churches' property

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9 *See infra* pt. I.A.5 for cases denying injunctive relief as to similar executive orders.

(Facts D), substantially burdening Churches' religious exercise, and triggering First Amendment protections.

3. Churches are not more dangerous than supermarkets, liquor stores, or warehouse stores, and thus the Orders are neither neutral nor generally applicable and must satisfy strict scrutiny under *Smith* and *Lukumi*.

Contrary to the Seventh Circuit's summary conclusion (Cir. IPA Order 2), Governor Pritzker's Orders must satisfy strict scrutiny because they are not neutral or generally applicable under *Emp't Div. v. Smith*, 494 U.S. 872 (1990),[10] and therefore they "must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531–32 (1993) [hereinafter *Lukumi*]. (*See also Roberts* and *Berean Baptist*, *supra* pt. I.A.1.)

"Neutrality and general applicability are interrelated, and . . . failure to satisfy one requirement is a likely indication that the other has not been satisfied." *Lukumi*, 508 U.S. at 531. A law is not neutral "if the object of the law is to infringe upon or restrict practices because of their religious motivation." *Lukumi*, 508 U.S. at 533. Courts first look to the text, but "facial neutrality is not determinative. The Free Exercise Clause . . . extends beyond facial discrimination [and] forbids subtle departures from neutrality." *Id.* at 533–34 (cleaned up). The First Amendment

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[10] Even if the Orders could be deemed neutral and generally applicable, strict scrutiny still applies under *Smith* when a "hybrid" claim exists, involving a free exercise claim in conjunction with other constitutional protections, such as freedom of speech." *See* 494 U.S. at 881. Churches' free exercise claims are such "hybrid" claims because they are brought in conjunction with Establishment Clause claims (*infra* pt. I.C) and free speech and assembly claims (Doc. 25 at 23–26, ¶¶ 99–128). Thus, under *Smith*, the Orders are subject to strict scrutiny.

prohibits hostility that is "masked, as well as overt." *Id.* "The constitutional benchmark is **government *neutrality*, not governmental avoidance of bigotry**." *Roberts*, 2020 WL 2316679, at *4 (cleaned up) (bold emphasis added). The Orders are not facially neutral, but even if so, they covertly depart from neutrality by treating religious worship differently from all other Essential Activities.

Similarly, to determine general applicability courts focus on disparate treatment of similar conduct. *See Lukumi*, 508 U.S. at 542. A law is not generally applicable where "inequality results" from the government's "decid[ing] that the governmental interests it seeks to advance are worthy of being pursued only against conduct with religious motivation." *Id.* at 543. Thus, a law "fall[s] well below the minimum standard necessary to protect First Amendment rights" when the government "**fail[s] to prohibit nonreligious conduct that endangers these interests in a similar or greater degree**" than the prohibited religious conduct. *Id.* (emphasis added).

Governor Pritzker's Orders fail neutrality on facial examination, and fail both neutrality and general applicability on enforcement. First, the orders facially impose a 10-person limit on "Essential" religious worship, but exempt a multitude of "Essential" commercial and nonreligious activities necessarily and unavoidably involving crowds (*e.g.*, shopping or working at liquor, warehouse, and supercenter stores). (Doc. 25 at 11–12, ¶¶ 39–43; Order 32.) All Essential Activities, except worship services, are permitted without numerical limit if distancing and hygiene guidelines are followed. But religious services of more than 10 people are prohibited

even if distancing and hygiene guidelines are followed religiously. (Doc. 25 at 12, ¶ 43; Order 32.)

The Seventh Circuit's *ipse dixit* reasoning, that "[w]orship services do not seem comparable to secular activities permitted under the Executive Order, such as shopping, in which people do not congregate or remain for extended periods" (Cir. IPA Order 2), does not hold up to logic or reality. The Governor is utterly unable to demonstrate the difference in risk of spreading COVID-19, if any, as between a congregant who spends an hour at a socially-distanced worship service with ten other people the congregant knows and loves (which is prohibited), and a shopper who spends an hour in a grocery store with ten other shoppers who are strangers (which is allowed)—the Governor certainly cannot demonstrate the worship service is riskier. Nor can the Governor demonstrate ERPC's sanitized and socially-distanced worship services, occupying just 15% of the church's seating capacity, standing in place for 1–2 hours at a time, twice on Sundays, are riskier than any Walmart, working dozens of moving and stationary employees together for hours at a time, cycling thousands of roving customers through the building at up to 50% of capacity, with no shopping time limit—touching carts, touching shelves, removing items from shelves and replacing them, following and passing within 6 feet of other customers, giving money to and receiving change from cashiers, touching point-of-sale machines—all day, 7 days a week. To be sure, **dozens, hundreds, or more EBO employees can work at one time for one EBO—*e.g.*, Post Office hubs, Amazon warehouses, Home Depots, Chase Bank processing centers, etc.—in one**

building, for 8, 10, 12 or more hours at a time, 5, 6, or 7 days a week, subject only to Order 32's sanitization and social distancing (and masks only if distancing is not possible). Neither logic nor common experience allow the conclusion that sanitized, socially-distanced worship services pose more risk than the myriad other Essential Activities that are not subject to Governor Pritzker's 10-person limit.

The Seventh Circuit's attempt to excuse Order 32's restrictions on worship by categorizing Churches' worship services with "comparable types of secular gatherings" (Cir. IPA Order 2) likewise fails. "[T]hat is word play. . . . [M]any of the serial exemptions for secular activities pose comparable public health risks to worship services." *Roberts*, 2020 WL 2316679, at *3. Moreover, "concerts" and "theatrical performances" are comparisons not available under Oder 32 itself because such activities are expressly categorized as "public amusement" and prohibited altogether. (Order 32 § 2.3.) Religious worship is expressly deemed an Essential Activity (Order 32 § 2.5.f), but within that category is singled out for more restrictive treatment.

Nor were the Governor's Orders applied neutrally or generally. Police and public health officials, acting pursuant to Governor Pritzker's Orders, directly targeted Churches with their enforcement threats and citations (Facts C–D), even as other Essential Activities accommodating various crowds and masses of people are allowed to proceed undisturbed. Where the government "has targeted religious

worship" for disparate treatment, there is no neutrality. *On Fire*, 2020 WL 1820249, at *6. [11]

4. The Orders Cannot Withstand Strict Scrutiny.

Because the State's discriminatory application of the Orders triggers strict scrutiny under the First Amendment (*see supra* pt. I.A.3), Governor Pritzker is subject to "the most demanding test known to constitutional law," *City of Boerne v. Flores*, 521 US. 507, 534 (1997), which is rarely passed. *See Burson v. Freeman*, 504 U.S. 191, 200 (1992). This is not that rare case.

To be sure, efforts to contain the spread of a deadly disease are "compelling interests of the highest order." *On Fire*, 2020 WL 1820249, at *7. But where the State permits regular large gatherings of persons for commercial and non-religious purposes, while expressly prohibiting Churches' worship gatherings of more than 10 people, the State's assertions of a compelling interest are substantially diminished. Indeed, the Orders "cannot be regarded as protecting an interest of the highest order . . . **when [they leave] appreciable damage to that supposedly vital interest**

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[11] The inherent selectivity and differentiation of the Governor's Orders with respect to the persons, entities, and activities to which its permissions and restrictions apply remove it from the realm of neutral and generally applicable laws under *Smith*, especially as applied to Churches. If, however, despite their inherent selectivity, the Orders are held to be neutral and generally applicable with respect to Churches' religious worship, then *Smith* is incompatible with the Free Exercise Clause, and due to be reconsidered. *Cf. Kennedy v. Bremerton Sch. Dist.*, 139 S. Ct. 634, 637 (2019) (Alito, J., concurring) (in concurrence with denial of certiorari, joined by Justices Thomas, Gorsuch, and Kavanaugh, lamenting *Smith*'s "drastic[] cut back on the protection provided by the Free Exercise Clause" and indicating willingness to revisit the decision); *Fulton v. Philadelphia, Pa.*, S. Ct. No. 19-123 (cert. granted Feb. 24, 2020), Question Presented ("Whether *Employment Division v. Smith* should be revisited?"), https://www.supremecourt.gov/qp/19-00123qp.pdf; *Ricks v. Id. Contractors Bd.*, S. Ct. No. 19-66, Brief of *Amici Curiae* Ten Legal Scholars in Support of Petitioner, https://www.supremecourt.gov/DocketPDF/19/19-66/112058/20190812162931642_Ricks%20-%20Amici%20Brief%20for%20Ten%20Legal%20Scholars%20TO%20FILE.pdf.

unprohibited." *Republican Party of Minn. v. White*, 536 U.S. 765, 780 (2002) (emphasis added).

Whatever interest Governor Pritzker purports to claim, however, he cannot show the Orders and their enforcement are narrowly tailored to be the least restrictive means of protecting that interest. And it is the State's burden to make the showing because "the burdens at the preliminary injunction stage track the burdens at trial." *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 429 (2006). "As the Government bears the burden of proof on the ultimate question of . . . constitutionality, **[Churches] must be deemed likely to prevail unless the Government has shown** that [their] proposed less restrictive alternatives are less effective than [the Orders]." *Ashcroft v. ACLU*, 542 U.S. 656, 666 (2004) (emphasis added).

The State cannot carry its burden because it cannot demonstrate that it seriously undertook to consider other, less-restrictive alternatives and ruled them out for good reason, meaning that it "**considered different methods that other jurisdictions have found effective**." *McCullen v. Coakley*, 134 S. Ct. 2518, 2539 (2014) (emphasis added). Thus, the Governor "would have to show either that **substantially less-restrictive alternatives were tried and failed**, or that the **alternatives were closely examined and ruled out for good reason**." *Bruni v. City of Pittsburgh*, 824 F.3d 353, 370 (3d Cir. 2016) (emphasis added). Furthermore, "[i]t is not enough to show that the Government's ends are compelling; the means must be carefully tailored to achieve those ends." *Sable Commc'ns of Cal., Inc. v. FCC*,

492 U.S. 115, 126 (1989). "There must be a fit between the . . . ends and the means chosen to accomplish those ends." *Sorrell v. IMS Health, Inc.*, 564 U.S. 552, 572 (2011) (cleaned up).

Governor Pritzker fails the test. The Governor has not and cannot state why or how crowds and masses of persons at a warehouse or supercenter store or accountants' office are any less "dangerous" to public health than a responsibly distanced and sanitized worship service (*see supra* pt. I.A.3.a), yet the Governor exempted the non-religious Essential Activities from the 10-person limit imposed on worship services. And examples abound of less restrictive approaches that Governor Pritzker neither tried nor considered. (Doc. 25 at 16–18, ¶¶ 61–63, 67, 68; Doc. 6-5 at 250–311.)

> Notably, 15 other Governors trusted the people of their states and exempted religious gatherings from any attendance limitations during this pandemic. The Governor has failed to cite any peer-reviewed study showing that religious interactions in those 15 states have accelerated the spread of COVID-19 in any manner distinguishable from non-religious interactions. Likewise, common sense suggests that religious leaders and worshipers (whether inside or outside [the State]) have every incentive to behave safely and responsibly whether working indoors, shopping indoors, or worshiping indoors. **The Governor cannot treat religious worship as a world apart from non-religious activities with no good, or more importantly, constitutional, explanation**.

Berean Baptist, 2020 WL 2514313, at *9 (emphasis added) (footnote omitted). Churches have demonstrated they already meet or exceed the distancing and hygiene requirements Governor Pritzker deems sufficient for other commercial and non-

religious Essential Activities. (Facts A–B, D.) There is no justification for depriving Churches of the same consideration or benefit.

Indeed, as the *On Fire* court reasoned, the Governor is unlikely to be able to demonstrate that he deployed the least restrictive means because his Orders, and their application,

> are **"underinclusive"** ***and*** **"overbroad."** They're underinclusive because they don't prohibit a host of equally dangerous (or equally harmless) activities that the Commonwealth has permitted . . . . Those . . . activities include . . . walking into a liquor store where other customers are shopping. The Court does not mean to impugn the perfectly legal business of selling alcohol, nor the legal and widely enjoyed activity of drinking it. But if beer is "essential," **so is [church]**.

On Fire, 2020 WL 1820249, at *7 (emphasis added) (footnote omitted).

The Governor's failure to tailor his Orders to closely fit the safety ends he espouses, and failure to try other, less restrictive alternatives that he cannot demonstrate are not working in other jurisdictions across the country, defeats the Governor's satisfaction of his burden to prove narrow tailoring. Thus, the Orders fail strict scrutiny, and the injunction is warranted.

5. The Seventh Circuit erroneously invoked the century-old *Jacobson v. Massachusetts* as a pandemic exception to free exercise principles.

In denying Churches IPA motion below, the Seventh Circuit's one-paragraph ruling apparently relied on *Jacobson v. Massachusetts*, 197 U.S. 11 (1905), to avoid

applying strict scrutiny to Governor Pritzker's Orders.[12] (Cir. IPA Order 2.) But *Jacobson* provides no pandemic exception to free exercise principles or strict scrutiny review. *See On Fire*, 2020 WL 1820249, at *8 ("[E]ven under *Jacobson*, constitutional rights still exist. Among them is the freedom to worship as we choose."); *Roberts*, 2020 WL 2316679, at *4 ("While the law may take periodic naps during a pandemic, we will not let it sleep through one."); *cf. Berean Baptist*, 2020 WL 2514313, at *1 ("There is no pandemic exception to the Constitution . . . or the Free Exercise Clause . . . .")

Importantly, the concept of "compelling interest" was not introduced to First Amendment jurisprudence until over 50 years after *Jacobson*, in Justice Frankfurter's concurrence in *Sweezy v. New Hampshire*, 354 U.S. 234, 65 (1957) (Frankfurter, J., concurring), and strict scrutiny was not applied in its current form until 60 years after *Jacobson*, in *Sherbert v. Verner*, 374 U.S. 398 (1963); *see also* Stephen Siegel, *The Origins of the Compelling State Interest Test and Strict Scrutiny*, 48 Am. J. Legal History 355 (2008).[13]

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[12] *See also Cassell v. Snyders*, No. 20 C 50153, 2020 WL 2112374, at *6–7 (N.D. Ill. May 3, 2020) (denying injunction against Illinois Order 32 after invoking *Jacobson* to avoid strict scrutiny analysis; alternatively holding Order 32 neutral and generally applicable; citing cases deciding similarly); *cf. South Bay United Pentecostal Church v. Newsom*, No. 20-55533, 2020 WL 2687079 (9th Cir. May 22, 2020) (2-1 panel decision denying injunction on finding that California orders neutral and generally applicable, over dissent concluding orders subject to strict scrutiny and unconstitutional).

