

No. _____

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

CALVARY CHAPEL OF BANGOR,

Petitioner

v.

JANET MILLS, in her official capacity as Governor
of the State of Maine

Respondent

*On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the First Circuit*

APPENDIX OF EXHIBITS

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United States Court of Appeals For the First Circuit

No. 20-1507

CALVARY CHAPEL OF BANGOR,

Plaintiff, Appellant,

v.

JANET T. MILLS, in her official capacity as Governor of the
State of Maine,

Defendant, Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

[Hon. Nancy Torresen, U.S. District Judge]

Before

Howard, Chief Judge,
Selya and Barron, Circuit Judges.

Roger K. Gannam, with whom Mathew D. Staver, Horatio G. Mihet,
Daniel J. Schmid, and Liberty Counsel were on brief, for appellant.

Stephen M. Crampton and Thomas More Society on brief for
Emmanuel Bible Baptist Church, Grace Community Chapel, First
Church of Waterville, New Hope Evangelical Free Church, Athens
Church of the Open Bible, Faith Bible Church, Cherryfield Church
of the Open Bible, Calvary Chapel St. Croix Valley, Life Community
Church, Hosanna Church, First Baptist Church of Waldoboro,
Guilford Christian Fellowship, The Rock Church of Bangor, New Hope
Evangelical Free Church, Charleston Church, Centerpoint Community
Church, Clinton Baptist Church, St. Albans Union Church, New
Beginnings Church of God, Machias Valley Baptist, and Stetson Union
Church, amici curiae.

Stephen C. Whiting and The Whiting Law Firm on brief for Adrienne Bennett, amicus curiae.

Christopher C. Taub, Deputy Attorney General, with whom Aaron M. Frey, Attorney General, and Sarah A. Forster, Assistant Attorney General, were on brief, for appellee.

Alex J. Luchenitser, Richard B. Katskee, Kenneth D. Upton, Jr., Sarah R. Goetz, David A. Soley, James G. Monteleone, and Bernstein Shur on brief for Americans United for Separation of Church and State, amicus curiae.

Alex J. Luchenitser, Richard B. Katskee, Kenneth D. Upton, Jr., Sarah R. Goetz, David A. Soley, James G. Monteleone, Bernstein Shur, Steven M. Freeman, David L. Barkey, Amy E. Feinman, Jeffrey I. Pasek, and Cozen O'Connor on brief for Americans United for Separation of Church and State, Anti-Defamation League, Bend the Arc, Central Conference of American Rabbis, Interfaith Alliance Foundation, Jewish Social Policy Action Network, Maine Conference, United Church of Christ, Men of Reform Judaism, Methodist Federation for Social Action, National Council of the Churches of Christ in the USA, Reconstructionist Rabbinical Association, Union for Reform Judaism, and Women of Reform Judaism, amici curiae.

December 22, 2020

SELYA, Circuit Judge. This interlocutory appeal arises out of the chaotic early weeks of the COVID-19 pandemic. Defendant-appellee Janet T. Mills, the Governor of Maine, responded to the growing threat of contagion by issuing a series of executive orders limiting all "non-essential" activities and gatherings, arguably including those by religious organizations. In the court below, plaintiff-appellant Calvary Chapel of Bangor (the Chapel) contended that these orders violated several federal and state constitutional and statutory provisions, including, principally, the Free Speech, Free Exercise, Assembly, and Establishment protections of the First Amendment. See U.S. Const. amend. I. The district court found the Chapel's contentions wanting and refused its request for a temporary restraining order. See Calvary Chapel of Bangor v. Mills, 459 F. Supp. 3d 273, 283-288 (D. Me. 2020).

In this venue, the Chapel renews its substantive claims and asserts that the district court abused its discretion by denying the Chapel's request for immediate relief. But a jurisdictional barrier looms at the threshold, which prevents us from reaching the substance of the Chapel's contentions. Consequently, we dismiss the appeal without prejudice for lack of appellate jurisdiction.

I. BACKGROUND

We draw the facts from the limited record available in the district court, including the Chapel's verified complaint and accompanying motion, the Governor's response, and the various exhibits proffered by the parties. The Chapel is a nonprofit religious organization that operates an approximately 10,000-square-foot church facility in Orrington, Maine. By all accounts, the onset of the COVID-19 pandemic in early 2020 significantly disrupted the Chapel's usual routine of staging weekly worship services and other in-person activities for its congregants.

COVID-19 is a respiratory illness caused by a novel (and highly transmissible) coronavirus known as SARS-CoV-2. The first outbreak of the disease was identified in Wuhan City, China, during December of 2019. The virus spread worldwide with alarming speed.

The United States Department of Health and Human Services declared the coronavirus a national public health emergency on January 31, 2020, retroactive to January 27. Governor Mills proclaimed a corresponding state of civil emergency in Maine on March 15.

The Governor's emergency proclamation was the first in a rapid-fire series of executive actions designed to prevent and/or slow the spread of the virus among Maine residents. Early on, in-person gatherings (particularly those involving dense crowds or extended exposure to other persons) were identified as a major

vector of transmission. Citing the need to limit the propagation of the virus through such gatherings, Governor Mills issued a series of four executive orders between March 18 and April 29, 2020, which imposed emergency regulations on assembly within the state. We chronicle them briefly:

- Executive Order 14, issued on March 18, prohibited gatherings of more than ten people for any "social, personal, [or] discretionary events," including "faith-based events."
- Executive Order 19, issued on March 24, authorized "Essential Businesses and Operations" to exceed the ten-person gathering limit; subject, however, to social distancing and sanitation guidelines.
- Executive Order 28, issued on March 31, directed all persons residing in Maine to "stay at their homes or places of residence," except as needed to engage in "essential" employment or activities. This exception captured tasks deemed critical for resident health and safety, including (as illustrated in the order) accessing childcare, shopping for household supplies, and obtaining physical or behavioral medical treatment.
- Executive Order 49, issued on April 29, provided for implementation of Governor Mills's plan to

restart Maine's economy – a staggered (four-phase) relaxation of the earlier restrictions.

For ease in exposition, we refer to this quartet of executive orders as the "gathering orders" and to the April 29 order as promulgating "the re-opening plan."

The dispute between the parties erupted at 8:30 p.m. on May 4, at which time the Chapel e-mailed a communique to Governor Mills, insisting that the gathering orders be revoked by 1:00 p.m. the following day. Receiving no response within the stipulated time frame, the Chapel sued Governor Mills in Maine's federal district court on May 5. Its verified complaint alleged that the gathering orders transgressed ten different provisions of federal and state law, both constitutional and statutory.¹ On the heels of this filing, the Chapel moved for a temporary restraining order or, in the alternative, a preliminary injunction.

Two days later, the district court convened a telephone conference with the parties. We have no transcript of that

¹ The Chapel claimed violations of the Free Exercise Clause of the First Amendment (Count I); the First Amendment right to peaceful assembly (Count II); the Free Speech Clause of the First Amendment (Count III); the Establishment Clause of the First Amendment (Count IV); the Equal Protection Clause of the Fourteenth Amendment (Count V); the Guarantee Clause of Article IV (Count VI); the Maine Constitution's guarantee of free exercise of religion (Count VII); the Maine Constitution's freedom of speech guarantee (Count VIII); legislative prerogatives (Count IX); and the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc-2000cc-5 (Count X).

conference, but Governor Mills apparently agreed to file an expedited response to the Chapel's request for some sort of interim injunctive relief. The Governor submitted an opposition to the Chapel's motion at the close of business the following day. On May 9, the district court issued a thoughtful rescript, in which it denied the Chapel's request for a temporary restraining order. See Calvary Chapel, 459 F. Supp. 3d at 288. The Chapel did not press for a hearing on preliminary injunction but, rather, filed this appeal.

II. ANALYSIS

"[F]ederal courts have an omnipresent duty to take notice of jurisdictional defects, on their own initiative if necessary." Whitfield v. Mun. of Fajardo, 564 F.3d 40, 44 (1st Cir. 2009). We start – and end – there.

The denial of a temporary restraining order is not ordinarily appealable, save for certain "narrow exceptions." Mass. Air Pollution & Noise Abatement Comm. v. Brinegar, 499 F.2d 125, 126 (1st Cir. 1974). The parties – who agree on little else – urge us to find that the district court's denial of the temporary restraining order in this case qualifies under one such exception. In other words, they stand united in asking us to hold that we have appellate jurisdiction. We are not so sanguine.

It is common ground that subject matter jurisdiction cannot be conferred on a federal court by the parties' agreement

alone. See Espinal-Domínguez v. Puerto Rico, 352 F.3d 490, 495 (1st Cir. 2003). We must, therefore, mount an independent inquiry into the existence vel non of appellate jurisdiction.

As a general rule, the jurisdiction of the court of appeals is limited to "appeals from . . . final decisions of the district courts." 28 U.S.C. § 1291. Of course, this general rule – like most general rules – admits of exceptions. As relevant here, Congress has fashioned an exception that gives the courts of appeals immediate appellate jurisdiction over appeals from non-final district court orders "granting, continuing, modifying, refusing or dissolving injunctions." Id. § 1292(a)(1). The parties identify this exception as the hook upon which appellate jurisdiction may be hung.

This is a heavy lift: the denial of a temporary restraining order does not normally fall within the compass of section 1292(a)(1). See S.F. Real Est. Inv'rs. v. Real Est. Inv. Tr. of Am., 692 F.2d 814, 816 (1st Cir. 1982) (explaining that "the term 'injunction' is understood not to encompass temporary restraining orders"). Even so, if an appellant can make a three-part showing – demonstrating that the refusal of a temporary restraining order had the practical effect of denying injunctive relief, will likely cause serious (if not irreparable) harm, and can only be effectually challenged by means of an immediate appeal – section 1292(a)(1) may be invoked. See Watchtower Bible & Tract

Soc'y of N.Y., Inc. v. Colombani, 712 F.3d 6, 12 (1st Cir. 2013); Fideicomiso De La Tierra Del Caño Martín Peña v. Fortuño, 582 F.3d 131, 133 (1st Cir. 2009) (per curiam). We examine the Chapel's showing on each of these three parts separately, mindful that it is the Chapel's burden to carry the devoir of persuasion on each of them and that a failure to do so on any one part is fatal. See Watchtower Bible, 712 F.3d at 12; Nwaubani v. Grossman, 806 F.3d 677, 680 (1st Cir. 2015).

The Chapel contends that the district court's decision to deny it a temporary restraining order functionally precluded any possibility of a preliminary injunction. This contention elevates hope over reason.

We previously have held that we will deem a ruling to have had the practical effect of denying injunctive relief either if it was issued after a full adversarial hearing or if no further interlocutory relief is available in the absence of immediate review. See Fideicomiso De La Tierra, 582 F.3d at 133. It strains credulity to call what happened below a "full adversarial hearing." The district court heard the parties only in a telephone conference of indeterminate length; no verbatim record was kept of what was said during the conference; no discovery was conducted in advance of the conference; no witnesses were called during the conference; and the court did not ask to hear from the Chapel after the Governor filed her opposition. To say that what happened was a "full"

adversarial hearing would be like saying that a CliffsNotes version of War and Peace was a "full" account of Tolstoy's original work. What walks like a duck and squawks like a duck usually is a duck, and we see no reason to disregard the district court's unambiguous description of itself as adjudicating only the Chapel's motion for a temporary restraining order.² See, e.g., Calvary Chapel, 459 F. Supp. 3d at 277 (describing issue sub judice as "[the Chapel's] Motion for Temporary Restraining Order, which seeks emergency relief before Sunday, May 10, 2020"). Indeed, we think that the district court's cautious choice to limit its order solely to the denial of a temporary restraint accurately reflected the absence of a full adversarial hearing.

In addition, the sparseness of the record argues powerfully in favor of a finding that pathways for further interlocutory relief remained available in the district court. See, e.g., id. at 281 n.11 (noting that record lacks "any information about the number of members Calvary Chapel has or the number of members who regularly attend its worship services"); id. at 277 n.2 (declining to consider amicus brief "[b]ecause of the tight timelines, and because [the Chapel] has not had time to file

² Even if these circumstances qualified as a close call – and we do not believe that they do – our settled practice when confronted with borderline cases is to "resolve[] against immediate appealability." Morales Feliciano v. Rullan, 303 F.3d 1, 7 (1st Cir. 2002).

any opposition to the amicus motion"); id. at 287 (noting that the Chapel failed to develop its argument "that the orders foster government entanglement with religion"). These comments and gaps in the record suggest that a preliminary injunction hearing would not have been either a redundancy or an exercise in futility. And whether or not a better-informed proceeding would have yielded a different outcome – a matter that is left entirely to speculation on this truncated record – the intervening development of the record would have facilitated subsequent appellate review. As matters now stand, the parties dispute key factual questions – including whether Maine classified religious gatherings as essential activity for purposes of Executive Order 28 or would have permitted gatherings at essential businesses – that the district court has not yet assessed. Finally, the denial of a preliminary injunction would have been immediately appealable under section 1292(a)(1), thus affording the Chapel an avenue for timely appellate review.

To say more about the first requirement for immediate appealability would be to paint the lily. The record makes manifest that this case, in its present posture, does not display the criteria that we previously have identified as characterizing a de facto denial of injunctive relief. See Fideicomiso De La Tierra, 582 F.3d at 133.

The fact that the Chapel stumbles at the first step of the tripartite inquiry is sufficient to defeat its claim of appellate jurisdiction. See Watchtower Bible, 712 F.3d at 12; Nwaubani, 806 F.3d at 680. For the sake of completeness, though, we note that the remaining requirements for appealability are not satisfied here.

To begin, we do not believe that the lack of immediate appealability can be said to cause serious harm. Although we do not gainsay that even a temporary restriction of traditional in-person worship opportunities may represent a tangible hardship for religious organizations and their members, the seriousness of any given harm can only be assessed in context. Jumping from a second-story window undoubtedly entails a risk of serious harm, but the harm may seem less serious if the jumper's only other choice is to remain in a burning building. Here, the need for context requires that a significant countervailing factor must be included in the mix: the harm of which the Chapel complains has its origins in the extraordinary epidemiological crisis that has engulfed Maine and every other part of the United States. This countervailing factor necessarily informs our assessment of the severity of the harm that the Chapel faced as a result of the district court's denial of its motion for a temporary restraining order. See Carson v. Am. Brands, Inc., 450 U.S. 79, 86 (1981).

Let us be perfectly clear: public officials do not have free rein to curtail individual constitutional liberties during a public health emergency. See Roman Catholic Diocese of Brooklyn v. Cuomo, No. 20A87, 2020 WL 6948354, at *3 (U.S. Nov. 25, 2020) (per curiam) (stating that "even in a pandemic, the Constitution cannot be put away and forgotten"); Jacobson v. Massachusetts, 197 U.S. 11, 31 (1905) (discussing courts' duty to intervene when legislative action lacks "real or substantial relation" to public health outcomes, or otherwise represents a "plain, palpable invasion" of constitutional rights). Even so, the public interest demands that public officials be accorded considerable latitude to grapple with the "dynamic and fact-intensive" considerations involved in mounting an effective response. S. Bay United Pentecostal Church v. Newsom, 140 S. Ct. 1613, 1613 (2020) (Roberts, C.J., concurring). Carefully balancing these considerations against the encroachment on the rights of the Chapel and its members, the district court determined that the gathering restrictions would not inflict irreparable harm. See Calvary Chapel, 459 F. Supp. 3d at 288.

This supportable determination helps to clarify that the absence of immediate appealability – like the denial of the temporary restraining order itself – will not cause serious harm. Given the gravity of the situation and the fact that events remained in flux, we discern no sufficient basis for finding that

the Chapel can satisfy the second of the three requirements for immediate appealability of a temporary restraining order. In this regard, we deem it important that the Chapel retained other means to organize worship services for its congregants, including the sponsorship of online worship services, the holding of drive-in services, and the hosting of gatherings of ten or fewer people. See id. at 285. While these options are less than ideal, their availability mitigated the harm to the Chapel and its worship community during the short run.

Nor has the Chapel demonstrated that effective appellate review of the constitutionality of the gathering orders, as those orders affect the Chapel, will be thwarted if the Chapel's ability to challenge them is confined to traditional litigation channels. See, e.g., Navarro-Ayala v. Hernandez-Colon, 956 F.2d 348, 350 (1st Cir. 1992). We recognize, of course, that idiosyncratic circumstances can render an attempted challenge to an interlocutory order "insusceptible of effective vindication" when subject to appreciable delay. Quiros Lopez v. Unanue Casal (In re Unanue Casal), 998 F.2d 28, 32 (1st Cir. 1993). Examples of such circumstances include an interlocutory order that would cause "trade secrets [to] be revealed," Chronicle Publ'g Co. v. Hantzis, 902 F.2d 1028, 1031 (1st Cir. 1990), or one that would "irretrievably" deprive a party of "an important tactical

litigation advantage," Kartell v. Blue Shield of Mass., Inc., 687 F.2d 543, 552 (1st Cir. 1982).

The case at hand is woven from quite different cloth. The district court's denial of the temporary restraining order did not herald an irreversible or meaningful shift in the relationship between the parties. Instead, the denial merely kept in place the same gathering restrictions under which the Chapel already was operating. Cf. Cobell v. Kempthorne, 455 F.3d 317, 322-23 (D.C. Cir. 2006) (vacating injunctive order because it imposed new obligations on a litigant that "[were] not correctable at the end of the litigation").

Here, moreover, the effect of the denial was of modest temporal duration. The Chapel had available to it the option of pressing for a hearing on preliminary injunction – and there is every reason to believe, especially given the district court's prompt attention to the Chapel's request for a temporary restraining order – that such a hearing would have been held expeditiously. Had the Chapel prevailed in its quest for a preliminary injunction, the harm of which it complains would have been abated; and had the Chapel not prevailed, the order denying a preliminary injunction would have been immediately reviewable. See 28 U.S.C. § 1292(a)(1). Either way, the Chapel has failed to make the third showing required for immediate appealability of the denial of a temporary restraining order.

We need go no further. "Federal courts are courts of limited jurisdiction." Rhode Island v. EPA, 378 F.3d 19, 22 (1st Cir. 2004). Thus, jurisdictional boundaries must be scrupulously observed. See Sierra Club v. Marsh, 907 F.2d 210, 214 (1st Cir. 1990); In re Recticel Foam Corp., 859 F.2d 1000, 1006 (1st Cir. 1988). As a general rule, the denial of a temporary restraining order is not immediately appealable, see S.F. Real Est. Inv'rs, 692 F.2d at 816, and thus falls outside the boundaries of our appellate jurisdiction. This appeal comes within the sweep of the general rule, not within the long-odds exception to it. Although we appreciate the importance of the issues that the Chapel seeks to raise, its appeal is premature, and there is no principled way for us to reach the merits of the appeal.

III. CONCLUSION

For the reasons elucidated above, the Chapel's appeal is dismissed without prejudice for lack of appellate jurisdiction. The parties shall bear their own costs.

So Ordered.

- Concurring Opinion Follows -

BARRON, Circuit Judge, concurring in part and concurring in the judgment. I agree that the denial of the temporary restraining order in this case did not have the practical effect of denying a preliminary injunction. Because that conclusion suffices to explain why the denial of the temporary restraining order in this case is not appealable, I would not go on to address the counterfactual question of whether the denial would have been appealable if it did have the practical effect of denying a preliminary injunction. Especially when we are explaining why we lack jurisdiction over an appeal from an order denying relief from an alleged violation of constitutional rights brought about by emergency legislation, I see little reason to speak more broadly than necessary.

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United States Court of Appeals For the First Circuit

No. 20-1507

CALVARY CHAPEL OF BANGOR,

Plaintiff - Appellant,

v.

JANET MILLS, in her official capacity as Governor of the State of Maine,

Defendant - Appellee.

Before

Howard, Chief Judge,
Torruella and Thompson, Circuit Judges.

ORDER OF COURT

Entered: June 2, 2020

Plaintiff-Appellant moves, pursuant to Fed. R. App. P. 8(a), for an injunction pending appeal. After careful review of the papers and arguments of the parties, Plaintiff-Appellant's motion is **DENIED**. If the parties wish to proceed on an expedited basis, an expedited briefing schedule should be jointly proposed for the Court's review within three days of entry of this order.

By the Court:

Maria R. Hamilton, Clerk

cc:

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Charles W. Hodsdon II
Horatio Gabriel Mihet
Roger K. Gannam
Daniel Joseph Schmid

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UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

CALVARY CHAPEL OF BANGOR,)
)
Plaintiff,)
)
v.) Docket No. 1:20-cv-00156-NT
)
JANET MILLS, Governor of the State of)
Maine,)
)
Defendant.)

ORDER ON PLAINTIFF’S MOTION
FOR A TEMPORARY RESTRAINING ORDER

On Tuesday, May 5, 2020, at 9:37 p.m., Plaintiff Calvary Chapel of Bangor filed a ten-count Complaint against Janet Mills, Governor of Maine (“**Governor Mills**”), alleging that the Governor’s orders issued in response to COVID-19, which limit the size of gatherings to ten people, violate Calvary Chapel’s constitutional and statutory rights. Before the Court is the Plaintiff’s Motion for Temporary Restraining Order, which seeks emergency relief before Sunday, May 10, 2020. Motion for Temporary Restraining Order and Preliminary Injunction (“**Pl.’s Mot.**”) (ECF No. 3).

I held a brief conference with Plaintiff’s counsel on Wednesday, May 6, 2020, because the Plaintiff asserted in its complaint that Calvary Chapel’s attempts to secure relief from the State without judicial intervention had been ignored¹ and

¹ The Plaintiff’s attempts to secure relief from the State turned out to be a letter sent via email to the Governor and her counsel at 8:30 p.m. on May 4, 2020, giving the Governor until 1:00 p.m. the next day, May 5, 2020, to notify Calvary Chapel that she had rescinded her Executive Order limiting gatherings to ten people. Demand Letter (ECF No. 1-19)

attempts to notify the State would be futile before Sunday. Compl. ¶¶ 83–85 (ECF No. 1). I advised Plaintiff’s counsel that service on the Governor would not be as difficult as the Plaintiff asserted, and, at my urging, the Plaintiff was able to effect service in time for a joint telephone conference at 9:00 a.m. the next day, Thursday, May 7, 2020. The Governor agreed to provide an expedited response, which was submitted at 5:00 p.m. on Friday, May 8, 2020.² (ECF No. 23.) After considering the motion, the exhibits filed in support thereof, and the opposition to the motion filed by the Governor, I **DENY** the Plaintiff’s Motion for Temporary Restraining Order.

BACKGROUND

I. The COVID-19 Pandemic

The 2019 Novel Coronavirus (“**COVID-19**”) is a respiratory illness caused by a coronavirus, known as SARS-CoV-2. Decl. of Nirav Dinesh Shah, M.D., J.D.³ ¶ 9 (“**Shah Decl.**”) (ECF No. 20). An outbreak of COVID-19 was first identified in January of 2020 in Wuhan City, China, and it has since swept the globe. Shah Decl. ¶¶ 9, 11. As of May 7, 2020, COVID-19 has infected millions worldwide and killed 75,543 people in the United States alone. Shah Decl. ¶ 11.⁴ On January 31, 2020, the

² Around the same time that the State’s opposition was filed, the Americans United for Separation of Church and State submitted a motion for leave to file an amicus brief with an accompanying brief. (ECF Nos. 22 & 24.) Because of the tight timelines, and because the Plaintiff has not had time to file any opposition to the amicus motion, I have not considered the amicus brief.

³ Dr. Shah is the Director of the Maine Center for Disease Control and Prevention. Shah Decl. ¶ 1 (ECF No. 20).

⁴ See also World Health Organization, Coronavirus Disease 2019 Situation Report, May 6, 2020 https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200508covid-19-sitrep-109.pdf?sfvrsn=159c3dc_2 (last visited May 9, 2020).

United States Department of Health and Human Services determined that, as of January 27, 2020, the COVID-19 virus constituted a nationwide public health emergency. Shah Decl. ¶ 10. On March 11, 2020, the World Health Organization declared a global pandemic. Shah Decl. ¶ 10. On March 13, 2020, President Donald Trump declared a National Emergency.⁵

Although not everything is yet known about COVID-19, it appears to spread several ways, including: (1) through respiratory droplets produced when an infected person coughs, sneezes, or talks; (2) through close personal contact, such as touching or shaking hands; and (3) through touching an object or surface containing the virus and then touching one's mouth, nose, or eyes. Shah Decl. ¶ 13. It is known that the virus can travel up to six feet through the air, and that it can live on surfaces, such as cardboard, for up to 24 hours. Shah Decl. ¶ 14. What makes the COVID-19 virus so nefarious is its long incubation period. Shah Decl. ¶ 15. For up to 14 days, a person can be infected and spreading the virus without noticing any symptoms. Shah Decl. ¶ 15. There is currently neither a vaccine for COVID-19 nor any effective pharmaceutical treatment, and it will take considerable time—perhaps over a year—for a vaccine or treatment to be developed and widely distributed. Shah Decl. ¶ 18.

In the absence of a vaccine or other treatment, the most effective way to control the virus is to practice “social distancing,” also referred to as “physical distancing.” Shah Decl. ¶ 19. Both the federal and Maine Centers for Disease Control (“U.S. CDC

⁵ President Trump made the National Emergency retroactive to March 1, 2020. To date, all fifty states and the District of Columbia have declared emergencies.

and Maine CDC) have determined that, to slow the spread of this virus, it is important to avoid gatherings of people and to keep at least six feet away from others. Shah Decl. ¶ 20. *See also* U.S. CDC, How to Protect Yourself & Others, www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html (last visited May 9, 2020).

II. Maine's Response

Governor Mills declared a “state of emergency” in Maine on March 15, 2020. Proclamation of State of Civil Emergency to Further Protect Public Health (“**Emergency Proclamation**”) (ECF No. 1-1). In that Emergency Proclamation, Governor Mills stated that COVID-19 “poses an imminent threat of substantial harm to our citizens” and directed various state agencies to implement certain restrictions and orders to facilitate the State’s response. Emergency Proclamation at 1. Over the last two months, Governor Mills has issued numerous executive orders addressing the COVID-19 health crisis. The orders at issue in this case, which I refer to collectively as the “Gathering Orders,” impose restrictions on assembly.

First, on March 18, 2020, Governor Mills issued Executive Order 14 stating that “[g]atherings of more than 10 people are prohibited throughout the State,” and declared that such a prohibition was mainly aimed at “social, personal, and discretionary events,” including those gatherings that are “faith-based.”⁶ Executive Order 14 at 1 (ECF No. 1-2).

⁶ Governor Mills’s Order is consistent with the recommendations of President Trump and the U.S. CDC that all people avoid social gatherings of more than ten people; work and attend school from home whenever possible; avoid eating or drinking at bars, restaurants, and food courts; avoid discretionary travel, shopping, or social visits; and practice good hygiene. The federal guidance advises

Then, on March 24, 2020, Governor Mills issued Executive Order 19. (ECF No. 1-3.) This Order continued the prohibition of all gatherings of more than ten people but carved out an exemption for businesses deemed “essential.” Businesses deemed “essential” are permitted to continue operations subject to the requirement that they adhere to social distancing guidelines—maintaining a six-foot distance between individuals—and other “social distancing requirements.” Under the Order, essential businesses include “grocery and household goods” stores, “gas stations,” and “home repair, hardware and auto repair” stores. Executive Order 19 at 2.

Executive Order 19 ordered “non-essential” businesses to cease activities at public-facing sites, but it permitted them to conduct limited activities that “do not allow customer, vendor or other visitor in-person contact;” “do not require more than 10 workers to convene in space where social distancing is not possible;” and “are facilitated to the maximum extent practicable by employees working remotely.” Non-essential businesses may engage in activities such as taking remote orders, maintaining the value of inventory, and processing payroll. These non-essential businesses include “shopping malls, theaters, casinos, fitness and exercise gyms . . . , and similar personal care and treatment facilities.” Executive Order 19 at 3. Executive Order 19 may be enforced through Maine departments or officials that issue business licenses. Executive Order 19 at 4.

governors of states with evidence of community transmission to close schools, businesses, and other indoor and outdoor venues where groups of people congregate. *See Lighthouse Fellowship Church v. Northam*, No. 2:20-cv-204, 2020 WL 2110416, at *2 (E.D. Va. May 1, 2020).

On March 31, 2020, Governor Mills next issued Executive Order 28, which stated: “[a]ll persons living in the State of Maine are hereby ordered, effective as of 12:01 AM on April 2, 2020 to stay at their homes or places of residence.” Executive Order 28 at 2 (ECF No. 1-4). Executive Order 28 only permitted residents to travel out of their homes if they were conducting “essential” activities or traveling to work at a business allowed to continue operations. Depending on the square footage of an essential business, Executive Order 28 placed limits on the number of customers permitted inside at any one time—permitting 5 people for buildings of less than 7,500 square feet, 15 people for buildings between 7,500 and 25,000 square feet, 50 people for buildings between 25,000 and 50,000 square feet, 75 people for buildings between 50,000 and 75,000 square feet, and 100 people for buildings larger than 75,000 square feet. Executive Order 28 states that violations constitute a class E crime.⁷ Executive Order 28 stated that its prohibitions were in effect until April 30, 2020.

On April 3, 2020, Governor Mills issued a list further explaining what businesses were considered “essential” and “non-essential.” Essential Business Operations Definition (ECF No. 1-5). The list of “essential” businesses included grocery stores, household goods stores, gas stations, hardware stores, home repair stores, garden centers and stores, child care services, and medical marijuana dispensaries.

⁷ On April 2, 2020, the Maine State Police issued a statement indicating that it would enforce Governor Mills’s Executive Order but that it was “asking for voluntary compliance” with the Executive Order. As a “last course of action and reserved for only the most egregious violators,” the State Police indicated that they would “[i]ssu[e] summonses or mak[e] physical arrests.” State Police Enforcement Practices Regarding Governor’s Executive Order 1 (ECF No. 1-9).

On April 14, 2020, Governor Mills issued a Proclamation to Renew the State of Civil Emergency in Maine, which continued the civil emergency and extended the previously issued orders for another 30 days. Proclamation to Renew the State of Civil Emergency (ECF No. 1-6).

III. Maine’s Plan for Reopening

On April 28, 2020, Governor Mills released the “Restarting Maine’s Economy” plan. Restarting Maine’s Economy (“**Restarting Plan**”) (ECF No. 1-8). This plan contemplates a four-phased approach to reopening businesses and activities. “Stage 1” contemplates “a continued prohibition on gatherings of more than 10 people,” but explicitly provides for the opening of categories of businesses “per checklist standards.” Restarting Plan at 10. With respect to religious gatherings, Stage 1 provides for “[l]imited drive-in, stay-in-your-vehicle church services.” Restarting Plan at 11. Thereafter, Stage 2, scheduled to begin in June, contemplates increasing the number of people allowed at gatherings to 50. Restarting Plan at 12.

On April 29, 2020, Governor Mills issued Executive Order 49, which extended her prior Orders until May 31, 2020, and provided for the implementation of the Restarting Plan. Executive Order 49 (ECF No. 1-7). Governor Mills reiterated that the “[p]rotection of public health and our health care delivery system shall remain the first priority.” Executive Order 49 at 2. As part of that approach, Governor Mills directed state agencies to continue to monitor various metrics to guide the timing and scope of easing restrictions.⁸ Executive Order 49 at 2.

⁸ Specifically, Executive Order 49 provides:

The Order further states that, “[s]tarting May 1, 2020, . . . the Commissioner of the Department of Economic and Community Development (DECD) shall implement the Restarting Plan and identify businesses and activities where current restrictions may be adjusted to safely allow for more economic and personal activity.” Executive Order 49 at 2. Any loosening of restrictions must be consistent with the guidelines stated in the Restarting Plan. As part of the reopening process, Governor Mills charged DECD with developing specific reopening checklists and standards for categories of businesses. DECD is working with industry representatives and businesses to develop industrywide checklists that will inform individual businesses and other entities about safe reopening standards.⁹ In addition to providing stability and efficiency, the primary goal of this approach is “to establish uniform standards, restrictions and guidance that are capable of broad, baseline application.” Decl. of Derek P. Langhauser ¶ 7 (“**Langhauser Decl.**”) (ECF No. 21).

The Commissioner of the Department of Health and Human Services (DHHS) and the Director of the Maine Center for Disease Control and Prevention (CDC) shall continue to advise on COVID-19 trends and metrics to guide the timing, pace and scope of any easing of current restrictions. Maine CDC currently tracks, subject to change, three primary metrics:

- A. a downward trajectory of reported influenza-like illnesses and COVID-like syndromic cases;
- B. a downward trajectory of documented cases and newly hospitalized patients; and
- C. the capacity of Maine’s hospital systems to treat all patients without crisis care and the ability of the State to engage in a robust testing program.

Executive Order 49 at 2.

⁹ DECD has taken an organized approach to restarting by “identifying approximately 70 categories of the tens of thousands of Maine’s business, social and other entities whose operations have been seriously affected by COVID-19.” Decl. of Derek P. Langhauser ¶ 6 (“**Langhauser Decl.**”) (ECF No. 21).

According to the DECD website,¹⁰ there is a “General Checklist” that all businesses must comply with to reopen, and there are industry-specific checklists under the various categories of businesses. *See* DECD, COVID-19 Prevention Checklists, <https://www.maine.gov/decd/covid-19-prevention-checklists> (last visited May 9, 2020). Each industry-specific checklist identifies best practices for items related to physical distancing, hygiene, personal protection, and maintenance of clean business environment, which are necessary for the safe reopening and operation of that category of business. All of the industry-specific checklists posted on the DECD website state that they are “guidance documents” for the use of businesses so “they can be prepared to meet health guidelines and reopen safely” and note that the checklists “may be updated as additional information and resources become available.” *See, e.g.*, COVID-19 Prevention Checklist for Drive-in Theaters, *available at* <https://www.maine.gov/decd/covid-19-prevention-checklists> (last visited May 9, 2020). Governor Mills indicates that DECD will also provide businesses with “interpretive guidance” on the checklists, and for months the Governor’s counsel has been directing inquiries to the DECD. Executive Order 49 at 2; Langhauser Decl. ¶ 8.

Faith-based entities are one of DECD’s approximately 70 categories. Langhauser Decl. ¶ 10. The DECD website provides the following specific guidance for “Places of Worship”:

¹⁰ I take judicial notice of the Maine DECD website. *Gent v. CUNA Mut. Ins. Soc’y*, 611 F.3d 79, 84 n.5 (1st Cir. 2010) (pursuant to Fed. R. Evid. 201(b) the court took “judicial notice of the relevant facts provided on the [government] website, which [were] ‘not subject to reasonable dispute.’”).

- A. In-person gatherings remain prohibited;
- B. Streaming and recording of services encouraged; and
- C. Drive-in services not encouraged but permitted provided:
 - 1. Participants stay in their vehicles;
 - 2. Leaders of services and signage provide notice about staying in vehicles;
 - 3. Only immediate household members in each vehicle;
 - 4. Vehicles shall be parked in manner that provides six feet of space between the occupants of adjacent vehicles;
 - 5. Windows are kept at least ½ way up;
 - 6. Any collection is executed with a drop-off receptacle that requires no contact and participants remaining in their vehicles; and
 - 7. Religious leaders are responsible for communicating and enforcing these restrictions.

DECD, Guidance on Governor's Executive Order 19 Regarding Places of Worship, <https://www.maine.gov/decd/sites/maine.gov.decd/files/inlinefiles/Religious%20Service%20Guidance.pdf> (last visited May 9, 2020).

IV. Calvary Chapel

Plaintiff Calvary Chapel is located and hosts services in Orrington, Maine.¹¹ Due to the Gathering Orders, the Plaintiff is prohibited from holding in-person services within its church building for more than ten people, a restriction that the Plaintiff contends violates its constitutional and statutory rights. Plaintiff's counsel represented to me during a teleconference on May 7, 2020, that Calvary Chapel did not contact DECD for guidance prior to filing suit. Instead, the Plaintiff emailed a letter to Governor Mills and her counsel, demanding written confirmation within less

¹¹ The record does not provide any information about the number of members Calvary Chapel has or the number of members who regularly attend its worship services.

than 24 hours “that the ‘gathering orders’ . . . prohibiting churches from meetings of more than 10 people have been rescinded.”¹² Demand Letter 1 (ECF No. 1-19).

When no response was received, the Plaintiff filed a Verified Complaint on May 5, 2020, asserting ten causes of action: Violation of Free Exercise Clause of First Amendment of the U.S. Constitution (Count I); Violation of Right to Peaceably Assembly under the First Amendment to the U.S. Constitution (Count II); Violation of Free Speech Clause of First Amendment to the U.S. Constitution (Count III); Violation of Establishment Clause of First Amendment to the U.S. Constitution (Count IV); Violation of Equal Protection Clause of Fourteenth Amendment to the U.S. Constitution (Count V); Violation of Republican form of Government under the Guarantee Clause of Article IV, § 4 of the U.S. Constitution (Count VI); Violation of Free Exercise of Religion under Art. 1, § 3 of the Maine Constitution (Count VII); Violation of Freedom of Speech under Art. 1, § 4 of the Maine Constitution (Count VIII); Violation of right to have laws suspended only by the Maine Legislature (Count IX); and Violation of the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc—2000cc-5 (Count X).