[13] The term "exacting judicial scrutiny" did not enter the First Amendment lexicon until 1938 in *United States v. Carolene Prods. Co.*, 304 U.S. 144, 153 n.4 (1938). Moroever, it was 1940 when this Court first articulated the notion that "[t]he fundamental concept of liberty embodied in [the Fourteenth] Amendment embraces the liberties guaranteed by the First Amendment." *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940) (incorporating the Free Exercise Clause); *see also Gitlow v. New York*, 268 U.S. 652, 666 (1925) (holding Free Speech Clause applicable as against the States under doctrine of incorporation); *Everson v. Bd. of Educ. of Ewing Twp.*, 330 U.S. 1, 16 (1947) (holding Establishment Clause applicable as against the States under doctrine of incorporation).

Moreover, *Jacobson* did not involve the First Amendment questions at issue here. Rather, *Jacobson* explained that governments can validly enact liberty-infringing restrictions to stop the spread of diseases (*i.e.*, universal vaccinations to stop Smallpox), but it cannot do so in "an arbitrary, unreasonable manner," or in a way that "go[es] so far beyond what was reasonably required for the safety of the public." 197 U.S. at 28. Thus, when evaluating challenges to laws "purporting to have been enacted to protect the public health, the public morals, or the public safety," courts must ask whether the law "has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law," recognizing that a government very well may "go **so far beyond what was reasonably required for the safety of the public**, as to authorize or **compel the courts to interfere**." *Id.* (emphasis added). *Jacobson*, then, is merely a precursor—not an alternative—to the strict scrutiny required of laws infringing free exercise rights as developed by this Court in the intervening century.

Furthermore, *Jacobson* itself dealt with a facially neutral law of general applicability (though before the category was so-called in *Smith*), and thus it provides an unsuitable framework to address the disparate treatment of religious exercise under Order 32. *See First Baptist*, 2020 WL 1910021, at *6 ("*Smith*, . . . *Jacobson*, and similar cases do not provide the best framework in which to evaluate the Governor's executive orders because all those cases deal with laws that are facially neutral and generally applicable.").

B. The Governor's Orders Violate Churches' Free Exercise Rights Under IRFRA.

Like the Free Exercise Clause, the Illinois Religious Freedom Restoration Act, 775 ILCS 35 [hereinafter IRFRA], also prohibits Governor Pritzker from substantially burdening a person's exercise of religion. IRFRA/15. As shown above, Governor Pritzker's threatened and actual enforcements of his Orders substantially burden Churches' religious practice of assembling together for worship. (*See supra* pt. I.A.2.) Thus, the Orders and their application to Churches must be subjected to strict scrutiny under IRFRA, which specifies that "Government may not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, unless it demonstrates that application of the burden to the person (i) is in furtherance of a compelling governmental interest and (ii) is the least restrictive means of furthering that compelling governmental interest." IRFRA/15. As also shown above, the Orders cannot survive this review. (*See supra* pt. I.A.4.)

Contrary to the Seventh Circuit's conclusion (Cir. IPA Order 2), the Eleventh Amendment does not bar Churches' IRFRA claims for declaratory and injunctive relief. This Court "consistently has held that a State may consent to suit against it in federal court." *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 99 (1984). The Court will find a state's waiver of Eleventh Amendment immunity from suit in federal court "where stated 'by the most express language or by such overwhelming implications from the text as (will) leave no room for any other reasonable construction.'" *Edelman v. Jordan*, 415 U.S. 651, 673 (1974). IRFRA, on its face,

leaves no doubt Illinois intended IRFRA protections to be available to federal plaintiffs with free exercise claims against Illinois officials.

In IRFRA's "Findings and purposes" section, § 35/10, Illinois makes three express findings relevant to its legislative intent to allow claims such as Churches' to proceed in federal court:

> (4) In Employment Division v. Smith, 494 U.S. 872 (1990) the Supreme Court virtually eliminated the requirement under the First Amendment to the United States Constitution that government justify burdens on the exercise of religion imposed by laws neutral toward religion.
>
> (5) In City of Boerne v. P. F. Flores, 65 LW 4612 (1997) the Supreme Court held that [federal RFRA] infringed on the legislative powers reserved to the states under the Constitution of the United States.
>
> (6) The compelling interest test, as set forth in Wisconsin v. Yoder, 406 U.S. 205 (1972), and Sherbert v. Verner, 374 U.S. 398 (1963), is a workable test for striking sensible balances between religious liberty and competing governmental interests.

IRFRA/10 (4)–(6). Following these findings, IRFRA states its express purposes:

> **To restore** the compelling interest test as set forth in [*Yoder*] and [*Sherbert*], and **to guarantee that a test of compelling governmental interest will be imposed on all State** . . . laws, ordinances, policies, procedures, practices, and **governmental actions in all cases in which the free exercise of religion is substantially burdened**.
>
> [and]
>
> **To provide a claim** . . . to persons whose exercise of religion is substantially burdened by government.

IRFRA/10(b) (emphasis added).

Thus, *Smith*'s "virtual eliminat[ion]" of free exercise claims under the First Amendment for Illinoisans, then *Flores*' abrogation of federal RFRA as applied against Illinois, and Illinois' finding that the pre-*Smith* and federal RFRA strict scrutiny test is workable, all supply the critical context for IRFRA's purposes: "To **restore**" strict scrutiny and "to **guarantee**" it is "imposed on **all** State . . . governmental actions **in all cases** in which the free exercise of religion is substantially burdened." *Id.* (emphasis added). IRFRA neither restores nor guarantees the protections taken away by *Smith*, and then *Flores*—in all cases—if it only applies in Illinois state courts when Illinois state officials are sued. Thus, both the "express language [and] overwhelming implications from the text . . . leave no room for any other reasonable construction.'" *Edelman*, 415 U.S. at 673.

Thus, while the Eleventh Amendment may bar a damages claim against Illinois under IRFRA,[14] the plain language and purpose of IRFRA unequivocally allow Illinoisans to bring IRFRA declaratory and injunctive relief claims against Illinois

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[14] A series of federal district court cases in Florida illustrate the distinction between claims for damages and claims for prospective relief for Eleventh Amendment purposes. *See Youngblood v. Florida*, No. 3:01-CV-1449-J-16MCR, 2005 WL 8159645, at *10 (M.D. Fla. Mar. 17, 2005) ("[A]n agency of the State of Florida[] cannot be sued for civil monetary damages in this case due to the principle of sovereign immunity. However . . . the Plaintiffs can seek prospective relief in the form of an injunction and declaratory judgment, as immunity is not a bar to equitable relief."); *Muhammad v. Crews*, No. 4:14CV379-MW/GRJ, 2016 WL 3360501, at *7 (N.D. Fla. June 15, 2016) (holding sovereign immunity shields state officials from Florida RFRA claims for damages but not declaratory relief, explaining "FRFRA was passed by the Florida Legislature after the Supreme Court held that RFRA did not apply against the states, and it was intended to ensure that RFRA-like protections would be in place for actions taken by state governmental entities."); *Fiedor v. Florida Dep't of Fin. Services*, --- F. Supp. 3d ---, No. 4:18CV191-RH-CAS, 2020 WL 881998, at *4, 7 (N.D. Fla. Feb. 24, 2020) (reaching Florida RFRA claim on the merits, and noting, "The count sought an injunction, not damages, apparently recognizing that the Act does not create an action for damages.").

officials "in all cases," including in federal court.[15] Accordingly, *Pennhurst* does not bar federal jurisdiction over Churches' IRFRA claims against Governor Pritzker.

C. Governor Pritzker's Orders Violate Churches' Rights to Be Free From Government Hostility and Disparate Treatment Under the Establishment Clause.

Governor Pritzker's Orders strike at the very core of Establishment Clause protections. "An attack founded on disparate treatment of 'religious' claims invokes what is perhaps the central purpose of the Establishment Clause—**the purpose of ensuring governmental neutrality in matters of religion**." *Gillette v. United States*, 401 U.S. 437, 449 (1971) (emphasis added). The Establishment Clause "affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility towards any." *Lynch v. Donnelly*, 465 U.S. 668, 673 (1984). "The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. . . . Neither can force nor influence a person to go to **or to remain away from church against his will**." *Everson v. Bd. of Educ. of Ewing Twp.*, 330 U.S. 1, 15 (1947) (emphasis added).

The Governors' Orders violate the neutrality required by the Establishment Clause because they purport to impose on Churches what worship the Governor

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[15] That Illinois intended IRFRA's restoration and guarantee to apply in all cases—including federal cases against state officials—is not only obvious from IRFRA's plain language, but also from the pre-*Smith* and pre-*Flores* federal cases against state officials. *See, e.g., Madyun v. Franzen*, 704 F.2d 954, 959 (7th Cir. 1983) (pre-*Smith* prisoner action against Illinois **state** officials distinguishing prisoner free exercise standard from "'compelling state interest'" test of *Sherbert* and "interest of 'the highest order'" test of *Yoder* applicable to non-prisoner claims); *Lindstrom v. State of Ill.*, 632 F. Supp. 1535, 1538 (N.D. Ill. 1986) (citing *Sherbert* and *Yoder* in pre-*Smith* free exercise action by pastor against **State** of Illinois); *C.L.U.B. v. City of Chicago*, No. 94 C 6151, 1996 WL 89241, at *19–20 (N.D. Ill. Feb. 27, 1996) (pre-*Flores* case recognizing federal RFRA restored compelling interest test from *Sherbert* and *Yoder* in free exercise action against **state** and city officials).

deems acceptable—designating religious worship as an "Essential Activity" but in the same provision effectively banning it except for drive-in or online services. (Order 32 § 2.5.f.) *See Hefferman v. City of Patterson*, 136 S. Ct. 1412, 1417 (2016) ("The basic constitutional requirement reflects the First Amendment's hostility to government action that prescribes what shall be orthodox."). Moreover, even a facially neutral motive in imposing disparate burdens on religious worship that are not imposed on non-religious Essential Activities violates the Establishment Clause if the motive is merely a pretext or sham. *See, e.g.*, *McCreary Cnty. v. ACLU of Ky.*, 545 U.S. 844, 864 (2005). The progression of the Governor's Orders demonstrates any neutrality towards religious worship was a sham from the start, and not even the promise of eventual lifting of restrictions in the Restore Illinois plan (in 12 to 18 months, Facts A–B) can escape the taint of the Orders' constitutionally hostile burdens on worship. *See McCreary Cnty.*, 545 U.S. at 866 ("[T]he world is not made brand new every morning . . . . [R]easonable observers have reasonable memories . . . ."). The Orders violate the Establishment Clause and should be enjoined.

D. The Orders Violate Churches' Rights Under RLUIPA.

Like the Free Exercise Clause, the Religious Land Use and Institutionalized Persons Act ("RLUIPA") provides that "[n]o government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution," 42 U.S.C. § 2000cc(a)(1), unless the government can satisfy strict scrutiny—*i.e.*, demonstrate that the burden "is in furtherance of a compelling governmental interest; and . . . is the least restrictive means of furthering that compelling governmental interest." *Id.*

RLUIPA has several key provisions, including the "Equal terms" provision, the "Nondiscrimination" provision, and the "Exclusions and limits" provision. 42 U.S.C. §§ 2000cc(b)(1)–(3). The Governor's Orders violate all three, and as shown above, the Orders cannot survive strict scrutiny. (*Supra* pt. I.A.4.) Thus, the Orders violate RLUIPA.

1. The Orders violate RLUIPA's equal terms provision.

The equal terms provision mandates that no government "impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution." 42 U.S.C. § 2000cc(b)(1). The Orders violate the equal terms provision under each of three possible scenarios. *See Vision Church v. Vill. of Long Grove*, 468 F.3d 975 (7th Cir. 2006).

First, the Orders facially differentiate between religious and non-religious assemblies, imposing a unique 10-person limit on Churches' using their buildings for worship, which limit is not imposed on other, non-religious Essential Activities. (Facts A–B.) Order 32 even goes so far as to allow Churches, as EBOs, to use their facilities without numeric limitation "when providing food, shelter, and social services," (Order 32 § 2.c), but not when engaging in their primary purpose—worship. (*See supra* pt. I.A.2; Facts A–B.) Second, even if the Orders were facially neutral the serial exemptions and exceptions in the Orders are gerrymandered to require onerous burdens and limitations on religious gatherings that are not imposed on other non-religious gatherings. (*Id.*) Finally, the Orders have been selectively enforced against

Churches. Indeed, Churches have demonstrated that they can and will abide by the distancing and hygiene protocols applicable to other Essential Activities (Facts D), but the Orders have been enforced against Churches and no other Essential Activities accommodating more than 10 people at a time. Thus, the Orders violate the equal terms provision.

2. The Orders violate RLUIPA's nondiscrimination provision.

The nondiscrimination provision mandates that no government "impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion." 42 U.S.C. § 2000cc(b)(2). Under this provision, Churches need only demonstrate that the government has treated it less favorably than other non-religious entities and that "a discriminatory impact was foreseeable," and "less restrictive alternatives were available." *Chabad Lubavitch of Litchfield Cnty., Inc. v. Litchfield Historical Dist. Comm'n*, 768 F.3d 183, 199 (2d Cir. 2014). Here, there is no question that a discriminatory impact was foreseeable, as the Orders imposed a blanket 10-person restriction on Churches and religious gatherings that does not apply to other Essential Activities (Facts A–B), and numerous less restrictive alternatives were available (*supra* pt. I.A.3–4). Thus, the Orders violate the nondiscrimination provision.

3. The Orders violate RLUIPA's exclusions and limits provision.

The exclusions and limits provision mandates that no government "impose or implement a land use regulation that . . . totally excludes religious assemblies from a jurisdiction; or . . . unreasonably limits religious assemblies, institutions, or

structures within a jurisdiction." 42 U.S.C. §2000cc(b)(3)(A). A violation of this provision occurs where—as here—the Orders have "'the effect of depriving both [Churches] and other religious institutions or assemblies of reasonable opportunities to practice their religion, including the **use** and construction of structures.'" *Rocky Mountain Christian Church v. Bd. of Cnty. Comm'rs*, 613 F.3d 1229, 1238 (10th Cir. 2010) (emphasis added). The Orders have unquestionably deprived Churches of the use of their facilities to host worship services with more than 10 people, despite Churches promises and ability to abide by the social distancing and hygiene protocols sufficient for non-religious Essential Activities that are not subject to numerical limits. (Facts A–D.) Thus, the Orders violate the exclusions and limits provision, and strict scrutiny applies, which the Governor cannot overcome.