Upon conclusion of my May 7, 2020 teleconference with counsel, and at my urging, Plaintiff’s counsel communicated with counsel for the Governor asking how it might “secure permission, accommodation or conditional waiver to host parking lot, drive-in, and/or in-person religious services” in conformance with the Restarting

¹² Although the Complaint states that the Plaintiff gave the Governor until 5:00 p.m. on May 5 to respond, the demand letter itself lists a deadline of 1:00 p.m.

Plan. Decl. of Horatio G. Mihet ¶ 3 (ECF No. 15) (“**Mihet Decl.**”). Plaintiff’s counsel states that he was informed by the Governor’s counsel “that there is no mechanism or procedure under the [Restarting Plan] by which Calvary Chapel could seek or obtain any certification, permission, and/or exemption to permit parking lot, drive-in and/or in-person religious services.” Mihet Decl. ¶ 4. While it may well be true that there is no permitting process in place, counsel for the Governor has averred that faith-based entities are allowed to hold drive-in services pursuant to the standards posted on the DECD website. Langhauser Decl. ¶ 11. Plaintiff has not stated that it has ever reached out to the DECD.

LEGAL STANDARD

“[Injunctive relief] is an extraordinary and drastic remedy that is never awarded as of right.” *Monga v. Nat’l Endowment for the Arts*, 323 F. Supp. 3d 75, 82 (D. Me. 2018) (quoting *Peoples Fed. Sav. Bank v. People’s United Bank*, 672 F.3d 1, 8–9 (1st Cir. 2012)). In deciding whether to issue a temporary restraining order, I apply the same four-factor analysis that is used to evaluate a motion for a preliminary injunction. *Id.* These factors are:

(1) the likelihood of success on the merits; (2) the potential for irreparable harm [to the movant] if the injunction is denied; (3) the balance of relevant impositions, i.e., the hardship to the nonmovant if enjoined as contrasted with the hardship to the movant if no injunction issues; and (4) the effect (if any) of the court’s ruling on the public interest.

Esso Standard Oil Co. v. Monroig-Zayas, 445 F.3d 13, 17–18 (1st Cir. 2006). The moving party “bears the burden of establishing that these four factors weigh in its

favor,” *id.* at 18, but the likelihood of success on the merits is the most important. *New Comm Wireless Servs., Inc. v. SprintCom, Inc.*, 287 F.3d 1, 9 (1st Cir. 2002). If the movant “cannot demonstrate that he is likely to succeed in his quest, the remaining factors become matters of idle curiosity.” *Id.*

DISCUSSION

I. Plaintiff’s Likelihood of Success

A. Free Exercise Clause

The Free Exercise Clause, applicable to the states through the Fourteenth Amendment, holds that governments “shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” U.S. Const. amend. I (emphasis added). The Plaintiff contends that the Gathering Orders violate this rule because they “plainly impose significant burdens on Calvary Chapel’s religious beliefs.” Pl.’s Mot. 5.

Over the last several weeks, the majority of courts that have considered similar executive orders in other states have concluded that a state does not violate the Free Exercise Clause when it limits in-person religious services to ten people, at least as long as the state permits drive-in services.¹³ *See Cassell v. Snyders*, No. 20-cv-50153,

¹³ The Plaintiff repeatedly cites to a few cases in which courts did enjoin the enforcement of COVID-19 restrictions. All are distinguishable. First, in *On Fire Christian Center, Inc. v. Fischer*, the plaintiffs challenged a ban on drive-in church services. No. 3:20-cv-264-JRW, 2020 WL 1820249 (W.D. Ky. Apr. 11, 2020). In granting the temporary restraining order to enjoin the mayor from enforcing the ban, the court noted that the city “targeted religious worship by prohibiting drive-in church services, while not prohibiting a multitude of other non-religious drive-ins and drive-throughs – including, for example, drive-through liquor stores.” *Id.* at *6. Likewise, in *Maryville Baptist Church v. Beshear*, the Sixth Circuit criticized Kentucky’s restrictions on religious activities but ultimately limited its decision by only enjoining the enforcement of the state’s ban on drive-in services. No. 20-5427, — F.3d —, 2020 WL 2111316, at *4–*5 (6th Cir. May 2, 2020) (slip opinion). Although the court stated that the in-person limitations “should give pause,” it explained that, “[i]n view of the fast-moving pace of this

2020 WL 2112374, at *6 (N.D. Ill. May 3, 2020); *Legacy Church, Inc. v. Kunkel*, No. CIV 20-0327 JB/SCY, 2020 WL 1905586, at *35 (D.N.M. Apr. 17, 2020). The Plaintiff has offered no reason why Maine's orders are distinguishable. For those reasons and for the reasons set forth below, I conclude that the Plaintiff is unlikely to succeed on its free exercise claims.

1. Government Power During a Health Emergency

Although a government cannot use a health crisis as a pretext for trampling constitutional rights, the Supreme Court has long recognized that “a community has the right to protect itself against an epidemic of disease which threatens the safety of its members.” *Jacobson v. Commonwealth of Mass.*, 197 U.S. 11, 27 (1905). And while such an epidemic is ongoing, the “traditional tiers of constitutional scrutiny do not apply.” *Cassell*, 2020 WL 2112374, at *6 (citing *Jacobson*, 197 U.S. at 27; *In re Abbott*, 954 F.3d 772, 784 (5th Cir. 2020)). During that temporary time and in those narrow

litigation and in view of the lack of additional input from the district court, whether of a fact-finding dimension or not, we are inclined not to extend the injunction to in-person services at this point.” *See id.* at *5. Maine currently permits drive-in, stay-in-your-vehicle services. *See* Langhauser Decl. ¶ 11.

Days after the Sixth Circuit decided *Maryville Baptist*, the district court extended the injunction to prevent enforcement of Kentucky's ban on “mass gatherings” as it applied to religious services. *See Maryville Baptist Church, Inc. v. Beshear*, No. 3:20-cv-00278-DJH-RSE (W.D. Ky. May 8, 2020). On the same day, another district court in Kentucky entered a similar state-wide injunction. *See Tabernacle Baptist Church, Inc. v. Beshear*, No. 3:20-cv-00033-GFVT (E.D. Ky. May 8, 2020). But those courts based their decisions on determinations that Kentucky's order was not neutral or generally applicable and that it was not narrowly tailored. Those courts were reviewing a different order than I have before me today. *See Maryville Baptist*, No. 3:20-cv-00278-DJH-RSE, at *2, *4 (noting that Kentucky's order bans “any event or convening that brings together groups of individuals” and stating the governor failed to consider simply limiting the number of people who could attend service at a time); *Tabernacle Baptist*, No. 3:20-cv-00033-GFVT, at *10 (finding order not narrowly tailored because “many of the serial exemptions for secular activities [such as law firms and laundromats] pose comparable public health risks to worship services”); *see also Roberts v. Neace*, No. 20-5465 (6th Cir. May 9, 2020). Here, Maine does allow groups of up to ten people to gather, and, as previously discussed, Maine's orders target both religious and secular conduct that poses similar health risks.

contexts, *Jacobson* instructs that courts should only overturn state action when it lacks a “real or substantial relation to the protection of the public health” or represents “a plain, palpable invasion of rights secured by the fundamental law.” *Jacobson*, 197 U.S. at 31. Calling upon this rule, courts across this country have repeatedly upheld orders meant to curb the spread of COVID-19, including rules that restrict in-person religious services to ten or fewer persons. *See Cross Culture Christian Ctr. v. Newsom*, No. 2:20-cv-00832-JAM, 2020 WL 2121111, at *3–*4 (E.D. Cal. May 5, 2020); *Cassell*, 2020 WL 2112374, at *6–*7; *Gish v. Newsom*, No. EDCV 20-755-JGB, 2020 WL 1979970, at *5 (C.D. Cal. Apr. 23, 2020); *Legacy Church*, 2020 WL 1905586, at *25; *see also In re Abbott*, 954 F.3d at 783–84 (admonishing district court for failing to apply *Jacobson* standard in reviewing state’s restriction of non-essential medical procedures, including non-essential abortions).

Maine’s Gathering Orders are likely to survive this test too. The orders are in place to protect Maine residents from the spread of a virus that can cause serious illness and death. Given what we know about how COVID-19 spreads, the nature of the orders—in permitting drive-in services, online services, and small gatherings, while restricting large assemblies of people—demonstrates a substantial relation to the interest of protecting public health. For these reasons, I conclude that the Plaintiff is unlikely to succeed on its claim that the Gathering Orders violate the Free Exercise Clause.

2. Traditional Free Exercise Clause Analysis

Even if the *Jacobson* standard was inapplicable, the Gathering Orders would likely still survive the Plaintiff’s free exercise challenge. Under traditional analysis

of the Free Exercise Clause, “neutral, generally applicable laws” are subject to rational basis review, even where they are applied to religious practice. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 694 (2014).

A law is not neutral if its object is to “infringe upon or restrict practices because of their religious motivation.” *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 533 (1993). A lack of neutrality can be clear from the face of the law if it “refers to a religious practice without a secular meaning discernable from the language or context.” *Id.*; see also *Perrier-Bilbo v. United States*, 954 F.3d 413, 429 (1st Cir. 2020). But the Free Exercise Clause also forbids “subtle departures from neutrality,” including evidence of bias that might not be reflected in the law’s text. *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm’n*, 138 S. Ct. 1719, 1731 (2018). In determining if a law’s object is neutral, courts consider “the effect of [the] law in its real operation” and often call upon principles developed in equal protection cases. *Lukumi*, 508 U.S. at 535, 540. Thus, a law will be found to violate the Free Exercise Clause if it was enacted “because of,” not merely “in spite of,” its restrictions on religious practice. *Id.* at 540. Relevant evidence on this point can include a proscription of religious activity in a way not applied to comparable secular activity; a “pattern” of “animosity” towards the religious group by the drafters; and the suppression of “much more religious conduct than is necessary” to achieve the asserted, legitimate purposes. *Id.* at 536, 542, 543.

Here, the Gathering Orders are plainly neutral. They prohibit all non-essential gatherings of more than ten people. There are no facts suggesting that Governor Mills

has any animus towards religious organizations. And under the Gathering Orders, churches remain free to conduct drive-in services, online programs, and in-person assemblies of up to ten people.¹⁴ The Gathering Orders are thus designed to restrict only the aspects of the religious conduct—the large, in-person gatherings—that undermine the secular purpose of slowing the spread of COVID-19.

Nevertheless, the Plaintiff asserts that the Gathering Orders are not neutral because religious organizations have been targeted and restricted in ways that secular entities have not. In particular, the Plaintiff notes that there is an exemption from the ten-person limit for “liquor stores, warehouse clubs, supercenter stores, [and] marijuana dispensaries.”¹⁵ Pl.’s Mot. 6. But, in this free exercise analysis, the question is not whether any secular entity faces fewer restrictions than any religious one. To be comparable, the secular conduct must “endanger[] [the government’s]

¹⁴ The Plaintiff contends that the Gathering Orders are not neutral on their face because they “expressly target ‘religious’ or ‘faith-based’ gatherings for disparate treatment.” Pl.’s Mot. 6. To be sure, the orders do include those terms in listing the types of gathering that are limited to ten or fewer people. *See, e.g.*, Exec. Order 14 (ECF No. 1-2) (“Such gatherings include, without limitation, community, civic, public, leisure, and faith-based events . . .”). But the mere reference to religious activity as part of a list of broader activities covered by the orders does not show that the order’s “object or purpose” was to target religious activity for harsher treatment. *See Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 533 (1993); *Maryville Baptist Church*, 2020 WL 2111316, at *3 (noting that mentioning religious gathering “by name” does not establish “that the Governor singled out faith groups”); *Cassell v. Snyders*, No. 20-cv-50153, 2020 WL 2112374, at *10 (N.D. Ill. May 3, 2020).

¹⁵ In multiple places, the Plaintiff asserts that the Governor has exempted casinos from the restrictions that churches face, and it implies that casinos are permitted to continue operations. *See, e.g.*, Pl.’s Mot. 7 (“large numbers of people may gather at . . . casinos”); Pl.’s Mot. 8 (“large gatherings at . . . casinos . . . are not prohibited”); Pl.’s Mot. 12 (“the State has created carveouts for gatherings of more than 10 individuals at . . . casinos”). I have reviewed the executive orders contained in the record, and I cannot find any support for this proposition. Executive Order 19 permits casinos to engage in certain activities—including taking remote orders, ensuring security, and processing payroll—but prohibits them from engaging in “customer, vendor or other visitor in-person contact.” Executive Order 19 at 3 (ECF No. 1-3) (also stating that activities are only permitted if they “do not require more than 10 workers to convene in space where social distancing is not possible” and “are facilitated to the maximum extent practicable by employees working remotely”).

interests in a similar or greater degree than” the religious conduct. *Lukumi*, 508 U.S. at 543.

The Plaintiff is unlikely to succeed in establishing that the conduct at the secular businesses that it identifies is comparable to the conduct at religious gatherings. “In other parts of the country, houses of worship have been linked to the spread of COVID-19.”¹⁶ Shah Decl. ¶ 29. “Gatherings in houses of worship present a greater risk to the public health than shopping at a grocery store or other retail outlet. Shoppers, particularly in the current environment, enter a store, gather the items they need as quickly as possible, check out, and promptly leave. Shah Decl. ¶ 25. In contrast, the Plaintiff seeks to hold worship service for “no more than a few hours twice per week.” Pl.’s Mot. at 16–17.

Several other courts have distinguished churches from places where individuals shop, noting that the purpose of shopping—unlike the purpose of community-centered religious organizations—is not to congregate and converse but instead to find and purchase items with limited contact with others. *See Cassell*, 2020 WL 2112374, at *9; *Gish*, 2020 WL 1979970, at *6. Religious gatherings, on the other hand, are more akin to restaurants, entertainment venues, movie theaters, and schools, all of which face the same restrictions as the Plaintiff. *See id.*

¹⁶ “[T]he Director of the Sacramento County Department of Health Services announced last month that at least 70 members of a local church were infected with COVID-19. The Secretary of the Kansas Department of Health and Environment announced that of the eleven coronavirus clusters in Kansas recorded at the time, three were tied to church gathers. . . . Recent epidemiological studies suggest that singing may release additional coronavirus into the air, increasing the likelihood of infection. For example, a recent investigation traced a COVID-19 outbreak to a choir practice session.” Shah Decl. ¶¶ 29–30.

The Gathering Orders are also generally applicable. As the Supreme Court explained in *Lukumi*, although “[a]ll laws are selective to some extent, . . . categories of selection are of paramount concern when a law has the incidental effect of burdening religious practice.” *Lukumi*, 508 U.S. at 542. Even “in pursuit of legitimate interests,” the government “cannot in a selective manner impose burdens only on conduct motivated by religious belief.” *Id.* at 543 (noting that this principle “has parallels in our First Amendment jurisprudence”).

The Plaintiff asserts that the Gathering Orders are not generally applicable because they exempt “large crowds and masses of people gathered at numerous businesses and other non-religious entities.” Pl.’s Mot. 7. But, again, these exempted entities do not foster the same type of assembly as the entities—both religious and secular—that are subject to the Gathering Orders’ restrictions. Schools, movie theaters, concert halls, sports venues, synagogues, mosques, and churches all fall under the Gathering Orders’ umbrella and are all burdened by the ten-person limit. The places covered by the General Orders are places where “people sit together in an enclosed space to share a communal experience.” *Gish*, 2020 WL 1979970, at *6. The Governor has thus not selectively “impose[d] burdens only on” religious conduct, but rather equally on all types of conduct that are likely to spread COVID-19. *See Lukumi*, 508 U.S. at 543.

Because I conclude that the Gathering Orders are neutral and generally applicable, the Plaintiff would have to show that they are unsupported by a rational basis in order to prevail. Given the Governor’s interest in limiting the spread of

COVID-19, a highly contagious illness that spreads more easily through close contact, the Plaintiff is likely unable to make such a showing.

B. Establishment Clause

The Plaintiff also contends that the Gathering Orders violate the Establishment Clause. This claim appears to rest on the same allegations as the free exercise claim, namely that the Governor has targeted religious gatherings and has subjected religious organizations to stricter limitations than she has imposed on secular ones.

As noted above, the First Amendment prohibits governments from making any law “respecting an establishment of religion.” U.S. Const. amend. I. The “clearest command” of this provision is that “one religious denomination cannot be officially preferred over another, . . . nor can the government prefer religion over nonreligion.” *Perrier-Bilbo*, 954 F.3d at 422 (internal quotations omitted). Under the test developed in *Lemon v. Kurtzman*, government action survives an Establishment Clause challenge if (1) it has “a secular legislative purpose,” (2) its “*principal or primary*” effect “neither advances nor inhibits religion,” and (3) it does “not foster an excessive government entanglement with religion.” *Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971) (internal quotations omitted) (emphasis added); *see also Freedom From Religion Found. v. Hanover Sch. Dist.*, 626 F.3d 1, 9 (1st Cir. 2010). The Gathering Orders are likely to pass this test. As discussed above, the orders have the secular purpose of slowing the spread of COVID-19; they have the primary effect of limiting gatherings—both secular and religious—which has been shown to slow the spread of COVID-19; and the Plaintiff develops no argument that the orders foster government

entanglement with religion. As such, I conclude that the Plaintiff is unlikely to succeed on its Establishment Clause claim.

C. Free Speech and Assembly

Finally, the Plaintiff asserts that the Gathering Orders impermissibly infringe on its First Amendment rights to free speech and assembly. Specifically, the Plaintiff contends that the Gathering Orders “discriminate against Calvary Chapel’s free speech rights and rights to assemble on the basis of content.” Pl.’s Mot. 11.

Both of these claims, however, are premised on the Plaintiff’s assertion that the Gathering Orders unconstitutionally target and restrict its religious exercise. Because I have already concluded that the Gathering Orders do not impermissibly restrict the Plaintiff’s free exercise of religion, the Plaintiff is unlikely to prevail on these claims as well.¹⁷ *See Gish*, 2020 WL 1979970, at *7.

¹⁷ I also doubt that the Plaintiff will succeed in showing that the Gathering Orders are “content based on their face,” as the Plaintiff asserts, which would subject the orders to strict scrutiny. Pl.’s Mot. 11. Even if the orders were subject to heightened scrutiny, the Governor would likely be able to show that they serve a compelling government interest (preventing the spread of COVID-19) and that they are narrowly tailored to achieve that interest, particularly because they do not restrict drive-in or streamed services and because, as discussed above, they do not impermissibly single out religious groups.

In denying similar motions for temporary restraining orders, other courts have recently concluded that plaintiffs were unlikely to succeed on their freedom of speech and assembly claims. *See Lighthouse Fellowship Church*, 2020 WL 2110416, at *10–*13 (finding that no expressive conduct or speech was targeted by the governor’s order, but concluding that, even if there was, governor’s order served a substantial interest unrelated to the suppression of expression, was narrowly tailored, and left open ample alternative channels for communication); *Legacy Church, Inc. v. Kunkel*, No. CIV 20-0327 JB/SCY, 2020 WL 1905586, at *38 (D.N.M. Apr. 17, 2020) (finding that New Mexico’s order was “reasonably related to the demands of the public health crisis” and that, even if the order “was subject to a strict scrutiny analysis, the Court would conclude that it meets strict scrutiny”).

II. Remaining Factors

While the likelihood of success on the merits is the most important of the four factors used in evaluating a motion for a temporary restraining order, I will touch on the remaining factors briefly.

First, I consider the potential irreparable harm to the Plaintiff if I decline to enter a temporary restraining order enjoining enforcement of the Gathering Orders. Importantly, as the Plaintiff made clear in the telephonic conference of counsel, the relief that it is seeking in this litigation is to be treated in the same fashion as an essential business. In its supplemental filing, the Plaintiff stated that Calvary Chapel is approximately 10,000 square feet. Mihet Decl. ¶ 6. Essential businesses of that size that are open to the public may only have 15 people inside at one time. *See Executive Order 28* at 4. Accordingly, the harm to Calvary Chapel if no injunction issues is that it will only be able to hold in-person services for ten participants rather than fifteen participants. This harm is further undercut by the availability of alternate ways to congregate in the form of “drive-in, stay-in-your-vehicle church services.”

Next, I consider the balance of the relevant impositions. The hardship to the Plaintiff outlined above must be balanced against the hardship to the State if the temporary restraining order is entered. The harm to the State that would come from an order requiring it to exempt religious institutions from gathering restrictions is profound. If the prevalence of COVID-19 pulses up within a community, it puts lives, and particularly the lives of our most vulnerable citizens and the health care workers trying to save them, at risk. It also threatens the precarious steps we are making toward reopening.

Finally, I consider the effect of my ruling on the public interest. The State is managing an extraordinary array of issues, and it has responded to the challenges raised by COVID-19 by establishing uniform standards and restrictions that are based on evolving scientific evidence. Governor Mills has laid out a path for organizations to seek to ease restrictions. Upsetting the careful balance being drawn by Maine's Governor at this time would have an adverse effect on the public interest.

CONCLUSION

For the reasons stated above, the Court **DENIES** the Plaintiff's Motion for a Temporary Restraining Order.

SO ORDERED.

/s/ Nancy Torresen
United States District Judge

Dated this 9th day of May, 2020.

No. _____

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

CALVARY CHAPEL OF BANGOR,

Petitioner

v.

JANET MILLS, in her official capacity as Governor
of the State of Maine

Respondent

*On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the First Circuit*

APPENDIX OF EXHIBITS – Exhibit D

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U.S. District Court

District of Maine

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No. _____

**IN THE SUPREME COURT
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CALVARY CHAPEL OF BANGOR,

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JANET MILLS, in her official capacity as Governor
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*On Petition for a Writ of Certiorari
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APPENDIX OF EXHIBITS – Exhibit E

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Oral Argument

December 23, 2020

In the Matter of:

**Calvary Chapel Of Bangor Vs. Mills,
Janet**

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

1
2
3 IN RE:)
4 CALVARY CHAPEL OF BANGOR) Case No.
5 Plaintiff/Appellant) 20-1507
6 v.) September 9, 2020
7 JANET T. MILLS, in her official)
8 capacity as Governor of the)
9 State of Maine,)
10 Defendant/Appellee)

11 ON APPEAL FROM
12 THE UNITED STATES DISTRICT COURT
13 FOR THE DISTRICT OF MAINE
[Hon. Nancy Torresen, U.S. District Judge]

BEFORE APPELLATE PANEL:

14 HON. JEFFREY R. HOWARD, Chief Judge
15 HON. BRUCE M. SELYA, Circuit Judge
16 HON. DAVID J. BARRON, Circuit Judge
17

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P R O C E E D I N G S

1
2 THE COURT REPORTER: The next case
3 today is Calvary Chapel of Bangor v. Janet T. Mills,
4 appeal number 20-1507.

5 HON. HOWARD: Attorney Gannam, you may
6 proceed.

7 MR. GANNAM: May it please the Court.
8 Roger Gannam for the appellant. And I would like to
9 reserve three minutes for rebuttal.

10 HON. HOWARD: Yes.

11 MR. GANNAM: The Court should reverse
12 the district court's denial of the preliminary
13 injunction because the governor's orders --

14 HON. SELYA: Mr. Gannam, excuse me.
15 There is no denial of a preliminary injunction.

16 MR. GANNAM: Your Honor brings up the
17 jurisdictional issue which I plan to cover at the
18 front.

19 HON. SELYA: Well, yes, but I'd
20 appreciate your using the correct terminology. There
21 was a denial only of a temporary restraining order.

22 MR. GANNAM: Thank you, Your Honor.

23 HON. SELYA: And you were notified that
24 the jurisdictional issue was going to be on the agenda
25 for these arguments. All right? And I suggest that

1 you get to it sooner rather than later because, in my
2 view at least, it is a very serious issue.

3 MR. GANNAM: Thank you, Your Honor.

4 We believe that the district court's
5 denial of a temporary restraining order is tantamount
6 to the denial of a preliminary injunction under this
7 Court's decision in Fideicomiso De La Tierra and the
8 decision that it cites, the Levesque case, the earlier
9 decision from this Court. And in Levesque --

10 HON. SELYA: But in both -- excuse me.

11 In both of those cases, there was an adversarial
12 hearing before the district court. We had a record.
13 We had a district court making rulings based on
14 documents that were produced, et cetera, in a
15 courtroom. Here, we have a TRO that is granted, as I
16 understand it, on the basis of a telephone conference.
17 And we don't even have, never mind a record, we don't
18 even have a transcript of that telephone conference.
19 Is that correct?

20 MR. GANNAM: I do not know about the
21 transcript, Your Honor, but it is --

22 HON. SELYA: Well, it's none that I can
23 find in the record. Did counsel ever ask to have one
24 prepared?

25 MR. GANNAM: Your Honor, we did not

1 request one. And --

2 HON. SELYA: All right. So how can you
3 say our case is talking terms of a TRO can sometimes
4 qualify as a preliminary injunction if there has been
5 a full and fair adversarial proceeding at the TRO
6 stage? That doesn't sound to me like a telephone
7 conference with no witnesses, no exhibits and no
8 transcript.

9 MR. GANNAM: Well, Your Honor, the
10 Fideicomiso De La Tierra case, which I'll call the
11 land trust case, makes it clear that it's -- the test
12 is an either or. Either there's a full adversary
13 hearing or the rec -- in the absence of review further
14 interlocutory relief is unavailable. And what the
15 Levesque case held --

16 HON. SELYA: So let's talk about that.
17 Why is further interlocutory review unavailable? Did
18 Judge Torresen say anything to indicate that she was
19 not open to a hearing at the preliminary injunction
20 stage to making independent rulings on a preliminary
21 injunction motion as a district court would ordinarily
22 do? Did she say anything like, and these rulings will
23 carry through all pretrial proceedings, something of
24 that sort?

25 MR. GANNAM: No, Your Honor. But I

1 believe that --

2 HON. SELYA: And -- excuse me, counsel.
3 And in your experience with judges, don't you think
4 that judges sometimes, just sometimes, are swayed by
5 evidence and witnesses?

6 MR. GANNAM: Your Honor --

7 HON. SELYA: So don't you think --
8 don't you think it's fair for us to think that it may
9 very well have made a difference to Judge Torresen had
10 there been a preliminary injunction hearing and
11 someone had actually brought in some evidence, some
12 live witnesses, some information about the size of
13 your facility, what the situation was with respect to
14 whether or not drive-in worship was feasible, a
15 list -- I started to make a list of the possible
16 questions that you might have evidentiary submissions
17 on. And I stopped when I got past 40. But don't you
18 think that might have been helpful to a judge in
19 deciding these weighty issues?

20 MR. GANNAM: Your Honor, if I may
21 recount what happened here. After the initial motion
22 for a TRO was filed, the judge convened a telephone
23 conference and instructed the parties -- counsel for
24 the parties to explore the narrowing of issues. And
25 the declaration of my colleague, Mr. Mihet, which is

1 in the record, details those discussions and the
2 issues considered. Then the district court allowed
3 the briefing to be concluded and issued a 23-page
4 order analyzing --

5 HON. SELYA: All of that occurred over
6 what time span?

7 MR. GANNAM: That occurred over -- it
8 was approximately two weeks, Your Honor, something in
9 that time frame.

10 HON. SELYA: I thought it was shorter
11 than that. But go ahead.

12 MR. GANNAM: And I could be corrected
13 on that, Your Honor. But I think -

14 HON. SELYA: I thought it was under a
15 week. But go ahead.

16 MR. GANNAM: I think what's important
17 here is that the TRO standard and the preliminary
18 injunction standard are essentially the same. And
19 under the circumstances where the district court
20 analyzes the issues and the cases and issues a
21 reasoned and lengthy order, like happened here, those
22 were the circumstances in the Levesque case where the
23 Court said having issued a decision on the merits that
24 takes into account all the case law, there's no reason
25 to think that the same plaintiff could go back to the

1 same court and seek relief that had already been
2 denied.

3 HON. SELYA: But -- excuse me. But
4 Judge Gignoux in Levesque had evidence in front of him
5 and did make a ruling on the dispositive issue and
6 made it very clear that he was going to stick by that
7 ruling. You don't have anything like that here. You
8 want us --

9 MR. GANNAM: We have --

10 HON. SELYA: You want us to adopt a
11 rule that says any time a district judge decides a TRO
12 in a reasoned decision regardless of what that
13 decision is based on, regardless of whether there's
14 been any sort of adversary proceeding, that we should
15 treat that for appeal purposes like a preliminary
16 injunction and ignore the distinction that 28 U.S.C.
17 1292(a) makes. And I'm not aware of any case that
18 holds us or that encourages that sort of compressed
19 procedure.

20 MR. GANNAM: Your Honor, I believe the
21 land trust case and Levesque itself both contemplate
22 either a full adversary proceeding or circumstances
23 such as a lengthy order, like the circumstances in
24 this case, where there's a clear indication there
25 won't be any change in the decision. And as I said

1 before, --

2 HON. SELYA: What's the clear -- excuse
3 me. What's --

4 HON. BARRON: Could I --

5 HON. SELYA: I missed that. What's the
6 clear indication there won't be a change in this case?

7 MR. GANNAM: Because the standard for a
8 PI --

9 HON. SELYA: Yeah. But the evidence --
10 the evidence --

11 MR. GANNAM: Your Honor, we have a --

12 HON. SELYA: You don't concede that
13 evidence may make a difference?

14 MR. GANNAM: Well, Your Honor, I
15 believe evidence does make a difference. And I also
16 would point out we have a verified complaint and we
17 have affidavits -- declarations filed by the
18 government in this case. So we do have an evidentiary
19 record that the district court looked at and relied on
20 in reaching the TRO denial.

21 And I would also point out that we
22 filed a motion for injunction pending appeal in the
23 district court which was also denied, again, on the
24 same standard as the TRO and the preliminary
25 injunction.

1 So we believe here all indicators, all
2 reasonable indicators, are that the district court
3 would not reach another decision on the same issue to
4 give us the same relief we've essentially already
5 requested and been denied.

6 HON. BARRON: What are we to make of --
7 in relation to this threshold question, the pretty
8 emphatic statements from the district court in
9 rejecting the free exercise clause challenge that it's
10 plainly not -- that it's plainly neutral? There's
11 nothing about that aspect of the analysis suggests to
12 me that further factual development is likely to
13 affect her determination on that score.

14 MR. GANNAM: I would agree with that,
15 Your Honor. And that's why I believe that under the
16 same standard, the district court would not reach a
17 different decision which justifies under this Court's
18 precedence an immediate appeal to this --

19 HON. BARRON: Do you know what we're
20 supposed to do in a situation in which certain of her
21 judgments which are unfavorable to you might seem more
22 susceptible of being influenced by further factual
23 development and other ones do not?

24 MR. GANNAM: Your Honor, I believe
25 under the preliminary injunction standard being a

1 likelihood of success on the merits based on the
2 evidence that is currently before the Court, I think
3 that the --

4 HON. BARRON: Could you pick out those
5 statements of hers that seem categorical and say that
6 part of it surmise for our review but the other
7 portions of it that seem more maybe susceptible of
8 changing if further factual, those you can't get
9 review on now? I'm just not sure how we're supposed
10 to proceed when the opinion is based on that limited a
11 factual record done that quickly and it has parts of
12 it which, I agree with you, do sound like they're just
13 pure legal determinations about the face of the order
14 and whether it sounds in neutrality and it rejects
15 your contention and there's nothing that seems like
16 factual at all is going to change that. Then there's
17 the Jacobson analysis which seems like it might well
18 depend on what expert evidence is put forward.

19 MR. GANNAM: Well, Your Honor, I would
20 say that the standard of review on a preliminary
21 injunction case involving the First Amendment is a
22 little different than in other contexts where the --
23 as we've quoted in our briefs, the court --

24 HON. BARRON: I'm asking what we're
25 supposed to do with respect to Judge Selya's question

1 about whether we have something here you can appeal
2 given that it's a TRO. You say if it's like a
3 preliminary injunction then you can appeal it. That's
4 obviously correct. So is this like a preliminary
5 injunction? Well, the record in the proceedings don't
6 make it look like one. Nonetheless, there are, at
7 least in my view, some relatively categorical
8 statements of law that do sound like you would lose if
9 it was now a preliminary injunction. But other
10 aspects of it are much more fact dependent just in
11 their nature. So what does that mean with respect to
12 whether you have an appealable order here?

13 MR. GANNAM: Well, Your Honor, I would
14 answer that we have a -- essentially, a facial
15 challenge to the language of the orders and the
16 disparate treatment that those orders impose on
17 religious exercise. And so to the extent our
18 challenge is on the face of the orders, I don't
19 believe there's any further factual development that
20 can assist the Court --

21 HON. SELYA: Counsel, you've confused
22 me. You keep talking about those orders. I thought
23 there was a single order challenged at the TRO stage.

24 MR. GANNAM: Your Honor, the governor
25 issued a series of orders beginning --

1 HON. SELYA: I know that. But what was
2 before the Court at the TRO stage?

3 MR. GANNAM: At the TRO stage, we have
4 the emergency declaration itself which enables all --

5 HON. SELYA: Right.

6 MR. GANNAM: -- all substantive orders.

7 HON. SELYA: Got it.

8 MR. GANNAM: We have the initial
9 gathering order which prohibited religious gatherings.
10 A subsequent order that expanded -- you know, imposed
11 the exemption, something like 40 categories of --

12 HON. SELYA: That was before the Court
13 at preliminary -- at the TRO stage?

14 MR. GANNAM: Yes, Your Honor. And also
15 the stay-at-home order which succeeded that which we
16 believe, on its face, reimposed an absolute ban on
17 worship because it said you could only leave your
18 house to do an essential business or operation. And
19 religious worship was not included in that.

20 So all of those orders were before the
21 Court as well as the order looking forward at the time
22 of the TRO hearing -- or the TRO briefing saying when
23 churches might reopen for purposes of parking lot
24 services. But at the time we were before the district
25 court, the best that can be said is that 10 people

1 could worship in person. But we believe at that time
2 it was actually banned altogether based on the
3 stay-at-home order and the fact there had been no
4 subsequent relief from that.

5 As we sit here today, we still have the
6 stay-at-home order, the initial gathering restriction.
7 They're only changed by the governor's delegation of a
8 power to (indiscernible) and seek to adjust what kind
9 of businesses and operations can reopen. And so we
10 have a constantly shifting number of people who are --

11 HON. BARRON: The gathering order
12 that's before us is the 10-person gathering order or
13 is it the 50-person gathering order?

14 MR. GANNAM: Your Honor, it's -- the
15 50-person limit was only allowed by the earlier
16 orders. I'd go back to Order 49, the implement to
17 restart --

18 HON. BARRON: Just in terms of -- you
19 sought a temporary restraining order against certain
20 orders. Right?

21 MR. GANNAM: Yes, Your Honor.

22 HON. BARRON: What you sought to
23 restrain was a 10-person gathering order and a
24 stay-at-home order?

25 MR. GANNAM: That's correct, Your

1 Honor.

2 HON. BARRON: Is there any -- the
3 50-person gathering order was not something you sought
4 to restrain, correct?

5 MR. GANNAM: Yes and no, Your Honor.
6 Yes, because we challenged the order that allowed that
7 50-person limit to be imposed in the future. And it's
8 the same order that would allow the governor now to
9 back off of that and take it back down to ten or zero.

10 HON. BARRON: And so what -- emergency
11 authorization order? Declaration of emergency order?
12 Is that what you're talking about?

13 MR. GANNAM: No. The Order 49 which
14 adopted the restarting Maine's economy plan which
15 essentially opens up all of these decisions to sort of
16 cabinet level agencies or the governor, how ever the
17 governor wants to proceed. But they are constantly
18 changing. As we pointed out in our reply brief,
19 there's already now a really inefficient --

20 HON. BARRON: Did the district court
21 address that challenge to that order?

22 MR. GANNAM: I'm sorry. I didn't hear
23 you, Your Honor.

24 HON. BARRON: Did the district court
25 separately address your challenge to that order?

1 MR. GANNAM: I don't believe the
2 district separated them out, Your Honor. The district
3 court analyzed them sort of as a unit imposing either
4 a 10-person or absolute ban on worship. The 50-person
5 limit did not exist yet when we were in the district
6 court.

7 HON. BARRON: Okay. So and what you're
8 appealing from is an order that denied your attempt to
9 get the 10-person and/or stay-at-home ban restrained,
10 correct?

11 MR. GANNAM: Yes, Your Honor. But also
12 before the district court was our claim that any order
13 that treats on its face religious conduct differently
14 from nonreligious conduct was also being challenged.
15 So it was forward-looking as well because we have the
16 exact situation that we have here. The restarting
17 Maine's economy plan is a constantly shifting series
18 of restrictions and then relaxed restrictions and the
19 reimposition of restrictions. That's what's going on.
20 And so, all of it as a unit are the governor's orders
21 that we're challenging to the extent they disparately
22 treat religious conduct as compared to nonreligious
23 conduct under the free exercise clause.