II. IRREPARABLE HARM WILL RESULT IF THE INJUNCTION IS NOT GRANTED.

"The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Thus, demonstrating irreparable injury in this matter "is not difficult. Protecting religious freedom was a vital part of our nation's founding, and it remains crucial today." *On Fire*, 2020 WL 1820249, at *9 (emphasis added). With each passing Sunday, Churches are suffering under the yoke of the Governor's unconstitutional Orders prohibiting Churches from freely exercising their sincerely held religious beliefs requiring assembling themselves together to worship God. Indeed, absent an injunction, Churches "face an impossible choice: skip [church] service[s] in violation

of their sincere religious beliefs, or risk arrest . . . or some other enforcement action for practicing those sincere religious beliefs." *On Fire*, 2020 WL 1820249, at *9.

Conversely, an injunction enjoining enforcement of the Orders on Churches' responsibly conducted worship services will impose no harm on Illinois. "[T]here can be no harm to [the government] when it is prevented from enforcing an unconstitutional statute . . . ." *Joelner v. Vill. of Washington Park*, 378 F.3d 613, 620 (7th Cir. 2004). And, "[i]njunctions protecting First Amendment freedoms are **always in the public interest**." *ACLU of Ill. v. Alvarez*, 679 F.3d 583, 590 (7th Cir. 2012) (emphasis added). "The task is simplified here because . . . . [t]he loss of First Amendment freedoms is presumed to constitute an irreparable injury for which money damages are not adequate, and injunctions protecting First Amendment freedoms are always in the public interest." *Christian Legal Soc'y v. Walker*, 453 F.3d 853, 859 (7th Cir. 2006).

CONCLUSION

For all of the foregoing reasons, this Circuit Justice should grant the requested writ of injunction or refer this application to the Court.

Respectfully submitted:

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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ELIM ROMANIAN PENTECOSTAL CHURCH, and
LOGOS BAPTIST MINISTRIES,

Applicants,

v.

JAY R. PRITZKER,
in his official capacity as Governor of the State of Illinois,

Respondent.

To The Honorable Brett M. Kavanaugh,
Associate Justice of the United States Supreme Court
and Circuit Justice for the Seventh Circuit

APPENDIX

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UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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ORDER

May 16, 2020

Before

FRANK H. EASTERBROOK, *Circuit Judge*
MICHAEL S. KANNE, *Circuit Judge*
DAVID F. HAMILTON, *Circuit Judge*

No. 20-1811	ELIM ROMANIAN PENTECOSTAL CHURCH, et al., Plaintiffs - Appellants v. JAY R. PRITZKER, in his official capacity as Governor of the State of Illinois, Defendant - Appellee
Originating Case Information:	
District Court No: 1:20-cv-02782 Northern District of Illinois, Eastern Division District Judge Robert W. Gettleman	

The following are before the court:

1. **PLAINTIFFS-APPELLANTS' EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL AND TO EXPEDITE APPEAL**, filed on May 15, 2020, by counsel for the appellants.

2. **BRIEF OF AMICUS CURIAE AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE IN SUPPORT OF APPELLEES AND IN OPPOSITION TO APPELLANTS' EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL**, filed on May 16, 2020, by counsel for amicus curiae.

3. **DEFENDANT-APPELLEE'S RESPONSE TO PLAINTIFFS' EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL AND TO EXPEDITE APPEAL**, filed on May 16, 2020, by counsel for the appellee.

4. **PLAINTIFFS-APPELLANTS' REPLY IN SUPPORT OF EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL AND TO EXPEDITE APPEAL AND ALTERNATIVE MOTION TO STRIKE RESPONSE**, filed on May 16, 2020, by counsel for the appellants.

IT IS ORDERED that plaintiffs-appellants' emergency motion for an injunction pending appeal, filed on May 15, 2020, is **DENIED**. Based on this court's preliminary review of this appeal for purposes of this motion, we find that plaintiffs have not shown a sufficient likelihood of success on the merits to warrant the extraordinary relief of an injunction pending appeal. The Governor's Executive Order 2020-32 responds to an extraordinary public health emergency. *See generally Jacobson v. Massachusetts*, 197 U.S. 11 (1905). The Executive Order does not discriminate against religious activities, nor does it show hostility toward religion. It appears instead to impose neutral and generally applicable rules, as in *Employment Division v. Smith*, 494 U.S. 872 (1990). The Executive Order's temporary numerical restrictions on public gatherings apply not only to worship services but also to the most comparable types of secular gatherings, such as concerts, lectures, theatrical performances, or choir practices, in which groups of people gather together for extended periods, especially where speech and singing feature prominently and raise risks of transmitting the COVID-19 virus. Worship services do not seem comparable to secular activities permitted under the Executive Order, such as shopping, in which people do not congregate or remain for extended periods. Further, plaintiffs-appellants may not obtain injunctive relief against the Governor in federal court on the basis of the Illinois Religious Freedom Restoration Act. *See Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89 (1984).

IT IS FURTHER ORDERED that plaintiffs-appellants' motion to expedite the appeal is **GRANTED**. Briefing shall proceed as follows:

1. The brief and required short appendix of the appellants are due by May 22, 2020.

2. The brief of the appellee is due by June 1, 2020.

3. The reply brief of the appellant, if any, is due by June 5, 2020.

Oral argument will be set by separate order after briefing is completed.

IT IS FINALLY ORDERED that plaintiffs-appellants' motion to strike is **DENIED**. The defendant-appellee is **GRANTED** leave to file his overlength response, which was prepared and filed in less than 12 hours in accordance with this court's order.

Important Scheduling Notice !

Notices of hearing for particular appeals are mailed shortly before the date of oral argument. Criminal appeals are scheduled shortly after the filing of the appellant's main brief; civil appeals after the filing of the appellee's brief. If you foresee that you will be unavailable during a period in which your particular appeal might be scheduled, please write the clerk advising him of the time period and the reason for such unavailability. Session data is located at http://www.ca7.uscourts.gov/cal/calendar.pdf. Once an appeal is formally scheduled for a certain date, it is very difficult to have the setting changed. See Circuit Rule 34(e).

form name: **c7_Order_3J**(form ID: **177**)

B

UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois − CM/ECF LIVE, Ver 6.3.2
Eastern Division

Elim Romanian Pentecostal Church, et al.

Plaintiff,

v.

Case No.: 1:20−cv−02782
Honorable Robert W. Gettleman

Jay Robert Pritzker

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Thursday, May 14, 2020:

MINUTE entry before the Honorable Robert W. Gettleman: For the reasons set forth in this court's Memorandum Opinion and Order [33], Plaintiffs' emergency motion for injunction pending appeal and supporting memorandum [36] is denied. Attorney Roger K. Gannam's motion to appear *pro hac vice* is granted. Mailed notice (cn).

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ELIM ROMANIAN PENTECOSTAL CHURCH, LOGOS BATIST MINISTRIES	)	
Plaintiff,	)	Case No. 20 C 2782
v.	)	
	)	Judge Robert W. Gettleman
JAY ROBERT PRITZKER, in his official capacity as Governor of the State of Illinois,	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER[1]

"These are the times that try men's souls."[2] Illinois, the nation, and the world are in the grip of a deadly pandemic the likes of which haven't been experienced in more than a century. As of yesterday, May 12, 2020, Illinois has experienced more than 83,000 known infections and more than 3,600 deaths from the COVID-19 virus, with more than 4,000 new cases and 144 new deaths reported on that date alone. In the nation, some 1.4 million cases and 82,000 deaths have been reported. In the world, more than 291,000 have died from the disease, which has infected more than 4 million people.

The virus is highly contagious and easily transferable. Because people may be infected but asymptomatic, they may be infecting others without knowing. At this time there is no known cure, no effective treatment and no vaccine. The only preventative measures agreed upon by all medical experts is to avoid contact with infected persons. To that end people have been cautioned to stay at home if at all possible, practice social distancing when it is not, and to wear face coverings when

[1] The facts discussed in this opinion are uncontested and principally taken from the parties' submissions.
[2] Thomas Payne, "The Crisis" (December 23, 1776).

coming near others. Despite the dire numbers and warnings, some people have refused to comply, causing governors across the country to issue what have been described as "stay-at-home" orders. Defendant Governor Jay Pritzker has issued a number of such orders, including, Executive Order 2020-32 (the "Order"), which requires wearing a face covering in public places or when working, the cessation of all non-essential business and operations, and most importantly for the instant case, prohibits "All public and private gatherings of any number of people occurring outside a single household or living unit" except for limited purposes. "[A]ny gathering of more than ten people is prohibited unless exempted …" Individuals may leave their residences only to perform certain "Essential Activities" and must follow social distancing requirements set forth in the Order, including wearing face coverings when in public and work. Among the Essential Activities listed is "to engage in the free exercise of religion." That provision of the Order provides:

> To engage in the free exercise of religion, provided that such exercise must comply with Social Distancing Requirements and the limit on gatherings of more than ten people in keeping with CDC guidelines for the protection of public health. Religious organizations and houses of worship are encouraged to use online or drive-in services to protect the health and safety of their congregants.

Plaintiffs have sued Governor Pritzker, challenging the Order to the extent that it restricts religious gatherings to ten persons, arguing that it violates numerous of their federal constitutional rights, most notably the right to free exercise of religion contained in the First Amendment. They filed their complaint on Thursday, May 7, 2020 at 11:16 p.m. and their motion for a temporary restraining order ("TRO") and preliminary injunction at 1:47 a.m. Friday, May 8, 2020. The motion sought a TRO enjoining defendant from enforcing the Order against them starting on Sunday, May 10, 2020. The court ordered defendant to respond to the motion by 5:00 p.m.

Saturday May 9, 2020 with plaintiffs to reply by 5:00 p.m. Sunday, May 10, 2020. Because of the briefing schedule, the court denied the request for a TRO effective for May 10, 2020.

Undeterred by the court's refusal to grant the TRO motion, plaintiff Elim Romanian Pentecostal Church ("Elim") elected to disobey the Order and hold services at its church with more than the allotted ten persons. The pictures that plaintiffs have included in their reply show that none of the congregants were wearing face coverings, contrary to CDC guidelines. Because plaintiffs' reply brief contained new factual matter, the court granted defendant leave to file a sur-reply by noon on Tuesday, May 12, 2020, with no further briefing to be accepted. Nevertheless, plaintiffs submitted a response to the sur-reply, principally to contend that the congregants and clergy were social distancing. The motion is now fully briefed and ready for resolution. For the reasons described below, the motion is denied.

Temporary restraining orders and preliminary injunctions, are extraordinary and drastic remedies that should not be granted unless the movant, "by a clear showing, carries the burden of persuasion." Mazurek v. Armstrong, 520 U.S. 968, 972 (1997). The party seeking such relief must show that: 1) it has some likelihood of success on the merits; 2) it has no adequate remedy at law; and, 3) that without relief it will suffer irreparable harm. Planned Parenthood of Ind. and Ky, Inc. v. Comm'r of Ind. State Dep't of Health, 896 F.3d 809, 816 (7th Cir. 2018). If the movant meets these requirements, the court must then weigh the harm the movant will suffer without an injunction against the harm the non-movant will suffer if an injunction is issued. The court makes this assessment using a sliding scale. The more likely the movant is to win, the less heavily need the balance of harm weigh in its favor. The less likely the movant is to win, the more the balance must weigh in its favor. Finally, the court must also determine whether the injunction is in the

public interest, taking into account any effects on non-parties. Courthouse News Serv. v. Brown, 908 F.3d 1063, 1068 (7th Cir. 2018).

Likelihood of Success on the Merits

Plaintiffs need show only that their chances of success are better than negligible. Ill. Council on Long Term Care v. Bradley, 957 F.2d 305, 310 (7th Cir. 1992). Plaintiffs' complaint challenges the Order on both federal and state constitutional grounds, as well as on state statutory grounds. Their motion, however, raises only that the Order violates their First Amendment Rights to Free Exercise of Religion and to "Be Free from Government Hostility and Disparate Treatment Under the Establishment Clause," and that the Order restricts their First Amendment rights to speech and assembly.

Over one hundred years ago the Supreme Court established a framework governing the emergency exercise of state authority during a public health crisis. Jacobson v Commonwealth of Mass., 197 U.S. 11, 27 (1905). The "liberty secured by the Constitution … does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint." Id. at 26. "Even liberty itself, the greatest right, is not unrestricted license to act according to one's will." Id. "[A] community has the right to protect itself against an epidemic of disease which threatens the safety of its members." Id. at 28. As the Court explained, "[t]he possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order, and morals of the community." Id. at 26-27 (emphasis added).

In Jacobson, the Court was faced with a claim that the state's compulsory vaccination law enacted during the smallpox epidemic violated the Fourteenth Amendment. Rejecting the claim,

the court described the state's police power to combat an epidemic, id at 29:

> In every well-ordered society charged with the duty of conserving the safety of its members the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the public may demand.

Courts have acknowledged this principle numerous times, applying it to various constitutional claims. For example, in Compagnie Francaise de Navigation a Vapeur v. State Bd. of Health, 186 US 380 (1902), the court upheld Louisiana's right to quarantine passengers aboard a vessel despite the fact that all were healthy. And in Prince v Mass., 321 U.S. 158, 166-67 (1944), the Court stated "[t]he right to practice religion freely does not include the liberty to expose the community … to communicable disease." Under such emergency circumstances, such as when faced with a society-threatening epidemic, "a state may implement emergency measures that curtail constitutional rights so long as the measures have at least some 'real or substantial relation' to the public health crisis and are not 'beyond all question, a plain, palpable violation of rights secured by the fundamental law." In re Abbot, 954 F.3d 772, 784-85 (5th Cir. 2020) (quoting Jacobson, 197 U.S. at 31).

As described above, there is no question that the world, the country, and Illinois in particular are in the midst of a deadly pandemic of epic proportions. Plaintiffs do not dispute that COVID-19 threatens the lives of the citizens of Illinois and all Americans. The court finds, as did the court in Cassell v Snyders, 2020 WL 2112374 at *7 (N.D. Ill. May 3, 2020), that the COVID-19 pandemic qualifies as the type of public health crisis that Jacobson contemplated. That finding means that to have any likelihood of success on the merits plaintiffs must demonstrate either that the Order has no real or substantial relation to the public health crisis or that it is a plain,

palpable invasion of their rights. They have failed to demonstrate either. Indeed, nowhere in any of their briefs do they cite Jacobson or mention its standard. As a result, because Jacobson is implicated by the current health crisis, and because the Order advances the State's interest in protecting its citizens from the pandemic, the court concludes that plaintiffs have a less than negligible chance of success on their constitutional claims.

Moreover, even if Jacobson's emergency crisis standard does not apply, plaintiffs have failed to show any likelihood of success under traditional First Amendment analysis. The Free Exercise Clause of the First Amendment (applied to the states through the Fourteenth Amendment) provides that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof …." It prohibits government from "[p]lacing a substantial burden on the observation of a central religious belief or practice without first demonstrating that a "compelling governmental interest justifies the burden." St. Johns United Church of Christ v. City of Chicago, 502 F.3d 616, 631 (7th Cir. 2007). In Employment Division v. Smith, 494 U.S. 872, 883 (1990), however, the Supreme Court held that neutral laws of general applicability do not violate the Free Exercise Clause even if they have the incidental effect of burdening a particular religious practice, and thus need not be justified by a compelling governmental interest. Put another way, a "neutral law of general applicability is constitutional if it is supported by a rational basis." Ill. Bible Colleges Ass'n v. Anderson, 870 F.3d 631, 639 (7th Cir. 2017). Neutrality and general application are interrelated, and failure to satisfy one likely indicates a failure to satisfy the other. Church of the Lukkumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 531 (1993).

Whether a law qualifies as neutral depends on its object. A law is not neutral if "the object of the law is to infringe upon or restrict practices because of their religious motivation." Lukumi,

508 U.S. at 533. General applicability forbids the government from "imposing burdens only on conduct motivated by religious belief in a selective manner." Id. In short, if the Order does not target religion, "the First Amendment has not been offended." Employment Division, 494 U.S. at 878.

In the instant case, plaintiffs have provided no evidence that the Order targets religion. They point to the Order's exemptions for essential businesses that may host more than ten people and argue "if large gatherings at liquor stores, warehouse supercenters, and cannabis stores are not prohibited – and distancing and hygiene practices are only required to the greatest extent possible – even though endangering citizens (or not) to an equal degree, then it is obvious religious gatherings have been targeted for discriminatory treatment." The court disagrees.

Gatherings at places of worship pose higher risks of infection than gatherings at businesses. As Judge Lee explained in Cassell, 2020 WL 2112374 at *9, when analyzing the same Order:

> [I]n person religious services create a higher risk of contagion than operating grocery stores or staffing manufacturing plants. The key distinction turns on the nature of each activity. When people buy groceries, for example, they typically enter a building quickly, do not engage directly with others except at point of sale, and leave once the task is complete. The purpose of shopping is not to gather with others or engage them in conversation and fellowship, but to purchase necessary items and then leave as soon as possible.
>
> By comparison, religious services involve sustained interactions between many people … Given that religious gatherings seek to promote conversation and fellowship, they "endanger" the government's interest in fighting COVID-19 to a "greater degree" than the secular businesses that Plaintiffs identify.

Plaintiffs do not address Cassell's reasoning (they don't even cite it in their reply) except to argue in their initial motion that COVID-19 does not care about people's intentions - what matters is hygiene and social distancing. That distorts Cassell's reasoning and common sense. The

congregants do not just stop by Elim Church. They congregate to sing, pray, and worship together. That takes more time than shopping for liquor or groceries. The word "congregate," from which the term "congregation" derives, means to "gather into a crowd or mass." Indeed, the church's YouTube channel lists a live recording from last Sunday's service that was one hour, forty-seven minutes long, with virtually no one in the congregation or clergy wearing a face covering.

Plaintiffs also complain that the Order classifies law and accounting firms as essential, with no ten-person limit, suggesting that this somehow shows that the Order targets religion. Again, however, people do not go to those places to gather in groups for hours at a time. In this regard the court agrees with Judge Lee that a more apt analysis is between places of worship and schools, both of which involve "activities where people sit together in an enclosed space to share a common experience," exacerbating the risk of contracting the virus. Cassell, 2020 2112374 at *10. All public and private schools serving pre-kindergarten through twelfth grade students have been closed under other Executive Orders. And under this Order, theaters and concert halls, which clearly resemble the layout of plaintiffs' churches, are completely banned from hosting any gatherings.

As a result, the court concludes that the Order is both neutral and of general applicability. As such, it does not violate the Free Exercise Clause so long as it is supported by a rational basis. Anderson, 870 F.3d at 639. The Order, without doubt, is rationally based in light of the need to slow the spread of COVID-19 in Illinois. Consequently, the court concludes that plaintiffs have a less than negligible likelihood of success on the merits of this claim.

Plaintiff's Establishment Clause claim fares no better. "[T]he Establishment Clause prohibits government from abandoning secular purposes in order to put an imprimatur on one

religion, or on religion as such, or to favor the adherents of any sect or religious organization." Gillette v. U.S., 401 U.S. 437, 450 (1971). "Its central purpose is to ensure government neutrality in matters of religion." Id. at 449. To comply with the Establishment Clause, government action must: 1) have a secular purpose; 2) have a primary effect that neither advances nor inhibits religion; and 3) not foster an excessive government entanglement with religion." Lemon v Kurtzman, 403 U.S. 602, 612-13 (1972).

There is no doubt that the Order passes the Lemon test, and plaintiffs do not argue otherwise. Indeed, once again, they fail to address Lemon in any of their three briefs. In any event, the Order obviously has a secular purpose to prevent the spread of COVID-19. Its primary effect neither advances nor prohibits religion. It does not favor one religion over another, or religion as such. Plaintiff's argument that the Order inhibits religion because it does not limit other essential businesses to ten persons or fewer fails for the same reason its Free Exercise Claim fails. Finally, the Order in no way fosters government entanglement with religion. Consequently, the court concludes that plaintiffs have a less than negligible change of success on their Establishment Clause claim.

Nor do plaintiffs have even a negligible change of success on their Free Speech and Assembly claim. The First Amendment bars the government from "abridging the freedom of speech." A law must pass strict scrutiny when it restricts speech based on content. A speech restriction is content-based when "it applies to particular speech because of the topic discussed or the idea or message expressed." Reed v. Town of Gilbert, Ariz., 576 U.S. 155 (2015). A commonsense meaning of content-based requires the court to consider "whether a regulation of speech on its face draws distinctions based on the message the speaker conveys." Id. (internal

quotations omitted). Some such distinctions are obvious, such as defining speech by particular subject matter; others are more subtle, defining regulated speech by its function or purpose. "Both are distinctions drawn based on the message a speaker conveys, and, therefore, are subject to strict scrutiny." Id. Additionally, some facially content neutral laws will be considered content-based regulations of speech if they "cannot be justified without reference to the content of the regulated speech, or that were adopted by the government because of disagreement with the message the speech conveys." Id.

Plaintiffs have failed to present any evidence to demonstrate that the Order is based on the content discussed at churches or the ideas or messages expressed. They again rely on the exemptions for other essential businesses that are not restricted to gatherings of ten persons. From this, plaintiffs conclude that the Order restricts religious speech because it is religious speech. Once again, the court disagrees.

As noted in Cassell, the Order has nothing to do with suppressing religion and everything to do with reducing infections and saving lives. There is no evidence that defendant has a history of animus toward religion. Cassell noted the example of a church choir practice in Washington State where members actually used hand sanitizer and practiced social distancing. Despite those efforts, forty-five of the sixty choir members contracted COVID-19 and two died. Cassell, 2020 WL 2112374 at *13. That example illustrates the purpose of the Order. Large gatherings magnify the risk of contagion even when participants practice preventative measures as plaintiffs claim they are prepared to do.[3] Consequently, the court concludes that plaintiffs' chance of success on this claim is less than negligible.

[3] As mentioned above, the pictures of the services held by Elim on Sunday, May 10, 2020, show that the participants were not wearing face coverings, as required by the CDC guidelines.

Balancing of Harms

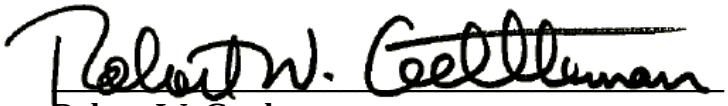
Because plaintiffs have not shown a greater than negligible chance of success on the merits, they are not entitled to preliminary relief. But, even if they had a slight chance of success, under the sliding scale approach, the less likely their chance of success the more the balance of harms must weigh in their favor. Valencia v. City of Springfield, Ill., 883 F.3d 959, 966 (7th Cir. 2018). Because their likelihood of success is so remote, plaintiffs must show that the scales weigh heavily in their favor. They do not and cannot.

Indeed, quite the contrary is true. The harm to plaintiffs if the Order is enforced pales in comparison to the dangers to society if it is not. The record clearly reveals how virulent and dangerous COVID-19 is, and how many people have died and continue to die from it. "[T]he sad reality is that places where people congregate, like churches, often act as vectors for the disease." Cassell, 2020 WL 2112374 at *15. Plaintiffs' request for an injunction, and their blatant refusal to follow the mandates of the Order are both ill-founded and selfish. An injunction would risk the lives of plaintiffs' congregants, as well as the lives of their family members, friends, co-workers and other members of their communities with whom they come in contact. Their interest in communal services cannot and does not outweigh the health and safety of the public.

CONCLUSION

For the reasons described above, plaintiffs' motion for temporary restraining order and preliminary injunction (Doc. 4) is denied.

ENTER: May 13, 2020



Robert W. Gettleman
United States District Judge

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STATE OF ILLINOIS

EXECUTIVE DEPARTMENT

SPRINGFIELD, ILLINOIS

FILED
INDEX DEPARTMENT
APR 30 2020
IN THE OFFICE OF
SECRETARY OF STATE

April 30, 2020 Executive Order 2020-32

EXECUTIVE ORDER 2020-32
(COVID-19 EXECUTIVE ORDER NO. 30)

WHEREAS, protecting the health and safety of Illinoisans is among the most important functions of State government; and,

WHEREAS, it is critical that Illinoisans who become sick are able to be treated by medical professionals, including when a hospital bed, emergency room bed, or ventilator is needed; and,

WHEREAS, it is also critical that the State's health care and first responder workforce has adequate personal protective equipment (PPE) to safely treat patients, respond to public health disasters, and prevent the spread of communicable diseases; and,

WHEREAS, Coronavirus Disease 2019 (COVID-19) is a novel severe acute respiratory illness that has spread among people through respiratory transmissions, the World Health Organization declared COVID-19 a Public Health Emergency of International Concern on January 30, 2020, and the United States Secretary of Health and Human Services declared that COVID-19 presents a public health emergency on January 27, 2020; and,

WHEREAS, on March 11, 2020, the World Health Organization characterized the COVID-19 outbreak as a pandemic, and has reported more than 3 million confirmed cases of COVID-19 and 200,000 deaths attributable to COVID-19 globally as of April 30, 2020; and,

WHEREAS, a vaccine or treatment is not currently available for COVID-19 and, on April 24, 2020, the World Health Organization warned that there is currently no evidence that people who have recovered from COVID-19 and have antibodies are protected from a second infection; and,

WHEREAS, despite efforts to contain COVID-19, the World Health Organization and the federal Centers for Disease Control and Prevention (CDC) indicated that the virus was expected to continue spreading and it has, in fact, continued to spread rapidly, resulting in the need for federal and State governments to take significant steps; and,

WHEREAS, the CDC currently recommends that all United States residents take precautions to contain the spread of COVID-19, including that they: (1) stay home as much as possible; (2) if they must leave their home, practice social distancing by maintaining 6 feet of distance from others and avoiding all gatherings; (3) wear cloth face coverings in public settings where other social distancing measures are difficult to maintain; (4) be alert for symptoms such as fever, cough, or shortness of breath, and take their temperature if symptoms develop; and (5) exercise appropriate hygiene, including proper hand-washing; and,

WHEREAS, the CDC also recommends the following precautions for household members, caretakers and other persons having close contact with a person with symptomatic COVID-19,

during the period from 48 hours before onset of symptoms until the symptomatic person meets the criteria for discontinuing home isolation: (1) stay home until 14 days after last exposure and maintain social distance (at least 6 feet) from others at all times; (2) self-monitor for symptoms, including checking their temperature twice a day and watching for fever, cough, or shortness of breath; and (3) avoid contact with people at higher risk for severe illness (unless they live in the same home and had the same exposure); and,

WHEREAS, as circumstances surrounding COVID-19 rapidly evolve, there have been frequent changes in information and guidance from public health officials as a result of emerging evidence; and,

WHEREAS, as of April 30, 2020, there have been nearly 53,000 confirmed cases of COVID-19 in 97 Illinois counties and 2,350 deaths from COVID-19; and,

WHEREAS, studies suggest that for every confirmed case there are many more unknown cases, some of which are asymptomatic individuals, meaning that individuals can pass the virus to others without knowing; and,

WHEREAS, as the virus has progressed through Illinois, the crisis facing the State has developed and now requires an evolving response to ensure hospitals, health care professionals and first responders are able to meet the health care needs of all Illinoisans and in a manner consistent with CDC guidance that continues to be updated; and,

WHEREAS, Illinois is using a high percentage of hospital beds, ICU beds, and ventilators as a result of the number of COVID-19 patients that require hospitalization and, if cases were to surge higher, the State would face a shortage of these critical health care resources; and,

WHEREAS, Illinois currently has a total of 32,010 hospital beds with 3,631 ICU beds, of which, as of April 30, 2020, only 33% of hospital beds and 25% of ICU beds were available statewide, and only 17% of ICU beds were available in the Chicago region; and,

WHEREAS, the State worked with top researchers from the University of Illinois at Urbana-Champaign, the Northwestern School of Medicine, the University of Chicago, the Chicago and Illinois Departments of Public Health, along with McKinsey and Mier Consulting Group, and Civis Analytics, to analyze two months' worth of daily data on COVID-19 deaths and ICU usage and model potential outcomes; and,

WHEREAS, the State's modeling shows that its health care resource utilization will not peak until May, and that health care resources will continue to be limited after the peak; and,

WHEREAS, the State's modeling shows that without extensive social distancing and other precautions, the State will not have sufficient hospital beds, ICU beds or ventilators; and,

WHEREAS, Illinois currently has a total of 32,010 hospital beds, and the State's modeling shows that without a "stay at home" order, more than 100,000 hospital beds would be necessary; and,

WHEREAS, Illinois currently has a total of 3,631 ICU beds, and the State's modeling shows that without a "stay at home" order, more than 25,000 ICU beds would be necessary; and,