24 HON. HOWARD: Counsel, before you
25 proceed, let me ask. Judge Selya, Judge Barron, do

1 you have other questions that you would like to get
2 to?

3 HON. SELYA: No. That's all.

4 MR. GANNAM: Your Honor, we pointed in
5 our briefs all the reasons --

6 HON. HOWARD: Counsel, I'm going to go
7 ahead and cut you off there. We've run considerably
8 over time. But you have reserved some time for
9 rebuttal.

10 MR. GANNAM: Thank you, Your Honor.

11 HON. HOWARD: So if you would mute.

12 And, Mr. Taub, you may proceed.

13 MR. TAUB: Good morning and may it
14 please the Court.

15 Since the Court is clearly interested
16 in this issue of the appealability of the order below,
17 I'll start with addressing that. And this is probably
18 the only thing that the parties can agree upon in this
19 case which is that we think that this order is
20 appealable. And there are a couple different points
21 that I want to make about that.

22 The first point is that the Court, if
23 it wants to, doesn't even have to get to the issue of
24 whether the order is appealable or not because, under
25 *Clair International v. Mercedes Benz*, there, this

1 Court said that it doesn't have to get to
2 jurisdictional issues if the appeal is uncomplicated
3 and easily resolved in favor of the party who would
4 benefit from a finding of no jurisdiction. So that is
5 certainly one avenue that the Court could take.

6 But --

7 HON. SELYA: But was that word
8 uncomplicated?

9 MR. TAUB: Uncomplicated, yes, Your
10 Honor.

11 HON. SELYA: I thought that was it.

12 MR. TAUB: But going to the issue of
13 sort of what happened below, for all intents and
14 purposes, this case proceeded just like a host of
15 other cases that are resolved on PI motions that our
16 office is involved in and really got resolved exactly
17 the same way the Bayley's Campground case got
18 resolved, just on a more expedited fashion.

19 But in this case, Calvary, when they
20 filed their motion, it was actually a motion for both
21 a PI and a TRO. It was combined. And so, the Court
22 ordered us to respond to it. We submitted
23 declarations. I believe Calvary submitted
24 declarations. At least from our perspective, you
25 know, we assumed that we were briefing a PI motion

1 since this wasn't being done on an ex parte basis
2 since the Court had invited us to respond. So we
3 submitted declarations. We submitted a brief. And
4 so, in our mind at least, we understood that this was
5 a PI motion.

6 Now also the Court's decision goes well
7 beyond what you would expect from a typical TRO order.
8 The Court went through all of the different legal and
9 factual issues, wrote a 23-page decision.

10 HON. HOWARD: But can I ask you
11 something about that, counsel? So what I've been hung
12 up on a little bit is not the merits claim but the
13 serious or irreparable harm claim. So the complaint
14 said they may be subjected to criminal prosecution.
15 And I suppose that's all that was in front of the
16 district court. But if time went on and there were a
17 preliminary injunction proceeding, whether they needed
18 to amend or not, it seems to me that that's the kind
19 of thing that would be subject to evidence. Am I
20 wrong about that? And you really could have, I think,
21 a shifting landscape there. So I'm with Judge Selya.
22 I'm not so sure we should be so quick to jump into
23 this. I'm -- but you tell me.

24 MR. TAUB: Well, I mean, I think in
25 this case, I mean, yes, there was no evidentiary

1 hearing although my recollection is that no party
2 requested one either. I don't think that that was
3 ever foreclosed. But what the parties did do is they
4 submitted declarations which, at least in the District
5 of Maine, it's pretty rare for there to be evidentiary
6 hearings on a preliminary injunction motion. So I
7 think --

8 HON. SELYA: Is it rare for there to be
9 transcripts and arguments?

10 MR. TAUB: Well, I don't believe that
11 there was an argument in this case. I think that the
12 only telephone conference we had -- and again, my
13 memory is sort of going back and a lot's happened
14 since then. But my memory is that the telephone
15 conference was really about seeing if the parties
16 could resolve the matter and then also sort of setting
17 up a briefing schedule. There was never any oral
18 argument. And my memory is there wasn't any oral
19 argument on the Bayley Campground case either. You
20 know, it's not unusual if no party requests it, for
21 the District of Maine at least, to decide preliminary
22 injunction motions just based on the briefs and the
23 declarations.

24 HON. SELYA: Yes. Of course, the
25 district court didn't decide a preliminary injunction

1 motion here.

2 MR. TAUB: Right. So --

3 HON. SELYA: And it's a big difference
4 because a TRO, by statute and rule, could only have
5 lasted for 10 days. It's just a stop cap.

6 MR. TAUB: Right, Your Honor. So I
7 guess there are a couple of things I'd like to say
8 about that. First, I think that the standard is -- or
9 the test that's applied is whether the order has the
10 practical effect of refusing an injunction, whether it
11 might have serious or perhaps irreparable consequence
12 and whether the order can be effectively challenged
13 only by an immediate appeal. And so, I think that
14 those elements are probably met here. I mean, for all
15 intents and purposes --

16 HON. SELYA: Why? What barrier was
17 there to -- if there was some barrier to a preliminary
18 injunction hearing, I could understand that. But what
19 barrier was there?

20 MR. TAUB: Well, there was no
21 barrier --

22 HON. SELYA: I mean, instead of -- you
23 could have used the same time you spent sparring about
24 an injunction pending appeal to -- the district court
25 is obligated to convene a preliminary injunction

1 hearing within 10 days. No one asked her to do it.

2 HON. BARRON: But you're suggesting
3 that it's because no one thought there was any reason
4 to do it since it had already been done. Is that my
5 understanding?

6 MR. TAUB: I think -- yeah. I mean,
7 Your Honor, again, I go back to absolutely -- Judge
8 Torresen's order is captioned as an order on a TRO.
9 But I --

10 HON. SELYA: Yes. And it makes it
11 clear from its body and from the order that was
12 entered that all that she did was deny the TRO.

13 MR. TAUB: Right. And the other thing
14 we have, of course, is that -- is that Calvary
15 appealed like literally hours after she issued it. So
16 we don't know --

17 HON. SELYA: That's right.

18 MR. TAUB: -- whether she was going to
19 issue some further order.

20 But I think at least the parties
21 understood that they were involved in a preliminary
22 injunction proceeding. And I guess -- and part of the
23 reason that we are taking this position is that we
24 understood that what we were doing was preliminary
25 injunction briefing. And so we went all out over the

1 course of a few days to develop all of the evidence,
2 put together the declarations, write up a brief and
3 submit it to the district court. And then she issued
4 her decision, she analyzed all the issues and the
5 Calvary Chapel didn't ask for some further preliminary
6 injunction hearing. They immediately appealed.

7 And so, in our view, where the parties
8 are really treating this as a preliminary injunction
9 matter -- and also, I think if you read her opinion
10 fairly, I don't think there are any set of facts that
11 would come forward that would really, you know, change
12 her ultimate conclusion.

13 So I would say that in these
14 circumstances, this really was effectively -- despite
15 what it was captioned as, this really was an order on
16 a preliminary injunction and there really wasn't
17 anything left to do in the district court with respect
18 to preliminary relief.

19 HON. BARRON: You want to just talk
20 about the merits?

21 MR. TAUB: Sure. So --

22 HON. BARRON: Could you explain to me
23 what orders you understand that are before us and how
24 we're supposed to think about it?

25 MR. TAUB: Yes. So let me just start

1 by saying -- because I just want to sort of address
2 some of the appellant's suggestions in their brief.

3 The state of Maine understands how
4 important religion is in many people's lives. And
5 beyond being important from a spiritual aspect, it's
6 also important from a constitutional perspective. And
7 we understand that religion has special protection
8 under the First Amendment. And so we don't take that
9 lightly. But at the same time, the state was facing
10 an unprecedented pandemic and so we had to balance
11 that interest in protecting religious freedom against
12 the health and safety of Maine's people.

13 To answer your question, Judge Barron,
14 so the only -- so, first of all, in my view, and I
15 think if you look at the complaint and if you look at
16 the PI briefing and if you look at the judge's order,
17 there's nothing to suggest that the plaintiffs were
18 ever arguing that people are prohibited from leaving
19 home to attend religious services. That is really an
20 argument that they have developed since the
21 preliminary injunction proceedings. And it's an
22 argument that's just completely factually wrong. I
23 mean, yes, the order about staying at home is a little
24 ambiguous but we have repeatedly and unequivocally
25 said that we consider attending worship services to be

1 an essential activity and it's one that people can
2 leave home to do.

3 So, first of all, I just want to point
4 out that this argument that they were also challenging
5 a stay-at-home order, I think if you look at the
6 complaint and you look at the briefing, you look at
7 the order, you're not going to see that.

8 But I think sort of the trickier
9 question -- and this is a question that I thought a
10 lot about; I'm not sure I have a good answer -- is
11 whether at this point the issue is the 50-person
12 restriction or the 10-person restriction. And I think
13 what I would say to that is this case is a little
14 different than the Bayley Campground case where we had
15 a fundamental shift in the nature of the restriction.
16 Here, really, all we had was an increase in the
17 numbers. So we went from 10-person indoor gatherings
18 to 50-person indoor gatherings. And in our view, that
19 doesn't really affect any of the analysis of the case.
20 So we don't think whether it's 10 or 50 --

21 HON. BARRON: Well, just humor me,
22 though. Which order is it that's being chall --
23 suppose -- are we going to restrain -- we're going to
24 issue a restraining order. What is restrained?

25 MR. TAUB: Well, I mean, the order

1 that's in front of the Court is the 10-person
2 gathering restriction.

3 HON. BARRON: Ten. Okay.

4 HON. SELYA: Which is no longer in
5 effect.

6 MR. TAUB: Which is no longer in
7 effect. And, you know, that's why -- and I recognize
8 there's some tension between the position that we're
9 taking here and the position that we're taking in the
10 Bayley's case where we're arguing that it's moot; I
11 definitely recognize that. But I think the reason
12 that that tension is resolved to some extent is,
13 again, whether it's 10 or 50 people doesn't really go
14 to the Court's evaluation of the case. But you're
15 absolutely right, Your Honor. I think if you were to
16 issue a decision and you were to enjoin an order, it
17 would be the 10-person order that you would be
18 enjoining.

19 HON. BARRON: With respect to that
20 10-person order then, could you just -- for purposes
21 of trying to figure out neutrality contention and
22 whether this is a generally applicable law neutral
23 with respect to religion. As I read the stay-at-home
24 order as you describe it and the 10-person gathering
25 order, what are the activities that are not

1 employment-related that are prohibited?

2 MR. TAUB: Well, so --

3 HON. BARRON: Almost all of the
4 gatherings are swamped by the stay-at-home order. So
5 if I understand that all that's left are those
6 gatherings that are essential activities that are not
7 employment-related -- is that right? Is that what's
8 permitted?

9 MR. TAUB: Right. So under the
10 stay-at-home order, you can leave home to either work
11 at an essential business and operation or to engage in
12 an essential activity.

13 HON. BARRON: Okay. And what are
14 essential activities? You say going to church is one.

15 MR. TAUB: Right. So the way the order
16 is phrased is it sort of gives kind of a definition of
17 what is an essential activity. And then it sort of
18 gives specific --

19 HON. BARRON: As your understanding is,
20 church -- going to church services are treated the
21 same way as what?

22 MR. TAUB: So --

23 HON. BARRON: Other essential
24 activities?

25 MR. TAUB: We would say that they're

1 treated the same way as obtaining medical or mental
2 health services because we equate spiritual health or
3 spiritual well-being as being roughly equivalent to
4 physical and emotional health.

5 HON. SELYA: But the exception to which
6 you point doesn't make any mention of religious
7 attendance as such.

8 MR. TAUB: Right. I mean, Your
9 Honor --

10 HON. SELYA: You've got to read between
11 the lines to get to where you want us to get.

12 MR. TAUB: Yes. You know, I mean, Your
13 Honor, these orders are being put together as the
14 conditions are evolving. And so, yes, it is somewhat
15 ambiguous about whether or not going to church or
16 religious service is what we consider an essential
17 activity. But I think the important thing is that
18 both -- the attorney general's office has
19 affirmatively stated to this Court that as we
20 interpret it, it includes going to religious services.
21 And I think our interpretation -- I think this Court
22 has historically given our interpretation considerable
23 deference.

24 But the other thing that I can tell you
25 is that even if you think that our interpretation

1 isn't a reasonable one, I can affirmatively state that
2 there is no threat of enforcement. The state is not
3 going to enforce the stay-at-home order for someone
4 who leaves home to attend religious services. So to
5 that extent, there's not even really any case or
6 controversy because there's no threat of prosecution.
7 I can't say it any more clearly. People may leave
8 home to attend religious services.

9 HON. BARRON: So then can you just run
10 through the -- so from your perspective, what we are
11 faced with is an order that imposes a gathering
12 restriction on nonemployment activities of a
13 relatively limited class that includes religious
14 worship. And that includes, what, going to a doctor,
15 going to a therapist or going to a church? Is that
16 about it?

17 MR. TAUB: Well, so I will say that --
18 I mean, I'm just pulling up the order. But there are
19 a host of activities that are included in being -- so,
20 for instance, going grocery shopping, obtaining
21 medicines --

22 HON. BARRON: I see.

23 MR. TAUB: -- engaging in outdoor
24 exercise. I think getting - you know, getting
25 staples. I mean there are all kinds of things that

1 are considered essential activities. And so -- I
2 don't have the order right in front of me --

3 HON. BARRON: None of those are
4 employment-related?

5 MR. TAUB: Right. Those are completely
6 separate from -- so, for example, you can leave your
7 home to go take a run on the Back Bay path. Or you
8 can leave your home to, I mean, go grocery shopping
9 even though you're not actually working at the grocery
10 store.

11 HON. BARRON: But for all those
12 activities, the gathering restriction kicks in.

13 MR. TAUB: Right. The gathering
14 restriction is still on top of it. So, for example --

15 HON. BARRON: Got it.

16 MR. TAUB: -- you could leave home to
17 exercise but you can't exercise -- at least at the
18 time, you couldn't exercise in a group of more than 10
19 people.

20 HON. BARRON: One last question. Does
21 the gathering restriction kick in to
22 employment-related activities? So if I wanted to have
23 a barbecue for all the law clerks of the First Circuit
24 during office hours, would I be able to do that or not
25 able to do that under the gathering restriction?

1 MR. TAUB: I mean, so to make sure I
2 understand, so if you wanted to have an in-office
3 gathering of court staff --

4 HON. BARRON: Correct.

5 MR. TAUB: Yeah. So --

6 HON. BARRON: For social purposes but
7 we're all employees and it's part of your job-related
8 function. Is that --

9 MR. TAUB: I mean --

10 HON. BARRON: -- permitted or not
11 permitted?

12 MR. TAUB: So these orders are
13 interpreted by different agencies in the state of
14 Maine. And that particular issue, as far as I know,
15 hasn't come up. But at least in my view, that would
16 be considered a gathering because the point of the
17 gathering is -- and I just want to step back a second
18 because I think there's maybe a little bit of
19 confusion.

20 If 50 people are in a grocery store all
21 at the same time, that's not considered a gathering.
22 That's a completely different set of restrictions
23 which applies to how many customers can be in a retail
24 operation at a specific time. So what the gathering
25 restriction applies to is it applies to sort of

1 communal events where people are gathering together
2 for some communal purpose and are standing together
3 for that period of time. So while certainly your
4 court staff can come work at the court, if you wanted
5 to, you know, go in the conference room and have a
6 gathering of 50 people and, you know, have sort of a
7 social gathering, that would be considered a gathering
8 and that would fall within the restrictions.

9 Does that answer your question, Your
10 Honor?

11 HON. BARRON: Yeah. I guess I'm
12 just -- are you saying that is Maine's position or
13 that's your view of what might --

14 MR. TAUB: Yeah. I mean, I'm not the
15 final interpreter of these orders. I mean, they're
16 issued by the governor so ultimately it's the
17 executive branch that has to interpret these. But I'm
18 fairly certain -- I think I can say with pretty good
19 certainty -- that basically a party at a place of
20 business would be considered a gathering. I mean, it
21 wouldn't make any sense to say that everyone could go
22 outside to, you know, some park and have the party
23 because that clearly would be a gathering. To say
24 that you can't do that but it's fine as long as you do
25 it within a courthouse conference room? So I think

1 I'm reasonably confident in saying that sort of a
2 social gathering within a business operation would be
3 subject to the gathering restrictions.

4 HON. HOWARD: Can you gather the 50
5 employees to give them their instructions for the day?
6 Like police departments do with roll calls?

7 MR. TAUB: Yeah. I don't -- I don't
8 think that would be considered a gathering. I think
9 that would just be considered part of sort of the
10 normal employment operations.

11 HON. HOWARD: Can you include 15
12 minutes of a morale boost or five minutes of a morale
13 boost during that gathering -- during that -- sorry.
14 I used the wrong word. But --

15 MR. TAUB: Yeah. I mean, I was afraid
16 this would happen because there are hypotheticals that
17 are difficult to address. You know, we are constantly
18 --

19 HON. HOWARD: I'm just asking you if
20 they have been addressed, if you have a --

21 MR. TAUB: No.

22 HON. HOWARD: -- position on them.

23 MR. TAUB: No. As far as I know, they
24 haven't. I mean, these always don't come to the
25 attorney general's office to sometimes decide it.

1 But I think sort of the point I want to
2 make also is that this isn't just semantics in terms
3 of what's considered a gathering and sort of what's
4 considered something else like shopping at a store.
5 We presented evidence there's a fundamental difference
6 between sort of social and communal gatherings as
7 opposed to someone going to a grocery store. And I
8 think this has really hit home. And I think it's fair
9 to take judicial notice of this because --

10 HON. HOWARD: Yeah. But you're walking
11 away from the closed question that you were asked.

12 MR. TAUB: Okay. Well -- and I'm
13 sorry, Your Honor. If you want to ask it again.

14 HON. BARRON: Before you -- what I'm
15 trying to -- as I understand it, there's two different
16 components to the inquiry on the free exercise.
17 There's the first question of whether we have a law of
18 general applicability. And then there's a second
19 question of what follows if we don't. If we do have a
20 law of general applicability, as I understand it, and
21 the state's in a very strong position, and I think
22 there's sometimes been a confusion around how much of
23 a justification you have to have for a law of general
24 applicability. So I'm really trying to get at whether
25 you have a law of general applicability. If the

1 gathering restriction applied even in businesses, that
2 certainly would support the idea that it's a law of
3 general applicability. If it does not, and it sounds
4 like maybe we have to assume it does not, the next
5 question is, is it nonetheless a law of general
6 applicability, and, if so, why? And as I understand
7 it, your earlier answers to me were suggesting that
8 there's a basic divide between the treatment of
9 employment-related activities and
10 nonemployment-related activities. And so long as
11 you're engaged in a nonemployment-related activity,
12 the gathering restriction may apply to you. To the
13 extent it doesn't apply to others, it's because
14 they're employment-related activities all of which are
15 treated differently. And I take it you say that's
16 just a neutral criteria and for distinction.

17 MR. TAUB: Yes. So I do want to make
18 sure I'm answering the Court's question because I'm
19 not trying to walk away from anything.

20 First of all, it's neutrally applicable
21 because it applies to all gatherings of any sort. So
22 that's just point one.

23 Now point two --

24 HON. BARRON: Except for employment.

25 MR. TAUB: Well, the hypothetical that

1 you gave, Judge Barron, of sort of an office party, as
2 I said, I am almost positive that that would be
3 considering a gathering. Now --

4 HON. BARRON: Yeah. But just humor me
5 for a moment. Let's say because that's unclear, we
6 have to assume that there's an exception for
7 gatherings in employment settings if all employment
8 settings are treated differently than all
9 nonemployment settings. If that were so and the
10 gathering restriction applied only to nonemployment
11 settings, would it still be a law of general
12 applicability?

13 MR. TAUB: Yes, it would, Your Honor,
14 because it still applies to all manner of gatherings.
15 And I think there's a distinction between a gathering
16 in an employment context versus other kinds of
17 gatherings.

18 HON. SELYA: But it doesn't apply to a
19 gathering -- it doesn't apply, for example, if you've
20 got 75 people inside a supermarket shopping.

21 MR. TAUB: And that's because --

22 HON. SELYA: Those people --

23 MR. TAUB: I'm sorry.

24 HON. SELYA: Those people aren't
25 engaged in their own employment.

1 MR. TAUB: Right. And that's because
2 that's not a gathering. And I recognize these terms
3 are a little difficult to wrap our arms around. But a
4 gathering is something like a wedding, a funeral, a
5 concert, a parade where everyone is going for a period
6 of time and sort of they're engaged in a communal
7 experience. And as Dr. Shah pointed out, there's a
8 much different level of risk associated with that kind
9 of activity than someone passing someone in the
10 grocery store and saying hi and maybe stopping to chat
11 for a few minutes.

12 And I think, you know, it's been widely
13 reported in the news and I think the Court's probably
14 already aware of this, that we had a wedding, which is
15 another kind of gathering, in Millinocket with just 65
16 people and we're now dealing with over 150 cases --

17 HON. HOWARD: Well, I think you're
18 getting outside the record.

19 HON. SELYA: Yeah.

20 MR. TAUB: And just to point out, Your
21 Honor, I think the appellants in their brief did point
22 to some news articles as well. But point taken.

23 HON. HOWARD: So, Judge Selya,
24 additional questions of Mr. Taub?

25 HON. SELYA: No.

1 HON. HOWARD: Judge Barron?

2 HON. BARRON: No. I think I'm okay.

3 HON. HOWARD: All right. Thank you.

4 MR. TAUB: Thank you, Your Honors.

5 HON. HOWARD: Mr. Gannam, I believe you
6 have reserved three minutes?

7 So you'll need to unmute your mic and
8 your video.

9 THE COURT REPORTER: Judge, it's Dan.
10 He had indicated that he was having a lag when he did
11 this and sometimes it takes a minute to clear.

12 HON. HOWARD: All right. Mr. Gannam?

13 MR. GANNAM: Thank you, Your Honor.

14 I want to turn to the merits here and
15 point out that the biggest problem that Maine has with
16 the general applicability issue is what I'll call the
17 same building problem.

18 On the face of the orders that we've
19 challenged, which we put in paragraph 50 of our
20 complaint, which was all of them up to that point in
21 time, on the face of those orders, a church can -- it
22 was prohibited from worship or, at best, could have
23 worship with 10 people in its building. But in the
24 same building could host an unlimited number of people
25 for providing food, providing shelter, providing

1 social services such job counseling, drug counseling,
2 whatever the case may be. So in the very same
3 building, a church could host an unlimited number of
4 people --

5 HON. BARRON: Why is that the right
6 test for whether it's a law of general applicability?
7 As I understand the orders, there is a divide between
8 the way employment-related activities are treated and
9 nonemployment-related activities. Now why is --
10 divide itself a neutral one with respect to religion?
11 I don't follow.

12 MR. GANNAM: I disagree, Your Honor,
13 because the essential businesses and operations are
14 defined to mean all profit and nonprofit activities
15 that are specified in the orders. And it's 40
16 something categories. So it's not limited simply to
17 employment. We have, for example, the provision of
18 social services, nonreligious services, that I've
19 pointed out can happen in a church building. But as
20 soon as the pastor turns to that same number of people
21 in the same building and begins a worship service,
22 that would be prohibited under the plain natural
23 reading of these orders This issue that --

24 HON. BARRON: Because the gathering
25 restriction kicks in. Right?

1 MR. GANNAM: Well, but that's correct,
2 Your Honor. What Lukumi requires --

3 HON. BARRON: What distinguishes those
4 things that are subject to the gathering restriction
5 from those that are not? And as long as that criteria
6 is a generally applicable criteria, I don't follow
7 what the free exercise challenge is that it's not
8 generally applicable. I'm just not getting that.

9 MR. GANNAM: Your Honor, we disagree
10 that it's generally applicable criteria because the
11 same number of people could be assembled for an
12 unemployment counseling session, for example, for two
13 hours every day of the week, but a one-hour worship
14 service for the same people in the same building,
15 which that is --

16 HON. BARRON: That's not an argument
17 that it's not generally applicable. That's just an
18 argument you think there's no sense to the
19 distinction.

20 MR. GANNAM: Well, no. I think --

21 HON. BARRON: The first question to ask
22 is, is there is a distinction that's being drawn on a
23 generally applicable basis.

24 MR. GANNAM: Well, Your Honor, we don't
25 think -- we think where there's --

1 HON. BARRON: Someone can smoke a
2 cigarette but they can't smoke Peyote. That may make
3 no sense that the law banning the Peyote is a neutral
4 law.

5 MR. GANNAM: So it --

6 HON. BARRON: You see what I'm saying?
7 That's just not -- you're not answering that aspect of
8 the question for me. So just keep -- by continually
9 saying that in the same building similar things can
10 happen doesn't address the concern that I'm trying to
11 get you to answer.

12 MR. GANNAM: Your Honor, I'm trying to
13 answer in accordance with the Supreme Court standard
14 set forth in Lukumi which says that when the
15 government restricts religious conduct but it doesn't
16 restrict similarly risky --

17 HON. BARRON: It's doesn't name just
18 religious conduct because there's a whole category of
19 things like religion that are treated similarly to
20 religion. So that -- it can't be a Lukumi case.

21 MR. GANNAM: Well, I disagree, Your
22 Honor, because --

23 HON. BARRON: Well, assume it's not a
24 Lukumi case. If you want to say it falls into the
25 exception for Employment Division v. Smith on the

1 ground that this is riddled with exceptions, I'm not
2 seeing how that argument works because the criteria
3 that divides it seems not to have exception which is a
4 criteria that's treating a gathering restriction as
5 applicable to this category of things and not some
6 other thing. And it's along a line that I don't see
7 how that line is riddled with exceptions.

8 MR. GANNAM: Well, the point I'm trying
9 to make, Your Honor, is sitting in the same room
10 surrounded by 100 other people for a social services
11 counseling session is identical conduct to sitting in
12 the same room for a worship service but they are
13 treated differently under these orders. And
14 therefore, even under Employment Division v. Smith,
15 which Lukumi simply built on, we have a law that's not
16 of general applicability.

17 And we would also point out that
18 there's also no religious neutrality here because if
19 we go back to the original gathering order, religion
20 is treated in the same category as social, personal
21 and discretionary events. In other words, unimportant
22 and so we can stop it whereas, as we see through the
23 development of the orders, hundreds of other things in
24 these 40 different categories were permitted.

25 And I would additionally point out,

1 Your Honor, that beyond essential businesses and
2 operations, these orders even allow what are
3 considered non-essential businesses and operations,
4 literally everything else, to meet without restriction
5 or to operate without numeric restriction as long as
6 its employees are socially distanced from one another.

7 So the exceptions are so huge that they
8 swallow the rule and we don't have a generally
9 applicable set of restrictions because everyone can
10 get out of them except for churches which were
11 expressly prohibited in the original gathering order
12 for meeting and then subsequently never pulled out
13 from that. And Maine's position that going to
14 religious worship is the same as going to get medical
15 care --

16 HON. BARRON: If I want to get 25
17 people together for a book club, I can't do that, can
18 I?

19 MR. GANNAM: I don't believe so, Your
20 Honor.

21 HON. BARRON: Well, but that's --

22 MR. GANNAM: But you could get 25
23 people together for a counseling session on how to
24 obtain unemployment benefits.

25 HON. BARRON: Right. But that doesn't

1 have -- you're making a point that the criteria is not
2 singling out religion.

3 MR. GANNAM: No, Your Honor, because
4 the conduct at issue, the conduct that implicates the
5 government's interest, which is people being together
6 in the same space for a period of time, the conduct is
7 identical. It's just one is motivated by religious
8 reasons, going to worship, and the other conduct is
9 not motivated by religious reasons.

10 But under the Supreme Court standard,
11 what we must look at is, is the state allowing things
12 of similar risk -- not things that look just the same
13 as on the surface but is the state allowing conduct of
14 similar risk to worship while restricting worship.
15 And if that's the case, it doesn't meet the free
16 exercise standard.

17 HON. HOWARD: Judge Selya, additional
18 questions?

19 HON. SELYA: No thanks.

20 HON. HOWARD: All right. Thank you
21 very much. Thank you to both counsel. And we will
22 take this case under advisement.

23 MR. GANNAM: Thank you

24 THE COURT REPORTER: That concludes the
25 arguments for today. The session of the Honorable

1 United States Court of Appeals is now recessed until
2 the next session of the court.

3 God save the United States of American
4 and this Honorable Court. Counsel, you may now
5 disconnect from the meeting.

6 (End of proceeding)

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I, Lisa Beck, certify that the foregoing transcript is
a true and accurate record of the proceedings.

s/s Lisa Beck

Lisa Beck

Date: December 28, 2020

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No. _____

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

CALVARY CHAPEL OF BANGOR,

Petitioner

v.

JANET MILLS, in her official capacity as Governor
of the State of Maine

Respondent

*On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the First Circuit*

APPENDIX OF EXHIBITS – Exhibit F

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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MAINE
Bangor Division**

CALVARY CHAPEL OF BANGOR,)	
)	
Plaintiff,)	
)	
v.)	Case No. <u>1:20-cv-00156-NT</u>
)	
JANET MILLS, in her)	
official capacity as Governor of the)	
State of Maine,)	
)	
Defendant.)	

NOTICE OF APPEAL

Pursuant to Fed. R. App. P. 3 and 28 U.S.C. §1292(a)(1), Plaintiff Calvary Chapel of Bangor hereby notices its appeal to the United States Court of Appeals for the First Circuit from this Court’s Order (dkt. 27) denying Plaintiff’s Emergency Motion for Temporary Restraining Order and Preliminary Injunction filed May 9, 2020.¹

¹ While a district court’s denial of a temporary restraining order is typically not appealable, such is not the case where, as here, “it has the practical effect of refusing an injunction [and] it might have serious, perhaps irreparable consequence, and if the order can be effectually challenged only by immediate appeal.” *Fideicomiso De La Tierra Del Cano Martin Pena v. Fortuno*, 582 F.3d 131, 133 (1st Cir. 2009).

Respectfully submitted,

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*Pro hac vice applications pending

Attorneys for Calvary Chapel of Bangor

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of May, 2020, I caused a true and correct copy of the foregoing to be electronically filed with this Court. Service will be effectuated via this Court's ECF/electronic notification system.

/s/Daniel J. Schmid
Daniel J. Schmid

No. _____

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

CALVARY CHAPEL OF BANGOR,

Petitioner

v.

JANET MILLS, in her official capacity as Governor
of the State of Maine

Respondent

*On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the First Circuit*

APPENDIX OF EXHIBITS – Exhibit G

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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MAINE
Bangor Division**

CALVARY CHAPEL OF BANGOR,)	
)	
Plaintiff,)	
)	
v.)	Case No. _____
)	
JANET MILLS, in her)	
official capacity as Governor of the)	
State of Maine,)	
)	
Defendant.)	

**VERIFIED COMPLAINT FOR DECLARATORY RELIEF,
TEMPORARY RESTRAINING ORDER, PRELIMINARY AND
PERMANENT INJUNCTIVE RELIEF, AND DAMAGES**

For its Verified Complaint against Defendant, JANET MILLS, in her official capacity as Governor of the State of Maine (“Governor Mills” or the “State”), Plaintiff, CALVARY CHAPEL OF BANGOR (“Calvary Chapel”), alleges and avers as follows:

URGENCIES JUSTIFYING TEMPORARY RESTRAINING ORDER

1. In its Prayer for Relief, *infra*, and in the contemporaneously filed Motion for Temporary Restraining Order (TRO), Calvary Chapel seeks a TRO restraining enforcement against Calvary Chapel of the various COVID-19 orders issued by Governor Mills and other State officials purporting to prohibit Calvary Chapel, on pain of criminal sanctions, from gathering in-person at Calvary Chapel for worship services, regardless of the number of individuals present or whether Calvary Chapel meets or exceeds the social distancing and hygiene guidelines pursuant to which the State disparately and discriminatorily allows so-called “essential” commercial and non-religious entities (*e.g.*, liquor stores, marijuana dispensaries, warehouse clubs, and ‘big box’ stores) to accommodate large crowds and masses of persons without scrutiny or numerical limit.

2. As shown in the verified allegations below, Governor Mills' Executive Orders relating to COVID-19 have been interpreted, applied, and enforced, including against the pastor of Calvary Chapel, such that Pastor Ken Graves ("Pastor Graves") has been forced not to hold in-person religious services at the Church and to prohibit his members from attending their house of worship.

3. At around the same time as Governor Mills' Executive Orders surrounding COVID-19 were being used to threaten criminal sanctions on Calvary Chapel's pastor, officials in other jurisdictions had similarly threatened to impose criminal sanctions on other religious gatherings. In Louisville, Kentucky, for example, the government threatened to use police to impose criminal sanctions on those individuals found in violation of similar COVID-19 orders and threatened to impose various sanctions on individuals found in violation of such orders. The United States District Court for the Western District of Kentucky found that the mere threat of such criminal sanction warranted a TRO. *See On Fire Christian Center, Inc. v. Fischer*, No. 3:20-cv-264-JRW, 2020 WL 1820249 (W.D. Ky. Apr. 11, 2020) [hereinafter *On Fire*]. The *On Fire* TRO enjoined the Mayor of Louisville from "**enforcing, attempting to enforce, threatening to enforce, or otherwise requiring compliance with any prohibition on drive-in church services at On Fire.**" *Id.* at *1 (emphasis added).

4. In fact, the Maine State Police—acting under the direction of Governor Mills' orders—have publicly declared that they would enforce the Governor's orders and have threatened to impose criminal sanctions on those found in violation of them.

5. Additionally, the Governor of Kansas had imposed a similar restriction on religious gatherings in Kansas, stating that "gatherings" of more than 10 individuals are prohibited, including religious gatherings. On April 18, 2020, the United States District for the District of Kansas issued a TRO enjoining Kansas officials from enforcing its discriminatory prohibition on

religious gatherings and required the government to treat “religious” worship services the same as other similar gatherings that are permitted. *See First Baptist Church. v. Kelly*, No. 20-1102-JWB, 2020 WL 1910021, *6–7 (D. Kan. Apr. 18, 2020) [hereinafter *First Baptist*]. The *First Baptist* TRO specifically stated that the government’s disparate treatment of religious gatherings was a violation of the Free Exercise Clause because it showed that “**religious activities were specifically targeted for more onerous restrictions than comparable secular activities,**” and that the churches had shown irreparable harm because they would “be prevented from gathering for worship at their churches” during the pendency of the executive order. *Id.* at *7–8 (emphasis added).

6. In discussing the Kansas orders—which imposed a 10-person limit on in-person gatherings, which is onerous but still not as restrictive as Governor Mills’ orders—the court said that specifically singling out religious gatherings for disparate treatment while permitting other non-religious activities “show[s] that these executive orders expressly target religious gatherings on a broad scale and are, therefore, not facially neutral,” *First Baptist*, 2020 WL 1910021, at *7, and—much like here—“churches 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.**” *Id.* (emphasis added). Thus, the court found that a TRO was necessary and that Kansas should be enjoined from enforcing its orders’ disparate terms against churches. Indeed, “**it goes without saying that the government could not lawfully expressly prohibit individuals from meeting together for religious services.**” *Id.* at *6 (emphasis added).

7. Additionally, the Sixth Circuit of Appeals has issued an Emergency Injunction Pending Appeal prohibiting the Governor from enforcing prohibitions on religious worship services. *See Maryville Baptist Church, Inc. v. Beshear*, -- F.3d --, No. 20-5427, 2020 WL 2111316

(6th Cir. May 2, 2020). In that appeal challenging orders similar to Governor Mills’ orders here, the Sixth Circuit stated that “[t]he Governor’s actions substantially burden the congregants’ sincerely held religious practices—and plainly so. . . . **Orders prohibiting religious gatherings, enforced by police officers telling congregants they violated a criminal law and by officers taking down license plate numbers, amount to a significant burden on worship gatherings.**” 2020 WL 2111316, at *2 (emphasis added). Additionally, “[t]he way the orders treat comparable religious and non-religious activities suggests that they do not amount to the least restrictive way of regulating the churches.” *Id.* “Outright bans on religious activity alone obviously count. So do general bans that cover religious activity when there are exceptions for comparable secular activities.” *Id.*, at *3. In discussing the prohibitions on religious gatherings, the Sixth Circuit posed several questions of equal import here:

Assuming all of the same precautions are taken, why is it safe to wait in a car for a liquor store to open but dangerous to wait in a car to hear morning prayers? **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. While the law may take periodic naps during a pandemic, we will not let it sleep through one.**

Id., at *4 (emphasis added).