WHEREAS, Illinois currently has a total of 3,378 ventilators, and the State's modeling shows that without a "stay at home" order, upwards of 20,000 ventilators would be necessary; and,

WHEREAS, the State's modeling shows that without a "stay at home" order, the number of deaths from COVID-19 would be between 10 to 20 times higher than with a "stay at home" order in place; and,

WHEREAS, I declared all counties in the State of Illinois as a disaster area on April 30, 2020 because the current circumstances in Illinois surrounding the spread of COVID-19 constitute an epidemic and a public health emergency under Section 4 of the Illinois Emergency Management Agency Act; and,

WHEREAS, I declared all counties in the State of Illinois as a disaster area on April 30, 2020 because the current circumstances surrounding the threatened shortages of hospital beds, ICU beds, ventilators, and PPE, and critical need for increased COVID-19 testing capacity constitute a public health emergency under Section 4 of the Illinois Emergency Management Agency Act; and,

WHEREAS, the Illinois Constitution, in Article V, Section 8, provides that "the Governor shall have the supreme executive power, and shall be responsible for the faithful execution of the laws," and states, in the Preamble, that a central purpose of the Illinois Constitution is "provide for the health, safety, and welfare of the people;" and,

WHEREAS, for the preservation of public health and safety throughout the entire State of Illinois, and to ensure that our healthcare delivery system is capable of serving those who are sick, I find it necessary to take measures consistent with public health guidance to slow and stop the spread of COVID-19 and to prevent shortages of hospital beds, ICU beds, ventilators, and PPE and to increase COVID-19 testing capacity;

THEREFORE, by the powers vested in me as the Governor of the State of Illinois, pursuant to the Illinois Constitution and Sections 7(1), 7(2), 7(3), 7(8), 7(9), and 7(12) of the Illinois Emergency Management Agency Act, 20 ILCS 3305, and consistent with the powers in public health laws, I hereby order the following, effective May 1, 2020:

Section 1. Public Health Requirements for Individuals Leaving Home and for Businesses

1. **Wearing a face covering in public places or when working**. Any individual who is over age two and able to medically tolerate a face-covering (a mask or cloth face-covering) shall be required to cover their nose and mouth with a face-covering when in a public place and unable to maintain a six-foot social distance. Face-coverings are required in public indoor spaces such as stores.

2. **Requirements for essential stores.** Retail stores (including, but not limited to, stores that sell groceries and medicine, hardware stores, and greenhouses, garden centers, and nurseries) designated as Essential Businesses and Operations under this Order shall to the greatest extent possible:
    - provide face coverings to all employees who are not able to maintain a minimum six-foot social distance at all times;
    - cap occupancy at 50 percent of store capacity, or, alternatively, at the occupancy limits based on store square footage set by the Department of Commerce and Economic Opportunity;
    - set up store aisles to be one-way where practicable to maximize spacing between customers and identify the one-way aisles with conspicuous signage and/or floor markings;
    - communicate with customers through in-store signage, and public service announcements and advertisements, about the social distancing requirements set forth in this Order (Social Distancing Requirements); and
    - discontinue use of reusable bags.

    Households must limit the number of members who enter stores to the minimum necessary.

3. **Requirements for non-essential stores.** Retail stores not designated as Essential Businesses and Operations may re-open for the limited purposes of fulfilling telephone and online orders through pick-up outside the store and delivery – which are deemed to be Minimum Basic Operations. Employees working in the store must follow the social Distancing Requirements, and must wear a face covering when they may come within six feet of another employee or a customer.

4. **Requirements for manufacturers.** Manufacturers that continue to operate pursuant to this Order must follow Social Distancing Requirements and take appropriate precautions, which may include:

- providing face coverings to all employees who are not able to maintain a minimum six-foot social distance at all times;
- staggering shifts;
- reducing line speeds;
- operating only essential lines, while shutting down non-essential lines;
- ensuring that all spaces where employees may gather, including locker rooms and lunchrooms, allow for social distancing; and
- downsizing operations to the extent necessary to allow for social distancing and to provide a safe workplace in response to the COVID-19 emergency.

5. **Requirements for all businesses.** All businesses must evaluate which employees are able to work from home, and are encouraged to facilitate remote work from home when possible. All businesses that have employees physically reporting to a work-site must post the guidance from the Illinois Department of Public Health (IDPH) and Office of the Illinois Attorney General regarding workplace safety during the COVID-19 emergency. The guidance will be posted on the IDPH webpage.

Section 2. Stay at Home; Social Distancing Requirements; and Essential Businesses and Operations

1. **Stay at home or place of residence.** With exceptions as outlined below, all individuals currently living within the State of Illinois are ordered to stay at home or at their place of residence except as allowed in this Executive Order. To the extent individuals are using shared or outdoor spaces when outside their residence, they must at all times and as much as reasonably possible maintain social distancing of at least six feet from any other person, consistent with the Social Distancing Requirements set forth in this Executive Order. All persons may leave their homes or place of residence only for Essential Activities, Essential Governmental Functions, or to operate Essential Businesses and Operations, all as defined below.

   Individuals experiencing homelessness are exempt from this directive, but are strongly urged to obtain shelter, and governmental and other entities are strongly urged to make such shelter available as soon as possible and to the maximum extent practicable (and to use in their operation COVID-19 risk mitigation practices recommended by the U.S. Centers for Disease Control and Prevention (CDC) and the Illinois Department of Public Health (IDPH)). Individuals whose residences are unsafe or become unsafe, such as victims of domestic violence, are permitted and urged to leave their home and stay at a safe alternative location. For purposes of this Executive Order, homes or residences include hotels, motels, shared rental units, shelters, and similar facilities.

2. **Non-essential business and operations must cease.** All businesses and operations in the State, except Essential Businesses and Operations as defined below, are required to cease all activities within the State except Minimum Basic Operations, as defined below. For clarity, businesses may also continue operations consisting exclusively of employees or contractors performing activities at their own residences (i.e., working from home).

   All Essential Businesses and Operations may remain open consistent with the express provisions of this Order and the intent of this Order as set forth in Section 2, Paragraph 16 below. To the greatest extent feasible, Essential Businesses and Operations shall comply with Social Distancing Requirements as defined in this Executive Order, including by maintaining six-foot social distancing for both employees and members of the public at all times, including, but not limited to, when any customers are standing in line.

3. **Prohibited activities.** All public and private gatherings of any number of people occurring outside a single household or living unit are prohibited, except for the limited purposes permitted by this Executive Order. Pursuant to current guidance from the CDC, any gathering of more than ten people is prohibited unless exempted by this Executive

Order. Nothing in this Executive Order prohibits the gathering of members of a household or residence.

All places of public amusement, whether indoors or outdoors, including but not limited to, locations with amusement rides, carnivals, amusement parks, water parks, aquariums, zoos, museums, arcades, fairs, children's play centers, playgrounds, funplexes, theme parks, bowling alleys, movie and other theaters, concert and music halls, and country clubs or social clubs shall be closed to the public.

4. **Prohibited and permitted travel.** All travel, including, but not limited to, travel by automobile, motorcycle, scooter, bicycle, train, plane, or public transit, except Essential Travel and Essential Activities as defined herein, is prohibited. People riding on public transit must comply with Social Distancing Requirements to the greatest extent feasible. This Executive Order allows travel into or out of the State to maintain Essential Businesses and Operations and Minimum Basic Operations.

5. **Leaving the home for essential activities is permitted.** For purposes of this Executive Order, individuals may leave their residence only to perform any of the following Essential Activities, and must follow the Social Distancing Requirements set forth in this Order, including wearing face coverings when in public or at work:

    a. **For health and safety.** To engage in activities or perform tasks essential to their health and safety, or to the health and safety of their family or household members (including, but not limited to, pets), such as, by way of example only and without limitation, seeking emergency services, obtaining medical supplies or medication, or visiting a health care professional.

    b. **For necessary supplies and services**. To obtain necessary services or supplies for themselves and their family or household members, or to deliver those services or supplies to others, such as, by way of example only and without limitation, groceries and food, household consumer products, supplies they need to work from home, and products necessary to maintain the safety, sanitation, and essential operation of residences.

    c. **For outdoor activity**. To engage in outdoor activity, provided the individuals comply with Social Distancing Requirements, as defined below, such as, by way of example and without limitation, walking, hiking, running, and biking. Individuals may go to public parks and open outdoor recreation areas, including specific State parks that remain open for certain activities, as designated by the Illinois Department of Natural Resources. Fishing, boating, and golf are permitted only when following the guidelines provided by the Illinois Department of Commerce and Economic Opportunity (DCEO). Playgrounds may increase spread of COVID-19, and therefore shall be closed.

    d. **For certain types of work**. To perform work providing essential products and services at Essential Businesses or Operations (which, as defined below, includes Healthcare and Public Health Operations, Human Services Operations, Essential Governmental Functions, and Essential Infrastructure) or to otherwise carry out activities specifically permitted in this Executive Order, including Minimum Basic Operations.

    e. **To take care of others**. To care for a family member, friend, or pet in another household, and to transport family members, friends, or pets as allowed by this Executive Order.

    f. **To engage in the free exercise of religion**. To engage in the free exercise of religion, provided that such exercise must comply with Social Distancing Requirements and the limit on gatherings of more than ten people in keeping with

CDC guidelines for the protection of public health. Religious organizations and houses of worship are encouraged to use online or drive-in services to protect the health and safety of their congregants.

6. **Elderly people and those who are vulnerable as a result of illness should take additional precautions.** People at high risk of severe illness from COVID-19, including elderly people and those who are sick, are urged to stay in their residence to the extent possible except as necessary to seek medical care. Nothing in this Executive Order prevents the Illinois Department of Public Health or local public health departments from issuing and enforcing isolation and quarantine orders pursuant to the Department of Public Health Act, 20 ILCS 2305.

7. **Healthcare and Public Health Operations.** For purposes of this Executive Order, individuals may leave their residence to work for or obtain services through Healthcare and Public Health Operations.

   Healthcare and Public Health Operations includes, but is not limited to: hospitals; clinics; dental offices; pharmacies; public health entities, including those that compile, model, analyze and communicate public health information; pharmaceutical, pharmacy, medical device and equipment, and biotechnology companies (including operations, research and development, manufacture, and supply chain); organizations collecting blood, platelets, plasma, and other necessary materials; licensed medical cannabis dispensaries and licensed cannabis cultivation centers; reproductive health care providers; eye care centers, including those that sell glasses and contact lenses; home healthcare services providers; mental health and substance use providers; other healthcare facilities and suppliers and providers of any related and/or ancillary healthcare services; and entities that transport and dispose of medical materials and remains.

   Specifically included in Healthcare and Public Health Operations are manufacturers, technicians, logistics, and warehouse operators and distributors of medical equipment, personal protective equipment (PPE), medical gases, pharmaceuticals, blood and blood products, vaccines, testing materials, laboratory supplies, cleaning, sanitizing, disinfecting or sterilization supplies, and tissue and paper towel products.

   Healthcare and Public Health Operations also includes veterinary care and all healthcare and grooming services provided to animals.

   Healthcare and Public Health Operations shall be construed broadly to avoid any impacts to the delivery of healthcare, broadly defined. Healthcare and Public Health Operations does not include fitness and exercise gyms, spas, salons, barber shops, tattoo parlors, and similar facilities.

8. **Human Services Operations.** For purposes of this Executive Order, individuals may leave their residence to work for or obtain services at any Human Services Operations, including any provider funded by the Illinois Department of Human Services, Illinois Department of Children and Family Services, or Medicaid that is providing services to the public and including state-operated, institutional, or community-based settings providing human services to the public.

   Human Services Operations includes, but is not limited to: long-term care facilities; all entities licensed pursuant to the Child Care Act, 225 ILCS 10, except for day care centers, day care homes, and group day care homes; day care centers licensed as specified in Section 2, Paragraph 12(s) of this Executive Order; day programs exempt from licensure under Title 89 of the Illinois Administrative Code, Sections 377.3(a)(1)-(a)(4), (b)(2), and (c); day programs exempt from licensure under Title 89 of the Illinois Administrative Code, Section 377.3(d) (subject to the conditions governing exempt day care homes set forth in Section 1, Paragraph 12(s) of this Executive Order); residential settings and shelters for adults, seniors, children, and/or people with developmental

disabilities, intellectual disabilities, substance use disorders, and/or mental illness; transitional facilities; home-based settings to provide services to individuals with physical, intellectual, and/or developmental disabilities, seniors, adults, and children; field offices that provide and help to determine eligibility for basic needs including food, cash assistance, medical coverage, child care, vocational services, rehabilitation services; developmental centers; adoption agencies; businesses that provide food, shelter, and social services, and other necessities of life for economically disadvantaged individuals, individuals with physical, intellectual, and/or developmental disabilities, or otherwise needy individuals.

Human Services Operations shall be construed broadly to avoid any impacts to the delivery of human services, broadly defined.

9. Essential Infrastructure. For purposes of this Executive Order, individuals may leave their residence to provide any services or perform any work necessary to offer, provision, operate, maintain and repair Essential Infrastructure.

   Essential Infrastructure includes, but is not limited to: food production, distribution, and sale; construction (including, but not limited to, construction required in response to this public health emergency, hospital construction, construction of long-term care facilities, public works construction, and housing construction); building management and maintenance; airport operations; operation and maintenance of utilities, including water, sewer, and gas; electrical (including power generation, distribution, and production of raw materials); distribution centers; oil and biofuel refining; roads, highways, railroads, and public transportation; ports; cybersecurity operations; flood control; solid waste and recycling collection and removal; and internet, video, and telecommunications systems (including the provision of essential global, national, and local infrastructure for computing services, business infrastructure, communications, and web-based services).

   Essential Infrastructure shall be construed broadly to avoid any impacts to essential infrastructure, broadly defined.

10. Essential Governmental Functions. For purposes of this Executive Order, all first responders, emergency management personnel, emergency dispatchers, court personnel, law enforcement and corrections personnel, hazardous materials responders, child protection and child welfare personnel, housing and shelter personnel, military, and other governmental employees working for or to support Essential Businesses and Operations are categorically exempt from this Executive Order.

    Essential Government Functions means all services provided by the State or any municipal, township, county, subdivision or agency of government and needed to ensure the continuing operation of the government agencies or to provide for or support the health, safety and welfare of the public, and including contractors performing Essential Government Functions. Each government body shall determine its Essential Governmental Functions and identify employees and/or contractors necessary to the performance of those functions.

    This Executive Order does not apply to the United States government. Nothing in this Executive Order shall prohibit any individual from performing or accessing Essential Governmental Functions.

11. Businesses covered by this Executive Order. For the purposes of this Executive Order, covered businesses include any for-profit, non-profit, or educational entities, regardless of the nature of the service, the function it performs, or its corporate or entity structure.

12. Essential Businesses and Operations. For the purposes of this Executive Order, Essential Businesses and Operations means Healthcare and Public Health Operations,

Human Services Operations, Essential Governmental Functions, and Essential Infrastructure, and the following:[1]

a. **Stores that sell groceries and medicine.** Grocery stores, pharmacies, certified farmers' markets, farm and produce stands, supermarkets, convenience stores, and other establishments engaged in the retail sale of groceries, canned food, dry goods, frozen foods, fresh fruits and vegetables, pet supplies, fresh meats, fish, and poultry, alcoholic and non-alcoholic beverages, and any other household consumer products (such as cleaning and personal care products). This includes stores that sell groceries, medicine, including medication not requiring a medical prescription, and also that sell other non-grocery products, and products necessary to maintaining the safety, sanitation, and essential operation of residences and Essential Businesses and Operations;

b. **Food, beverage, and cannabis production and agriculture**. Food and beverage manufacturing, production, processing, and cultivation, including farming, livestock, fishing, baking, and other production agriculture, including cultivation, marketing, production, and distribution of animals and goods for consumption; licensed medical and adult use cannabis dispensaries and licensed cannabis cultivation centers; and businesses that provide food, shelter, and other necessities of life for animals, including animal shelters, rescues, shelters, kennels, and adoption facilities;

c. **Organizations that provide charitable and social services**. Businesses and religious and secular nonprofit organizations, including food banks, when providing food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals, individuals who need assistance as a result of this emergency, and people with disabilities;

d. **Media**. Newspapers, television, radio, and other media services;

e. **Gas stations and businesses needed for transportation.** Gas stations and auto-supply, auto-repair, and related facilities and bicycle shops and related facilities;

f. **Financial institutions**. Banks, currency exchanges, consumer lenders, including but not limited, to payday lenders, pawnbrokers, consumer installment lenders and sales finance lenders, credit unions, appraisers, title companies, financial markets, trading and futures exchanges, affiliates of financial institutions, entities that issue bonds, related financial institutions, and institutions selling financial products;

g. **Hardware and supply stores and greenhouses, garden centers, and nurseries**. Hardware stores and businesses that sell electrical, plumbing, and heating material, and greenhouses, garden centers, and nurseries;

h. **Critical trades.** Building and Construction Tradesmen and Tradeswomen, and other trades including but not limited to plumbers, electricians, exterminators, cleaning and janitorial staff for commercial and governmental properties, security staff, operating engineers, HVAC, painting, moving and relocation services, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, Essential Activities, and Essential Businesses and Operations;

[1] On March 19, 2020, the U.S. Department of Homeland Security, Cybersecurity & Infrastructure Security Agency, issued a *Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response*. The definition of Essential Businesses and Operations in this Order is meant to encompass the workers identified in that Memorandum.

i. **Mail, post, shipping, logistics, delivery, and pick-up services**. Post offices and other businesses that provide shipping and delivery services, and businesses that ship or deliver groceries, food, alcoholic and non-alcoholic beverages, goods or services to end users or through commercial channels;

j. **Educational institutions**. Educational institutions—including public and private pre-K-12 schools, colleges, and universities—for purposes of facilitating distance learning, performing critical research, or performing essential functions, provided that social distancing of six-feet per person is maintained to the greatest extent possible. Educational institutions may allow and establish procedures for pick-up of necessary supplies and/or student belongings and dormitory move-out if conducted in a manner consistent with public health guidelines, including Social Distancing Requirements. This Executive Order is consistent with and does not amend or supersede Executive Order 2020-05 (COVID-19 Executive Order No. 3) or Executive Order 2020-06 (COVID-19 Executive Order No. 4) except that affected schools have been closed past the April 7, 2020 date reflected in those Orders;

k. **Laundry services**. Laundromats, dry cleaners, industrial laundry services, and laundry service providers;

l. **Restaurants for consumption off-premises.** Restaurants and other facilities that prepare and serve food, but only for consumption off-premises, through such means as in-house delivery, third-party delivery, drive-through, curbside pick-up, and carry-out. Schools and other entities that typically provide food services to students or members of the public may continue to do so under this Executive Order on the condition that the food is provided to students or members of the public on a pick-up and takeaway basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site due to the virus's propensity to physically impact surfaces and personal property. This Executive Order is consistent with and does not amend or supersede Section 1 of Executive Order 2020-07 (COVID-19 Executive Order No. 5) except that Section 1 is ordered to be extended through April 7, 2020;

m. **Supplies to work from home**. Businesses that sell, manufacture, or supply products needed for people to work from home;

n. **Supplies for Essential Businesses and Operations**. Businesses that sell, manufacture, or supply other Essential Businesses and Operations with the support or materials necessary to operate, including computers, audio and video electronics, household appliances; IT and telecommunication equipment; hardware, paint, flat glass; electrical, plumbing and heating material; sanitary equipment; personal hygiene products; food, food additives, ingredients and components; medical and orthopedic equipment; optics and photography equipment; diagnostics, food and beverages, chemicals, soaps and detergent; and firearm and ammunition suppliers and retailers for purposes of safety and security;

o. **Transportation.** Airlines, taxis, transportation network providers (such as Uber and Lyft), vehicle rental services, paratransit, and other private, public, and commercial transportation and logistics providers necessary for Essential Activities and other purposes expressly authorized in this Executive Order;

p. **Home-based care and services**. Home-based care for adults, seniors, children, and/or people with developmental disabilities, intellectual disabilities, substance use disorders, and/or mental illness, including caregivers such as nannies who

may travel to the child's home to provide care, and other in-home services including meal delivery;

q. **Residential facilities and shelters**. Residential facilities and shelters for adults, seniors, children, and/or people with developmental disabilities, intellectual disabilities, substance use disorders, and/or mental illness;

r. **Professional services**. Professional services, such as legal services, accounting services, insurance services, real estate services (including appraisal and title services);

s. **Day care centers for employees exempted by this Executive Order**. Day care centers granted an emergency license pursuant to Title 89, Section 407.500 of the Illinois Administrative Code, governing Emergency Day Care Programs for children of employees exempted by this Executive Order to work as permitted. The licensing requirements for day care homes pursuant to Section 4 of the Child Care Act, 225 ILCS 10/4, are hereby suspended for family homes that receive up to 6 children for the duration of the Gubernatorial Disaster Proclamation;

t. **Manufacture, distribution, and supply chain for critical products and industries**. Manufacturing companies, distributors, and supply chain companies producing and supplying essential products and services in and for industries such as pharmaceutical, technology, biotechnology, healthcare, chemicals and sanitization, waste pickup and disposal, agriculture, food and beverage, transportation, energy, steel and steel products, petroleum and fuel, mining, construction, national defense, communications, as well as products used by other Essential Businesses and Operations;

u. **Critical labor union functions**. Labor Union essential activities including the administration of health and welfare funds and personnel checking on the well-being and safety of members providing services in Essential Businesses and Operations – provided that these checks should be done by telephone or remotely where possible;

v. **Hotels and motels**. Hotels and motels, to the extent used for lodging and delivery or carry-out food services; and

w. **Funeral services**. Funeral, mortuary, cremation, burial, cemetery, and related services.

13. **Minimum Basic Operations**. For the purposes of this Executive Order, Minimum Basic Operations include the following, provided that employees comply with Social Distancing Requirements, to the extent possible, while carrying out such operations:

    a. The minimum necessary activities to maintain the value of the business's inventory, preserve the condition of the business's physical plant and equipment, ensure security, process payroll and employee benefits, or for related functions.

    b. The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.

    c. For retail stores, fulfilling online and telephonic orders through pick-up outside the store or delivery.

14. **Essential Travel.** For the purposes of this Executive Order, Essential Travel includes travel for any of the following purposes. Individuals engaged in any Essential Travel must comply with all Social Distancing Requirements as defined in this Section.

a. Any travel related to the provision of or access to Essential Activities, Essential Governmental Functions, Essential Businesses and Operations, or Minimum Basic Operations.

b. Travel to care for elderly, minors, dependents, persons with disabilities, or other vulnerable persons.

c. Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services.

d. Travel to return to a place of residence from outside the jurisdiction.

e. Travel required by law enforcement or court order, including to transport children pursuant to a custody agreement.

f. Travel required for non-residents to return to their place of residence outside the State. Individuals are strongly encouraged to verify that their transportation out of the State remains available and functional prior to commencing such travel.

15. **Social Distancing, Face Covering, and PPE Requirements**. For purposes of this Executive Order, Social Distancing Requirements includes maintaining at least six-foot social distancing from other individuals, washing hands with soap and water for at least twenty seconds as frequently as possible or using hand sanitizer, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, and not shaking hands.

    a. **Required measures.** Essential Businesses and Operations and businesses engaged in Minimum Basic Operations must take proactive measures to ensure compliance with Social Distancing Requirements, including where possible:

        i. **Designate six-foot distances**. Designating with signage, tape, or by other means six-foot spacing for employees and customers in line to maintain appropriate distance;

        ii. **Hand sanitizer and sanitizing products.** Having hand sanitizer and sanitizing products readily available for employees and customers;

        iii. **Separate operating hours for vulnerable populations**. Implementing separate operating hours for elderly and vulnerable customers; and

        iv. **Online and remote access**. Posting online whether a facility is open and how best to reach the facility and continue services by phone or remotely.

        v. **Face Coverings and PPE**. Providing employees with appropriate face coverings and requiring that employees wear face coverings where maintaining a six-foot social distance is not possible at all times. When the work circumstances require, providing employees with other PPE in addition to face coverings.

16. **Intent of this Executive Order**. The intent of this Executive Order is to ensure that the maximum number of people self-isolate in their places of residence to the maximum extent feasible, while enabling essential services to continue, to slow the spread of COVID-19 to the greatest extent possible. When people need to leave their places of residence, whether to perform Essential Activities, or to otherwise facilitate authorized activities necessary for continuity of social and commercial life, they should at all times and as much as reasonably possible comply with Social Distancing Requirements. All provisions of this Executive Order should be interpreted to effectuate this intent. Businesses not specifically addressed by this Executive Order generally should cease

activities and reduce to Minimum Basic Operations.

17. **Enforcement**. This Executive Order may be enforced by State and local law enforcement pursuant to, *inter alia*, Section 7, Section 15, Section 18, and Section 19 of the Illinois Emergency Management Agency Act, 20 ILCS 3305.

    Businesses must follow guidance provided or published by: the Office of the Governor, the Illinois Department of Commerce and Economic Opportunity, and State and local law enforcement regarding whether they qualify as Essential; and the Illinois Department of Public Health, local public health departments, and the Workplace Rights Bureau of the Office of the Illinois Attorney General with respect to Social Distancing Requirements. Pursuant to Section 25(b) of the Whistleblower Act, 740 ILCS 174, businesses are prohibited from retaliating against an employee for disclosing information where the employee has reasonable cause to believe that the information discloses a violation of this Order.

18. **No limitation on authority**. Nothing in this Executive Order shall, in any way, alter or modify any existing legal authority allowing the State or any county, or local government body from ordering (1) any quarantine or isolation that may require an individual to remain inside a particular residential property or medical facility for a limited period of time, including the duration of this public health emergency, or (2) any closure of a specific location for a limited period of time, including the duration of this public health emergency. Nothing in this Executive Order shall, in any way, alter or modify any existing legal authority allowing a county or local government body to enact provisions that are stricter than those in this Executive Order.

Section 3. Savings clause.

If any provision of this Executive Order or its application to any person or circumstance is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable. This Executive Order is meant to be read consistently with any Court order regarding this Executive Order.

JB Pritzker, Governor

Issued by the Governor April 30, 2020
Filed by the Secretary of State April 30, 2020

FILED
INDEX DEPARTMENT
APR 30 2020
IN THE OFFICE OF
SECRETARY OF STATE

E

RESTORE ILLINOIS

A Public Health Approach To Safely Reopen Our State

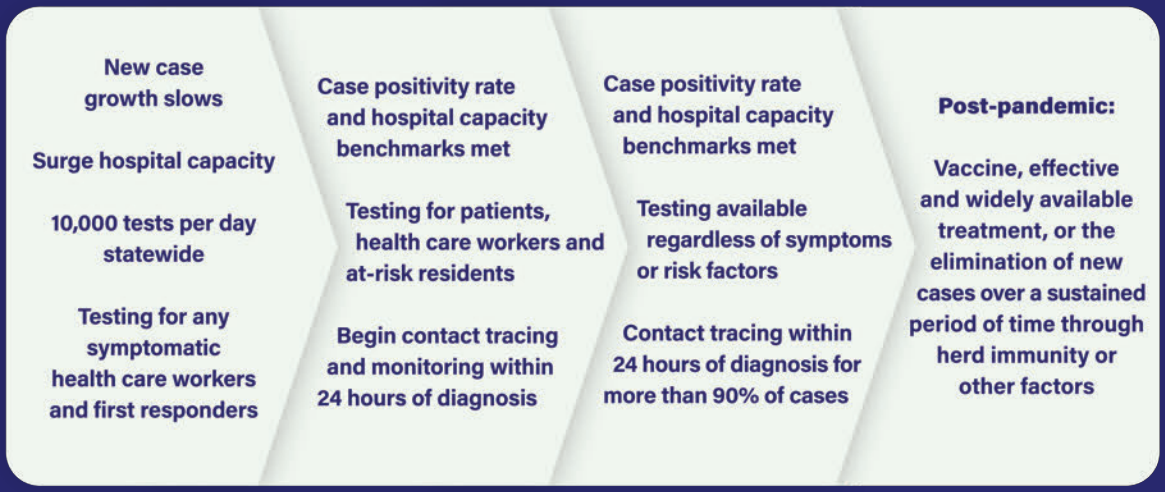
Office of the Governor
JB Pritzker

May 5, 2020

RESTORE ILLINOIS

A Public Health Approach To Safely Reopen Our State

Phase 1 Rapid Spread	Phase 2 Flattening	Phase 3 Recovery	Phase 4 Revitalization	Phase 5 Illinois Restored
Strict stay at home and social distancing guidelines are put in place, and only essential businesses remain open. Every region has experienced this phase once already and could return to it if mitigation efforts are unsuccessful.	Non-essential retail stores reopen for curb-side pickup and delivery. Illinoisans are directed to wear a face covering when outside the home and can begin enjoying additional outdoor activities like golf, boating & fishing while practicing social distancing.	Manufacturing, offices, retail, barbershops and salons can reopen to the public with capacity and other limits and safety precautions. Gatherings of 10 people or fewer are allowed. Face coverings and social distancing are the norm.	Gatherings of 50 people or fewer are allowed, restaurants and bars reopen, travel resumes, child care and schools reopen under guidance from the Illinois Department of Public Health. Face coverings and social distancing are the norm.	The economy fully reopens with safety precautions continuing. Conventions, festivals and large events are permitted, and all businesses, schools and places of recreation can open with new safety guidance and procedures.