8. Because the prohibition on religious gatherings substantially burdened Maryville Baptist’s sincerely held religious beliefs and was not the least restrictive means, the Sixth Circuit concluded the plaintiff church and pastor were likely to succeed on the merits of their free exercise claims as to both in-person and drive-in services. *Id.*, at *2–3. Balancing the remaining injunction factors, the court issued an injunction pending appeal enjoining the Governor of Kentucky from enforcing his unconstitutional orders against drive-in services, and directed the district court to prioritize consideration of enjoining in-person services, with the admonition, “The breadth of the ban on religious services, together with a haven for numerous secular exceptions, should give pause to anyone who prizes religious freedom.” *Id.*, at *5.

9. Calvary Chapel's members were also threatened with criminal sanctions and penalties if, at any time, any number of individuals gathered together for in-person worship services at Calvary Chapel, and regardless of whether social distancing, enhanced sanitization, and personal hygiene practices were followed. Because of the government threat of criminal sanction, Calvary Chapel was forced not to host services on Easter Sunday, the most treasured day in Christianity.

10. Absent emergency relief from this Court, Calvary Chapel, its pastor, and all congregants will suffer immediate and irreparable injury from the threat of criminal prosecution for the mere act of engaging in the free exercise of religion and going to church. **Indeed, if Calvary Chapel, its pastor, or its congregants do not subscribe to what Governor Mills' has prescribed as orthodox in a worship service, they risk becoming criminals in the State.** A temporary restraining should issue.

INTRODUCTION

11. Due to the unprecedented nature of the 2019 novel coronavirus disease (COVID-19) and the indisputable health tragedy the disease has wrought on our great Republic and those victims suffering under its yoke, there are those who may find it "tempting to hold that First Amendment rights should acquiesce to national security in this instance." *Tobey v. Jones*, 706 F.3d 379, 393 (4th Cir. 2013). One could be forgiven for hastily reaching such a conclusion in such uncertain times, but "our Forefather Benjamin Franklin warned against such a temptation by opining that those who can give up essential liberty to obtain a little temporary safety, deserve neither liberty nor safety." *Id.*

12. When the great American experiment was first implemented, our revered Founders took pains to note that the Constitution—and all of the rights it recognized and enshrined—was instituted "in order to form a more perfect Union, establish Justice, insure domestic Tranquility,

provide for the common defense, promote the general Welfare, and **secure the Blessings of Liberty to ourselves and our Posterity.**” U.S. Const. Pmbl. (emphasis added). To this very day, “we continue to strive toward ‘[that] more perfect union.’” *Smith v. City of New Smyrna Beach*, No. 6:110cv01110-Orl-37KRS, 2013 WL 5230659, *1 (M.D. Fla. Sept. 16, 2013). That work is not easy, and governments acting in good faith can and sometimes do miss the mark. This is such a case.

13. Recognizing that times of crisis would arise, that such times might lead governments to seek to repress precious freedoms, and that the Republic’s survival depended upon defeating such repressive instincts, the genius of our founding document is that it placed explicit protections into the text of the Bill of Rights. And, importantly, “[o]ur Bill of Rights placed our survival on firmer ground—that of freedom, not repression.” *Konigsberg v. State Bar of California*, 366 U.S. 36, 79 (1961) (Black, J., dissenting).

14. During times of national crisis, such as the current uncertainty arising from COVID-19, “the fog of public excitement obscures the ancient landmarks set up in our Bill of Rights.” *American Communist Ass’n, C.I.O. v. Douds*, 339 U.S. 382, 453 (1950) (Black, J., dissenting). But, where the fog of public excitement is at its apex, “the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly.” *De Jonge v. Oregon*, 299 U.S. 353, 365 (1937). Without doubt, “[t]herein lies the security of the Republic, the very foundation of constitutional government.” *Id.*

15. It is beyond cavil that our commitment to our founding principles is most tested and best calculated during times of crisis and uncertainty. Indeed, “[t]imes of crisis take the truest measure of our commitment to constitutional values. **Constitutional values are only as strong as our willingness to reaffirm them when they seem most costly to bear.**” *Hartness v. Bush*, 919 F.2d 170, 181 (D.C. Cir. 1990) (Edwards, J., dissenting) (emphasis added). Our willingness to

reaffirm our staunch commitment to our fundamental freedoms is imperative to the very survival of the American experiment. For, “[h]istory reveals that the initial steps in the erosion of individual rights are usually excused on the basis of an ‘emergency’ or threat to the public. **But the ultimate strength of our constitutional guarantees lies in the unhesitating application in times of crisis and tranquility alike.**” *United States v. Bell*, 464 F.2d 667, 676 (2d Cir. 1972) (Mansfield, J., concurring) (emphasis added).

16. Calvary Chapel brings this case to restrain the troubling transgression of its fundamental and cherished liberties wrought by the imposition of Governor Mills’ orders surrounding COVID-19. Calvary Chapel seeks not to discredit or discard the government’s unquestionable interest in doing that task for which it was instituted—protecting the citizenry. But, as is often true in times of crisis, Calvary Chapel respectfully submits that in an effort to uphold her sworn duties Governor Mills has stepped over a line the Constitution does not permit. Because of that, Calvary Chapel brings this action to ensure that this Court safeguards the cherished liberties for which so many have fought and died. For, “[i]f the provisions of the Constitution be not upheld when they pinch as well as when they comfort, they may as well be discarded.” *Home Bldg. & Loan Ass’n v. Blaisdell*, 290 U.S. 398, 483 (1934) (Sutherland, J., dissenting) (emphasis added). Calvary Chapel prays unto the Court that it not permit the cherished and fundamental liberties enshrined in the Constitution to be another tragic casualty of COVID-19.

PARTIES

17. Plaintiff, CALVARY CHAPEL OF BANGOR (“Calvary Chapel” or the “Church”), is a non-profit corporation incorporated under the laws of the State of Maine with its principal place of business at 154 River Road Orrington, Maine 04474.

18. Defendant, JANET MILLS, in her official capacity as Governor of the State of Maine (“Governor Mills” or the “State”), is responsible for enacting and enforcing the COVID-19

Executive Orders and other Orders at issue in this litigation. Governor Mills is sued in her official capacity.

JURISDICTION AND VENUE

19. This action arises under the First and Fourteenth Amendments to the United States Constitution and is brought pursuant to 42 U.S.C. § 1983. This action also arises under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §2000cc, *et seq.* This action also arises under Article I, Sections 3, 4, and 13 the Constitution of Maine.

20. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343, and 1367.

21. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Calvary Chapel's claims occurred in this district.

22. This Court is authorized to grant declaratory judgment under the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02, implemented through Rule 57 of the Federal Rules of Civil Procedure, and is authorized to grant a temporary restraining order and injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure.

23. This Court is authorized to grant Calvary Chapel's prayer for relief regarding costs, including a reasonable attorney's fee, pursuant to 42 U.S.C. § 1988.

GENERAL ALLEGATIONS

A. GOVERNOR MILLS' EXECUTIVE ORDERS AND RELATED ORDERS FROM THE STATE OF MAINE.

24. On March 15, 2020, in response to COVID-19, Governor Mills issued Proclamation of State of Civil Emergency to Further Protect Public Health, which declared a state of emergency

in the State of Maine. A true and correct copy of the March 15th Emergency Proclamation is attached hereto as **EXHIBIT A** and incorporated herein.

25. In the Emergency Proclamation, Governor Mills stated that COVID-19 “poses an imminent threat of substantial harm to our citizens” and directed various government agencies to implement certain restrictions and orders to facilitate the State’s response.

26. On March 18, 2020, Governor Mills issued Executive Order 14 stating that “[g]atherings of more than 10 people are prohibited throughout the State,” and declared that such a prohibition was primarily aimed at “social, personal, and discretionary events,” including those gatherings that are “faith-based.” A true and correct copy of Executive Order 14 is attached hereto as **EXHIBIT B** and incorporated herein.

27. On March 24, 2020, Governor Mills issued Executive Order 19, which continued to prohibit all gatherings of more than 10 people. A true and correct copy of Executive Order 19 is attached hereto as **EXHIBIT C** and incorporated herein.

28. Though continuing the prohibition on “faith-based” gatherings (*i.e.*, church) of more than 10 people, Governor Mills carved out a massive exemption from such prohibitions for businesses deemed “essential” and for certain businesses deemed “non-essential.” Such “essential businesses include *inter alia* “grocery and household goods” stores, gas stations, “home repair, hardware and auto repair” stores, and “convenience stores.” This exemption likewise permitted “big box” stores to continue operations.

29. Businesses deemed “essential” are permitted to continue operations subject to the requirement—but only “to maximum extent practicable”—that they adhere to social distancing recommendations, maintaining a six-foot distance between individuals, and other measures recommended by various government agencies.

30. Executive Order 19 also permitted “non-essential” businesses to continue provided in-person contact with customers is restricted, they do not require more than 10 employees in a space where distancing is not possible, and are facilitated by remote employees to the maximum extent practicable. These non-essential businesses include “shopping malls, theaters, casinos . . . exercise gyms . . . massage facilities . . . , and other personal care and treatment facilities.”

31. Violation of Executive Order 19 carried with it criminal and business licensing penalties.

32. On March 31, 2020, Governor Mills issued Executive Order 28, which stated: “[a]ll persons living in the State of Maine are hereby ordered, effective as of 12:01 AM on April 2, 2020 to stay at their homes or places of residence.” A true and correct copy of Executive Order 28 is attached hereto as **EXHIBIT D** and incorporated herein.

33. Executive Order 28 only permitted residents to travel out of their homes if they were conducting “essential” activities or traveling to work at a business allowed to continue operations.

34. Executive Order 28 further restricted the functions of “essential” businesses by setting numerical limitations on the number of customers or patrons depending on the square footage of the building in which the business was located, permitting 5 people for buildings of less than 7,500 square feet, 15 people for buildings between 7,500 and 25,000 square feet, 50 people for buildings between 25,000 and 50,000 square feet, 75 people for buildings between 50,000 and 75,000 square feet, and 100 for buildings larger than 75,000 square feet.

35. The exemption allowing “essential” businesses to operate subject to numerical limitations was not applicable to faith-based gatherings or churches, regardless of the size of the building in which such worship services take place.

36. Executive Order 28 stated that violations constituted a class E crime subject to up to six months in jail and a \$1,000 fine.

37. On April 3, 2020, Governor Mills issued a list further explaining what businesses were considered “essential” and those deemed “non-essential” under the previous Executive Orders. A true and correct copy of Governor Mills’ “Essential Business List” is attached hereto as **EXHIBIT E** and incorporated herein.

38. The list of “essential” businesses included grocery stores, household goods stores, gas stations, hardware stores, home repair stores, garden centers and stores, child care services, and **marijuana dispensaries**.

39. Executive Order 28 stated that its prohibitions were in effect until April 30, 2020.

40. On April 14, 2020, Governor Mills issued a Proclamation to Renew the State of Civil Emergency in Maine, extending the purported authorities in Maine to continue to order prohibitions on religious gatherings and business closures for another 30 days. A true and correct copy of the Proclamation Extension is attached hereto as **EXHIBIT F** and incorporated herein.

41. On April 29, 2020, Governor Mills issued Executive Order 49, further extending her stay-at-home orders until at least May 31. A true and correct copy of Executive Order 49 is attached hereto as **EXHIBIT G** and incorporated herein.

42. Executive Order 49 explicitly states that all of the prohibitions concerning “faith-based” gatherings remain in full effect, and that certain guidance documents would be made available concerning the potential re-opening of Maine’s economy in the coming days.

43. Executive Order 49 states that the “Restarting Plan” would permit certain businesses and operations to reopen subject to the guidelines stated in the Restarting Plan, and that those businesses or activities allowed to open were “subject to change depending upon the demonstrated efficacy of the conditions imposed” on those businesses or activities.

44. On April 28, 2020, Governor Mills released the “Restarting Maine’s Economy” plan, further outlining the Governor’s continued prohibitions on certain gatherings. A true and correct copy of the Restarting Maine’s Economy plan is attached hereto as **EXHIBIT H** and incorporated herein.

45. Restarting Maine’s Economy contemplates that businesses and activities will be permitted to reopen in phases with “Stage 1” contemplated to begin sometime in May, but the plan states that no concrete decisions have been made and that “decisions will be determined by public health metrics.”

46. If Governor Mills does permit Stage 1 to commence sometime in May, although it is not certain based on the plan, certain functions at churches and “religious” gatherings will be permitted under Governor Mills’ proscribed orthodoxy for worship services

47. Stage 1 contemplates “a continued prohibition on gathering of more than 10 people.”

48. Restarting Maine’s Economy states that churches or religious organizations, if permitted to open during Stage 1, will be “[l]imited to drive-in, stay-in-your-vehicle church services.” Otherwise, as contemplated in Executive Order 49, the stay-at-home order remains in full effect prohibiting any gathering of individuals.

49. Churches and religious gatherings are not mentioned in any of the subsequent stages, and thus no further guidance on the speculative “drive-in stay-in-your-vehicle church services” potentially coming sometime in May will continue beyond May or whether different circumstances and prohibitions will continue.

50. Calvary Chapel hereinafter refers to Executive Order 14, Executive Order 19, Executive Order 28, Executive Order 49, and the Restarting Maine’s Economy plan (EXHIBITS A–H) collectively as the “GATHERING ORDERS.”

B. THE STATE’S ENFORCEMENT OF GOVERNOR MILLS’ GATHERING ORDERS.

51. On April 2, 2020, the Maine State Police issued press statements indicating that it will enforce Governor Mills’ GATHERING ORDERS against churches and individuals found in violation of them. A true and correct copy of the Maine State Police’s Enforcement Practices Memorandum is attached hereto as **EXHIBIT I** and incorporated herein.

52. The Enforcement Memorandum states that while the Maine State Police is “asking for voluntary compliance” with the GATHERING ORDERS, the State Police will—in certain circumstances—“issu[e] summonses or mak[e] physical arrests” for violating the GATHERING ORDERS.

53. The Enforcement Memorandum explicitly notes that the Maine State Police will be “ask[ing] questions to ensure compliance” and that it hopes residents of Maine will “not put our officers in the position of having to enforce the law.”

54. Through its Enforcement Memorandum, the Maine State Police has unquestionably demonstrated that it intends to enforce the GATHERING ORDERS, including against Calvary Chapel and its religious services.

C. CALVARY CHAPEL’S CHURCH SERVICES CAN AND WILL COMPLY WITH SOCIAL DISTANCING AND PERSONAL HYGIENE RECOMMENDATIONS.

55. To comply with the CDC and other governmental social distancing and personal hygiene guidelines imposed by Governor Mills’ GATHERING ORDERS (*i.e.*, “to maximum extent practicable” for exempted businesses) for its worship services, Calvary Chapel can and would practice stringent social distancing and personal hygiene protocols, including extensive and enhanced sanitizing of common surfaces in Calvary Chapel’s building prior to the service, and

requiring attendees to remain at least six feet apart and use hand sanitizer prior to entering and during movement inside Calvary Chapel's building.

56. Calvary Chapel also has the capability to abide by all of the guidelines set out by the Maine Center for Disease Control and Prevention and will implement all such guidelines at its in-person religious gatherings.

D. GOVERNOR MILLS' UNEQUAL TREATMENT OF NON-RELIGIOUS GATHERINGS.

57. On May 3, 2020, at around the same time as Calvary Chapel was prohibited from hosting its in-person religious worship services, businesses in Bangor and the surrounding area were permitted to and did continue to operate without the onerous restrictions imposed on Calvary Chapel.

58. As accurately depicted in the below photographs, on May 3, 2020, around the same time that Calvary Chapel was prohibited from having a religious gathering, the Walmart in Bangor had hundreds of cars parked in the parking lot, right next to one another without the onerous social distancing mandates forced on Calvary Chapel.





59. Similarly, and as accurately depicted in the below photograph, on May 3, 2020, at the Target Store in Bangor, countless cars were present in the parking lot while Calvary Chapel was suffering under the yoke of the GATHERING ORDERS.



60. As accurately depicted in the below photographs, on May 3, 2020, the Home Depot in Bangor was similarly permitted to continue operating with large numbers of people while Calvary Chapel was threatened with enforcement under the GATHERING ORDERS.





61. As accurately depicted in the below photograph, the BJ's Wholesale Club similarly had large gatherings on May 3, 2020 without the restrictions imposed on Calvary Chapel's religious services.



62. As accurately depicted in the below photograph, the Sam's Club in Bangor had similar large gatherings on May 3, 2020, while Calvary Chapel was not permitted to host its religious gatherings of a similar nature.



63. Finally, and as accurately depicted in the below photographs, Lowe's Home Improvement Store's parking lot was filled with cars on May 3, 2020, while Calvary Chapel was prohibited from having such gatherings for its religious services.



E. LESS RESTRICTIVE ALTERNATIVES ARE AVAILABLE TO GOVERNOR MILLS.

64. Despite Governor Mills' insistence that in-person religious gatherings of more than 10 people cannot continue because they would spread COVID-19, the State has failed to consider other, substantially less restrictive alternatives to an absolute prohibition on "religious" gatherings.

65. Like the State of Maine, the State of Florida has issued stay-at-home executive orders and required the closure of all so-called "non-essential" businesses without unnecessarily discriminating against religious gatherings. On April 1, 2020, Florida Governor Ron DeSantis issued Executive Order 20-91, which **included "religious services conducted in churches, synagogues, and houses of worship" as essential activities permitted to continue subject to social distancing and personal hygiene guidelines.** A true and correct copy of Florida Executive Order 20-91 is attached hereto as **EXHIBIT J** and incorporated herein.

66. The State of Indiana has likewise issued stay-at-home executive orders and required the closure of all so-called "non-essential" businesses without unnecessarily discriminating against religious gatherings. Governor Eric J. Holcomb's Executive Order 20-08 declared that "[r]eligious facilities, entities and groups, and religious gatherings" are essential and may continue to operate provided they follow appropriate social distancing and personal hygiene practices. A true and correct copy of Indiana's Executive Order 20-08 is attached hereto as **EXHIBIT K** and incorporated herein.

67. The State of Arizona, in Executive Order 2020-18, classified "[e]ngaging in constitutionally protected activities such as speech and religion" as essential activities, subject to a flexible requirement that such engagement be "conducted in a manner that provides appropriate physical distancing to the extent feasible." The Arizona Attorney General, in Opinion I20-008, interpreted such essential activities clearly to include assembling for religious worship. True and

correct copies of Arizona Executive Order 2020-18 and Arizona Attorney General Opinion I20-008 are attached hereto as **EXHIBIT L** and **EXHIBIT M**, respectively, and incorporated herein.

68. The State of Alabama, in its final Order of the State Health Officer Suspending Certain Public Gatherings Due to Risk of Infection by COVID-19, issued April 3, 2020, exempts individuals attending religious worship services in person subject to certain requirements and permits “drive-in” worship services without limitation. A true and correct copy of the Alabama Order is attached hereto as **EXHIBIT N** and incorporated herein.

69. The State of Arkansas has likewise exempted “places of worship” from its Executive Order 20-13 imposing restrictions to prevent the spread of COVID-19, provided that they engage in adequate social distancing and personal hygiene practices. A true and correct copy of the Arkansas Executive Order is attached hereto as **EXHIBIT O** and incorporated herein.

70. The State of Connecticut has similarly shown that other, less restrictive alternatives are available. In Executive Order No. 7N, Governor Ned Lamont permitted religious services to continue to meet, but limited their in-person gatherings to 50 people, as opposed to the six-person limit applicable to other gatherings. A true and correct copy of the Connecticut Executive Order No. 7N is attached hereto as **EXHIBIT P** and incorporated herein.

71. The State of Texas has likewise issued certain COVID-19 orders, but has provided explicit protections to religious gatherings and issued directives outlining the protection for religious freedom, even in these times of uncertainty. A true and correct copy of the Texas Guidance for Houses of Worship is attached hereto as **EXHIBIT Q** and incorporated herein. In that Guidance, Texas notes that religious assemblies and houses of worship are “essential services” and that in-person gatherings are permissible if social distancing and personal hygiene practices are followed.

72. The State of Ohio has likewise issued certain COVID-19 orders, including the Ohio Department of Health's Stay Safe Ohio Order. A true and correct copy of the Ohio order is attached hereto as **EXHIBIT R** and incorporated herein. Ohio's order likewise states that the stay at home mandate "does not apply to religious facilities, entities and groups and religious gatherings."

73. Numerous other states have similarly permitted religious gatherings to be treated equally with non-religious gatherings.

74. As these other states have demonstrated, Governor Mills can continue to pursue the State's objective of preventing the spread of COVID-19 without unnecessarily treating religious gatherings in a discriminatory manner, and the State has numerous other, less restrictive alternatives available to it to do so.

75. **Governor Mills has neither tried without success nor considered and ruled out for good reason these less restrictive alternatives.**

76. Governor Mills has constitutionally permissible alternatives available, but has failed to attempt to achieve the State's purported goals without unnecessarily interfering with constitutionally protected activities.

F. IRREPARABLE INJURY TO CALVARY CHAPEL FROM GOVERNOR MILLS' GATHERING ORDERS.

77. Despite being capable of following all social distancing and personal hygiene protocols recommended by the CDC and specified in the GATHERING ORDERS, Calvary Chapel has been explicitly targeted, singled out, and punished for participating in an in-person religious gathering when exempted commercial and non-religious entities may accommodate gatherings, crowds, and masses of people without numeric limitation, and without targeting or punishment by the government.

78. As a result of Governor Mills' GATHERING ORDERS, Calvary Chapel has suffered and is suffering irreparable injury by having Pastor Graves and all attendees of future services threatened with criminal sanction.

79. As a result of Governor Mills' GATHERING ORDERS, Calvary Chapel has suffered and is suffering irreparable injury by being prohibited from engaging in its constitutionally and statutorily protected rights of free exercise, assembly, and speech.

80. As a result of Governor Mills' GATHERING ORDERS, Calvary Chapel has suffered and is suffering irreparable injury by the infringement of its constitutionally protected right to be free from government hostility toward religion.

81. As a result of the Governor Mills' GATHERING ORDERS and the explicit threats from the Maine State Police, Calvary Chapel has suffered and is suffering irreparable injury by the continuing threat of criminal sanctions against Calvary Chapel's Pastor Graves and congregants for merely exercising their constitutionally protected freedoms.

82. Due to the explicit threats of Governor Mills' GATHERING ORDERS and the announcements by the Maine State Police, Calvary Chapel has been forced to self-censor, cease its religious worship services, and violate its sincerely held religious beliefs.

G. CALVARY CHAPEL'S ATTEMPTS TO SECURE RELIEF WITHOUT JUDICIAL INTERVENTION WERE IGNORED AND FURTHER ATTEMPTS TO NOTIFY THE STATE ARE FUTILE AND IMPRACTICAL BEFORE THIS SUNDAY.

83. On May 4, 2020, prior to the commencement of the instant action, Calvary Chapel's counsel sent by email a demand letter to Governor Mills, with copies to state and local police and other officials, in which Calvary Chapel's counsel demanded, by 5:00 P.M. on May 5, written confirmation that the State has withdrawn the ban on religious gatherings embodied in the GATHERING ORDERS, will allow individuals to attend church services at Calvary Chapel in an

equal manner with other essential and non-essential business permitted to continue provided certain social distancing and personal hygiene practices are followed, and will cease enforcement of any church gathering ban against members and/or attendees of Calvary Chapel church services. A true and correct copy of the demand letter is attached hereto as **EXHIBIT S**. No written response from Governor Mills' office was received by the requested deadline, or at any time prior to the filing of this Verified Complaint.

84. The failure of Governor Mills or her officials to confirm withdrawal or cessation of enforcement of the discriminatory gathering ban for religious services in the GATHERING ORDERS and applied to Calvary Chapel and its pastor shows that Calvary Chapel's irreparable injury to its constitutionally protected freedoms is ongoing.

85. The failure of Governor Mills or her officials to respond to Calvary Chapel's communication also shows that notice and an opportunity to respond to this lawsuit cannot be effectuated, and would be futile, prior to this Sunday's worship activities at Calvary Chapel, when the State and/or other government officials will again interfere with the constitutional liberties of Calvary Chapel and its congregants absent a temporary restraining order from this Court.

CONSTITUTIONAL CLAIMS

**COUNT I—THE GATHERING ORDERS VIOLATE
PLAINTIFF'S RIGHT TO FREE EXERCISE OF RELIGION
UNDER THE FIRST AMENDMENT**

86. Calvary Chapel hereby realleges and adopts each and every allegation in paragraphs 1–85 above.

87. The Free Exercise Clause of the First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, prohibits the State from abridging Calvary Chapel's rights to free exercise of religion.

88. Calvary Chapel has sincerely held religious beliefs that Scripture is the infallible, inerrant word of the Lord Jesus Christ, and that it is to follow its teachings.

89. Calvary Chapel has sincerely held religious beliefs, rooted in Scripture's commands (*e.g.*, *Hebrews* 10:25), that followers of Jesus Christ are not to forsake the assembling of themselves together, and that they are to do so even more in times of peril and crisis. Indeed, the entire purpose of the Church (in Greek "ekklesia," meaning "assembly") is to assemble together Christians to worship Almighty God.

90. The GATHERING ORDERS, on their face and as applied, target Calvary Chapel's sincerely held religious beliefs by prohibiting religious gatherings.

91. The GATHERING ORDERS, on their face and as applied, impermissibly burden Calvary Chapel's sincerely held religious beliefs, compel Calvary Chapel to either change those beliefs or to act in contradiction to them, and force Calvary Chapel to choose between the teachings and requirements of its sincerely held religious beliefs in the commands of Scripture and the State's imposed value system.

92. The GATHERING ORDERS, on their face and as applied, place Calvary Chapel in an irresolvable conflict between compliance with the GATHERING ORDERS and its sincerely held religious beliefs.

93. The GATHERING ORDERS, on their face and as applied, put substantial pressure on Calvary Chapel to violate its sincerely held religious beliefs by ignoring the fundamental teachings and tenets of Scripture concerning the assembling of Believers.

94. The GATHERING ORDERS, on their face and as applied, are neither neutral nor generally applicable, but rather specifically and discriminatorily target the religious beliefs, speech, assembly, and viewpoint of Calvary Chapel.

95. The GATHERING ORDERS, on their face and as applied, constitute a substantial burden on Calvary Chapel's sincerely held religious beliefs.

96. The State lacks a compelling, legitimate, or rational interest in the GATHERING ORDERS' application of different standards for churches and religious gatherings than those applicable to exempted businesses or non-religious entities.

97. Even if the GATHERING ORDERS' restriction on religious gatherings were supported by a compelling interest, which it is not, they are not the least restrictive means to accomplish the government's purported interest.

98. The GATHERING ORDERS, on their face and as applied, fail to accommodate Calvary Chapel's sincerely held religious beliefs.

99. The GATHERING ORDERS, on their face and as applied, specifically target Calvary Chapel's sincerely held religious beliefs and set up a system of individualized exemptions that permits certain other similarly situated businesses or non-religious entities to continue operations under certain guidelines while prohibiting religious gatherings, such as Calvary Chapel's church and worship services, from operating with similar guidelines.

100. The GATHERING ORDERS, on their face and as applied, constitute an express and overt religious gerrymander.

101. The GATHERING ORDERS, on their face and as applied, have caused, are causing, and will continue to cause Calvary Chapel immediate and irreparable harm, and actual and undue hardship.

102. Calvary Chapel has no adequate remedy at law to correct the continuing deprivation of its most cherished liberties.

WHEREFORE, Calvary Chapel respectfully prays for relief against the State as hereinafter set forth in its prayer for relief.

**COUNT II—THE GATHERING ORDERS VIOLATE
PLAINTIFF’S RIGHT TO PEACEABLE ASSEMBLY
UNDER THE FIRST AMENDMENT**

103. Calvary Chapel hereby realleges and adopts each and every allegation in paragraphs 1–85 above.

104. The First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, prohibits the State from abridging the right of the people peaceably to assemble.

105. The GATHERING ORDERS, on their face and as applied, are an unconstitutional prior restraint on Calvary Chapel’s right to assemble.

106. The GATHERING ORDERS, on their face and as applied, unconstitutionally discriminate on the basis of viewpoint.

107. The GATHERING ORDERS, on their face and as applied, unconstitutionally discriminate on the basis of content.

108. The State lacks a compelling, legitimate, or rational interest in the GATHERING ORDERS’ application of differential standards for churches and religious gatherings than those applicable to exempted businesses or non-religious entities.

109. The GATHERING ORDERS, on their face and as applied, are not the least restrictive means to accomplish any permissible government purpose sought to be served by the orders.

110. The GATHERING ORDERS, on their face and as applied, are not narrowly tailored to serve the government’s purported interest.

111. The GATHERING ORDERS, on their face and as applied, do not leave open ample alternative channels of communication for Calvary Chapel.

112. The GATHERING ORDERS, on their face and as applied, are irrational and unreasonable and impose unjustifiable and unreasonable restrictions on Calvary Chapel's constitutionally protected right to assemble.

113. The GATHERING ORDERS, on their face and as applied, impermissibly vest unbridled discretion in the hands of government officials, including Governor Mills and her designees, to apply or not apply the GATHERING ORDERS in a manner to restrict free assembly.

114. The GATHERING ORDERS, on their face and as applied, are underinclusive by limiting their gathering prohibitions to only certain businesses or organizations deemed "non-essential."

115. The GATHERING ORDERS, on their face and as applied, are unconstitutionally vague and overbroad as they chill and abridge the free assembly rights of Calvary Chapel.

116. On their face and as applied, the GATHERING ORDERS' violation of Calvary Chapel's right to free assembly have caused, are causing, and will continue to cause Calvary Chapel to suffer immediate and irreparable injury and undue and actual hardship.

117. Calvary Chapel has no other adequate remedy at law to correct the continuing deprivation of its most cherished liberties.

WHEREFORE, Calvary Chapel respectfully prays for the relief against the State as hereinafter set forth in its prayer for relief.

**COUNT III - THE GATHERING ORDERS VIOLATE
PLAINTIFF'S RIGHTS TO FREEDOM OF SPEECH
UNDER THE FIRST AMENDMENT**

118. Calvary Chapel hereby realleges and adopts each and every allegation in paragraphs 1-85 above.

119. The Free Speech Clause of the First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, prohibits the State from abridging Calvary Chapel's freedom of speech.

120. The GATHERING ORDERS, on their face and as applied, are an unconstitutional prior restraint on Calvary Chapel's speech.

121. The GATHERING ORDERS, on their face and as applied, unconstitutionally discriminate on the basis of viewpoint.

122. The GATHERING ORDERS, on their face and as applied, unconstitutionally discriminate on the basis of content.

123. The State lacks a compelling, legitimate, or rational interest in the GATHERING ORDERS' application of different standards for churches and religious gatherings than those applicable to exempted businesses and non-religious entities.

124. The GATHERING ORDERS, on their face and as applied, are not the least restrictive means to accomplish any permissible government purpose sought to be served by the orders.

125. The GATHERING ORDERS, on their face and as applied, are not narrowly tailored to serve the government's purported interest.

126. The GATHERING ORDERS, on their face and as applied, do not leave open ample alternative channels of communication for Calvary Chapel.

127. The GATHERING ORDERS, on their face and as applied, are irrational and unreasonable and impose unjustifiable and unreasonable restrictions on Calvary Chapel's constitutionally protected speech.

128. The GATHERING ORDERS, on their face and as applied, impermissibly vest unbridled discretion in the hands of government officials, including Governor Mills and her designees, to apply or not apply the GATHERING ORDERS in a manner to restrict free speech.

129. The GATHERING ORDERS, on their face and as applied, are underinclusive by limiting their prohibitions to only certain entities, organizations, or businesses deemed “non-essential.”

130. The GATHERING ORDERS, on their face and as applied, are unconstitutionally overbroad as they chill and abridge the free speech rights of Calvary Chapel.

131. On their face and as applied, the GATHERING ORDERS’ violation of Calvary Chapel’s rights to free speech have caused, are causing, and will continue to cause Calvary Chapel to suffer immediate and irreparable injury and undue and actual hardship.

132. Calvary Chapel has no other adequate remedy at law to correct the continuing deprivation of its most cherished liberties.

WHEREFORE, Calvary Chapel respectfully prays for the relief against the State as hereinafter set forth in its prayer for relief.

**COUNT IV—THE GATHERING ORDERS VIOLATE
THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT**

133. Calvary Chapel hereby realleges and adopts each and every allegation in paragraphs 1–85 above.

134. The Establishment Clause of the First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, prohibits the government from establishing a religion.

135. The Establishment Clause also prohibits excessive government entanglement with religion.

136. The Establishment Clause also prohibits the government from showing hostility towards religion and prohibits showing favoritism towards one religious sect over another or between non-religion and religion.

137. The government mandated prohibition on “faith-based” gatherings in the GATHERING ORDERS violates the Establishment Clause because the State of Maine thereby dictates the manner in which Christians and churches must worship or worship online.

138. The Establishment Clause does not permit the State of Maine to dictate under penalty of criminal sanctions the manner, style, form, practices, or sacraments of religious worship and thereby impose its own version of religious worship on every church and citizen of the State.

139. In fact, as the Supreme Court has unequivocally stated, “[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, **religion**, or other matters of opinion or force citizens to confess by word or act their faith therein.” *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) (emphasis added).

140. The State, through Governor Mills’ GATHERING ORDERS, is purporting to prescribe what shall be orthodox in matters of religious worship, and is thus running roughshod over the Establishment Clause.

141. The GATHERING ORDERS, on their face and as applied, permit the State to display impermissible hostility towards religious gatherings.

142. The GATHERING ORDERS, on their face and as applied, impermissibly show favoritism towards certain non-religious gatherings over religious gatherings.

143. The GATHERING ORDERS, on their face and as applied, violate the Establishment Clause because they excessively entangle the government with religion.

144. The GATHERING ORDERS, on their face and as applied, purport to inform religious adherents and believers how they may choose to worship, assemble together, or engage in their religious freedoms.

145. The GATHERING ORDERS, on their face and as applied, purport to establish an acceptable method of religious practice and worship, place a numerical limitation on the scope of how such religious practice and worship may occur, and provide a government imprimatur for only certain forms of “permissible” worship.

146. The GATHERING ORDERS, on their face and as applied, demonstrate overt hostility to religious practice and worship that does not conform to government sanctioned religious exercises.

147. The GATHERING ORDERS, on their face and as applied, have caused, are causing, and will continue to cause Calvary Chapel immediate and irreparable harm, and actual and undue hardship.

148. Calvary Chapel has no adequate remedy at law to correct the continuing deprivation of its most cherished constitutional liberties.

WHEREFORE, Calvary Chapel respectfully prays for the relief against the State as hereinafter set forth in their prayer for relief.

**COUNT V—THE GATHERING ORDERS VIOLATE
PLAINTIFF’S RIGHT TO EQUAL PROTECTION
UNDER THE FOURTEENTH AMENDMENT**

149. Calvary Chapel hereby realleges and adopts each and every allegation in paragraphs 1–85 above.

150. The Fourteenth Amendment to the United States Constitution guarantees Calvary Chapel the right to equal protection under the law.

151. The GATHERING ORDERS, on their face and as applied, are an unconstitutional abridgement of Calvary Chapel's right to equal protection under the law, are not neutral, and specifically target Calvary Chapel's and other religious gatherings for unequal treatment.

152. The GATHERING ORDERS, on their face and as applied, are an unconstitutional abridgment of Calvary Chapel's right to equal protection because they permit the State to treat Calvary Chapel differently from other similarly situated businesses and non-religious entities on the basis of the content and viewpoint of Calvary Chapel's gatherings.

153. The GATHERING ORDERS create a system of exempt categories that permit essential businesses and gatherings to continue to operate with restriction or threat of sanction, and impose disparate treatment to those categories of businesses and gatherings called "non-essential."

154. The GATHERING ORDERS system of categories represents disparate treatment based upon classification in violation equal protection.

155. The GATHERING ORDERS, on their face and as applied, impermissibly discriminate between certain non-religious gatherings and religious gatherings.

156. The State lacks a compelling, legitimate, or rational interest in the GATHERING ORDERS' application of different standards for churches and religious gatherings than those applicable to exempted businesses or non-religious entities.

157. The GATHERING ORDERS, on their face and as applied, are not the least restrictive means to accomplish any permissible government purpose sought to be served.

158. The GATHERING ORDERS, on their face and as applied, do not have a rational basis.

159. The GATHERING ORDERS, on their face and as applied, are irrational and unjustifiable and impose irrational and unjustifiable restrictions on Calvary Chapel's religious gatherings.

160. The GATHERING ORDERS, on their face and as applied, have caused, are causing, and will continue to cause Calvary Chapel immediate and irreparable harm, and actual and undue hardship.

161. Calvary Chapel has no adequate remedy at law to correct the continuing deprivation of its most cherished liberties.

WHEREFORE, Calvary Chapel respectfully prays for relief against the State as hereinafter set forth in its prayer for relief.

**COUNT VI—THE GATHERING ORDERS VIOLATE
PLAINTIFF’S RIGHT TO A REPUBLICAN FORM OF GOVERNMENT
UNDER THE GUARANTEE CLAUSE OF ARTICLE IV, § 4 OF
THE UNITED STATES CONSTITUTION**

162. Calvary Chapel hereby realleges and adopts each and every allegation in paragraphs 1–85 above.

163. Article IV, § 4 of the United States Constitution requires the United States to guarantee to every citizen in the nation a republican form of government.

164. The Guarantee Clause’s distinguishing feature is that the republican form of government it guarantees is the right of the people to choose their own governmental administration and pass their own laws.

165. As interpreted by the federal judiciary and prominent scholars, the Guarantee Clause mandates that the federal government guarantee a form of government for all citizens in which supreme power resides in a body of citizens entitled to vote and exercised by elected officers responsible to such citizens.

166. The GATHERING ORDERS’ express, unilateral, and unequivocal exercises of purported executive authority over the constitutional rights of Calvary Chapel deprive Calvary Chapel of the right to select its own government administration, pass its own laws, and maintain a

government administration directly responsible to the people, including by laws that are enacted by the legislature in constitutional recognition of the separation of powers.

167. The impermissible exercise of exclusive and unaccountable executive authority violates the Guarantee Clause of the United States Constitution.

168. The GATHERING ORDERS, on their face and as applied, have caused, are causing, and will continue to cause Calvary Chapel immediate and irreparable harm, and actual and undue hardship.

169. Calvary Chapel has no adequate remedy at law to correct the continuing deprivation of its most cherished liberties.

WHEREFORE, Calvary Chapel respectfully prays for the relief against the State as hereinafter set forth in its prayer for relief.

**COUNT VII—THE GATHERING ORDERS VIOLATE
PLAINTIFF’S RIGHT TO FREE EXERCISE OF RELIGION UNDER
ARTICLE I, SECTION 3 OF THE CONSTITUTION OF THE STATE OF MAINE**

170. Calvary Chapel hereby realleges and adopts each and every allegation in paragraphs 1–85 above.

171. Article I, § 3 of the Constitution of the State of Maine states:

All individuals have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences, and no person shall be hurt, molested or restrained in that person's liberty or estate for worshipping God in the manner and season most agreeable to the dictates of that person's own conscience, nor for that person's religious professions or sentiments, **provided that that person does not disturb the public peace, nor obstruct others in their religious worship**;—and all persons demeaning themselves peaceably, as good members of the State, shall be equally under the protection of the laws

(Emphasis added.)

172. Calvary Chapel has sincerely held religious beliefs that Scripture is the infallible, inerrant word of the Lord Jesus Christ, and that it is to follow its teachings.

173. Calvary Chapel has sincerely held religious beliefs, rooted in Scripture's commands (*e.g.*, *Hebrews* 10:25), that followers of Jesus Christ are not to forsake the assembling of themselves together, and that they are to do so even more in times of peril and crisis. Indeed, the entire purpose of the Church (in Greek "ekklesia," meaning "assembly") is to assemble together Christians to worship Almighty God.

174. The GATHERING ORDERS, on their face and as applied, target Calvary Chapel's sincerely held religious beliefs by prohibiting religious gatherings.

175. The GATHERING ORDERS, on their face and as applied, impermissibly burden Calvary Chapel's sincerely held religious beliefs, compel Calvary Chapel to either change those beliefs or to act in contradiction to them, and force Calvary Chapel to choose between the teachings and requirements of its sincerely held religious beliefs in the commands of Scripture and the State's imposed value system.

176. The GATHERING ORDERS, on their face and as applied, place Calvary Chapel in an irresolvable conflict between compliance with the GATHERING ORDERS and its sincerely held religious beliefs.

177. The GATHERING ORDERS, on their face and as applied, put substantial pressure on Calvary Chapel to violate its sincerely held religious beliefs by ignoring the fundamental teachings and tenets of Scripture concerning the assembling of Believers.

178. The GATHERING ORDERS, on their face and as applied, are neither neutral nor generally applicable, but rather specifically and discriminatorily target the religious beliefs, speech, assembly, and viewpoint of Calvary Chapel.

179. The GATHERING ORDERS, on their face and as applied, constitute a substantial burden on Calvary Chapel's sincerely held religious beliefs.

180. The State lacks a compelling, legitimate, or rational interest in the GATHERING ORDERS' application of different standards for churches and religious gatherings than those applicable to exempted businesses or non-religious entities.

181. Even if the GATHERING ORDERS' restriction on religious gatherings were supported by a compelling interest, which it is not, they are not the least restrictive means to accomplish the government's purported interest.

182. The GATHERING ORDERS, on their face and as applied, fail to accommodate Calvary Chapel's sincerely held religious beliefs.

183. The GATHERING ORDERS, on their face and as applied, specifically target Calvary Chapel's sincerely held religious beliefs and set up a system of individualized exemptions that permits certain other similarly situated businesses or non-religious entities to continue operations under certain guidelines while prohibiting religious gatherings, such as Calvary Chapel's church and religious gatherings, from operating with similar guidelines.

184. The GATHERING ORDERS, on their face and as applied, constitute an express and overt religious gerrymander.

185. The GATHERING ORDERS, on their face and as applied, have caused, are causing, and will continue to cause Calvary Chapel immediate and irreparable harm, and actual and undue hardship.

186. Calvary Chapel has no adequate remedy at law to correct the continuing deprivation of its most cherished liberties.

WHEREFORE, Calvary Chapel respectfully prays for relief against the State as hereinafter set forth in its prayer for relief.

**COUNT VIII—THE GATHERING ORDERS VIOLATE
PLAINTIFF’S RIGHT TO FREEDOM OF SPEECH UNDER
ARTICLE I, SECTION 4 OF THE CONSTITUTION OF THE STATE OF MAINE**

187. Calvary Chapel hereby realleges and adopts each and every allegation in paragraphs 1–85 above.

188. Article I, Section 4 of the Constitution of the State of Maine states that “[e]very citizen may freely speak, write and publish sentiments on any subject.”

189. The GATHERING ORDERS, on their face and as applied, are an unconstitutional prior restraint on Calvary Chapel’s speech.

190. The GATHERING ORDERS, on their face and as applied, unconstitutionally discriminate on the basis of viewpoint.

191. The GATHERING ORDERS, on their face and as applied, unconstitutionally discriminate on the basis of content.

192. The State lacks a compelling, legitimate, or rational interest in the GATHERING ORDERS’ application of different standards for churches and religious gatherings than those applicable to exempted businesses and non-religious entities.

193. The GATHERING ORDERS, on their face and as applied, are not the least restrictive means to accomplish any permissible government purpose sought to be served by the orders.

194. The GATHERING ORDERS, on their face and as applied, are not narrowly tailored to serve the government’s purported interest.

195. The GATHERING ORDERS, on their face and as applied, do not leave open ample alternative channels of communication for Calvary Chapel.

196. The GATHERING ORDERS, on their face and as applied, are irrational and unreasonable and impose unjustifiable and unreasonable restrictions on Calvary Chapel's constitutionally protected speech and right to assemble.

197. The GATHERING ORDERS, on their face and as applied, impermissibly vest unbridled discretion in the hands of government officials, including Governor Mills and her designees, to apply or not apply the GATHERING ORDERS in a manner to restrict free speech and assembly.

198. The GATHERING ORDERS, on their face and as applied, are underinclusive by limiting their prohibitions to only certain entities, organizations, or businesses deemed "non-essential."

199. The GATHERING ORDERS, on their face and as applied, are unconstitutionally overbroad as they chill and abridge the free speech and assembly rights of Calvary Chapel.

200. On their face and as applied, the GATHERING ORDERS' violation of Calvary Chapel's rights to free speech and assembly have caused, are causing, and will continue to cause Calvary Chapel to suffer immediate and irreparable injury and undue and actual hardship.

201. Calvary Chapel has no other adequate remedy at law to correct the continuing deprivation of its most cherished liberties.

WHEREFORE, Calvary Chapel respectfully prays for the relief against the State as hereinafter set forth in its prayer for relief.

**COUNT IX—THE GATHERING ORDERS VIOLATE
PLAINTIFF'S RIGHT TO HAVE LAWS SUSPENDED
ONLY BY THE MAINE LEGISLATURE**

202. Calvary Chapel hereby realleges and adopts each and every allegation in paragraphs 1–85 above.

203. Article I, Section 13 of the Constitution of the State of Maine states that “[t]he laws shall not be suspended but by the Legislature or its authority.”

204. The GATHERING ORDERS’ express, unilateral, and unequivocal exercise of purported executive authority over the constitutional rights of Calvary Chapel deprive Calvary Chapel of the right to select its own government administration, pass its own laws, and maintain a government administration directly responsible to the people, including by laws that are enacted by the legislature.

205. The impermissible exercise of such executive authority violated the Constitution of Maine by purporting to suspend constitutional rights and laws of the State without legislative exercise of such suspension.

206. The GATHERING ORDERS, on their face and as applied, have caused, are causing, and will continue to cause Calvary Chapel immediate and irreparable harm, and actual and undue hardship.

207. Calvary Chapel has no adequate remedy at law to correct the continuing deprivation of its most cherished liberties.

WHEREFORE, Calvary Chapel respectfully prays for the relief against the State as hereinafter set forth in its prayer for relief.

STATUTORY CLAIMS

COUNT X—THE GATHERING ORDERS VIOLATE PLAINTIFF’S RIGHTS UNDER THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT

208. Calvary Chapel hereby realleges and adopts each and every allegation in paragraphs 1–85 above.

209. The Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc–2000cc-5 (“RLUIPA”), states 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). If the government does impose such a restriction, it must then demonstrate that such a burden on the religious assembly is supported by a compelling interest and is the least restrictive means to further that alleged interest.

210. RLUIPA further 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).

211. RLUIPA further states that “[n]o government shall impose or implement a land use regulation that (A) totally excludes religious assemblies from a jurisdiction; or (B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.” 42 U.S.C. § 2000cc(b)(3).

212. Calvary Chapel has sincerely held religious beliefs that Scripture is the infallible, inerrant word of the Lord Jesus Christ, and that Calvary Chapel is to follow its teachings.

213. Calvary Chapel has sincerely held religious beliefs, rooted in Scripture’s commands (*e.g.*, *Hebrews* 10:25), that followers of Jesus Christ are not to forsake the assembling of themselves together, and that they are to do so even more in times of peril and crisis. Indeed, the entire purpose of the Church (in Greek “ekklesia,” meaning “assembly”) is to assemble together Christians to worship Almighty God.

214. The GATHERING ORDERS, on their face and as applied, target Calvary Chapel’s sincerely held religious beliefs by prohibiting religious gatherings.

215. The GATHERING ORDERS, on their face and as applied, impermissibly and substantially burden Calvary Chapel’s sincerely held religious beliefs, compel Calvary Chapel to either change those beliefs or to act in contradiction to them, and force Calvary Chapel to choose

between the teachings and requirements of its sincerely held religious beliefs in the commands of Scripture and the State's imposed value system.

216. The GATHERING ORDERS, on their face and as applied, constitute a substantial burden on Calvary Chapel's sincerely held religious beliefs.

217. The State lacks a compelling interest in the GATHERING ORDERS' application of different standards for churches and religious gatherings than those applicable to exempted businesses and non-religious entities.

218. Even if the GATHERING ORDERS' restrictions on religious gatherings was supported by a compelling interest, which it is not, they are not the least restrictive means to accomplish the government's purported interest.

219. The GATHERING ORDERS, on their face and as applied, have caused, are causing, and will continue to cause Calvary Chapel immediate and irreparable harm, and actual and undue hardship.

220. Calvary Chapel has no adequate remedy at law to correct the continuing deprivation of its most cherished liberties.

WHEREFORE, Calvary Chapel respectfully prays for relief against the State as hereinafter set forth in its prayer for relief.

PRAYER FOR RELIEF

WHEREFORE, Calvary Chapel prays for relief as follows:

A. That the Court issue a Temporary Restraining Order restraining and enjoining Governor Mills, all State officers, agents, employees, and attorneys, and all other persons in active concert or participation with them, from enforcing, attempting to enforce, threatening to enforce, or otherwise requiring compliance with the GATHERING ORDERS or any other order to the extent any such order prohibits religious worship services at Calvary Chapel, or in-person church

services at Calvary Chapel if Calvary Chapel meets the social distancing, enhanced sanitization, and personal hygiene guidelines pursuant to which the State allows so-called “essential” commercial and non-religious entities (*e.g.*, beer, wine, and liquor stores, warehouse clubs, ‘big box’ and ‘supercenter’ stores, and marijuana dispensaries) to accommodate gatherings of persons without numerical limit. **To be clear, Calvary Chapel merely seeks a TRO preventing Calvary Chapel, its pastor, and its members from being subject to criminal sanctions for hosting an in-person worship service on Sunday during which Calvary Chapel will implement social distancing and hygiene protections on an equal basis with other non-religious gatherings.** In making such a request, Calvary Chapel merely seeks to be treated equally with other businesses, and seeks only to be permitted to meet in person so long as they abide by social distancing, enhanced sanitizing, and personal hygiene recommendations that other businesses are allowed to follow and remain open.

B. That the Court issue a Preliminary Injunction pending trial, and a Permanent Injunction upon judgment, restraining and enjoining Governor Mills, all State officers, agents, employees, and attorneys, and all other persons in active concert or participation with them, from enforcing the GATHERING ORDERS so that:

- i. The State will not apply the GATHERING ORDERS in any manner as to infringe Calvary Chapel’s constitutional and statutory rights by discriminating against their right to assembly, speech, free exercise of religion, equal protection, and all other constitutional and statutory rights outlined herein;
- ii. The State will apply the GATHERING ORDERS in a manner that treats Calvary Chapel’s religious gatherings on equal terms as gatherings for or in so-called “essential” businesses and non-religious entities;

- iii. The State will permit religious gatherings so long as they comply with the same social distancing and personal hygiene recommendations pursuant to which the State allows so-called “essential” commercial and non-religious entities (*e.g.*, beer, wine, and liquor stores, warehouse clubs, and supercenters) to accommodate gatherings of persons without numerical limit under the GATHERING ORDERS;
- iv. The State will permit Calvary Chapel the opportunity to comport their behavior to any further limitations or restrictions that the State may impose in any future modification, revision, or amendment of the GATHERING ORDERS or similar legal directive;
- v. The State will cease issuing notices of criminal violation to Calvary Chapel’s Pastor, members, and/or attendees; and
- vii. The State will not bring any further enforcement, criminal, or other public health actions against Calvary Chapel as threatened in Governor Mills’ public statements.

C. That the Court render a Declaratory Judgment declaring that the GATHERING ORDERS both on their face and as applied by the State are unconstitutional under the United States Constitution and Constitution of Maine, and further declaring that:

- i. The State has violated Calvary Chapel’s rights to freedom of assembly by impermissibly prohibiting religious gatherings;
- ii. The State has violated Calvary Chapel’s rights to freedom of speech by impermissibly prohibiting religious gatherings;
- iii. The State has violated Calvary Chapel’s rights to free exercise of religion by impermissibly prohibiting religious gatherings, substantially burdening

their sincerely held religious beliefs, applying criteria that are neither neutral nor generally applicable to religious and non-religious gatherings, by establishing a religious gerrymander against religious gatherings, and by establishing a system of individualized exemptions that exclude similarly situated non-religious gatherings from the prohibitions applicable to Calvary Chapel's religious gatherings;

- iv. The State has violated Calvary Chapels' rights to equal protection of the laws by impermissibly prohibiting religious gatherings, and by applying criteria that treats religious gatherings in a discriminatory and dissimilar manner as that applied to various non-religious gatherings;
- v. The State has violated the Establishment Clause by impermissibly demonstrating hostility towards religious gatherings and by impermissibly showing favoritism to certain non-religious gatherings;
- vi. The State has violated the Guarantee Clause by impermissibly exercising executive authority in an unconstitutional manner; and
- vii. The State has violated the Religious Land Use and Institutionalized Persons Act by substantially and impermissibly burdening Calvary Chapel's sincerely held religious beliefs and treating unequally as compared to other non-religious assemblies or institutions, by imposing draconian prohibitions on Calvary Chapel's sincerely held religious beliefs without a compelling government interest, and without deploying the least restrictive means to achieve any permissible government interest.

D. That the Court award Calvary Chapel nominal damages for the violation of Calvary Chapel's constitutional rights.

E. That the Court adjudge, decree, and declare the rights and other legal relations within the subject matter here in controversy so that such declaration shall have the full force and effect of final judgment.

F. That the Court retain jurisdiction over the matter for the purposes of enforcing the Court's order.

G. That the Court declare Calvary Chapel is prevailing parties and award Calvary Chapel the reasonable costs and expenses of this action, including a reasonable attorney's fee, in accordance with 42 U.S.C. § 1988.

H. That the Court grant such other and further relief as the Court deems equitable and just under the circumstances.

Respectfully submitted,

/s/ Charles W. Hodson
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*Pro hac vice applications pending

Attorneys for Calvary Chapel of Bangor

VERIFICATION

I, Kenneth Graves, am over the age of eighteen years and the Pastor of Calvary Chapel of Bangor, the Plaintiff in this action. The statements and allegations that pertain to me and/or Plaintiff Calvary Chapel of Bangor or which I make in this VERIFIED COMPLAINT are true and correct, and based upon my personal knowledge (unless otherwise indicated). If called upon to testify to their truthfulness, I would and could do so competently. I declare under penalty of perjury, under the laws of the United States and the State of Maine, that the foregoing statements are true and correct to the best of my knowledge.

Dated: May 5, 2020

/s/ Kenneth Graves
Kenneth Graves

State of Maine



Proclamation of State of Civil Emergency to Further Protect Public Health

WHEREAS, COVID-19 is a highly infectious agent that poses an imminent threat of substantial harm to our citizens;

WHEREAS, to date the State has taken numerous actions to respond and protect against this threat; and

WHEREAS, this Proclamation is necessary to authorize the use of emergency powers in order to expand and expedite that response;

NOW, THEREFORE, I, Janet T. Mills, Governor of the State of Maine, pursuant to *Me. Const. Art. V, Pt. 1, §§ 1 and 12*, do hereby find and declare by this Proclamation that these conditions constitute a state of emergency within the meaning of *37-B M.R.S. §703(2), §742(1)(A)* and *37-B M.R.S. Ch. 13, subch. II* and *22 M.R.S. §801(4-A)* and *§802(2-A)*. This Proclamation activates any and all authority delegated to me by any and all emergency management, public health and other pertinent laws to issue any and all oral and written directives that I, upon the advice of public health and other expert officials, reasonably deem necessary to respond to and protect against the spread and impacts of COVID-19 in Maine. This Proclamation also authorizes the Maine Department of Health and Human Services to exercise emergency powers pursuant to *22 M.R.S. §820*. Officials and other persons lawfully subject to any and all directives pursuant to this Proclamation shall faithfully and timely execute the same. This Proclamation shall, pursuant to *37-B M.R.S. §743*, expire thirty (30) days from the date of its signature unless earlier renewed or terminated by me, or terminated by legislative joint resolution.

In testimony whereof, I have caused the Great Seal of the State to be hereunto affixed GIVEN under my hand at Augusta this fifteenth day of March Two Thousand Twenty

A handwritten signature in black ink, appearing to read "Janet T. Mills". The signature is fluid and cursive, written over a light blue horizontal line.

Janet T. Mills
Governor

Matthew Dunlap
Secretary of State
TRUE ATTESTED COPY



OFFICE OF
THE GOVERNOR

NO. 14 FY 19/20
DATE March 18, 2020

AN ORDER TO PROTECT PUBLIC HEALTH

WHEREAS, I proclaimed a state of emergency on March 15, 2020 to authorize the use of emergency powers in order to expand and expedite the State's response to the threats posed by COVID-19;

WHEREAS, the State has taken many essential actions and additional actions are necessary;

WHEREAS, the immediate implementation of this Order is necessary to limit the number of common discretionary and primarily social gatherings of persons in numbers sufficiently large enough to pose a risk of transmission of COVID-19 due to their close proximity;

WHEREAS, allowing the congregation of persons, especially at restaurants and bars, constitutes an imminent health threat within the meaning of 10-144 C.M.R. Ch. 201, §6 and 10-144 C.M.R. Ch. 200, Ch. 1, §§1-2;

NOW, THEREFORE, I, Janet T. Mills, Governor of the State of Maine, pursuant to 37-B M.R.S. Ch. 13, do hereby Order as follows:

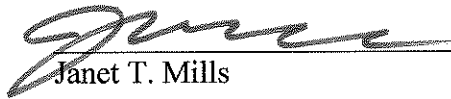
I. ORDERS

Effective 6 P.M. March 18, 2020 and until midnight of March 31, 2020:

- A. Certain Gatherings.** Gatherings of more than 10 people are prohibited throughout the State. Gatherings subject to this Order are those that are primarily social, personal, and discretionary events other than employment. Such gatherings include, without limitation, community, civic, public, leisure, and faith-based events; social clubs; sporting events with spectators; concerts, conventions, fundraisers, parades, fairs, and festivals; and any similar event or activity in a venue such as an auditorium, stadium, arena, large conference room, meeting hall, theatre, gymnasium, fitness center or private club.
- B. Restaurants and Bars.** All restaurants and bars shall close their dine-in facilities. Such businesses that offer carry-out, delivery, and drive-through food and beverage service may continue to do so but eating and drinking inside restaurants and bars is temporarily prohibited.

II. EFFECTIVE DATE AND REVIEW

The effective date of this Order is March 18, 2020. This Order shall be reviewed prior to its expiration date for a determination of the need for revision and renewal.



Janet T. Mills
Governor



OFFICE OF
THE GOVERNOR

NO. 19 FY 19/20
DATE March 24, 2020

AN ORDER REGARDING ESSENTIAL BUSINESSES AND OPERATIONS

WHEREAS, I proclaimed a state of emergency on March 15, 2020 to authorize the use of emergency powers in order to expand and expedite the State’s response to the serious health and safety risks of COVID-19; and

WHEREAS, Executive Order No. 14 FY 19/20 dated March 18, 2020 restricted certain social gatherings and certain use of restaurants and bars, and strongly recommended use of social distancing to reduce the transmission of COVID-19, which is highly contagious; and

WHEREAS, the Maine Center for Disease Control and Prevention advises that additional social distancing measures are warranted to slow the spread of this life-threatening virus in order to save lives and improve the ability of the health care system to respond; and

WHEREAS, a governor’s emergency powers expressly include the authorities to:

- a. Control the movement of persons and occupancy of premises within the State pursuant to 37-B M.R.S. §742(1)(C)(8);
- b. Enlist the aid of any person to assist in the effort to control the emergency and aid in the caring for the safety of persons pursuant to 37-B M.R.S. §742(1)(C)(5) and 37-B M.R.S. §827;
- c. Utilize all available resources of the State as reasonably necessary to cope with the emergency pursuant to 37-B M.R.S. §742(1)(C)(2); and
- d. Take whatever action is necessary to mitigate a danger that may exist within the State pursuant to 37-B M.R.S. §742(1)(C)(12);

NOW, THEREFORE, I, Janet T. Mills, Governor of the State of Maine, pursuant to 37-B M.R.S. Ch. 13, including but not limited to the provisions referenced above, do hereby Order as follows:

I. EFFECTIVE DATE

This Order takes effect at 12:01 AM on March 25, 2020 and terminates at 12:00 AM on April 8, 2020 unless amended, rescinded or renewed.

II. ORDERS

A. BUSINESSES AND OPERATIONS COVERED BY THIS ORDER

For purposes of this Order, covered businesses include any for-profit, non-profit, or entities, regardless of the nature of the service, the function it performs, or its corporate or entity structure and their operations.

B. ACTIVITIES OF ESSENTIAL BUSINESSES AND OPERATIONS

All Essential Businesses and Operations shall continue their activities consistent with the guidance on social distancing set for the below. For purposes of this Order, Essential Businesses and Operations are those:

1. Identified by the United States Department of Homeland Security, Cybersecurity & Infrastructure Security Agency Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response dated March 19, 2020. A copy thereof is attached and incorporated herein by this reference; and
2. In addition or for clarity here in Maine, include the following: food processing and agriculture; fishing and aquaculture; industrial manufacturing; construction and maintenance of essential infrastructure; trash collection and transfer stations; grocery and household goods (including convenience stores); forest products; essential home repair, hardware and auto repair; pharmacy and other medical, psychiatric, and long-term care facilities; group homes and residential treatment facilities; biomedical, life science, behavioral health, health care, dental care, and long-term services and supports providers and organizations; child care providers; post offices and shipping outlets; banks and credit unions; gas stations and laundromats; veterinary clinics, animal welfare and animal feed and supply stores; truck delivery and distribution of goods; public transportation; legal, business, professional, environmental permitting and insurance services; hotel and commercial lodging; and all utilities such as electricity, water, wastewater, and telecommunications.

Essential Businesses and Operations shall to maximum extent practicable have their employees work remotely and otherwise comply with social distancing requirements set forth below, including maintaining six-foot social distancing for both employees and members of the public at all times, including but not limited to, when customers are standing in line.

As urged in Maine Center for Disease Control and Prevention guidance on March 15, 2020, non-urgent medical and dental procedures, elective surgeries, and appointments should be postponed based on consultations between individuals and providers; the use of telehealth and telephone consultation is strongly encouraged.

C. ACTIVITIES OF NON-ESSENTIAL BUSINESS AND OPERATIONS

All Non-Essential Businesses and Operations must cease activities at sites that are public facing and thereby allow customer, vendor or other in-person contact; or are at sites that require more than 10 workers to convene in space where social distancing is not possible. Non-Essential Businesses and Operations may continue those activities that:

1. do not allow customer, vendor or other visitor in-person contact;
2. do not require more than 10 workers to convene in space where social distancing is not possible; and
3. are facilitated to the maximum extent practicable by employees working remotely.

Such permitted activities may include taking orders by phone, email or other remote means and preparing such orders by delivery; maintaining the value of the business's inventory; preserving the condition of the business's physical plant and equipment; ensuring security; and processing payroll, employee benefits and related functions.

For clarity, Non-Essential Business and Operations include, but are not limited to, shopping malls, theaters, casinos, fitness and exercise gyms, spas, barber shops, hair salons, tattoo and piercing parlors, parlors, massage facilities, nail technicians, cosmetologists and estheticians, electrolysis services, laser hair removal services, and similar personal care and treatment facilities and services.

D. SOCIAL DISTANCING REQUIREMENTS FOR ALL BUSINESSES

Businesses covered by this Order, especially "big box" stores that attract more people, shall make all best efforts to implement and actively enforce social distancing requirements in and around their facilities including but not limited to:

1. Designate with signage, tape, or by other means six-foot spacing for employees and customers in line to maintain appropriate distance;
2. Have hand sanitizer and sanitizing products readily available for employees and customers;
3. Implement separate operating hours for elderly and vulnerable customers; and
4. Post online whether a facility is open and how best to reach the facility and continue services by phone or remotely.

III. EXECUTIVE 14 FY 19/20 CONTINUED


Executive 14 FY 19/20 dated March 18, 2020, restricting certain gatherings of more than 10 people and closure of certain services by restaurants and bars is hereby renewed and extended to apply until April 8, 2020 unless otherwise directed.

IV. INTERPRETATION

The Department of Economic and Community Development is designated as the lead agency for addressing questions regarding the interpretation and application of this Order.

V. ENFORCEMENT

This Order may be enforced by any governmental department or official that regulates licenses, permits or any other authorization to operate a business or occupy a building. A violation of this Order may be construed a violation of any such license, permit and other authorization to which pertinent penalties may be assessed. This Order may also pursuant to 37-B M.R.S. Section 786 be enforced by law enforcement if necessary.



Janet T. Mills
Governor


U.S. Department of Homeland Security
Cybersecurity & Infrastructure Security Agency
Office of the Director
Washington, DC 20528



CISA
CYBER+INFRASTRUCTURE

March 19, 2020

**MEMORANDUM ON IDENTIFICATION OF ESSENTIAL CRITICAL
INFRASTRUCTURE WORKERS DURING COVID-19 RESPONSE**

FROM: Christopher C. Krebs
Director

Cybersecurity and Infrastructure Security Agency (CISA)

As the Nation comes together to slow the spread of COVID-19, on March 16th, the President issued updated Coronavirus Guidance for America. This guidance states that:

"If you work in a critical infrastructure industry, as defined by the Department of Homeland Security, such as healthcare services and pharmaceutical and food supply, you have a special responsibility to maintain your normal work schedule."

The Cybersecurity and Infrastructure Security Agency (CISA) executes the Secretary of Homeland Security's responsibilities as assigned under the Homeland Security Act of 2002 to provide strategic guidance, promote a national unity of effort, and coordinate the overall federal effort to ensure the security and resilience of the Nation's critical infrastructure. CISA uses trusted partnerships with both the public and private sectors to deliver infrastructure resilience assistance and guidance to a broad range of partners.

In accordance with this mandate, and in collaboration with other federal agencies and the private sector, CISA developed an initial list of "Essential Critical Infrastructure Workers" to help State and local officials as they work to protect their communities, while ensuring continuity of functions critical to public health and safety, as well as economic and national security. The list can also inform critical infrastructure community decision-making to determine the sectors, sub-sectors, segments, or critical functions that should continue normal operations, appropriately modified to account for Centers for Disease Control (CDC) workforce and customer protection guidance.

The attached list identifies workers who conduct a range of operations and services that are essential to continued critical infrastructure viability, including staffing operations centers, maintaining and repairing critical infrastructure, operating call centers, working construction, and performing management functions, among others. The industries they support represent, but are not necessarily limited to, medical and healthcare, telecommunications, information technology systems, defense, food and agriculture, transportation and logistics, energy, water and wastewater, law enforcement, and public works.

We recognize that State, local, tribal, and territorial governments are ultimately in charge of implementing and executing response activities in communities under their jurisdiction, while the Federal Government is in a supporting role. As State and local communities consider COVID-19-related restrictions, CISA is offering this list to assist prioritizing activities related to continuity of operations and incident response, including the appropriate movement of critical infrastructure workers within and between jurisdictions.

Accordingly, this list is advisory in nature. It is not, nor should it be considered to be, a federal directive or standard in and of itself.

In addition, these identified sectors and workers are not intended to be the authoritative or exhaustive list of critical infrastructure sectors and functions that should continue during the COVID-19 response. Instead, State and local officials should use their own judgment in using their authorities and issuing implementation directives and guidance. Similarly, critical infrastructure industry partners will use their own judgment, informed by this list, to ensure continued operations of critical infrastructure services and functions. All decisions should appropriately balance public safety while ensuring the continued delivery of critical infrastructure services and functions.

CISA will continue to work with you and our partners in the critical infrastructure community to update this list as the Nation's response to COVID-19 evolves. We also encourage you to submit how you might use this list so that we can develop a repository of use cases for broad sharing across the country.

Should you have questions about this list, please contact CISA at CISA.CAT@cisa.dhs.gov.

Attachment: "Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response"

Essential Critical Infrastructure Workforce

HEALTHCARE / PUBLIC HEALTH

- Workers providing COVID-19 testing; Workers that perform critical clinical research needed for COVID-19 response
- Caregivers (e.g., physicians, dentists, psychologists, mid-level practitioners, nurses and assistants, infection control and quality assurance personnel, pharmacists, physical and occupational therapists and assistants, social workers, speech pathologists and diagnostic and therapeutic technicians and technologists)
- Hospital and laboratory personnel (including accounting, administrative, admitting and discharge, engineering, epidemiological, source plasma and blood donation, food service, housekeeping, medical records, information technology and operational technology, nutritionists, sanitarians, respiratory therapists, etc.)
- Workers in other medical facilities (including Ambulatory Health and Surgical, Blood Banks, Clinics, Community Mental Health, Comprehensive Outpatient rehabilitation, End Stage Renal Disease, Health Departments, Home Health care, Hospices, Hospitals, Long Term Care, Organ Pharmacies, Procurement Organizations, Psychiatric Residential, Rural Health Clinics and Federally Qualified Health Centers)
- 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
- Public health / community health workers, including those who compile, model, analyze and communicate public health information
- Blood and plasma donors and the employees of the organizations that operate and manage related activities
- Workers that manage health plans, billing, and health information, who cannot practically work remotely
- Workers who conduct community-based public health functions, conducting epidemiologic surveillance, compiling, analyzing and communicating public health information, who cannot practically work remotely
- Workers performing cybersecurity functions at healthcare and public health facilities, who cannot practically work remotely
- Workers conducting research critical to COVID-19 response
- Workers performing security, incident management, and emergency operations functions at or on behalf of healthcare entities including healthcare coalitions, who cannot practically work remotely
- Workers who support food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals, such as those residing in shelters
- Pharmacy employees necessary for filling prescriptions
- Workers performing mortuary services, including funeral homes, crematoriums, and cemetery workers
- Workers who coordinate with other organizations to ensure the proper recovery, handling, identification, transportation, tracking, storage, and disposal of human remains and personal effects; certify cause of death; and facilitate access to mental/behavioral health services to the family members, responders, and survivors of an incident

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Essential Critical Infrastructure Workforce

LAW ENFORCEMENT, PUBLIC SAFETY, FIRST RESPONDERS

- Personnel in emergency management, law enforcement, Emergency Management Systems, fire, and corrections, including front line and management
- Emergency Medical Technicians
- 911 call center employees
- Fusion Center employees
- Hazardous material responders from government and the private sector.
- Workers – including contracted vendors – who maintain digital systems infrastructure supporting law enforcement and emergency service operations.