An Introduction

From the beginning of the new coronavirus pandemic, Illinois' response has been guided by data, science, and public health experts. As community spread rapidly increased, Governor Pritzker moved quickly to issue a Disaster Proclamation on March 9, restrict visitors to nursing homes on March 11, close bars and restaurants for on-site consumption on March 16, move schools to remote learning on March 17, and issue a Stay at Home order on March 21. This virus has caused painful, cascading consequences for everyone in Illinois, but the science has been clear: in the face of a new coronavirus with unknown characteristics and in the absence of widespread testing availability and contact tracing, mitigation and maintaining a 6-foot social distance have been the only options to reduce the spread and save as many lives as possible.

Millions of Illinoisans working together by staying at home and following experts' recommendations have proven these mitigation and social distancing measures effective so far. The result has been a lower infection rate, fewer hospitalizations, and lower number of fatalities than projected without these measures. Our curve has begun to flatten. Nevertheless, the risk of spread remains, and modeling and data point to a rapid surge in new cases if all mitigation measures were to be immediately lifted.

Now that Illinois is bending the curve, it is vitally important that we follow a safe and deliberate path forward to get our Illinois economy moving. That path forward is not what everyone wants or hopes for, but it will keep Illinoisans as safe as possible from this virus as our economy is reopening.

Restore Illinois is about saving lives and livelihoods. This five-phased plan will reopen our state, guided by health metrics and with distinct business, education, and recreation activities characterizing each phase. This is an initial framework that will likely be updated as research and science develop and as the potential for treatments or vaccines is realized. The plan is based upon regional healthcare availability, and it recognizes the distinct impact COVID-19 has had on different regions of our state as well as regional variations in hospital capacity. The Illinois Department of Public Health (IDPH) has 11 Emergency Medical Services Regions that have traditionally guided its statewide public health work and will continue to inform this reopening plan. For the purposes of this plan, from those 11, four health regions are established, each with the ability to independently move through a phased approach: Northeast Illinois; North-Central Illinois; Central Illinois; and Southern Illinois.

The five phases for each health region are as follows:

Phase 1 – Rapid Spread: The rate of infection among those tested and the number of patients admitted to the hospital is high or rapidly increasing. Strict stay at home and social distancing guidelines are put in place and only essential businesses remain open. Every region has experienced this phase once already, and could return to it if mitigation efforts are unsuccessful.

Phase 2 – Flattening: The rate of infection among those tested and the number of patients admitted to the hospital beds and ICU beds increases at an ever slower rate, moving toward a flat and even a downward trajectory. Non-essential retail stores reopen for curb-side pickup and delivery. Illinoisans are directed to wear a face covering when outside the home and can begin enjoying additional outdoor activities like golf, boating and fishing while practicing social distancing. To varying degrees, every region is experiencing flattening as of early May.

Phase 3 – Recovery: The rate of infection among those surveillance tested, the number of patients admitted to the hospital, and the number of patients needing ICU beds is stable or declining. Manufacturing, offices, retail, barbershops and salons can reopen to the public with capacity and other limits and safety precautions. Gatherings limited to 10 people or fewer are allowed. Face coverings and social distancing are the norm.

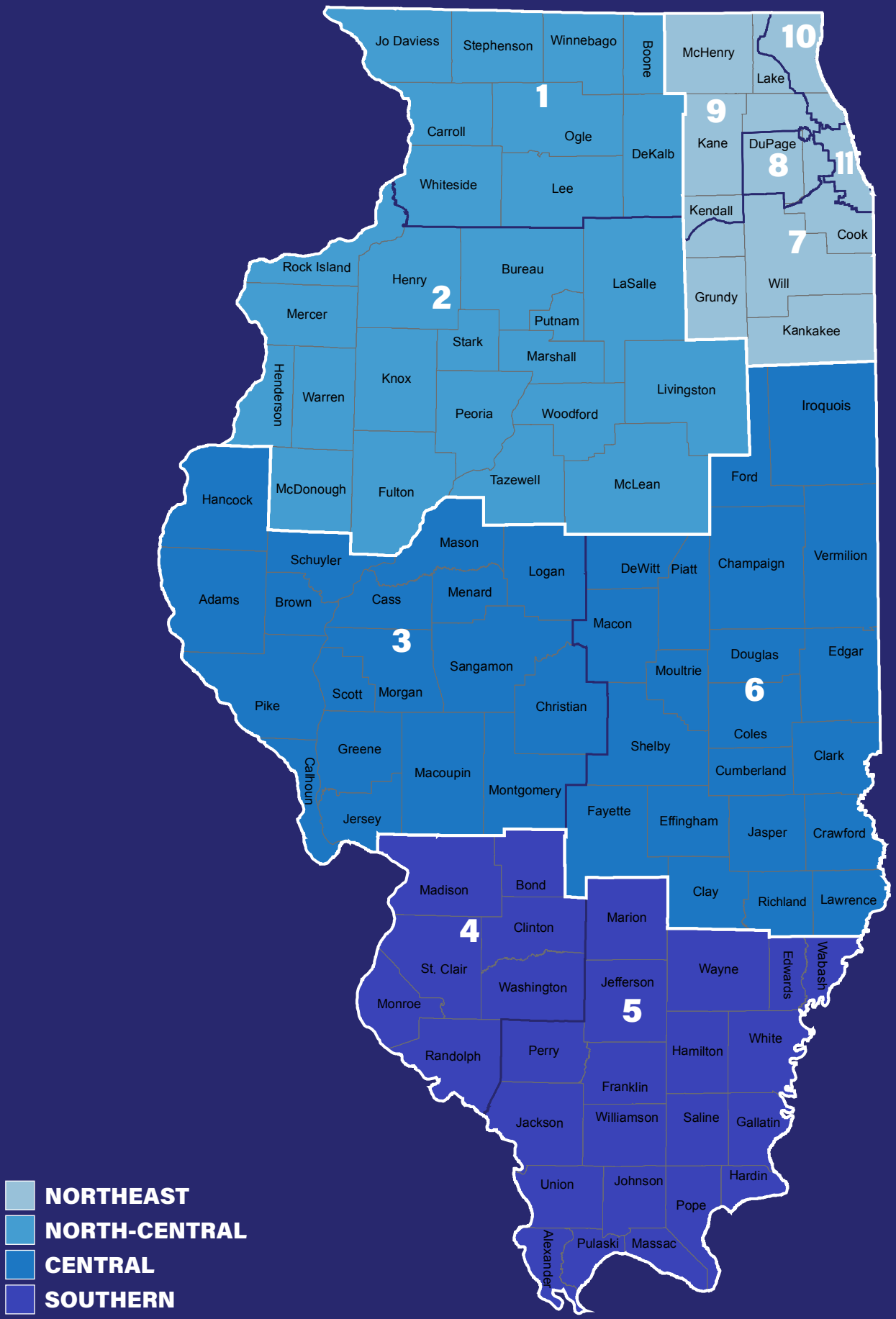
Phase 4 – Revitalization: The rate of infection among those surveillance tested and the number of patients admitted to the hospital continues to decline. Gatherings of 50 people or fewer are allowed, restaurants and bars reopen, travel resumes, child care and schools reopen under guidance from the Illinois Department of Public Health. Face coverings and social distancing are the norm.

Phase 5 – Illinois Restored: With a vaccine or highly effective treatment widely available or the elimination of any new cases over a sustained period, the economy fully reopens with safety precautions continuing. Conventions, festivals and large events are permitted, and all businesses, schools and places of recreation can open with new safety guidance and procedures in place reflecting the lessons learned during the COVID-19 pandemic.

Until COVID-19 is defeated, this plan also recognizes that just as health metrics will tell us it is safe to move forward, health metrics may also tell us to return to a prior phase. With a vaccine or highly effective treatment not yet available, IDPH will be closely monitoring key metrics to immediately identify trends in cases and hospitalizations to determine whether a return to a prior phase may become necessary.

All public health criteria included in this document are subject to change. As research and data on this novel coronavirus continue to develop, this plan can and will be updated to reflect the latest science and data.

RESTORE ILLINOIS HEALTH REGIONS



- NORTHEAST
- NORTH-CENTRAL
- CENTRAL
- SOUTHERN

Phase 1: Rapid Spread

WHAT THIS PHASE LOOKS LIKE

COVID-19 is rapidly spreading. The number of COVID-19 positive patients in the hospital, in ICU beds, and on ventilators is increasing. The public health response relies on dramatic mitigation measures, like stay at home orders and social distancing, to slow the spread of the virus and prevent a surge that overwhelms the health care system. With a Stay at Home order in place, only essential businesses are in operation and activities outside of the home are limited to essentials, like grocery shopping.

WHAT'S OPEN?

Gatherings: Essential gatherings, such as religious services, of 10 or fewer allowed; No non-essential gatherings of any size

Travel: Non-essential travel discouraged

Health care: Emergency procedures and COVID-19 care only

Education and child care: Remote learning in P-12 schools and higher education; Child care in groups of 10 or fewer for essential workers

Outdoor recreation: Walking, hiking and biking permitted; State parks closed

Businesses:

- **Manufacturing:** Essential manufacturing only
- **"Non-essential" businesses:** Employees of "non-essential" businesses are required to work from home except for Minimum Basic Operations
- **Bars and restaurants:** Open for delivery, pickup and drive-through only
- **Entertainment:** Closed
- **Personal care services and health clubs:** Closed
- **Retail:** Essential stores are open with strict restrictions; Non-essential stores are closed

HOW WE MOVE TO THE NEXT PHASE

Cases and Capacity:

- Slowing of new case growth
- Availability of surge capacity in adult medical and surgical beds, ICU beds, and ventilators

Testing:

- Ability to perform 10,000 tests per day statewide
- Testing available in region for any symptomatic health care workers and first responders

Phase 2: Flattening

WHAT THIS PHASE LOOKS LIKE

The rise in the rate of infection is beginning to slow and stabilize. Hospitalizations and ICU bed usage continue to increase but are flattening, and hospital capacity remains stable. Face coverings must always be worn when social distancing is not possible. Testing capacity increases and tracing programs are put in place to contain outbreaks and limit the spread.

WHAT'S OPEN

Gatherings: Essential gatherings, such as religious services, of 10 or fewer allowed; No non-essential gatherings

Travel: Non-essential travel discouraged

Health care: Emergency and COVID-19 care continue; Elective procedures allowed once IDPH criteria met

Education and child care: Remote learning in P-12 schools and higher education; Child care in groups of 10 or fewer for essential workers

Outdoor recreation: Walking, hiking, and biking permitted; Select state parks open; Boating and fishing permitted; Golf courses open; All with IDPH approved safety guidance

Businesses:

- **Manufacturing:** Essential manufacturing only
- **"Non-essential" businesses:** Employees of "non-essential" businesses are required to work from home except for Minimum Basic Operations
- **Bars and restaurants:** Open for delivery, pickup, and drive through only
- **Personal care services and health clubs:** Closed
- **Retail:** Essential stores are open with restrictions; Non-essential stores open for delivery and curbside pickup

HOW WE MOVE TO THE NEXT PHASE

Cases and Capacity: The determination of moving from Phase 2 to Phase 3 will be driven by the COVID-19 positivity rate in each region and measures of maintaining regional hospital surge capacity. This data will be tracked from the time a region enters Phase 2, onwards.

- At or under a 20 percent positivity rate and increasing no more than 10 percentage points over a 14-day period, AND
- No overall increase (i.e. stability or decrease) in hospital admissions for COVID-19-like illness for 28 days, AND
- Available surge capacity of at least 14 percent of ICU beds, medical and surgical beds, and ventilators

Testing: Testing available for all patients, health care workers, first responders, people with underlying conditions, and residents and staff in congregate living facilities

Tracing: Begin contact tracing and monitoring within 24 hours of diagnosis

WHAT COULD CAUSE US TO MOVE BACK

IDPH will closely monitor data and receive on-the-ground feedback from local health departments and regional healthcare councils and will recommend moving back to the previous phase based on the following factors:

- Sustained rise in positivity rate
- Sustained increase in hospital admissions for COVID-19 like illness
- Reduction in hospital capacity threatening surge capabilities
- Significant outbreak in the region that threatens the health of the region

Phase 3: Recovery

WHAT THIS PHASE LOOKS LIKE

The rate of infection among those surveillance tested is stable or declining. COVID-19-related hospitalizations and ICU capacity remains stable or is decreasing. Face coverings in public continue to be required. Gatherings of 10 people or fewer for any reason can resume. Select industries can begin returning to workplaces with social distancing and sanitization practices in place. Retail establishments reopen with limited capacity, and select categories of personal care establishments can also begin to reopen with social distancing guidelines and personal protective equipment. Robust testing is available along with contact tracing to limit spread and closely monitor the trend of new cases.

WHAT'S OPEN

Gatherings: All gatherings of 10 people or fewer are allowed with this limit subject to change based on latest data & guidance

Travel: Travel should follow IDPH and CDC approved guidance

Health Care: All health care providers are open with DPH approved safety guidance

Education and child care: Remote learning in P-12 schools and higher education; Limited child care and summer programs open with IDPH approved safety guidance

Outdoor recreation: State parks open; Activities permitted in groups of 10 or fewer with social distancing

Businesses:

- **Manufacturing:** Non-essential manufacturing that can safely operate with social distancing can reopen with IDPH approved safety guidance
- **"Non-essential" businesses:** Employees of "non-essential" businesses are allowed to return to work with IDPH approved safety guidance depending upon risk level, tele-work strongly encouraged wherever possible; Employers are encouraged to provide accommodations for COVID-19-vulnerable employees
- **Bars and restaurants:** Open for delivery, pickup, and drive through only
- **Personal care services and health clubs:** Barbershops and salons open with IDPH approved safety guidance; Health and fitness clubs can provide outdoor classes and one-on-one personal training with IDPH approved safety guidance
- **Retail:** Open with capacity limits and IDPH approved safety guidance, including face coverings

HOW WE MOVE TO THE NEXT PHASE

Cases and Capacity: The determination of moving from Phase 3 to Phase 4 will be driven by the COVID-19 positivity rate in each region and measures of maintaining regional hospital surge capacity. This data will be tracked from the time a region enters Phase 3, onwards.