FOOD AND AGRICULTURE

- Workers supporting groceries, pharmacies and other retail that sells food and beverage products
- Restaurant carry-out and quick serve food operations - Carry-out and delivery food employees
- Food manufacturer employees and their supplier employees—to include those employed in food processing (packers, meat processing, cheese plants, milk plants, produce, etc.) facilities; livestock, poultry, seafood slaughter facilities; pet and animal feed processing facilities; human food facilities producing by-products for animal food; beverage production facilities; and the production of food packaging
- Farm workers to include those employed in animal food, feed, and ingredient production, packaging, and distribution; manufacturing, packaging, and distribution of veterinary drugs; truck delivery and transport; farm and fishery labor needed to produce our food supply domestically
- Farm workers and support service workers to include those who field crops; commodity inspection; fuel ethanol facilities; storage facilities; and other agricultural inputs
- Employees and firms supporting food, feed, and beverage distribution, including warehouse workers, vendor-managed inventory controllers and blockchain managers
- Workers supporting the sanitation of all food manufacturing processes and operations from wholesale to retail
- Company cafeterias - in-plant cafeterias used to feed employees
- Workers in food testing labs in private industries and in institutions of higher education
- Workers essential for assistance programs and government payments
- Employees of companies engaged in the production of chemicals, medicines, vaccines, and other substances used by the food and agriculture industry, including pesticides, herbicides, fertilizers, minerals, enrichments, and other agricultural production aids
- Animal agriculture workers to include those employed in veterinary health; manufacturing and distribution of animal medical materials, animal vaccines, animal drugs, feed ingredients, feed, and bedding, etc.; transportation of live animals, animal medical materials; transportation of deceased animals for disposal; raising of animals for food; animal production operations; slaughter and packing plants and associated regulatory and government workforce
- Workers who support the manufacture and distribution of forest products, including, but not limited to timber, paper, and other wood products
- Employees engaged in the manufacture and maintenance of equipment and other infrastructure necessary to agricultural production and distribution

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Essential Critical Infrastructure Workforce

ENERGY

Electricity industry:

- Workers who maintain, ensure, or restore the generation, transmission, and distribution of electric power, including call centers, utility workers, reliability engineers and fleet maintenance technicians
- Workers needed for safe and secure operations at nuclear generation
- Workers at generation, transmission, and electric blackstart facilities
- Workers at Reliability Coordinator (RC), Balancing Authorities (BA), and primary and backup Control Centers (CC), including but not limited to independent system operators, regional transmission organizations, and balancing authorities
- Mutual assistance personnel
- IT and OT technology staff – for EMS (Energy Management Systems) and Supervisory Control and Data Acquisition (SCADA) systems, and utility data centers; Cybersecurity engineers; cybersecurity risk management
- Vegetation management crews and traffic workers who support
- Environmental remediation/monitoring technicians
- Instrumentation, protection, and control technicians

Petroleum workers:

- Petroleum product storage, pipeline, marine transport, terminals, rail transport, road transport
- Crude oil storage facilities, pipeline, and marine transport
- Petroleum refinery facilities
- Petroleum security operations center employees and workers who support emergency response services
- Petroleum operations control rooms/centers
- Petroleum drilling, extraction, production, processing, refining, terminal operations, transporting, and retail for use as end-use fuels or feedstocks for chemical manufacturing
- Onshore and offshore operations for maintenance and emergency response
- Retail fuel centers such as gas stations and truck stops, and the distribution systems that support them

Natural and propane gas workers:

- Natural gas transmission and distribution pipelines, including compressor stations
- Underground storage of natural gas
- Natural gas processing plants, and those that deal with natural gas liquids
- Liquefied Natural Gas (LNG) facilities
- Natural gas security operations center, natural gas operations dispatch and control rooms/centers natural gas emergency response and customer emergencies, including natural gas leak calls
- Drilling, production, processing, refining, and transporting natural gas for use as end-use fuels, feedstocks for chemical manufacturing, or use in electricity generation
- Propane gas dispatch and control rooms and emergency response and customer emergencies, including propane leak calls
- Propane gas service maintenance and restoration, including call centers

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Essential Critical Infrastructure Workforce

- Processing, refining, and transporting natural liquids, including propane gas, for use as end-use fuels or feedstocks for chemical manufacturing
- Propane gas storage, transmission, and distribution centers

WATER AND WASTEWATER

Employees needed to operate and maintain drinking water and wastewater/drainage infrastructure, including:

- Operational staff at water authorities
- Operational staff at community water systems
- Operational staff at wastewater treatment facilities
- Workers repairing water and wastewater conveyances and performing required sampling or monitoring
- Operational staff for water distribution and testing
- Operational staff at wastewater collection facilities
- Operational staff and technical support for SCADA Control systems
- Chemical disinfectant suppliers for wastewater and personnel protection
- Workers that maintain digital systems infrastructure supporting water and wastewater operations

TRANSPORTATION AND LOGISTICS

- Employees supporting or enabling transportation functions, including dispatchers, maintenance and repair technicians, warehouse workers, truck stop and rest area workers, and workers that maintain and inspect infrastructure (including those that require cross-border travel)
- Employees of firms providing services that enable logistics operations, including cooling, storing, packaging, and distributing products for wholesale or retail sale or use.
- Mass transit workers
- Workers responsible for operating dispatching passenger, commuter and freight trains and maintaining rail infrastructure and equipment
- Maritime transportation workers - port workers, mariners, equipment operators
- Truck drivers who haul hazardous and waste materials to support critical infrastructure, capabilities, functions, and services
- Automotive repair and maintenance facilities
- Manufacturers and distributors (to include service centers and related operations) of packaging materials, pallets, crates, containers, and other supplies needed to support manufacturing, packaging staging and distribution operations
- Postal and shipping workers, to include private companies
- Employees who repair and maintain vehicles, aircraft, rail equipment, marine vessels, and the equipment and infrastructure that enables operations that encompass movement of cargo and passengers
- Air transportation employees, including air traffic controllers, ramp personnel, aviation security, and aviation management
- Workers who support the maintenance and operation of cargo by air transportation, including flight crews, maintenance, airport operations, and other on- and off- airport facilities workers

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Essential Critical Infrastructure Workforce

PUBLIC WORKS

- Workers who support the operation, inspection, and maintenance of essential dams, locks and levees
- Workers who support the operation, inspection, and maintenance of essential public works facilities and operations, including bridges, water and sewer main breaks, fleet maintenance personnel, construction of critical or strategic infrastructure, traffic signal maintenance, emergency location services for buried utilities, maintenance of digital systems infrastructure supporting public works operations, and other emergent issues
- Workers such as plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences
- Support, such as road and line clearing, to ensure the availability of needed facilities, transportation, energy and communications
- Support to ensure the effective removal, storage, and disposal of residential and commercial solid waste and hazardous waste

COMMUNICATIONS AND INFORMATION TECHNOLOGY

Communications:

- Maintenance of communications infrastructure- including privately owned and maintained communication systems- supported by technicians, operators, call-centers, wireline and wireless providers, cable service providers, satellite operations, undersea cable landing stations, Internet Exchange Points, and manufacturers and distributors of communications equipment
- Workers who support radio, television, and media service, including, but not limited to front line news reporters, studio, and technicians for newsgathering and reporting
- Workers at Independent System Operators and Regional Transmission Organizations, and Network Operations staff, engineers and/or technicians to manage the network or operate facilities
- Engineers, technicians and associated personnel responsible for infrastructure construction and restoration, including contractors for construction and engineering of fiber optic cables
- Installation, maintenance and repair technicians that establish, support or repair service as needed
- Central office personnel to maintain and operate central office, data centers, and other network office facilities
- Customer service and support staff, including managed and professional services as well as remote providers of support to transitioning employees to set up and maintain home offices, who interface with customers to manage or support service environments and security issues, including payroll, billing, fraud, and troubleshooting
- Dispatchers involved with service repair and restoration

Information Technology:

- Workers who support command centers, including, but not limited to Network Operations Command Center, Broadcast Operations Control Center and Security Operations Command Center
- Data center operators, including system administrators, HVAC & electrical engineers, security personnel, IT managers, data transfer solutions engineers, software and hardware engineers, and database administrators
- Client service centers, field engineers, and other technicians supporting critical infrastructure, as well as

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Essential Critical Infrastructure Workforce

manufacturers and supply chain vendors that provide hardware and software, and information technology equipment (to include microelectronics and semiconductors) for critical infrastructure

- Workers responding to cyber incidents involving critical infrastructure, including medical facilities, SLTT governments and federal facilities, energy and utilities, and banks and financial institutions, and other critical infrastructure categories and personnel
- Workers supporting the provision of essential global, national and local infrastructure for computing services (incl. cloud computing services), business infrastructure, web-based services, and critical manufacturing
- Workers supporting communications systems and information technology used by law enforcement, public safety, medical, energy and other critical industries
- Support required for continuity of services, including janitorial/cleaning personnel

OTHER COMMUNITY-BASED GOVERNMENT OPERATIONS AND ESSENTIAL FUNCTIONS

- Workers to ensure continuity of building functions
- Security staff to maintain building access control and physical security measures
- Elections personnel
- Federal, State, and Local, Tribal, and Territorial employees who support Mission Essential Functions and communications networks
- Trade Officials (FTA negotiators; international data flow administrators)
- Weather forecasters
- Workers that maintain digital systems infrastructure supporting other critical government operations
- Workers at operations centers necessary to maintain other essential functions
- Workers who support necessary credentialing, vetting and licensing operations for transportation workers
- Customs workers who are critical to facilitating trade in support of the national emergency response supply chain
- Educators supporting public and private K-12 schools, colleges, and universities for purposes of facilitating distance learning or performing other essential functions, if operating under rules for social distancing
- Hotel Workers where hotels are used for COVID-19 mitigation and containment measures

CRITICAL MANUFACTURING

- Workers necessary for the manufacturing of materials and products needed for medical supply chains, transportation, energy, communications, food and agriculture, chemical manufacturing, nuclear facilities, the operation of dams, water and wastewater treatment, emergency services, and the defense industrial base.

HAZARDOUS MATERIALS

- Workers at nuclear facilities, workers managing medical waste, workers managing waste from pharmaceuticals and medical material production, and workers at laboratories processing test kits
- Workers who support hazardous materials response and cleanup
- Workers who maintain digital systems infrastructure supporting hazardous materials management operations

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Essential Critical Infrastructure Workforce

FINANCIAL SERVICES

- Workers who are needed to process and maintain systems for processing financial transactions and services (e.g., payment, clearing, and settlement; wholesale funding; insurance services; and capital markets activities)
- Workers who are needed to provide consumer access to banking and lending services, including ATMs, and to move currency and payments (e.g., armored cash carriers)
- Workers who support financial operations, such as those staffing data and security operations centers

CHEMICAL

- Workers supporting the chemical and industrial gas supply chains, including workers at chemical manufacturing plants, workers in laboratories, workers at distribution facilities, workers who transport basic raw chemical materials to the producers of industrial and consumer goods, including hand sanitizers, food and food additives, pharmaceuticals, textiles, and paper products.
- Workers supporting the safe transportation of chemicals, including those supporting tank truck cleaning facilities and workers who manufacture packaging items
- Workers supporting the production of protective cleaning and medical solutions, personal protective equipment, and packaging that prevents the contamination of food, water, medicine, among others essential products
- Workers supporting the operation and maintenance of facilities (particularly those with high risk chemicals and/or sites that cannot be shut down) whose work cannot be done remotely and requires the presence of highly trained personnel to ensure safe operations, including plant contract workers who provide inspections
- Workers who support the production and transportation of chlorine and alkali manufacturing, single-use plastics, and packaging that prevents the contamination or supports the continued manufacture of food, water, medicine, and other essential products, including glass container manufacturing

DEFENSE INDUSTRIAL BASE

- Workers who support the essential services required to meet national security commitments to the federal government and U.S. Military. These individuals, include but are not limited to, aerospace; mechanical and software engineers, manufacturing/production workers; IT support; security staff; security personnel; intelligence support, aircraft and weapon system mechanics and maintainers
- Personnel working for companies, and their subcontractors, who perform under contract to the Department of Defense providing materials and services to the Department of Defense, and government-owned/contractor-operated and government-owned/government-operated facilities

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OFFICE OF
THE GOVERNOR

NO. 28 FY 19/20
DATE March 31, 2020
Corrected

**AN ORDER REGARDING FURTHER RESTRICTIONS ON
PUBLIC CONTACT AND MOVEMENT, SCHOOLS, VEHICLE TRAVEL
AND RETAIL BUSINESS OPERATIONS**

WHEREAS, I proclaimed a state of emergency on March 15, 2020 to authorize the use of emergency powers in order to expand and expedite the State's response to the serious health and safety risks of the highly contagious COVID-19; and

WHEREAS, Executive Order No. 14 FY 19/20 dated March 18, 2020 restricted certain social gatherings and certain use of restaurants and bars, prohibited gatherings of more than ten people that are primarily social, personal or discretionary events, and strongly recommended use of social distancing to reduce the transmission of COVID-19; and

WHEREAS, Executive Order No. 19 FY 19/20 dated March 25, 2020 restricted the operations of essential and non-essential business in order to further reduce the transmission of COVID-19; and

WHEREAS, because of unhealthy crowds, the Maine Department of Agriculture, Conservation and Forestry has closed many state-owned beaches and other public venues; and

WHEREAS, other New England states have seen a dramatic rise in positive COVID-19 tests and deaths related to the COVID-19 virus in recent days; and

WHEREAS, the Maine Center for Disease Control and Prevention advises that additional social/physical distancing measures are warranted to slow the spread of this life-threatening virus in order to save lives and improve the ability of the health care system to respond; and

WHEREAS, on March 28, 2020, the President of the United States and his Coronavirus Response Team extended the national guidelines for social distancing and other measures to quell the virus to April 30; and

WHEREAS, a governor's emergency powers expressly include the authorities to:

- a. Control the movement of persons and occupancy of premises within the State pursuant to 37-B M.R.S. §742(1)(C)(8);

- b. Enlist the aid of any person to assist in the effort to control the emergency and aid in the caring for the safety of persons pursuant to 37-B M.R.S. §742(1)(C)(5) and 37-B M.R.S. §827;
- c. Utilize all available resources of the State as reasonably necessary to cope with the emergency pursuant to 37-B M.R.S. §742(1)(C)(2); and
- d. Take whatever action is necessary to mitigate a danger that may exist within the State pursuant to 37-B M.R.S. §742(1)(C)(12);

NOW, THEREFORE, I, Janet T. Mills, Governor of the State of Maine, pursuant to 37-B M.R.S. Ch. 13, including but not limited to the provisions referenced above, do hereby Order as follows:

I. STAY AT HOME

A. ORDER

All persons living in the State of Maine are hereby ordered, effective as of 12:01AM on April 2, 2020 to stay at their homes or places of residence (“homes”) except:

- 1. To conduct or participate in Essential Activities (defined below);
- 2. Workers at Essential Businesses and Operations that are not required to close pursuant to Executive Orders 19 FY 19/20 may travel:
 - a. between their Homes and those businesses and organizations;
 - b. to and from child care; and
 - c. to and from customers for the purpose of delivering goods or performing services; and
- 3. Workers of Non-Essential Businesses and Operations under Executive Orders 19 FY 19/20 may travel:
 - a. between their Homes and those Non-Essential Businesses for the purpose of engaging in Minimal Operations; and
 - b. to and from customers for the purpose of delivering goods.

B. ESSENTIAL ACTIVITIES

For purposes of this section, “Essential Activities” means:

- 1. Obtaining necessary supplies or services for one’s self, family, household members, pets, or livestock, including, without limitation: groceries, supplies for household consumption or use, supplies and equipment needed

- to work from home, laundry, and products needed to maintain safety, sanitation, and essential maintenance of the home or residence;
2. Engaging in activities essential for the health and safety of one's self, one's family, household members, pets, or livestock, including such things as accessing child care, seeking medical or behavioral health or emergency services, and obtaining medication or medical supplies;
 3. Caring for a family member, friend, pet, or livestock in another household or location, including, without limitation, transporting a family member, friend, pet, or livestock animal for essential health and safety activities, and obtaining necessary supplies and services;
 4. Traveling to and from an educational institution for purposes of receiving meals or instructional materials for distance learning;
 5. Engaging in outdoor exercise activities, such as fishing, walking, hiking, running or biking, but only in compliance with the gathering restriction in Executive Order 14 FY 19/20 and all applicable social distancing guidance published by the U.S. and Maine Centers for Disease Control and Prevention;
 6. Travel required by a law enforcement officer or court order; and
 7. Traveling to and from a federal, State, or local government building for a necessary purpose.

When out of the home or when at work at an essential business, all individuals shall maintain a minimum distance of six feet from other persons.

II. VEHICLE TRAVEL

- A. No one shall use public transportation unless absolutely necessary, for an essential reason or for an essential job that cannot be done from home.
- B. Persons traveling in private vehicles shall limit passengers to persons within their immediate household, unless transporting for medical necessity.

III. SCHOOL CLOSURES

Public and private k-12 schools statewide have terminated in-classroom instruction in accordance with my recommendation of March 15, 2020. It is hereby Ordered that all such schools shall remain closed for classroom or other in-person instruction until at least May 1, 2020 unless otherwise ordered.

IV. ESSENTIAL RETAIL BUSINESSES AND OPERATIONS

A. APPLICATION

This section applies to those retailers identified as Essential Businesses and Operations by the Department of Economic and Community Development. All Non-Essential Businesses and Operations must continue to limit their activities consistent with Executive Order 19 FY 19/20 and this Order.

B. PRIORITIZING REMOTE ORDER AND CURBSIDE PICK-UP

To reduce the risk of community spread, essential stores shall:

1. Prioritize opportunities to offer and transact as much business as possible by curbside order-pick up or other like limited in-person contact method.
2. Broadly advertise and promote this method, including how to best reach the facility and continue services by telephone or remotely.

C. IN-STORE GATHERING LIMITS

To reduce the risk of community spread, essential stores with retail space of:

1. Less than 7,500 square feet shall limit the number of customers in the store at one time to 5. Examples of such stores typically include gas stations and convenience and specialty food stores
2. More than 7,500 and less than 25,000 square feet shall limit the number of customers in the store at one time to 15. Examples of such stores typically include stand-alone pharmacies and certain hardware stores.
3. More than 25,000 and less than 50,000 square feet shall limit the number of customers in the store at one time to 50. Examples of such stores typically include mid-sized and locally owned grocery stores.
4. More than 50,000 and less than 75,000 square feet shall limit the number of customers in the store at one time to 75. Examples of such stores typically include chain grocery stores.
5. More than 75,000 square feet shall limit the number of customers in the store at one time to 100. Examples of such stores typically include Lowes, Wal-Mart, Target and Home Depot.

Such retailers shall actively monitor and enforce these limits. Any customer lines outside the store must enforce the six-foot separation requirement between waiting customers and such line areas shall be marked with signage and ground lines designed to impose that distancing.

D. ADDITIONAL IN-STORE REQUIREMENTS

To reduce the risk of community spread, essential stores shall:

1. Implement and actively enforce social distancing requirements in and around their facilities.
2. Prominently post signage at all public entrances instructing customers to remain six feet away from other people inside and outside the store.
3. Mark every customer line with signage and floor lines designed to impose social distancing.
4. Disinfect the handles of every used cart and basket prior to customer reuse.
5. Take all reasonable steps to minimize customer handling of unpurchased merchandise.
6. Offer separate operating hours for persons over the age of 60 and customers with medical conditions to be the only customers in the store.

E. ADDITIONAL REQUIREMENT FOR ESSENTIAL STORES WITH MORE THAN 75,000 SQUARE FEET

Essential stores with more than 75,000 square feet shall as soon as practicable install protective shields between the customer and checkout and pharmacy personnel.

F. COMPLIANCE

A violation of this Order may be construed to be a violation of any such license, permit and other authorization to which pertinent penalties may be assessed. Failure to comply may result in further on-site restrictions or closure until the violations are remedied.

G. INTERPRETATION

The Department of Economic and Community Development is designated as the lead agency for addressing questions regarding the interpretation and application of this section of the Order.

V. PREEMPTION

This Order preempts any local ordinance or emergency order of the same subject matter that is less restrictive than or otherwise inconsistent with this Order.

VI. ENFORCEMENT

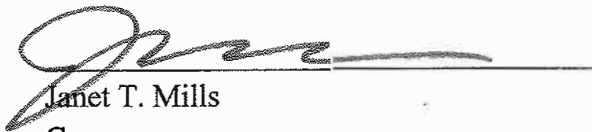
Pursuant to 37-B M.R.S. §786, this Order shall be enforced by law enforcement as necessary and violations are a class E crime subject to up to six months days in jail and a \$1000 fine. In addition, compliance with Section IV of this Order may also be enforced by government officials who regulate licenses, permits or any other authorization to operate a business or occupy a building.

VII. EXECUTIVE ORDER 14 FY 19/20 EXTENDED

The previous requirement that all restaurants and bars shall close their dine-in facilities remains in effect until at least April 30, 2020 unless otherwise ordered.

VIII. EFFECTIVE DATE

This Order takes effect at 12:01 AM on April 2, 2020 and shall remain in effect until at least April 30, 2020 unless otherwise ordered.


Janet T. Mills
Governor



Essential Business Operations Definitions

April 3, 2020

ESSENTIAL BUSINESSES AND OPERATIONS:

Retail:

- Grocery Stores
- Household Goods
- Convenience Stores and Gas Stations
- Hardware Stores and Home Repair
- Automobile Repair
- Bicycle Repair
- Pharmacy and Other Medical Supply Stores
- Medical Marijuana Dispensaries and Caregivers
- Post Offices and Shipping Outlets
- Office Supplies
- Electronics and Communications
- Banks and Credit Unions
- Laundromats and Dry Cleaning
- Animal Feed and Pet Supply Stores
- Truck Delivery and Distribution of Goods
- Hotel and Commercial Lodging
- Garden Stores and Green Houses
- Restaurants and Bars – Curbside Pickup, Takeout, and Delivery Only
- Fishing Supply and Bait Shops
- Rental Centers – Appliances Only
- Federal Firearms Licensee

Other Essential:

- Boat Builders
- Real Estate Activities (See guidance)
- Food Processing and Agriculture
- Fishing and Aquaculture
- Industrial Manufacturing
- Construction, Maintenance and Property Management
- Trash Collection, Transfer Stations and Redemption Centers
- Forest Products
- Psychiatric and Long-Term Care Facilities
- Group Homes and Residential Treatment Facilities
- Biomedical
- Life Science
- Behavioral Health, Health Care, Dental Care, and Long-Term Services and Supports Providers and Organizations
- Child Care Providers
- Veterinary Clinics and Animal Welfare
- Public Transportation
- Legal, Business, Professional, Environmental Permitting and Insurance Services
- All Utilities Such as Electricity, Water, Wastewater and Telecommunications
- Heating Fuel Maintenance and Delivery
- School Employees and Child Nutrition Programs
- Food Banks and Food Pantries
- Fully Automated Car Washes Only
- Plumbers and Electricians

NON-ESSENTIAL BUSINESSES AND OPERATIONS:

- Shopping Malls
- Fitness and Exercise Gyms
- Spas
- Barber Shops
- Hair Salons
- Tattoo and Piercing Parlors
- Parlors
- Massage Facilities
- Nail Technicians
- Cosmetologists and Estheticians
- Electrolysis Services
- Laser Hair Removal Services, and Similar Personal Care and Treatment Facilities and Services
- Dog Grooming
- Auto Dealerships
- Golf Courses
- Disc Golf Courses
- Pool Construction and Maintenance
- Furniture and Mattress Stores

State of Maine



Proclamation to Renew the State of Civil Emergency

WHEREAS, I proclaimed a state of emergency on March 15, 2020 to authorize the use of emergency powers in order to expand and expedite the State's response to the serious health and safety risks of COVID-19; and

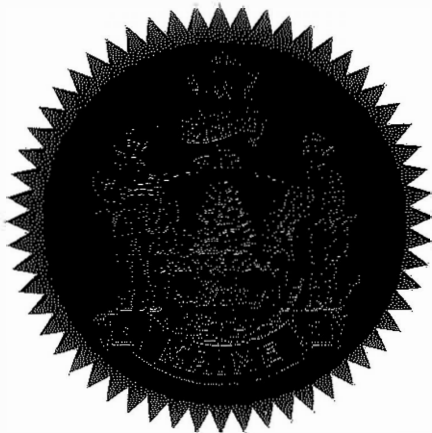
WHEREAS, that Proclamation by law expires on April 15, 2020 and COVID-19 remains a highly infectious agent that poses an imminent threat of substantial harm to our citizens; and

WHEREAS, the State has taken numerous emergency actions to respond and protect against this threat, including the issuance of 29 emergency executive orders to improve and expedite the State's ability to respond; and

WHEREAS, this Proclamation is necessary to authorize the continued use of emergency powers to lead the State's response;

NOW, THEREFORE, I, Janet T. Mills, Governor of the State of Maine, pursuant to *Me. Const. Art. V, Pt. 1, §§ 1 and 12*, do hereby find and declare by this Proclamation that these conditions constitute a state of emergency within the meaning of *37-B M.R.S. §703(2), §742(1)(A)* and *37-B M.R.S. Ch. 13, subch. II* and *22 M.R.S. §801(4-A)* and *§802(2-A)*. This Proclamation renews my *Proclamation of State of Civil Emergency to Further Protect Public Health dated March 15, 2020*, and activates any and all authority delegated to me by any and all emergency management, public health and other pertinent laws to issue any and all oral and written directives that I, upon the advice of public health and other expert officials, reasonably deem necessary to respond to and protect against the spread and impacts of COVID-19 in Maine. This Proclamation also authorizes the Maine Department of Health and Human Services to exercise emergency powers pursuant to *22 M.R.S. §820*. Officials and other persons lawfully subject to any and all directives pursuant to this Proclamation shall faithfully and timely execute the same. This Proclamation shall, pursuant to *37-B M.R.S. §743*, expire thirty (30) days from the date of its signature unless earlier renewed or terminated by me, or terminated by legislative joint resolution.

In testimony whereof, I have caused the Great Seal of the State to be hereunto affixed GIVEN under my hand at Augusta this fourteenth day of April Two Thousand Twenty



Janet T. Mills
Governor

Matthew Dunlap
Secretary of State

TRUE ATTESTED COPY



Office of
The Governor

No. 49 FY 19/20
DATE April 29, 2020

AN ORDER TO STAY SAFER AT HOME

WHEREAS, I proclaimed a state of emergency on March 15, 2020 and a renewed state of emergency on April 14, 2020 to authorize the use of emergency powers in order to expand and expedite the State's response to the serious health and safety risks of the highly contagious COVID-19; and

WHEREAS, between March 18th and April 3rd I issued Executive Orders 14, 19, 28 and 34 FY 19/20 that, for the reasons and upon the authorities stated therein, imposed until April 30th certain emergency rules and limitations necessary to respond to COVID-19; and

WHEREAS, it is necessary to extend the effective dates of those Orders to continue to protect public health while, at the same time, implementing the *Together We Are Maine: Restarting Maine's Economy Plan (hereinafter Restarting Plan)*, as the deliberative process to identify how certain restrictions on businesses and activities can be safely and incrementally eased over time;

NOW, THEREFORE, I, Janet T. Mills, Governor of the State of Maine, pursuant to 37-B M.R.S. Ch. 13, including but not limited to the authorities cited in the Proclamations and Orders referenced above, do hereby Order as follows:

I. PURPOSE

The purposes of this Order are to continue to prioritize protection of public health and safety by keeping certain existing public safety measures for business and personal activities in effect through May 31, 2020 and to implement the *Restarting Plan* to assess how certain restrictions may, consistent with expert public health guidance, be safely eased to permit more economic and personal activity.

II. CONTINUED PRIORITY OF PUBLIC HEALTH

Protection of public health and our health care delivery system shall remain the first priority. The Commissioner of the Department of Health and Human Services (DHHS) and the Director of the Maine Center for Disease Control and Prevention (CDC) shall continue to advise on COVID-19 trends and metrics to guide the timing, pace and scope of any easing of current restrictions. Maine CDC currently tracks, subject to change, three primary metrics:

- A. a downward trajectory of reported influenza-like illnesses and COVID-like syndromic cases;
- B. a downward trajectory of documented cases and newly hospitalized patients; and
- C. the capacity of Maine's hospital systems to treat all patients without crisis care and the ability of the State to engage in a robust testing program.

III. EXISTING EXECUTIVE ORDERS EXTENDED

To continue to protect public health, the effective dates of Executive Orders 14, 19, 28 and 34 FY 19/20 are hereby extended through May 31, 2020 unless sooner amended. All other provisions of such Orders remain in effect and subject to interpretive guidance. Such guidance includes, but is not limited to, the implementation of the *Restarting Plan*, incorporated into this Order by this reference.

IV. STAGES OF THE RESTARTING PLAN

Starting May 1, 2020, and consistent with Maine CDC/DHHS tracking metrics and recommendations, the Commissioner of the Department of Economic and Community Development (DECD) shall implement the *Restarting Plan* and identify businesses and activities where current restrictions may be adjusted to safely allow for more economic and personal activity. Businesses and activities so identified may receive a conditional approval consistent with the *Restarting Plan*. Any such approval is subject to change depending upon the demonstrated efficacy of the conditions imposed or the changing or general needs of public health. Any such approval is also subject to suspension or revocation depending upon actual and consistent compliance with such conditions. DHHS shall issue guidance for DECD and others on the process for health services identified in the *Restarting Plan*.

V. CLOTH FACE COVERINGS

Consistent with guidance from the United States Centers for Disease Control and Prevention individuals must wear cloth face coverings in public settings where other physical distancing measures are difficult to maintain.

- A. **Definitions.** For purposes of this section, the following terms have the following meanings.

1. "Public settings" mean:
 - a. indoor spaces that are accessible to the public such as grocery stores, retail stores, pharmacies and health care facilities;
 - b. outdoor spaces such as playgrounds, busy parking lots, and other areas such as lines for take-out service where the public typically gathers in a smaller area; and
 - c. public transportation such as a taxi, Uber, Lyft, ride-sharing or similar service; ferry, bus, or train; and any semi-enclosed transit stop or waiting area.

Employers in settings that are not typically accessible to the public may determine the persons who should wear a cloth face covering at their workplace and shall permit any employee who wants to wear a covering to do so.


2. "Individual" means any person in such settings irrespective of whether the person is an employee, customer, vendor, invitee or other.
3. "Cloth Face Covering" is a protection that covers the nose and mouth; fits snugly but comfortably against the side of the face; is secured with ties or ear loops; has multiple layers of fabric; allows for breathing without restriction; and is able to be laundered and machine dried without damage or change to its shape.

B. Exceptions. Cloth face coverings are not required for children under age 2, a child in a child care setting, or for anyone who has trouble breathing or related medical conditions, or who is otherwise unable to remove the mask without assistance. A person who cannot wear a cloth face covering because of a medical condition is not required to produce medical documentation of the condition, provided that an employer may require such documentation from an employee in accordance with state and federal law.

C. Other. Cloth face coverings are not a replacement for adhering to social distancing protocols. As recommended by current CDC guidance, surgical masks and N-95 respirators are critical supplies that will remain be reserved for health care workers, medical first responders, and other workers as recommended by Federal guidance.

VI. EFFECTIVE DATE

This Order takes effect on April 29, 2020, with section V taking effect on May 1, 2020.



Janet T. Mills
Governor



**TOGETHER, WE ARE
MAINE**

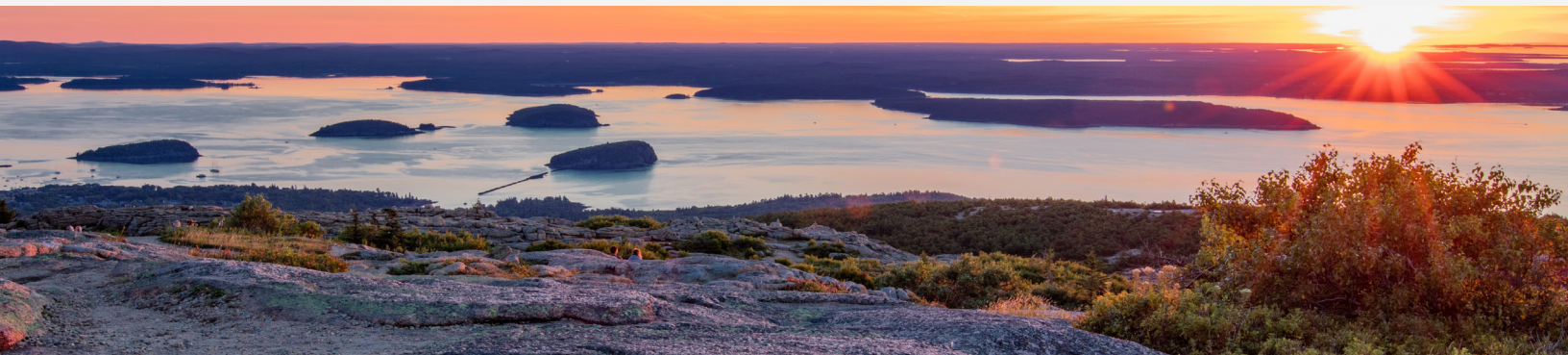


RESTARTING MAINE'S ECONOMY

GOVERNOR JANET MILLS | MAY 2020



RESTARTING MAINE'S ECONOMY



A MESSAGE FROM GOVERNOR JANET MILLS

Time and again, Maine people have risen to the challenges put in front of us. We have survived blizzards, ice storms, depressions, booms and busts. We've suffered loss — as a state and as families. We have conquered them because we are a strong, resilient people – borne of the western foothills; the northern potato fields; the bold, rocky coasts; and the tall, pine forests. We have been lifted up by the courage, conviction and resilience that comes from loving a place and its people. Let us continue to prepare, take every precaution, remain both careful and compassionate. We will get through this.



STATE OF MAINE

Covid-19 Response
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RESTARTING MAINE'S ECONOMY

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Office of the Governor



RESTARTING MAINE'S ECONOMY

INTRODUCTION

After months of tireless efforts and decisive action by people across Maine, our state appears to be flattening the curve against COVID-19. However, we should not expect life to return to normal. Instead, we have to embrace a new normal – a different way of doing business, shopping, traveling and recreating that keeps us all safe. To that end, the Mills Administration has prepared a plan to gradually and safely restart Maine's economy.

The plan establishes four gradual stages of reopening, the first of which begins on May 1st. Designed with input from public health and industry experts, this staged approach will allow Maine businesses to safely open when the time is right, and stay open by following reasonable, practical guidelines to ensure the safety of employees and customers.

Public health is the foremost factor guiding this process. As the Administration gradually eases restrictions on some businesses and activities, it also implements protective protocols, along with broader additional health and safety measures, to protect Maine people.



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RESTARTING MAINE'S ECONOMY

The guiding principles for this approach include:

1 PROTECTING PUBLIC HEALTH

The State will continue to use epidemiological data, such as case trends and hospitalization rates, to inform decisions about the appropriate time to lift restrictions.

2 MAINTAINING HEALTH CARE READINESS

Maine must be able to respond to any surge of COVID-19. To that end, the State will continue to work closely with hospitals and health systems to assess system capacity, including available hospital beds, ICU beds and ventilators, and to procure and distribute personal protective equipment to hospitals, nursing facilities, emergency services, and other frontline responders.

3 BUILDING RELIABLE AND ACCESSIBLE TESTING

Testing for all symptomatic people and sentinel disease surveillance are key foundations for opening the economy. While the widespread availability of rapid testing remains a challenge, the State is actively seeking to expand testing to make it more accessible to Maine people.

4 PRIORITIZING PUBLIC-PRIVATE COLLABORATION

Opening Maine's economy depends on close collaboration among businesses, employees, government, and the public to develop, implement, oversee, and accept guidelines and safe practices. A new Economic Recovery task force will be appointed to ensure this occurs.



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RESTARTING MAINE'S ECONOMY

A STAGED APPROACH

Under the Governor's plan, the stages are based on calendar months, to allow for time to assess the effectiveness of the health and safety precautions put into place and give businesses a predictable timeframe to plan for opening.

The earliest stages are focused on resuming business operations and activities which can be conducted in a safe manner, meaning they have a low risk for potential transmission of the virus.

In addition, new public health guidance will also go into effect. Maine people will be newly required to wear cloth face coverings in public settings where physical distancing measures are difficult to maintain.

Employers must also ensure workers wear such cloth face coverings when appropriate, and long-term care facilities will be subject to emergency rules to keep residents and staff safe.

While progression through the stages is planned month-by-month, decisions will be determined by public health metrics. Progress may also change based on virus trends, testing or treatment breakthroughs, or identification of new, safe ways of doing business.



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RESTARTING MAINE'S ECONOMY

HEALTH METRICS

Throughout the opening process, Maine CDC epidemiological data, such as case trends and hospitalization rates, as well as health care readiness and capacity, will inform Governor Mills' decisions on proceeding through the stages and lifting restrictions.

The Maine CDC will be tracking three primary metrics in its evaluation of whether or not to progress through the stages:

1. a downward trajectory of influenza-like illnesses and COVID-like syndromic cases;
2. a downward trajectory of documented cases and newly hospitalized patients; and
3. the capacity of Maine's hospital systems to treat all patients without crisis care and the ability of the state to engage in a robust testing program.

The Administration will also continue to evaluate standards outlined in the Governor's vision statement, such as testing capacity and contact tracing, to inform decisions about proceeding.

If the COVID-19 situation worsens in Maine for any reason, the state will move quickly to either halt progress or return to an earlier stage.



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RESTARTING MAINE'S ECONOMY

ESTABLISHING SAFETY PRECAUTIONS

In order to reopen, various sectors of Maine's economy will be required to work with the Department of Economic and Community Development to implement practical, reasonable, evidence-informed safety protocols and modifications that protect the health and safety of employees and customers.

These accommodations may be as simple as closing break rooms, providing flexible working hours, employee training, and installing plexiglass shields, or as complex as adjusting a business' sales process and reducing occupancy to ensure employee and customer safety.

This collaboration between DECD and the private sector will result in what will be known as a COVID-19 Prevention Checklists, which will be distributed ahead of staged openings to allow businesses to prepare.

These checklists will identify best practices for the business specific to its operations as well as general best practices related to physical distancing, hygiene, personal protection, and maintenance of clean workplaces, among others.

The checklists, which will differ sector to sector, will undergo a rigorous review process including from government officials, health experts, and industry representatives.

Businesses that commit to complying with the requirements on the checklist will be provided a badge to post at their business, on their website, in their advertising, or on social media. Their names will also be posted on the DECD website and they will be allowed to open. Health providers in Maine will follow U.S. CDC and professional association guidelines.



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RESTARTING MAINE'S ECONOMY

RESTARTING MAINE'S ECONOMY

The Governor's plan builds on current Executive Orders, which allow for the operation of grocery stores, pharmacies, financial institutions, home repair services, and car repair services, among others, and then plans for the safe reopening of those businesses not currently operating.

The stages do not use essential v. non-essential designations, like those used to limit business operations and activities in the immediate response to COVID-19. All businesses in Maine are essential, and the focus is now on ensuring the safety of their employees and customers.

The stages are advanced as a framework for planning. Innovations or expanded testing and other capacity could accelerate this pace, as could a determination that certain parts of Maine, such as rural areas, may be able ease restrictions safely.

The Mills Administration does not currently anticipate that it will be safe to accept cruise or commercial passenger ships with more than 50 people this summer. The Administration will review this assessment in September 2020. This excludes passenger ferries working between Maine ports.

Additionally, the Administration is currently working with stakeholders to develop plans for a safe return to school in the fall.



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RESTARTING MAINE'S ECONOMY

The upcoming four stages as contemplated by the Governor's plan include:

STAGE 1, MAY

Stage 1 contemplates a continued prohibition on gatherings of more than 10 people as well as the continued quarantine of all people entering Maine for a period of 14 days. All businesses that have been open may remain open. At-risk people should stay home when possible.

In addition:

- If employees are able to work from home, they should continue to do so. This includes State of Maine employees.
- Professional services, such as legal services, should continue to be done remotely.
- Construction firms should deploy additional Personal Protective Equipment and other safety measures on job sites.

OPENINGS PERMITTED PER CHECKLIST STANDARDS

ENTERTAINMENT

- Drive-in theaters

HEALTH CARE

- Health care from Maine licensed providers, with a recommendation that they prioritize care for patients with time-sensitive conditions; assure the safety of patients, staff, and communities; manage the use of essential resources such as personal protective equipment and testing supplies; and pace reopening services to the level of community COVID-19 activity, maintaining capacity in our hospitals for potential outbreaks.



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RESTARTING MAINE'S ECONOMY

OUTDOOR RECREATION:

- Golf Courses and Disc Golf Courses, with restrictions
- Guided outdoor activities (Hunting, Fishing)
- Guided boating (5 or fewer customers)
- Marinas
- Some 30 State Parks and Historic sites, but coastal sites will remain closed.
- State owned public lands trails

PERSONAL SERVICES:

- Barber Shops and Hair Salons
- Dog Grooming

RELIGIOUS

- Limited drive-in, stay-in-your-vehicle church services

RETAIL/COMMERCIAL

- Auto Dealership Sales
- Car Washes



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RESTARTING MAINE'S ECONOMY

STAGE 2, JUNE

Stage 2 contemplates a continued prohibition on gatherings of more than 50 people and the 14-day quarantine on people entering Maine. All businesses that have been open may remain open. At-risk people should stay home when possible. Employees in legal and professional fields may return to offices, including State employees, as needed.

OPENINGS PERMITTED PER CHECKLIST STANDARDS

HOSPITALITY

- Restaurants
- Lodging (Open to Maine residents)

OUTDOOR RECREATION

- Campgrounds/RV parks (Open to Maine residents)
- Day camps for Maine children
- Coastal State Parks, with some services

PERSONAL SERVICES

- Fitness and Exercise Gyms
- Nail Technicians

RETAIL

- All retail businesses



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RESTARTING MAINE'S ECONOMY

STAGE 3, JULY-AUGUST

Stage 3 maintains the prohibition on gatherings of more than 50 people and the 14-day quarantine on people entering Maine. All businesses that have been open may remain open. At-risk people should stay home when possible. Employees in legal and professional fields may return to offices, including State employees, as needed.

OPENINGS PERMITTED PER CHECKLIST STANDARDS

HOSPITALITY

- Bars
- Lodging, such as hotels, campgrounds, summer camps, or RV parks for Maine residents and visitors. The Administration is developing guidelines (e.g. potential testing requirements) to assist them in safely reopening, and reservations should not be taken until those guidelines are issued.

OUTDOOR RECREATION

- Charter boats, excursions – fewer than 50 people
- State Park Campgrounds
- Summer Camps

PERSONAL SERVICES

- Spas
- Tattoo and Piercing Parlors
- Massage Facilities
- Cosmetologists and Estheticians
- Electrolysis Services
- Laser Hair Removal Services, and Similar Personal Care and Treatment Facilities and Services



STATE OF MAINE

Covid-19 Response
Office of the Governor



RESTARTING MAINE'S ECONOMY

STAGE 4, TBD

All businesses are open and operating with appropriate safety modifications.



STATE OF MAINE

Covid-19 Response
Office of the Governor

ALERT: Stay up to date on Maine's COVID-19 Response

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STATE POLICE ENFORCEMENT PRACTICES REGARDING GOVERNOR'S EXECUTIVE ORDER

April 2, 2020 by Katharine England

04/02/2020

We are experiencing a life-threatening, unprecedented health crisis in our state and country and the actions that we take today will determine the severity of this pandemic. As a society we all need to work together to get through this challenging time. Without significant changes in our social interactions and travel habits, we can anticipate things will get worse before they get better, particularly for those persons in high-risk groups such as the elderly or those with underlying medical conditions. The steps and guidelines outlined in the Governor's Executive Order are an attempt to minimize the destruction that the Corona Virus (COVID-19) will leave in its path. We all know that things are going to get worse before they get better, but they **WILL GET BETTER!** If we fail to heed the cautions of experts and do not take the proper safeguards, the devastation from this disease will extend deeper and wider than if we manage to slow the spread by staying at home. We can't stop this virus yet, but we can slow it down to a manageable rate thereby saving dozens if not hundreds of lives right here in Maine. One of those lives could be your own, or that of a loved one.

The Maine State Police is asking for voluntary compliance with this Executive Order by staying at home unless you have an essential need to go out. There are several allowable reasons to leave your home such as; going to get groceries or take-out from a restaurant, getting needed supplies at a hardware store or pharmacy for yourself or others, going to a doctor's appointment, etc. Those who are employed by essential businesses can still travel for work. You may also go out for a hike or go for a walk to get some fresh air while maintaining proper physical distancing.

Our Troopers will be visible on normal patrol and will be responding to emergency calls for service just like we would at any other time. We will assume that people we encounter are following the orders and have an essential need for travel. We will smile and wave as we see them out walking to get some fresh air. In order to maintain order and public safety during this State of Civil Emergency we will continue to respond to complaints and investigate crime, enforcing all laws to include the Governor's Executive Order. Our Troopers will exercise discretion and compassion as we always do, considering the totality of the circumstances in deciding the most reasonable and appropriate enforcement action. With our goal being voluntary compliance, we hope and believe that communication and education regarding legal, safe practices outlined in the Executive Order will suffice. Issuing summonses or making physical arrests would be our last course of action and reserved for only the most egregious violators. Our hope is that the public will abide by the Executive Order and not put our officers in the position of having to enforce the law.

The Maine State Police will not be randomly stopping people simply to verify compliance. However, there will be times when our Troopers will be in contact with members of the public during normal law enforcement operations and may ask questions to ensure compliance with the Governor's Executive Order.

Recent Posts

[Troop J \(04-27-20 to 05-03-20\)](#) ([/dps/msp/media-center/public-releases/troop-j-04-27-20-05-03-20](#))

May 4, 2020

[Troop F Weekly Report 04-27 to 05-03-20](#) ([/dps/msp/media-center/public-releases/troop-f-weekly-report-04-27-05-03-20](#))

May 4, 2020

[UPDATE: Missing Searsmont Woman Located Safely](#) ([/dps/msp/media-center/public-releases/update-missing-searsmont-woman-located-safely](#))

May 2, 2020

[Troop G Weekly Report 04/20/2020-04/26/2020](#) ([/dps/msp/media-center/public-releases/troop-g-weekly-report-04202020-04262020](#))

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[Lewiston Fatal Accident](#) ([/dps/msp/media-center/public-releases/lewiston-fatal-accident](#))

April 28, 2020

Categories

[Major Crimes](#) ([/dps/msp/taxonomy/term/2](#))

Please do your part to stay apart. It will help flatten the curve to a level where medical heroes can safely take care of all of Maine's citizens. There is no better way to fight this public safety challenge. It is the right thing for all of us to do together.

(42)

[News Release](#)

[\(/dps/msp/taxonomy/term/3\)](/dps/msp/taxonomy/term/3)
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Additional Resources that may be helpful:

The Department of Economic and Community Development has been designated as the lead for many of these interpretation questions – particularly for businesses. Their website with FAQs and an email address for questions is [here \(https://www.maine.gov/dec/d/\)](https://www.maine.gov/dec/d/).

[Training](#)

[\(/dps/msp/taxonomy/term/65\)](/dps/msp/taxonomy/term/65)
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The language in the Executive Order can be found [here \(https://www.maine.gov/governor/mills/news/governor-mills-issues-stay-healthy-home-mandate-2020-03-31\)](https://www.maine.gov/governor/mills/news/governor-mills-issues-stay-healthy-home-mandate-2020-03-31).

[Troop A](#)

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[Troop B](#)

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Contacts

Emergency: 9-1-1
(800 numbers in-state only)
Augusta: (207) 624-7076
or 1-800-452-4664
Bangor: (207) 973-3700
or 1-800-432-7381

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Office of Professional Standards

Lt. Anna Love
Office of Professional Standards
Phone: (207) 624-7290

Houlton: (207) 532-5400
or 1-800-924-2261

STATE OF FLORIDA

OFFICE OF THE GOVERNOR

EXECUTIVE ORDER NUMBER 20-91

(Essential Services and Activities During COVID-19 Emergency)

WHEREAS, on March 1, 2020, I issued Executive Order 20-51 directing the Florida Department of Health to issue a Public Health Emergency; and

WHEREAS, on March 1, 2020, the State Surgeon General and State Health Officer declared a Public Health Emergency exists in the State of Florida as a result of COVID-19; and

WHEREAS, on March 9, 2020, I issued Executive Order 20-52 declaring a state of emergency for the entire State of Florida as a result of COVID-19; and

WHEREAS, on March 16, 2020, President Donald J. Trump and the Centers for Disease Control and Prevention ("CDC") issued the "15 Days to Slow the Spread" guidance advising individuals to adopt far-reaching social distancing measures, such as avoiding gatherings of more than 10 people, and in states with evidence of community spread, recommending restrictions to certain establishments conducive to mass gatherings and congregations; and

WHEREAS, on March 29, 2020, the President extended such guidance to be in effect until April 30, 2020; and

WHEREAS, on March 31, 2020, the President updated the guidance, renaming it "30 Days to Slow the Spread", and along with the White House Coronavirus Task Force urged Americans to continue to adhere to the guidelines and expand community mitigation efforts; and

WHEREAS, the majority of individuals in Florida that have tested positive for COVID-19 have been concentrated in its southeastern counties and other urban cores; and

WHEREAS, positive cases of COVID-19 have continued to rise in other states in close proximity to Florida, resulting in increased risk to counties in northern Florida; and

WHEREAS, many thousands of people fled the New York City region to Florida following New York State issuing a “shelter-in-place” order, thereby jeopardizing the health and safety of Floridians; and

WHEREAS, on March 23, 2020, I issued Executive Order 20-80, requiring all individuals that fly into Florida from states with substantial community spread to self-isolate in Florida for 14 days or the duration of their trip, whichever is shorter; and

WHEREAS, on March 27, 2020, I issued Executive Order 20-86, requiring all individuals that drive into Florida from states with substantial community spread to self-isolate in Florida for 14 days or the duration of their trip, whichever is shorter; and

WHEREAS, persistent interstate travel continues to pose a risk to the entire state of Florida; and

WHEREAS, on March 24, 2020, I issued Executive Order 20-83, directing the State Surgeon General and State Health Officer to issue a public health advisory urging the public to avoid all social or recreational gatherings of 10 or more people and urging those who can work remotely to do so; and

WHEREAS, it is necessary and appropriate to take action to ensure that the spread of COVID-19 is slowed, and that residents and visitors in Florida remain safe and secure.

NOW, THEREFORE, I, RON DESANTIS, as Governor of Florida, by virtue of the authority vested in me by Article IV, Section (1)(a) of the Florida Constitution Chapter

252, Florida Statutes, and all other applicable laws, promulgate the following Executive Order to take immediate effect:

Section 1. Safer At Home

A. Senior citizens and individuals with a significant underlying medical condition (such as chronic lung disease, moderate-to-severe asthma, serious heart conditions, immunocompromised status, cancer, diabetes, severe obesity, renal failure and liver disease) shall stay at home and take all measures to limit the risk of exposure to COVID-19.

B. In concert with the efforts of President Trump and the White House Coronavirus Task Force to fight COVID-19, and based on guidance provided by Florida Surgeon General and State Health Officer, Dr. Scott Rivkees, all persons in Florida shall limit their movements and personal interactions outside of their home to only those necessary to obtain or provide essential services or conduct essential activities.

Section 2. Essential Services

A. For purposes of this Order and the conduct it limits, “essential services” means and encompasses the list detailed by the U.S. Department of Homeland Security in its Guidance on the Essential Critical Infrastructure Workforce, v. 2 (March 28, 2020) (attached) and any subsequent lists published.

B. Essential services also include those businesses and activities designated by Executive Order 20-89 and its attachment which consists of a list propounded by Miami-Dade County in multiple orders.

C. Other essential services may be added under this Order with the approval of the State Coordinating Officer, in close coordination with the State Health Officer. The State Coordinating Officer shall maintain an online list of essential services, as specified in this Order along with any approved additions. The online list shall be available on the Division of

Emergency Management's website at www.floridadisaster.org and the Florida Department of Health's website at www.floridahealth.gov.

D. Nothing in this order prohibits individuals from working from home; indeed, this Order encourages individuals to work from home.

E. All businesses or organizations are encouraged to provide delivery, carry-out or curbside service outside of the business or organization, of orders placed online or via telephone, to the greatest extent practicable.

Section 3. Essential Activities

A. For purposes of this Order and the conduct it limits, "essential activities" means and encompasses the following:

- i. Attending religious services conducted in churches, synagogues and houses of worship; and
- ii. Participating in recreational activities (consistent with social distancing guidelines) such as walking, biking, hiking, fishing, hunting, running, or swimming; and
- iii. Taking care of pets; and
- iv. Caring for or otherwise assisting a loved one or friend.

B. Other essential activities may be added to this list with the approval of the State Coordinating Officer, in close coordination with the State Health Officer. The State Coordinating Officer shall maintain an online list of essential activities, as specified in this Order along with any approved additions.

C. A social gathering in a public space is not an essential activity. Local jurisdictions shall ensure that groups of people greater than ten are not permitted to congregate in any public space.

Section 4. Local Orders in Response to COVID-19

This Order shall supersede any conflicting official action or order issued by local officials in response to COVID-19 but only to the extent that such action or order allows essential services or essential activities prohibited by this Executive Order.

Section 5. Previous Executive Orders

This Executive Order does not supersede any Executive Order related to COVID-19.

Section 6. Effective Date and Expiration Date

This Order is effective 12:01 am on April 3, 2020. This Order shall expire on April 30, 2020 unless extended by subsequent order. Executive Order 20-68 (bars, restaurants) and Executive Order 20-71 (alcohol sales, restaurants) shall remain in effect through the duration of Executive Order 20-52, including any extensions.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed, at Tallahassee, this 1st day of April, 2020





RON DESANTIS, GOVERNOR

ATTEST:



SECRETARY OF STATE

FILED
2020 APR - 1 PM 1:15
TALLAHASSEE, FLORIDA

STATE OF INDIANA

EXECUTIVE DEPARTMENT INDIANAPOLIS

EXECUTIVE ORDER 20-08

FOR: DIRECTIVE FOR HOOSIERS TO STAY AT HOME

TO ALL WHOM THESE PRESENTS MAY COME, GREETINGS:

WHEREAS, on March 6, 2020, I issued Executive Order 20-02, which declared that a public health emergency exists throughout the State of Indiana as result of the coronavirus disease 2019 (“COVID-19”) outbreak in the United States and a confirmed report that a single Hoosier, living in one county, had contracted the virus;

WHEREAS, since then, on March 11, 2020, the World Health Organization declared COVID-19 to be a global pandemic, and, on March 13, 2020, the President of the United States declared a national emergency with respect to this dangerous virus;

WHEREAS, as of the date of this Executive Order, the virus has now spread to more than forty (40) counties throughout Indiana and caused several deaths, with these numbers expected to increase in the days ahead;

WHEREAS, on March 16, 2020, I issued Executive Order 20-04 which, among other things: (a) established that Indiana would adhere to the guidance of the Centers for Disease Control & Prevention (“CDC”) for large events and gatherings; (b) encouraged all Indiana residents to heed the advice of the CDC, the Indiana State Department of Health (“ISDH”), the Indiana Department of Homeland Security (“IDHS”), as well as other healthcare and emergency officials in connection with this public health emergency; and (c) proclaimed it to be the duty of every person in our State and every entity doing business in Indiana, including all governmental bodies, agencies, authorities and officials of any nature, to cooperate fully with the Commissioner of the ISDH and the Executive Director of IDHS on all matters concerning this public health emergency;

WHEREAS, despite significant steps being taken in our State, this virus remains a serious threat to the health, safety, and welfare of all residents of Indiana, and further efforts are needed to address, control, and reduce the evolving threat posed by COVID-19;

WHEREAS, as Governor, I have broad authority and powers under Indiana law to declare and respond to public health emergencies on behalf of our State, including, but not limited to: (a) making, amending, and rescinding the necessary orders, rules, and regulations to carry out Indiana’s Emergency Management & Disaster Law and its purposes, Ind. Code ch. 10-14-3 (the “Emergency Disaster Law”); (b) employing any measure and giving any direction to the ISDH and local boards of health as is reasonably necessary for securing compliance with the Emergency Disaster Law or with the findings or recommendations of the ISDH or local boards of health because of conditions arising from the actual or threatened emergency; and (c) controlling ingress to and egress from a disaster area (here, the entire State of Indiana), the movement of persons within said area, and the occupancy of premises in said area;

WHEREAS, the ISDH, which reports to me as the Governor, also has broad legal authority and powers in connection with public health emergencies (Ind. Code ch. 16-19-3), including, for example, the powers to do what is reasonable and necessary for the prevention and suppression of disease, to forbid public gatherings when necessary to prevent and stop epidemics, to bring actions in the courts for the enforcement of health laws, and all powers necessary to fulfill the duties prescribed by law; and

WHEREAS, in light of the above, and after consultation with and the concurrence of the ISDH and its Commissioner, it is necessary and proper to take further actions to protect the health, safety and welfare of all Hoosiers in connection with the continuing and evolving threat posed by COVID-19, as more particularly described herein;

NOW, THEREFORE, I, Eric J. Holcomb, by virtue of the authority vested in me as Governor by the Indiana Constitution and the laws of the State of Indiana, do hereby order:

1. Defined Terms and Phrases

In order to properly understand the full, complete and proper meaning of this Executive Order, please read and consult the definitions of the terms and phrases which are shown by underlining and found throughout this Executive Order, as follows:

- a. Essential Activities: Page 3
- b. Essential Businesses and Operations: Pages 5-8
- c. Essential Governmental Functions: Page 5
- d. Essential Infrastructure: Pages 4-5
- e. Essential Travel: Page 8
- f. Healthcare & Public Health Operations: Page 4
- g. Human Services Operations: Page 4
- h. Minimum Basic Operations: Page 8
- i. Social Distancing Requirements: Page 9

2. Duration

This Executive Order shall be effective at 11:59 p.m. on March 24, 2020, and remain in full force and effect until 11:59 p.m. on April 6, 2020, unless the I rescind, modifies, or extend this Executive Order.

3. Stay at Home or Place of Residence

With exceptions as outlined below, all individuals currently living in the State of Indiana are ordered to stay at home or their place of residence, except as allowed in this Executive Order.

To the extent that individuals are using shared or outdoor spaces when outside of their homes or residences, they must at all times, and as much as reasonably possible, maintain social distancing of at least six (6) feet from any other person, with the exception of family or household members, consistent with the Social Distancing Requirements set forth in this Executive Order. All persons may leave their homes or residences only for Essential Activities, Essential Governmental Functions, or to participate in Essential Businesses and Operations, all as defined below.

Individuals experiencing homelessness are exempt from this provision, but are strongly urged to obtain shelter, and governmental and other entities are strongly urged to make such shelter available as soon as reasonably possible and to the maximum extent practicable (and to use, in their operation, COVID-19 risk mitigation practices recommended by the CDC and the ISDH).

With respect to individuals whose residences are unsafe or become unsafe, such as, by way of example, victims of domestic violence, they are expressly permitted and urged to leave their home and stay at a safe alternative location.

For purposes of this Executive Order, the terms “homes” and “residences” include hotels, motels, shared rental units, shelters, and similar facilities.

4. Non-Essential Business and Operations Must Cease

All businesses and operations in the State of Indiana, except for Essential Businesses and Operations (as defined below), are hereby required to cease all activities within the State, except, however, for Minimum Basic Operations (as defined below). For purposes of clarity, businesses (which includes home-based businesses) may also continue operations consisting exclusively of employees or contractors performing activities at their own homes or residences (i.e., working from home).

All Essential Businesses and Operations are hereby encouraged to remain open. Further, Essential Businesses and Operations shall comply with the Social Distancing Requirements defined in this Executive Order, including by maintaining six-foot social distancing for both employees and members of the general public at all times, including, but not limited to, when any customers are standing in line.

5. Prohibited Activities

All public and private gatherings of any number of people that occur outside of a single household or living unit, are hereby prohibited, except, however, for the limited purposes permitted by this Executive Order. Any gathering of more than ten (10) people is hereby prohibited, unless exempted by this Executive Order. This is in accordance with the President's coronavirus guidelines issued on March 16, 2020. 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.

6. Prohibited and Permitted Travel

Only Essential Travel and Essential Activities (as defined herein) are permitted. 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 of Indiana in order to maintain Essential Businesses and Operations and Minimum Basic Operations.

7. Leaving the Home for Essential Activities is Permitted

For purposes of this Executive Order, individuals may leave their homes or residences only to perform any of the following, which are deemed to be "Essential Activities" hereunder:

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 or persons who are unable or should not leave their home (including, but not limited to, pets), such as, by way of example 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 persons who are unable or should not leave their home, or to deliver those services or supplies to others, such as, by way of example and without limitation, groceries and food, household consumer products, supplies they need in order to work from home, automobile supplies (including dealers, parts, supplies, repair and maintenance), and products necessary to maintain the safety, sanitation, and/or essential operation of homes or residences.

c. For Outdoor Activity

To engage in outdoor activity, provided that they comply with the Social Distancing Requirements (as defined below), such as, by way of example and without limitation, walking, hiking, running, or biking. Individuals may go to public parks and open outdoor recreation areas. However, public access 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 Essential Governmental Functions, Healthcare and Public Health Operations, Human Services Operations, and Essential Infrastructure) or to otherwise carry out activities specifically permitted or allowed by 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.

8. Elderly People & Those 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 ISDH or local health departments from issuing and enforcing isolation and quarantine orders.

9. Healthcare and Public Health Operations

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

The phrase "Healthcare and Public Health Operations" includes, but is not limited to, the following: 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; obstetricians and gynecologists; 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; entities that transport and dispose of medical materials and remains; and veterinary care and all healthcare services provided to animals.

Also 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.

Fitness and exercise gyms, spas, salons, barber shops, tattoo parlors, and similar facilities are not included in Healthcare and Public Health Operations.

Further, the phrase "Healthcare and Public Health Operations" shall be construed broadly in order to avoid any impacts to the delivery of healthcare, broadly defined.

10. Human Services Operations

For purposes of this Executive Order, individuals may leave their homes and residences to work for or obtain services at any Human Services Operations, including any provider funded by the ISDH, Indiana Family and Social Services Administration, Indiana Medicaid, Indiana Division of Mental Health and Addiction, Indiana Department of Child Services, Indiana Department of Veterans Affairs and other similar governmental entities, that are providing services to the general public and including state-operated, institutional, or community-based settings providing human services to the public.

The phrase "Human Services Operations" includes, but is not limited to, the following: long-term care facilities; day care centers, day care homes, group day care homes; 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.

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

11. Essential Infrastructure

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

The phrase “Essential Infrastructure” includes, but is not limited to, the following: food production, distribution, fulfillment centers, storage facilities, marinas, 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, school construction, essential business construction, and housing construction); building management and maintenance; airport operations; operation and maintenance of utilities, including, for example, 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).

Further, the phrase “Essential Infrastructure” shall be construed broadly in order to avoid any impacts to essential infrastructure, broadly defined.

12. Essential Governmental Functions

For purposes of this Executive Order, all first responders, law enforcement, emergency dispatchers and management personnel, legislators, judges, court personnel, jurors and grand jurors, 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 hereby categorically exempt from this Executive Order.

The phrase “Essential Governmental Functions” means all services provided by the State of Indiana or any municipality, township, county, political subdivision, board, commission or agency of government and needed to ensure the continuing operation of government agencies or to provide for or support the health, safety and welfare of the public, and including contractors performing Essential Governmental Functions. Each governmental 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.

13. Businesses Covered by this 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.

14. Essential Businesses and Operations

For the purposes of this Executive Order, the phrase “Essential Businesses and Operations” means Healthcare and Public Health Operations, Human Services Operations, Essential Governmental Functions, and Essential Infrastructure, as well as the following:

a. CISA List

On March 19, 2020, the U.S. Department of Homeland Security, Cybersecurity & Infrastructure Security Agency (“CISA”), issued a *Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response*. The definition of Essential Businesses and Operations in this Executive Order includes all of the workers identified in that Memorandum, which may be found or accessed at the following link: <https://www.cisa.gov/sites/default/files/publications/CISA-Guidance-on-Essential-Critical-Infrastructure-Workers-1-20-508c.pdf>.

b. Stores That Sell Groceries and Medicine

Grocery stores, pharmacies, certified farmer’s 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, prepared food, alcoholic and non-alcoholic beverages, any other household consumer products (such as cleaning and personal care products), and specifically includes their supply chain and administrative support operations. 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.

c. **Food, Beverage, and Agriculture**

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

d. **Organizations That Provide Charitable and Social Services**

Businesses and religious and secular non-profit 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.

e. **Religious Entities**

Religious facilities, entities and groups, and religious gatherings, provided they adhere to the CDC's guidance on social gatherings.

f. **Media**

Newspapers, television, radio, and other media services.

g. **Gas Stations and Businesses Needed for Transportation**

Gas stations and auto supply, auto-repair, farm equipment, construction equipment, boat repair, and related facilities, and bicycle shops and related facilities.

h. **Financial and Insurance Institutions**

Banks, currency exchanges, consumer lenders, including, but not limited to, credit unions, pawnbrokers, consumer installment lenders and sales finance lenders, title companies, appraisers, financial markets, trading and futures exchanges, payday lenders, affiliates of financial institutions, entities that issue bonds, related financial institutions, and institutions selling financial products. Also, insurance companies, underwriters, agents, brokers, and related insurance claims and agency services.

i. **Hardware and Supply Stores**

Hardware stores and businesses that sell electrical, plumbing, and heating material.

j. **Critical Trades**

Building, construction, and other trades, including, but not limited to, plumbers, electricians, exterminators, operating engineers, cleaning and janitorial staff for commercial and governmental properties, security staff, 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.

k. **Mail, Post, Shipping, Logistics, Delivery, and Pick-Up Services**

Post offices and other businesses that provide shipping and delivery services, as well as businesses that ship or deliver groceries, food, goods, vehicles, alcoholic and non-alcoholic beverages, or services to end users or through commercial channels.

l. **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.

This Executive Order is consistent with, and does not amend or supersede, any prior Executive Order regarding the closure of schools.

m. Laundry Services

Laundromats, dry cleaners, industrial laundry services, as well as laundry service providers.

n. Restaurants for Consumption Off-Premises

Restaurants, bars, taverns, 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 carryout. The foregoing is addressed in Executive Orders 20-04 and 20-10. The in-person dining prohibition shall be enforced under and pursuant to the process described in Executive Order 20-10.

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, prior Executive Orders regarding the closure of restaurants.

o. Supplies to Work from Home

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

p. Supplies for Essential Businesses and Operations

Businesses that sell, manufacture, and/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.

q. Transportation

Airlines, taxis, transportation network providers (such as Uber and Lyft), vehicle rental services, paratransit, marinas, docks, boat storage, and other private, public, and commercial transportation and logistics providers necessary for the Essential Activities and other purposes expressly authorized in this Executive Order.

r. 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.

s. Residential Facilities and Shelters

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

t. Professional Services

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

u. **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 healthcare, pharmaceutical, technology, biotechnology, chemicals and sanitization, agriculture, waste pickup and disposal, food and beverage, transportation, energy, steel and steel products, petroleum, fuel, mining, construction, national defense, communications, and products used by other Essential Businesses and Operations.

v. **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.

w. **Hotels and Motels**

Hotels and motels, to the extent they are used for lodging and delivery or carryout food services.

x. **Funeral Services**

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

15. **Minimum Basic Operations**

For the purposes of this Executive Order, the term "Minimum Basic Operations" includes 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 its 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.

16. **Essential Travel**

For the purposes of this Executive Order, the phrase "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 herein).

- a. Any travel that is 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 the 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 in order 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 of the State of Indiana. However, individuals are strongly encouraged to verify that their transportation out of Indiana remains available and functional prior to commencing such travel.

17. Social Distancing Requirements

For purposes of this Executive Order, the phrase “Social Distancing Requirements” shall include maintaining at least six-feet of 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. With respect to Essential Businesses and Operations as well as businesses engaged in Minimum Basic Operations, they must take proactive measures to ensure compliance with the Social Distancing Requirements, including, where possible, the following:

a. Designate Six-Foot Distances

Designating with signage, tape or by other means, six-feet of spacing for employees and customers in line to maintain appropriate distance.

b. Hand Sanitizer and Sanitizing Products

Having hand sanitizer, and sanitizing products, readily available for employees and customers.

c. Separate Operating Hours for Vulnerable Populations

Implementing separate operating hours for the elderly and vulnerable customers.

d. Online and Remote Access

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

18. Intent of this Executive Order

The intent of this Executive Order is to ensure that the maximum number of people self-isolate in their homes or residences to the maximum extent feasible, while also enabling essential services to continue, in order to slow the spread of COVID-19 to the greatest extent possible. When individuals need to leave their homes or residences, 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 the Social Distancing Requirements. All provisions of this Executive Order should be interpreted to effectuate this intent.

19. Enforcement

This Executive Order may be enforced by State and local law enforcement, as well as other governmental entities (such as state and local departments of health), to the extent set forth in Indiana law, including, but not limited to, the Emergency Disaster Law.

However, with respect to the in-person dining prohibition that was set forth in Executive Order 20-04, it shall be enforced pursuant to the process described in Executive Order 20-10.

20. COVID-19 Information and Checklist for All Businesses/Employers

All businesses and employers, whether or not they are deemed to be essential under this Executive Order, are hereby ordered to take the following actions:

a. Allow as many employees as possible to work from home by implementing policies in areas such as teleworking and video conferencing.

b. Actively encourage sick employees to stay home until they are free of fever (without the use of medication) for at least 72 hours (three full days) AND symptoms have improved for at least 72 hours AND at least seven days have passed since symptoms first began. Do not require a healthcare provider’s note to validate the illness or return to work of employees sick with acute respiratory illness; healthcare provider offices and medical facilities may be extremely busy and not able to provide such documentation in a timely way.

c. Ensure that your sick leave policies are up to date, flexible, and non-punitive in order to allow sick employees to stay home to care for themselves, children, or other family members. Consider encouraging employees to do a self-assessment each day in order to check if they have any COVID-19 type symptoms (fever, cough, or shortness of breath).

- d. Separate employees who appear to have acute respiratory illness symptoms from other employees and send them home immediately. Restrict their access to the business until they have recovered.
- e. Reinforce key messages to all employees (including stay home when sick, use cough and sneeze etiquette, and practice hand hygiene), and place posters in areas where they are most likely to be seen. Provide protection supplies such as soap and water, hand sanitizer, tissues, and no-touch disposal receptacles for use by employees.
- f. Frequently perform enhanced environmental cleaning of commonly-touched surfaces, such as workstations, countertops, railings, door handles, and doorknobs. Use the cleaning agents that are usually used in these areas and follow the directions on the label. Provide disposable wipes so that commonly used surfaces can be wiped down by employees before each use.
- g. Be prepared to change business practices, if needed, in order to maintain critical operations (e.g., identify alternative suppliers, prioritize customers, or temporarily suspend some of your operations).

21. No Limitation on Authority

Nothing in this Executive Order shall, in any way, alter or modify any existing legal authority allowing the State, any local health department, or any other proper entity from ordering: (a) 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 (b) any closure of a specific location for a limited period of time, including the duration of this public health emergency.

22. 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 Order are hereby declared to be severable.

This Executive Order is a supplement to, and deemed to be part of, Executive Order 20-02.

IT IS SO ORDERED.



IN TESTIMONY WHEREOF, I, Eric J. Holcomb, have hereunto set my hand and caused to be affixed the Great Seal of the State of Indiana, on this 23rd day of March, 2020.


Eric J. Holcomb
Governor of Indiana



ATTEST: Connie Lawson
Secretary of State

GOVERNOR DOUGLAS A. DUCEY

STATE OF ARIZONA
★
EXECUTIVE ORDER

Executive Order 2020-18

Stay Home, Stay Healthy, Stay Connected
Physical Distancing to Mitigate COVID-19 Transmission

WHEREAS, Arizona is committed to combating COVID-19, which represents a serious threat to public health; and

WHEREAS, the State of Arizona has taken proactive actions to mitigate the risk of COVID-19 to public health and address the economic impact of the COVID-19 pandemic; and

WHEREAS, on March 11, 2020, pursuant to A.R.S. §§ 26-303 and 36-787, I, as Governor of the State of Arizona, issued a declaration of a Public Health State of Emergency due to the necessity to prepare for, prevent, respond to, and mitigate the spread of COVID-19; and

WHEREAS, on March 15, 2020, a statewide school closure was issued in coordination with Superintendent of Public Instruction Kathy Hoffman, later extended on March 30, 2020, through the end of the school year; and

WHEREAS, many businesses have greatly reduced their hours and operations as directed by health officials and in an effort to protect the public health and slow the spread of COVID-19; and

WHEREAS, on March 17, 2020, following updated guidance from the Centers for Disease Control and Prevention (CDC), the Arizona Department of Health Services (ADHS) issued updated guidance that included canceling or postponing gatherings of 10 or more people, recommending telework and other alternatives, restricting access to nursing homes, retirement homes and long-term care facilities to provide critical assistance, and providing recommendations to restaurants and eating establishments to mitigate the risk of COVID-19 transmission; and

WHEREAS, on March 19, 2020, Executive Order 2020-09 was issued requiring restaurants in Arizona counties with confirmed COVID-19 cases to provide dine-out options only and required all bars, gyms and movie theaters in those counties to close; and

WHEREAS, on March 19, 2020, Executive Order 2020-10 halted all elective surgeries in the State of Arizona to free up medical resources and maintain the capacity for hospitals and providers to continue offering vital services; and

WHEREAS, essential services were identified in Executive Order 2020-12 as those specifically necessary to promote the public health, safety and welfare of the state or assist others in fulfilling such functions; and

WHEREAS, to combat COVID-19, and at the recommendation of the state's health officials, the State of Arizona must continue its efforts by further limiting potential exposure through a policy of physical distancing while maintaining social connectedness; and

WHEREAS, pursuant to A.R.S. §§ 26-303(E), the Governor of Arizona, after a Declaration is issued, has "the right to exercise, within the area designated, all police power vested in the state by the constitution and laws of this state"; and

WHEREAS, pursuant to A.R.S. § 36-787(A), during a State of Emergency declared by the Governor, the Arizona Department of Health Services has primary jurisdiction, responsibility and authority for:

- (1) Planning and executing public health emergency assessment, mitigation, preparedness response and recovery of the State;
- (2) Coordinating public health emergency response among State, local and tribal authorities;
- (3) Collaborating with relevant federal government authorities, elected officials or other states, private organizations and private sector companies; and
- (4) Coordinating recovery operations and mitigation initiatives subsequent to public health emergencies; and

WHEREAS, on March 30, 2020, the Director of the Arizona Department of Health Services, based on an epidemiological assessment of Arizona specific data and in alignment with CDC guidance, recommended the state implement enhanced mitigation strategies.

NOW, THEREFORE, I, Douglas A. Ducey, Governor of the State of Arizona, by virtue of the authority vested in me by the Constitution and laws of the State, including but not limited to A.R.S. § 26-303 and after consultation with the Director of the Arizona Department of Health Services, do hereby order, effective at 5:00 p.m. on March 31, 2020:

1. Arizona shall institute a "Stay home, Stay healthy, Stay connected" policy that promotes physical distancing, while also encouraging social connectedness. This builds on actions the state has already taken, and further memorializes some already in effect, to slow the spread of COVID-19 and protect our citizens.
2. Under this policy, all individuals in the State of Arizona shall limit their time away from their place of residence or property, except:
 - a. To conduct or participate in Essential Activities.
 - b. For employment, to volunteer or participate in Essential Functions.
 - c. To utilize any services or products provided by Essential Businesses.
 - d. Employment, if as a sole proprietor or family owned business, work is conducted in a separate office space from your home and the business is not open to serve the public.
 - e. No person shall be required to provide documentation or proof of their activities to justify their activities under this order.
3. Arizonans are encouraged to improve social connectedness, resiliency, and help-seeking behavior by:

- a. Maintaining ongoing connections and communication with current social supports and structures such as family, friends, neighbors and other social groups;
 - b. Educating fellow Arizonans on the negative health impacts of social isolation;
 - c. Developing habits and activities that increase resilience, such as physical activity, virtual social gatherings, assisting neighbors, implementing or participating in connection campaigns for at-risk populations, and participating in volunteer activities;
 - d. Sharing information and awareness of newly available social services and resources to improve the stability of families and reduce financial stressors; and
 - e. Sharing information and awareness of resources in the community by providing information on where and how high risk populations can access suicide prevention services throughout Arizona, including specific resources that are targeted to high risk populations.
4. Under this policy, Essential Activities include:
- a. Obtaining necessary supplies and services for family, household members and pets, such as groceries, food and supplies for household consumption and use, supplies and equipment needed to work from home, assignments for completion of distance learning and products necessary to maintain safety, sanitation and essential maintenance of the home and residence.
 - b. Engaging in activities essential for the health and safety of family, household members and pets, including things such as seeking medical, behavioral health or emergency services and obtaining medical supplies or medication.
 - c. Caring for a family member, friend, or pet in another household or residence, which includes but is not limited to transportation of a family member, friend or their pet for essential health and safety activities and to obtain necessary supplies and services for the other household.
 - d. Engaging in outdoor exercise activities, such as walking, hiking, running, biking or golfing, but only if appropriate physical distancing practices are used.
 - e. Attending or conducting work or volunteering in Essential Functions which includes but is not limited to transporting children to child care services for attending work in an essential service.
 - f. Engaging in constitutionally protected activities such as speech and religion, and any legal or court process provided that such is conducted in a manner that provides appropriate physical distancing to the extent feasible.
5. To the extent individuals are using shared or outdoor spaces when outside their residence or property for Essential Activities, they shall to the extent possible maintain physical distancing of at least six feet from any other person, consistent with guidance from the CDC.
6. All persons may leave their place of residence only for Essential Activities, to participate in or receive Essential Governmental Functions, or to participate in or fulfill Essential Functions outlined in Executive Order 2020-12.
7. Individuals shall limit use of public transportation to when absolutely necessary to obtain or conduct Essential Activities or attend work in an Essential Function. While using public transportation, riders shall maintain to the extent possible recommended physical distancing of at least six feet from other riders and the operator.