- At or under a 20 percent positivity rate and increasing no more than 10 percentage points over a 14-day period, AND
- No overall increase (i.e. stability or decrease) in hospital admissions for COVID-19-like illness for 28 days, AND
- Available surge capacity of at least 14 percent of ICU beds, medical and surgical beds, and ventilators

Testing: Testing available in region regardless of symptoms or risk factors

Tracing: Begin contact tracing and monitoring within 24 hours of diagnosis for more than 90% of cases in region

WHAT COULD CAUSE US TO MOVE BACK

IDPH will closely monitor data and receive on-the-ground feedback from local health departments and regional healthcare councils and will recommend moving back to the previous phase based on the following factors:

- Sustained rise in positivity rate
- Sustained increase in hospital admissions for COVID-19 like illness
- Reduction in hospital capacity threatening surge capabilities
- Significant outbreak in the region that threatens the health of the region

Phase 4: Revitalization

WHAT THIS PHASE LOOKS LIKE

There is a continued decline in the rate of infection in new COVID-19 cases. Hospitals have capacity and can quickly adapt for a surge of new cases in their communities. Additional measures can be carefully lifted allowing for schools and child care programs to reopen with social distancing policies in place. Restaurants can open with limited capacity and following strict public health procedures, including personal protective equipment for employees. Gatherings with 50 people or fewer will be permitted. Testing is widely available, and tracing is commonplace.

WHAT'S OPEN

Gatherings: Gatherings of 50 people or fewer are allowed with this limit subject to change based on latest data and guidance

Travel: Travel should follow IDPH and CDC approved guidance

Health care: All health care providers are open

Education and child care: P-12 schools, higher education, all summer programs, and child care open with IDPH approved safety guidance

Outdoor Recreation: All outdoor recreation allowed

Businesses:

- **Manufacturing:** All manufacturing open with IDPH approved safety guidance
- **"Non-essential" businesses:** All employees return to work with IDPH approved safety guidance; Employers are encouraged to provide accommodations for COVID-19-vulnerable employees
- **Bars and restaurants:** Open with capacity limits and IDPH approved safety guidance
- **Personal care services and health clubs:** All barbershops, salons, spas and health and fitness clubs open with capacity limits and IDPH approved safety guidance
- **Entertainment:** Cinema and theaters open with capacity limits and IDPH approved safety guidance
- **Retail:** Open with capacity limits and IDPH approved safety guidance

HOW WE MOVE TO THE NEXT PHASE

Post-pandemic: Vaccine, effective and widely available treatment, or the elimination of new cases over a sustained period of time through herd immunity or other factors.

WHAT COULD CAUSE US TO MOVE BACK

IDPH will closely monitor data and receive on-the-ground feedback from local health departments and regional healthcare councils and will recommend moving back to the previous phase based on the following factors:

- Sustained rise in positivity rate
- Sustained increase in hospital admissions for COVID-19 like illness
- Reduction in hospital capacity threatening surge capabilities
- Significant outbreak in the region that threatens the health of the region

Phase 5: Illinois Restored

WHAT THIS PHASE LOOKS LIKE

Testing, tracing and treatment are widely available throughout the state. Either a vaccine is developed to prevent additional spread of COVID-19, a treatment option is readily available that ensures health care capacity is no longer a concern, or there are no new cases over a sustained period. All sectors of the economy reopen with new health and hygiene practices permanently in place. Large gatherings of all sizes can resume. Public health experts focus on lessons learned and building out the public health infrastructure needed to meet and overcome future challenges. Heath care equity is made a priority to improve health outcomes and ensure vulnerable communities receive the quality care they deserve.

WHAT'S OPEN

- All sectors of the economy reopen with businesses, schools, and recreation resuming normal operations with new safety guidance and procedures.
- Conventions, festivals, and large events can take place.

F

Hand delivered

Pastor Reverend Cristian Ionescu
Elim Romanian Pentecostal Church
4850 N. Bernard Street
Chicago, IL 60625

May 22, 2020

Dear Pastor Reverend Cristian Ionescu:

On May 15, 2020, I directed that you not hold gatherings at **4850 N. Bernard Street** until such time as the data and guidance from public health officials indicates that it is safe to do so. Contrary to the State's "Stay at Home" Order (Executive Order) and my directive, you held services on May 17, 2020 at **4850 N. Bernard Street.** You were reported to have gatherings far in excess of ten individuals allowed by the Executive Order. As a result, you were issued an Administrative Notice of Violation by the Chicago Police Department.

As you may know, here in Chicago, we have lost three faith leaders to Coronavirus Disease 2019 (COVID-19) and many more congregants who have been linked to churches with clusters outbreaks. In February 2020, the CDC reported[1] that one COVID-19 positive individual experiencing mild respiratory symptoms, unknowingly spread COVID to 16 people, ages 5 to 86 years, after attending a church funeral and a birthday party. Three of those individuals tragically died from the disease.

On a national level, just this week, the Center for Disease Control and Prevention's (CDC's) Morbidity and Mortality Weekly Report (MMWR) described a large outbreak of COVID19, including several deaths, among a church congregation in Arkansas.[2] The CDC reported that among 92 attendees at a rural Arkansas church over just a five-day period, from March 6–11, 35 (38%) developed laboratory-confirmed COVID-19, and three persons died. This occurred as a result of just two individuals (index cases) participating in church events several days *before* they developed symptoms of nonspecific respiratory symptoms and fever. This outbreak highlights the likelihood for widespread transmission of COVID-19 at group gatherings, even before any participants show symptoms. It further emphasizes the paramount

[1] "Community Transmission of SARS-CoV-2 at Two Family Gatherings — Chicago, Illinois, February–March 2020."
www.cdc.gov/mmwr/volumes/69/wr/mm6915e1.htm?s_cid=mm6915e1_w

[2] "High COVID-19 Attack Rate Among Attendees at Events at a Church — Arkansas, March 2020."
https://www.cdc.gov/mmwr/volumes/69/wr/mm6920e2.htm?s_cid=mm6920e2_w.

importance of adhering to guidance from the Chicago Department of Public Health (CDPH) and the CDC, including avoiding any gatherings of groups of more than 10 individuals.

As I previously provided, the Governor's Executive Order has the force of law and is enforceable by law enforcement agencies in Chicago and throughout the state. CDPH has the authority, pursuant to the Department of Public Health Act (20 ILCS 2305/1-1.1 et seq.), the Civil Administrative Code of Illinois (Department of Public Health Powers and Duties Law) (20 ILCS 2310/1 et seq.) and the Control of Communicable Diseases Code (77 Ill. Adm. Code 690), to order that a location be closed and made off limits to the public "to prevent the probable spread of a dangerously contagious or infectious disease… until such time as the condition can be corrected or the danger to the public health eliminated or reduced in such a manner that no substantial danger to the public's health any longer exists." 20 ILCS 2305/2(b). In addition, as the Health Commissioner, I have the power and duty "to cause all nuisances affecting the health of the public to be abated with all reasonable promptness," and general police powers "to correct, by whatever means are necessary, any health hazard that presents an immediate risk to the life or health of one or more citizens of the City of Chicago." *See* Chi. Muni. Code § 2-112-160 and § 2-112-080.

Please be advised, any continued operation of **4850 N. Bernard Street** in defiance of my directive and the Executive Order is hereby declared a public health nuisance. Pursuant to the Municipal Code of Chicago, I am authorized to seek to enjoin such nuisance or to cause the same to be summarily abated in such manner as I may direct pursuant to the applicable provisions of the Code. *See* Chi. Muni. Code § 7-28-020. Through this Notice, I am exercising my authority to order the abatement of the public health nuisance at **4850 N. Bernard Street** which may contribute to the continued spread of COVID19 by failing to comply with restrictions set out in the Executive Order. *See* Chi. Muni. Code § 7-28-010.

This **Notice to Abate** is being served upon you as the leader of your congregation. Given the heightened risk of spread of COVID19 in gatherings of 10 of more, you are hereby ordered to abate immediately. You are prohibited from having any in-person gatherings contrary to the Executive Order. You are required to cancel all gatherings contrary to the law. If you continue to host gatherings in violation of the Executive Order, the City of Chicago will take all necessary measures to abate the nuisance to ensure the safety of the City's residents. Please be further advised, pursuant to section 7-28-010 of the Chicago Municipal Code:

> "If the person so notified shall neglects, refuses or otherwise fails to comply with any of the requirements of such order within the time specified in the notice required under this section, such person shall be fined not less than $250.00 nor more than $500.00 for each such offense. Each day that a violation continues shall constitute a separate and distinct offense to which a separate fine shall apply." * * * "In addition to any fine or other penalty provided by law, the person who created, continued or suffered the nuisance to exist shall be liable to the city for any and all costs and expenses incurred by the city in abating the nuisance, plus a penalty of up to three times the amount of the costs and expenses incurred by the city." Chi. Muni. Code § 7-28-010.

Gatherings held contrary to the Executive Order can result in the unintentional spread of the disease to some of our most vulnerable residents. I appeal to you as a leader in your community and remain hopeful that you will work with me for the health, safety, and welfare of all Chicagoans. If you continue to operate in defiance of the Executive Order, the City will pursue all available legal remedies, including those outlined above. Any future gatherings conducted contrary to the Order will be considered a failure to abate and the City will take steps necessary to abate, including Summary Abatement.

Sincerely,

Allison Arwady, MD
Commissioner
Chicago Department of Public Health

G

IN THE NAME AND BY THE AUTHORITY OF THE
☐ The City or Village of Niles, Illinois, a Municipal Corporation,
☐ 2nd Municipal District of the Circuit Court of Cook County, Skokie
PLANTIFF VS.

2020-14413
1ST OFFENSE

COMPLIANCE VIOLATION NUMBER

PO- 125484

M 15110-Y

[redacted]

COURT KEY

STAR # 14

HEIGHT AND WEIGHT 507 130

DAY OF WEEK / MO/DAY/YR	TIME	Did then drive and operate a certain motor vehicle, to wit, a	MAKE	YEAR	☐ AUTO ☐ TRUCK ☐ BUS ☐ TAXI ☐ M/CYCLE	☐ MODEL ☐ COLOR
ON SUN 5/24/20	AT 10:20 AM M		—	—		

UPON A PUBLIC HIGHWAY OF THIS STATE, TO WIT,	BOUND ON	FROM / AT	EMPLOYER OR SCHOOL
		AT 7280 CALDWELL	—

SITUATED WITH THE TOWNSHIP, TOWN OR CITY AFORESAID IN COOK COUNTY, ILLINOIS, AND DID THEN AND THERE UNLAWFULLY VIOLATE SECTION 66-77

☐ (T.R. ORDINANCE) ☐ (VEHICLE CODE) ☐ (OTHER)

STATE LICENSE PLATE NO. —

By (Describe) DISORDERLY CONDUCT 1ST OFFENSE

☐ COM. MTR. VEH ☐ PLACARDED HAZ. MAT. VEH.

THIS COMPLAINANT FURTHER STATES THAT HE HAS JUST AND REASONABLE GROUNDS TO BELIEVE AND DOES BELIEVE THAT THE PERSON NAMED ABOVE COMMITTED THE OFFENSE HEREIN SET FORTH, CONTRARY TO THE ORDINANCES OF THE VILLAGE OR CITY AFORESAID.

You may, BEFORE DUE DATE:

DUE DATE 7-14-20

(1) Mail the amount indicated at the right in this envelope
(2) Pay in person at location shown on the reverse side or
(3) Appear in person at location shown on the reverse side to request a hearing JULY 14TH 9AM COURT

☒ COURT APPEARANCE IS MANDATORY (YOU MUST REQUEST A HEARING)

Officer [redacted] Star No. 14

X WITHOUT ADMITTING GUILT I ACKNOWLEDGE RECEIPT OF THIS CITATION

Penalty for this violation if Payment is

Received BEFORE DUE DATE: | NOT Received BEFORE DUE DATE

Mail Payments to: NILES VIOLATION BUREAU, 7000 W. Touhy Ave., Niles, IL 60714

IN THE NAME AND BY THE AUTHORITY OF THE
☐ The City or Village of Niles, Illinois, a Municipal Corporation,
☐ 2nd Municipal District of the Circuit Court of Cook County, Skokie
PLANTIFF VS.

2020-14413
2ND OFFENSE

COMPLIANCE VIOLATION NUMBER

PO- 125485

M 15110-Y

[redacted]

COURT KEY

STAR # 14

HEIGHT AND WEIGHT 507 130

DAY OF WEEK / MO/DAY/YR	TIME	Did then drive and operate a certain motor vehicle, to wit, a	MAKE	YEAR	☐ AUTO ☐ TRUCK ☐ BUS ☐ TAXI ☐ M/CYCLE	☐ MODEL ☐ COLOR
ON SUN 5/24/20	AT 5:25 PM M		—	—		

UPON A PUBLIC HIGHWAY OF THIS STATE, TO WIT,	BOUND ON	FROM / AT	EMPLOYER OR SCHOOL
		AT 7280 CALDWELL	—

SITUATED WITH THE TOWNSHIP, TOWN OR CITY AFORESAID IN COOK COUNTY, ILLINOIS, AND DID THEN AND THERE UNLAWFULLY VIOLATE SECTION 66-77

☐ (T.R. ORDINANCE) ☐ (VEHICLE CODE) ☐ (OTHER)

STATE LICENSE PLATE NO.

By (Describe) DISORDERLY CONDUCT 2ND OFFENSE

☐ COM. MTR. VEH ☐ PLACARDED HAZ. MAT. VEH.

THIS COMPLAINANT FURTHER STATES THAT HE HAS JUST AND REASONABLE GROUNDS TO BELIEVE AND DOES BELIEVE THAT THE PERSON NAMED ABOVE COMMITTED THE OFFENSE HEREIN SET FORTH, CONTRARY TO THE ORDINANCES OF THE VILLAGE OR CITY AFORESAID.

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☒ COURT APPEARANCE IS MANDATORY (YOU MUST REQUEST A HEARING)

Officer [redacted] Star No. 14

X WITHOUT ADMITTING GUILT I ACKNOWLEDGE RECEIPT OF THIS CITATION

Penalty for this violation if Payment is

Received BEFORE DUE DATE: | NOT Received BEFORE DUE DATE

Mail Payments to: NILES VIOLATION BUREAU, 7000 W. Touhy Ave., Niles, IL 60714