8. Individuals experiencing homelessness are exempt from this directive, but are strongly urged to obtain shelter as soon as possible and to the maximum extent practicable.
9. 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.
10. For purposes of this Executive Order, homes or residences include hotels, motels, shared rental units, shelters, and similar facilities.
11. Businesses and entities that remain open shall implement rules and procedures that facilitate physical distancing and spacing of individuals of at least six feet.
 - a. All businesses that are classified as Essential Functions may remain open and maintain operations, but shall establish and implement social distancing and sanitation measures established by the United States Department of Labor or the Arizona Department of Health Services.
 - b. Essential Functions conducted by governmental entities shall remain open. Government leaders may adjust operations to promote physical distancing, including but not limited to offering on-line services as feasible, limiting the number of persons in a physical space or limiting access to specific facilities or areas to protect from the spread of COVID-19.
 - c. Employment in Essential Businesses and Operations means an essential employee performing work for an Essential Function as identified in the "Prohibiting the Closure of Essential Services" Executive Order list.
12. Non-essential businesses may continue to operate those activities that do not require in-person, on-site transactions and are encouraged to maintain at least minimum basic operations that maintain the value of the business' inventory, preserve the condition of the business' physical plant and equipment, ensure security, process payroll and employee benefits, facilitate employees of the business being able to continue to work remotely from their residences, and related functions to include mail pickup.
13. This Executive Order shall not be construed to prohibit working from home, operating a single owner business with no in-person, on-site public interaction, or restaurants and food services providing delivery or take-away services, so long as proper physical distancing and sanitation measures are established and implemented.
14. Arizonans are already acting responsibly during this public health emergency. The intent of this Executive Order is to ensure that people maintain physical distance to the maximum extent feasible, while enabling essential services to continue, protecting people's rights and slowing 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 physical distancing recommendations. All provisions of this Executive Order shall be interpreted to effectuate this intent. Prior to any enforcement action being taken to enforce this order in accordance with A.R.S. § 26-317, a person shall be notified and given an opportunity to comply.

15. Pursuant to A.R.S. § 26-307, no county, city or town may make or issue any order, rule or regulation that conflicts with the policy, directives or intent of this Executive Order, including any order, rule or regulation that limits an individual from conducting, participating in or receiving Essential Services, Essential Activities or Non-essential Services as outlined in this order and prior executive orders.
16. 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.
17. This Executive Order shall be in effect until April 30, 2020, unless extended.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.



Douglas R. Ducey

GOVERNOR

DONE at the Capitol in Phoenix on this Thirtieth Day of March in the Year Two Thousand and Twenty and of the Independence of the United States of America the Two Hundred and Forty-Fourth.

ATTEST:

[Signature]

Secretary of State



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

<p>ATTORNEY GENERAL OPINION</p> <p>By</p> <p>MARK BRNOVICH ATTORNEY GENERAL</p> <p>April 30, 2020</p>	<p>No. I20-008 (R20-008)</p> <p>Re: Application of Executive Order 2020-18 to Religious Worship</p>
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To: The Honorable Kelly Townsend
Representative
Arizona House of Representatives

Questions Presented

1. In reference to the right to “peaceably assemble” protected under the US Constitution, would attendance at a church service constitute an “essential activity” and be considered a permissible activity under Executive Order 2020-18?
2. Would parishioners be required to maintain social distancing by being 6 feet apart?
3. If they are required to maintain 6 feet apart and do not, under what law would they be in violation of and what punishment would they be subject to?

Summary Answer

Attendance at a church service is an “essential activity” under Executive Order 2020-18. The Executive Order does not impose an absolute six-foot social distancing requirement on essential activities that are constitutionally protected. Instead, it provides flexibility to individuals

engaged in constitutionally protected activities by encouraging such activities to be “conducted in a manner that provides appropriate physical distancing to the extent feasible.” That being said, nothing in this opinion should be construed to require or recommend places of worship to reopen; that decision is beyond the scope of a legal opinion.

Background

On March 11, 2020, Arizona Governor Doug Ducey issued a Declaration of Emergency declaring a State of Emergency throughout Arizona due to the COVID-19 outbreak. Pursuant to that State of Emergency, on March 30, 2020, Governor Ducey issued Executive Order 2020-18, which lists certain “Essential Activities” exempted from the order’s general proscription that “all individuals ... shall limit their time away from their place of residence or property.” Ariz. Exec. Order No. 2020-18 § 2 (March 30, 2020) (“Executive Order”).¹ These essential activities include “Engaging in constitutionally protected activities such as speech and religion ... provided that such is conducted in a manner that provides appropriate physical distancing to the extent feasible.” *Id.* § 4(f).

Analysis

I. Attending Places of Worship Is an “Essential Activity”

Attendance at a place of worship is clearly an “essential activity” under Executive Order 2020-18. The Executive Order expressly provides that essential activities include “[e]ngaging in constitutionally protected activities such as speech and religion.” Executive Order § 4(f).

II. Social Distancing for Constitutionally Protected Activities

The Executive Order exempts essential activities from the requirement that individuals limit their time away from their place of residence or property. Executive Order §§ 2, 6. Gener-

¹ On April 29, 2020, the Governor issued Executive Order 2020-33, to which this opinion is also applicable.

ally, when individuals engage in essential activities outside their residence or property, “they shall *to the extent possible* maintain physical distancing of *at least six feet* from any other person, consistent with guidance from the CDC.” Executive Order § 5 (emphasis added). The Executive Order, however, provides even wider latitude when constitutionally protected activities “such as speech and religion” are involved. For constitutionally protected activities, the Executive Order does not mandate a set distancing requirement. Instead, it provides that such protected activities be “conducted in a manner that provides *appropriate* physical distancing *to the extent feasible*.” Executive Order § 4(f) (emphasis added). This flexible language recognizes that what may be appropriate or feasible in one context may not be appropriate or feasible in another context. As such, the Executive Order encourages individuals to act responsibly based on individual circumstances. The flexible language also helps ensure that appropriate leeway is provided to individuals engaged in activities afforded heightened protections under both federal and state constitutions. No doubt recognizing the importance of these protections—even when faced with an emergency declaration—the “intent of th[e] Executive Order” expressly includes “protecting people’s rights ... to the greatest extent possible.” Executive Order § 14.

III. Applicable Penalties for Constitutionally Protected Activities

As set forth above, the Executive Order does not impose an absolute six-foot social distancing requirement for essential activities that are constitutionally protected, but rather requires “appropriate physical distancing to the extent feasible.” *Id.* § 4(f).

Conclusion

Executive Order 2020-18 proclaims that a state of emergency exists due to COVID-19 and implores all Arizonans to use their best judgment in suspending public activities that can be delayed, for the purposes of protecting the individual and the public as well as preserving vital

healthcare resources. Nevertheless, during times of pandemic and other crises, “[a] frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government.” Ariz. Const. art. 2, § 1. Therefore, the Executive Order is properly interpreted to exempt constitutionally protected activities as “essential” and provides flexibility in social distancing.

Mark Brnovich
Attorney General

**ORDER OF THE STATE HEALTH OFFICER
SUSPENDING CERTAIN PUBLIC GATHERINGS
DUE TO RISK OF INFECTION BY COVID-19**

(APPLICABLE STATEWIDE)

AMENDED APRIL 3, 2020

WHEREAS Coronavirus Disease 2019 (COVID-19) has been detected in Alabama; and

WHEREAS the appearance of COVID-19 in the State poses the potential of widespread exposure to an infectious agent that poses significant risk of substantial harm to a large number of people; and

WHEREAS the State Board of Health has designated COVID-19 to be a disease of epidemic potential, a threat to the health and welfare of the public, or otherwise of public health importance; and

WHEREAS, on March 13, 2020, on recommendation of the State Health Officer, Kay Ivey, Governor of the State of Alabama, declared a state public health emergency exists in the State of Alabama; and

WHEREAS, on March 16, 2020, the Jefferson County Health Officer, in response to a rapidly growing number of cases of COVID-19 being detected in Jefferson County, issued an order suspending certain public gatherings in that county; and

WHEREAS, on March 17, 2020, the State Health Officer issued a similar order for counties surrounding Jefferson, including Blount, St. Clair, Shelby, Tuscaloosa, and Walker Counties, and

WHEREAS, on March 19, 2020, the State Health Officer issued an order, and on March 20, 2020, and March 27, 2020, amended orders, of statewide application suspending certain public gatherings; and

WHEREAS further social distancing measures are necessary to be implemented on a statewide basis to prevent the spread of COVID-19; and

WHEREAS Ala. Code § 22-2-2(4) authorizes the State Health Officer, on behalf of the State Board of Health, to direct that conditions prejudicial to health in public places within the State be abated;

NOW THEREFORE, THESE PREMISES CONSIDERED, it is ordered that the following Stay at Home order be implemented statewide:

1. Effective Saturday, April 4, 2020, at 5:00 P.M., every person is ordered to stay at his or her place of residence except as necessary to perform any of the following “essential activities”:

- a. **To obtain necessary supplies.** A person may leave his or her place of residence to obtain the following supplies for himself or herself, for other household members, including pets, or for a loved one or friend who cannot or should not leave home or cannot care for himself or herself:
 - (i) Food and other consumer goods necessary to maintain a person's daily routine or to maintain the safety, sanitation, and routine operation of a home or residence;
 - (ii) Supplies needed to work from home;
 - (iii) Pharmaceutical prescriptions or other medical supplies;
 - (iv) Fuel for automobiles or other vehicles or other vehicle supplies;
 - (v) Materials for distance learning or other education-related purposes; and
 - (vi) Any other supplies necessary to maintain a person's or pet's daily routine or to maintain the safety, sanitation, and routine operation of a home or residence.

- b. **To obtain or provide necessary services.** A person may leave his or her place of residence to obtain or provide the following services for himself or herself, for other household members, including pets, or for a loved one or friend who cannot or should not leave home or cannot care for himself or herself:
 - (i) Dental, medical, or surgical procedures allowed under paragraph 14 of this Order;
 - (ii) Government-funded services or benefits;
 - (iii) Automobile repair services;
 - (iv) Services vital to the treatment or care of people with physical, intellectual, or developmental disabilities, or people with substance-use disorders;
 - (v) Services related to any public or private distance learning activities and education continuity, including all services under education continuity plans approved by the State Superintendent of Education; and
 - (vi) Any other services necessary to maintain a person's or pet's health and safety or to preserve the person's ability to perform an essential activity as defined in this paragraph.

- c. **To attend religious services.** A person may leave his or her place of residence to attend an event that is a religious worship service, wedding, or funeral in either of the following circumstances:
 - (i) The event involves fewer than 10 people and the people maintain a consistent six-foot distance from one another; or

- (ii) The event is a “drive-in” worship service that adheres to the following rules:
 - 1. All participants shall remain in their vehicles for the entirety of the service;
 - 2. The participants in each vehicle all share the same place of residence; and
 - 3. Participants do not come within six feet of participants in other vehicles.
- d. **To take care of others.** A person may leave his or her place of residence to care for a family member, friend, or pet in another household, or to donate blood, or to transport family members, friends, or pets as allowed by this Order.
- e. **To work.** A person may leave his or her place of residence to perform work at “essential businesses and operations” as defined in paragraph 2 below or to perform essential work-related activities as follows:
 - (i) Work-related activities to maintain the value of a business, establishment, corporation or other organization, such as managing inventory, ensuring security, and processing payroll and employee benefits;
 - (ii) Work-related activities to enable people to work or shop remotely from their residences or to allow people to buy products through drive-by, curbside, or door-to-door delivery; or
 - (iii) Work-related activities that do not require any regular interaction within six feet of another person.
- f. **To engage in outdoor activity.** A person may leave his or her place of residence to participate in outdoor activity that involves fewer than 10 people so long as the person maintains a consistent six-foot distance from other persons.
- g. **To seek shelter.** A person may leave his or her place of residence to seek shelter if required by his or her employment by an “essential service of business” or if his or her residence is unsafe or at imminent risk of becoming unsafe. A person may also leave his or her place of residence to seek help from providers of basic necessities to economically disadvantaged people, such as food pantries.
- h. **To travel as required by law.** A person may leave his or her place of residence to travel as required by law enforcement or court order, including the transportation of children required by a custody agreement.
- i. **To see family members.** A person may leave his or her place of residence to visit the residence of other persons who are related to him or her.

Anyone leaving his or her home or place of residence as authorized in this order shall take reasonable steps to maintain six feet of separation from other persons.

2. For the purposes of this Order, “essential businesses and operations” means and includes:

- a. **Government operations**, including public safety and first responders, law enforcement, fire prevention and response, courts and court personnel, military, emergency management personnel, corrections, probation and parole, child protection, child welfare, EMTs, 911 call-center employees, all workers and vendors that support law enforcement and emergency management operations and services, and other federal, state, tribal, or local officials or employees;
- b. **Health-care providers and caregivers**, including physicians, dentists, mental health workers, nurses, chiropractors, physical therapists, veterinarians, hospitals/clinics, medical practices, research and laboratory operations, hospice, health care facilities, clinical staff, nursing homes, residential health care facilities, adult day care centers, blood banks, congregate-care facilities, assisted living facilities, elder care, medical wholesale and distribution, home health workers and aides, medical supply and equipment manufacturers and providers, medical waste disposal, hazardous waste disposal, other ancillary healthcare services;
- c. **Infrastructure Operations**, including electric, natural gas, and water utilities, nuclear facilities and other generating facilities, utility poles and components, fuel pipelines and transmission systems, petroleum producers, telecommunications, electronic security and life safety services, wireless communication companies, communications sales and customer support, telecommunication and data centers, cybersecurity operations; businesses and other operations concerned with flood control, aviation, and the maintenance, operation, or construction of dams, airports, ports, roads and highways, and mass transit; automotive sales and repair, vehicle rental and taxi services, network providers (such as Uber and Lyft), freight and passenger rail, motor carriers, pipelines, and other transportation infrastructure and businesses, water and waste water systems, transportation companies such as airlines and bus lines, hazardous waste disposal, hotels and commercial lodging services, and RV parks;
- d. **Manufacturing facilities**, including food processing and production; companies that produce pharmaceuticals, food additives, medical equipment, medical devices and supplies, technology, biotechnology, chemical products, telecommunications products; automotive production and suppliers, airplane, ship, and space vehicle or rocket manufacturers; companies involved in healthcare, energy, steel and steel products, fuel and petroleum exploration and production, lubricants, greases and engine oils, mining, national defense, sanitary and cleaning products, household products, personal care products, products used by any other Essential Business or Operation;
- e. **Agricultural operations and farms**, including food cultivation, livestock, cattle, poultry and seafood operations, transportation of agricultural products, livestock auctions, feedlots, dealers and brokers of livestock, farmer’s markets, feed stores, repairers and suppliers of agricultural equipment, gas, diesel and petroleum suppliers, companies involved with aquaculture, horticulture, and chemicals, including pesticide, herbicide,

and fertilizer producers and distributors, forest products businesses, including those involved in forestry operations, logging, manufacture of lumber and paper products; meat processing facilities, rendering facilities and transporters, feed processing facilities, veterinary services;

- f. **Essential retailers**, defined as all supermarkets, food and beverage stores, including liquor stores and warehouse clubs, food providers, convenience stores, office-supply stores, bookstores, computer stores, pharmacies, health care supply stores, hardware stores, home improvement stores, building materials stores, stores that sell electrical, plumbing, and heating materials, gun stores, gas stations; auto, farm equipment, bicycle, motorcycle, and boat supply and repair stores, and businesses that ship or deliver groceries, food, and goods directly to residences;
- g. **Restaurants and bars**;
- h. **Essential personal services**, defined as trash collection, mail and shipping services, home repair, automotive sales and repair; warehouse, distribution and fulfillment centers, kennels, animal shelters, laundromats/laundry service, drycleaners, childcare facilities, public transportation, and providers of business services including security and payroll; funeral, cemetery, and related services;
- i. **Media operations**, including newspapers, digital news sites, television, radio and other media services;
- j. **Education operations**, including educators supporting public and private K-12 schools, colleges and universities or other educational institutions, for purposes of facilitating distance learning and education continuity plans approved by the State Superintendent of Education, performing critical research or other essential functions, including public schools preparing and transporting distance-learning materials and meals to eligible students and colleges providing lodging for students (all in compliance with paragraph 12 below);
- k. **Financial services**, including banks and related financial institutions, credit unions, payday lenders, businesses that process credit card and other financial transactions, and other services related to financial markets;
- l. **Professional Services**, including legal services, accounting services, insurance services, real estate services (including appraisal and title services);
- m. **Providers of basic necessities to economically disadvantaged populations** including businesses, religious and secular non-profit organizations, food banks, homeless shelters and congregate-care facilities;
- n. **Construction and construction-related services**, including building and construction, lumber, building materials and hardware businesses, electricians, plumbers, other construction tradesmen and tradeswomen, exterminators; cleaning and janitorial, HVACR and water heating businesses; painting, moving and relocating services, other

skilled trades, and other related construction firms and professionals for maintaining essential infrastructure;

- o. **Essential public services**, defined as services necessary to maintain the safety, sanitation and essential operations of residences and essential businesses and essential business operations, including law enforcement, fire prevention and response, firearm and ammunition manufacturers and retailers, building code enforcement, security, emergency management and response, building cleaning including disinfection, automotive sales and repair, mortuaries and cemeteries;
- p. **Military or defense operations**, including employers and personnel who support the essential products and services required to meet national security commitments, including personnel working for companies and their subcontractors, who perform under contract to the Department of Defense providing materials and services to the Department of Defense and government-owned/contractor-operated and government-owned/government-operated facilities.
- q. **Essential services or product providers**, defined as vendors that provide services or products, including logistics, transportation, and technology support, child care programs and services, medical waste disposal, hazardous waste disposal, services needed to ensure the continuing operation of an essential business or operation, operation of government agencies, and to provide for the health, safety and welfare of the public;
- r. **Religious entities**, including religious and faith-based facilities, entities and groups;
- s. **Federally-designated critical infrastructure**, defined as workers and related industries identified by the U.S. Department of Homeland Security, Cybersecurity & Infrastructure Security Agency (CISA) in its “Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response,” <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>, as may be amended;
- t. **Other state-designated essential businesses and operations**, defined as businesses and operations deemed essential by the Alabama Department of Public Health or the Alabama Emergency Management Agency; and
- u. **Support operations for essential businesses and operations**, defined as employees, contractors, agents, suppliers, or vendors of an essential business or operation as defined in this paragraph.

3. Operators of “essential businesses and operations” as defined in paragraph 2 may, but need not, issue credentials to their employees verifying their status as an employee of an essential business or operation. The decision to provide any such credentials is left to the discretion of the essential business or operation.

4. “Essential businesses and operations” as defined in paragraph 2 shall take all reasonable steps, for employees and customers, to (a) avoid gatherings of 10 persons or more and (b) maintain a consistent six-foot distance between persons.

5. Effective March 28, 2020, at 5:00 P.M., the following businesses, venues, and activities shall be closed to non-employees or not take place:

a. **Entertainment venues** as follows:

- (i) Night clubs
- (ii) Bowling alleys
- (iii) Arcades
- (iv) Concert venues
- (v) Theaters, auditoriums, and performing arts centers
- (vi) Tourist attractions (including museums and planetariums)
- (vii) Racetracks
- (viii) Indoor children’s play areas
- (ix) Adult entertainment venues
- (x) Adult novelty stores
- (xi) Casinos
- (xii) Bingo halls
- (xiii) Venues operated by social clubs

b. **Athletic facilities** and activities as follows:

- (i) Fitness centers and commercial gyms
- (ii) Spas and public or commercial swimming pools
- (iii) Yoga, barre, and spin facilities
- (iv) Spectator sports
- (v) Sports that involve interaction with another person of closer than 6 feet
- (vi) Activities that require use of shared sporting apparatus and equipment

(vii) Activities on commercial or public playground equipment

c. **Close-contact service providers** as follows:

- (i) Barber shops
- (ii) Hair salons
- (iii) Waxing salons
- (iv) Threading salons
- (v) Nail salons and spas
- (vi) Body art facilities and tattoo services
- (vii) Tanning salons
- (viii) Massage therapy establishments and services

6. Effective Saturday, April 4, 2020, at 5:00 P.M., all “essential retailers” as defined in paragraph 2, including grocery stores, pharmacies, and “big box” stores, shall comply with the following rules in addition to any other applicable provisions of this Order:

- a. **Emergency maximum occupancy rate.** Occupancy shall be limited to no more than 50 percent of the normal occupancy load as determined by the fire marshal. This “emergency maximum occupancy rate” shall be posted in a conspicuous place, and enough staff shall be posted at the store entrances and exits to enforce this requirement.
- b. **Social distancing.** An employee of the essential retailer place may not knowingly allow customers or patrons to congregate within six feet of one another.
- c. **Sanitation.** The essential retailer shall take reasonable steps to comply with guidelines on sanitation from the Centers for Disease Control and Prevention and the Alabama Department of Public Health.

7. Notwithstanding any other provision of this Order, a business may continue to operate through curbside pickup, delivery, remotely, or any other method that does not involve a customer entering its building, provided that the business takes all reasonable steps to ensure a consistent six-foot distance between persons.

8. Effective March 28, 2020, at 5:00 P.M., all non-work related gatherings of 10 persons or more, or non-work related gatherings of any size that cannot maintain a consistent six-foot distance between persons, are prohibited.

9. Effective immediately, any person who has tested positive for COVID-19—other than institutionalized persons—shall be quarantined to their place of residence for a period of 14 days

after receiving positive test results. Any person quarantined pursuant to this provision shall not leave their place of residence for any reason other than to seek necessary medical treatment. Any person requiring assistance while under quarantine may contact Alabama Voluntary Organizations Active in Disaster (VOAD), <http://alvoad.communityos.org/cms/>. While under quarantine, the person must shall take precautions as directed by his or her health care provider or the Department of Public Health to prevent the spread of the disease to others.

10. Effective March 28, 2020, at 5:00 P.M., all beaches shall be closed. For purposes of this section, the term “beach” means the sandy shoreline area abutting the Gulf of Mexico, whether privately or publicly owned, including beach access points.

11. Effective, March 20, 2020, all regular programs at Senior Citizen Centers shall be ended except that Senior Citizen Centers and their partners are urged to assure that their clients continue to receive needed meals via curbside pick-up or delivery.

12. Effective March 20, 2020, the following shall be closed:

a. In-person instruction or classes at all schools, public and private, including but not limited to: elementary, secondary, postsecondary, technical, or specialty schools, and colleges and universities.

(i) This order is not intended to prevent any employers from making continued necessary staffing decisions. Employers are authorized to advise employees to work from home or maintain flexible work schedules. If working from home is not feasible, the employee should practice social distancing, maintaining consistent six-foot distance between persons, for the duration of this order and follow public health guidelines.

(ii) This order shall not apply to-daytime special activities programs provided by local boards of education for children, ages 6 through 12 as of March 13, 2020, of first responders (including EMS and fire services) and licensed health-care providers and their essential employees; and essential employees of the following categories of employers: state and local governments, law enforcement, hospitals, nursing home/long-term care facilities, (including assisted living and specialty-care assisted living facilities), end-stage renal disease treatment centers, pharmacies, and grocery stores. In these special activities programs, 12 or more children shall not be allowed in any one room at the same time, and operators of these programs are encouraged to use enhanced sanitation practices consistent with guidance from the CDC and the Alabama Department of Public Health.

b. Facilities providing child day care, including any child day care facility described in Ala. Code § 38-7-2, at which 12 or more children are in a room or other enclosed space at the same time. Center employees are encouraged to use enhanced sanitation and social-distancing practices consistent with guidance from the Centers for Disease Control and Prevention and the Alabama Department of Public Health. This Order does not change the Minimum Standards for Day Care promulgated by the Alabama Department of Human Resources, except that 12 or more children shall not be allowed in a room or other enclosed space at the same time.

13. Effective March 20, 2020, all Hospitals and Nursing Home/Long Term Care Facilities (including Assisted Living and Specialty Care Assisted Living Facilities) shall prohibit visitation of all visitors, as defined by the facility, and non-essential health care personnel, except for certain compassionate care situations such as maternity and end-of-life.

14. Effective March 28, 2020 at 5:00 P.M., all dental, medical, or surgical procedures shall be postponed until further notice, subject to the following exceptions:

a. Dental, medical, or surgical procedures necessary to treat an emergency medical condition. For purposes of this order, “emergency medical condition” is defined as a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain, psychiatric disturbances, and/or symptoms of substance abuse) such that the absence of immediate medical attention could reasonably be expected by a person’s licensed medical provider to result in placing the health of the person in serious jeopardy or causing serious impairment to bodily functions or serious dysfunction of bodily organs.

b. Dental, medical, or surgical procedures necessary to avoid serious harm from an underlying condition or disease, or necessary as part of a patient’s ongoing and active treatment.

15. Effective March 19, 2020, at 5:00 P.M., all restaurants, bars, breweries, or similar establishments shall not permit on-premises consumption of food or drink.

a. Such establishments may continue to offer food for take-out or delivery provided the social distancing protocols, including maintaining a consistent six-foot distance between persons, are followed.

b. Such establishments are strongly encouraged to offer online ordering and curbside pick-up of food.

c. Hospital food service areas are excluded from this order provided they have their own social distancing plan.

16. This Order shall remain in full force and effect until 5:00 P.M. on April 30, 2020. Prior to 5:00 P.M. on April 30, 2020, a determination shall be made whether to extend this Order—or, if circumstances permit, to relax this Order.

17. This Order supersedes and preempts all orders previously issued by the State Health Officer and Jefferson and Mobile County Health Officers concerning COVID-19 mitigation measures, and this Order shall remain in full force and effect until rescinded by order of the State Health Officer or its expiration. After the date this order is issued, the Jefferson and Mobile County Health Officers are authorized, after approval by the State Health Officer, to implement more stringent measures as local circumstances require.

This Order also supersedes and preempts any county and municipal orders or ordinances, whenever adopted, that purport to impose less stringent COVID-19-related curfew or quarantine measures.

Done on this 3rd day of April, 2020.

A handwritten signature in blue ink, appearing to read "Scott Harris", written in a cursive style.

Scott Harris, M.D., M.P.H.
State Health Officer

STATE OF ARKANSAS
EXECUTIVE DEPARTMENT

PROCLAMATION

TO ALL TO WHOM THESE PRESENTS COME – GREETINGS:

EO 20 - 13

EXECUTIVE ORDER TO AMEND EXECUTIVE ORDER 20-03 REGARDING THE PUBLIC HEALTH EMERGENCY CONCERNING COVID-19 FOR THE PURPOSE OF IMPOSING FURTHER RESTRICTIONS TO PREVENT THE SPREAD OF COVID-19

WHEREAS: An outbreak of coronavirus disease 2019 (COVID-19) has spread throughout the world resulting in a global pandemic; and

WHEREAS: On March 11, 2020, by Executive Order 20-03, an emergency was declared in the state as a result of COVID-19, and that emergency is on-going; and

WHEREAS: COVID-19 continues to spread throughout the United States and Arkansas; and

WHEREAS: In response to COVID-19, significant measures have been taken by Executive Order and Directives by the Secretary of Health to limit person-to-person contact, restrict gatherings, and suspend businesses that require significant person-to-person interaction; and

WHEREAS: On March 26, 2020, by Executive Order 20-10, amending Executive Order 20-03, I declared the entire State of Arkansas a disaster area in which ingress and egress to and from, the movement of persons within, and the occupancy of premises therein, may be controlled, pursuant to Ark. Code Ann. § 12-75-114(e)(7); and

WHEREAS: Pursuant to Act 96 of 1913, Ark. Code Ann. §§ 20-7-101 et seq., and the rules promulgated therefore, the Secretary of Health has the authority to impose such quarantine restrictions and regulations upon commerce and travel by railway, common carriers or any other means, and upon all individuals as in his judgment may be necessary to prevent the introduction of communicable disease into the State, or from one place to another within the State; and

WHEREAS: On March 26, 2020, in conjunction with a directive issued by the Secretary of Health, Executive Order 20-10, amending Executive Order 20-03, imposed restrictions on gatherings of ten (10) or more people to limit the spread of COVID-19; and

WHEREAS: Executive Order 20-10 exempted certain entities from the restrictions on gathering; and

WHEREAS: I, as Governor, in consultation with the Secretary of Health, have determined that more actions must be taken to protect the people of the State of Arkansas from COVID-19; and

WHEREAS: All Arkansas citizens must observe proper social distancing, and the Department of Health has issued a directive on proper social distancing protocols for businesses, manufacturers, construction companies, and places of worship; and

WHEREAS: The State of Arkansas prides itself on being a destination for out-of-state guests who travel here to enjoy all that our state has to offer; however, during this health emergency, all resources must be maintained and

preserved to the greatest extent possible for the health and safety of Arkansas citizens; and

WHEREAS: The Secretary of Health has directed that occupancy of commercial lodgings and short-term rentals shall be limited to authorized guests as set forth in the Secretary's directive; and

WHEREAS: Executive Order 20-03 established that no quarantine regulations of commerce or travel shall be instituted or operated by any place, city, town or county against another place, city, town, or county in this or in any other state except by authority of the Secretary of Health; and

WHEREAS: Reasonable city or county curfews and closures of city or county owned parks and facilities, to prevent the spread of COVID-19, shall not be interpreted as a quarantine regulation of commerce or travel, as long as, they are consistent with this order; and

NOW, THEREFORE, I, Asa Hutchinson, Governor of the State of Arkansas, acting under the authority vested in me by Ark. Code Ann. §§ 12-75-101, *et seq.*, do hereby amend Executive Order 20-03 declaring an emergency in the State of Arkansas. The entire state is impacted by COVID-19, and I am declaring the entire state an emergency disaster area. In conjunction with the Directive of the Secretary of Health, I am ordering the following, effective as of 12:01 a.m. on April 6, 2020 until further notice:


- (1) The Directives of this order shall supersede the directives of Executive Order 20-10; and
- (2) All public and private gatherings of any number of people occurring outside a single household or living unit are subject to the following directives and exceptions:
 - a. Due to the high risk of community spread of COVID-19, gatherings of more than ten (10) people in any confined indoor or outdoor space are prohibited until further notice. Gatherings subject to this directive include, without limitation, community, civic, public, leisure, commercial, or sporting events, concerts, conferences, conventions, fundraisers, parades, fairs, and festivals; and
 - b. This directive does not apply to gatherings of ten (10) or more people in unenclosed, outdoor spaces such as parks, trails, athletic fields and courts, parking lots, golf courses, and driving ranges where social distancing of at least six (6) feet can be easily maintained; and
 - c. This directive does not apply to businesses, manufacturers, construction companies, places of worship, the Arkansas General Assembly, municipal or county governing bodies, or the judiciary; however, these entities are advised to limit person-to-person contact, maintain appropriate social distancing of at least six (6) feet, and adhere to the social distancing protocols mandated by this order; and
 - d. The Secretary of Health reserves the right to exercise his authority to prevent the spread of disease in this State if, in his judgment, any of the excluded entities are operating in a manner that is a risk to public health;

- (3) All businesses, manufacturers, construction companies, and places of worship shall implement the following social distancing protocols:
 - a. Limit the number of people who can enter into the facility at any one time to ensure that people in the facility can easily maintain a minimum six-foot distance from one another;
 - b. If lines form at a facility (inside or outside), facilities shall mark off six-foot increments at a minimum, establishing where individuals should stand to maintain adequate social distancing;
 - c. Provide hand sanitizer, soap and water, or effective disinfectant at or near the entrance of the facility and in other appropriate areas for use by the public and employees, and in locations where there is high-frequency employee interaction with members of the public;
 - d. Retail businesses shall provide contactless payment systems or provide for disinfecting all payment portals, pens, and styluses after each use;
 - e. Regularly disinfect any high-touch surfaces;
 - f. Post a sign at the entrance of the facility informing all employees, customers, and congregants that they should: avoid entering the facility if they have a cough or fever; maintain a minimum six-foot distance from one another; sneeze and cough into one's elbow; not shake hands or engage in any unnecessary physical contact;
- (4) Commercial lodgings and short-term rentals, including, but not limited to, hotels, motels, and vacation rentals, shall only permit occupancy for the following authorized guests:
 - a. Healthcare professionals;
 - b. First responders;
 - c. Law enforcement;
 - d. State or Federal employees on official business;
 - e. National Guard Members on active duty;
 - f. Airline crew members;
 - g. Patients of hospitals and their families;
 - h. Journalists;
 - i. Persons unable to return to their home due to COVID-19 travel restrictions;
 - j. Arkansas citizens unable to return to their home due to exigent circumstances, such as fire, flood, tornado, or other disaster;
 - k. Persons in need of shelter due to domestic violence or homelessness;
 - l. Employees of hotels, motels, or other service providers/contractors of a hotel or motel; and
 - m. Persons away from their home due to work or work-related travel;
- (5) K-12 schools and extracurricular activities, including athletic events and practices, will remain closed for on-site instruction until such time as the Governor and Secretary of Education deem appropriate;
- (6) State government employees will continue to conduct business through both remote work and on-site work. On-site government work will be limited to employees that are critical to the necessary function of government during a public health emergency and are required to report to work on site;
- (7) Bars, Clubs, and Restaurants shall remain closed for dine-in purposes and remain open for takeaway and delivery only;
- (8) Gyms (including fitness centers/clubs, fitness classes, and group fitness studios) and indoor entertainment venues, such as bowling alleys, trampoline parks, and indoor amusement centers, shall remain closed to nonessential functions;
- (9) Casinos shall remain closed;

- (10) Barbers, Body Art Establishments, Body Art Schools, Cosmetology Establishments and Massage Therapy Clinics/Spas, and Medical Spas shall remain closed;
- (11) The directives of the Arkansas Department of Health issued on March 13, 2020, regarding long term health facilities shall remain in effect for the duration of this order;
- (12) Cities and counties taking reasonable measures to prevent the spread of COVID-19 by imposing curfews and closing city or county owned parks and facilities shall not be interpreted as a quarantine regulation of commerce or travel. Curfews should not prevent citizens of any age from traveling to and from work, acquiring food or essential goods and services, walking pets, or acquiring exercise outdoors while maintaining social distance of at least six (6) feet;
- (13) Executive Orders of the Governor issued pursuant Ark. Code Ann. §§ 12-75-101, *et seq.*, have the force and effect of law. Additionally, pursuant to Ark. Code Ann. § 20-7-101, violation of a directive from the Secretary of Health during this public health emergency is a misdemeanor offense, and upon conviction thereof is punishable by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or by imprisonment not exceeding one (1) month, or both. All law enforcement officers within this state shall enforce the directives of this order and those of the Secretary of Health to preserve the health and safety of all Arkansans during this emergency.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Arkansas to be affixed this 4th day of April, in the year of our Lord 2020.




Asa Hutchinson, Governor

STATE OF CONNECTICUT

BY HIS EXCELLENCY

NED LAMONT

EXECUTIVE ORDER NO. 7N

**PROTECTION OF PUBLIC HEALTH AND SAFETY DURING COVID-19 PANDEMIC
AND RESPONSE – INCREASED DISTANCING, EXPANDED FAMILY ASSISTANCE,
AND ACADEMIC ASSESSMENT SUSPENSION**

WHEREAS, on March 10, 2020, I issued declarations of public health and civil preparedness emergencies, proclaiming a state of emergency throughout the State of Connecticut as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States and confirmed spread in Connecticut; and

WHEREAS, my Executive Order No. 7, dated March 12, 2020, among other things, prohibited gatherings of 250 people or more for social and recreational activities, including but not limited to, community, civic, leisure, and sporting events; parades; concerts; festivals; movie screenings; plays or performances; conventions; and similar activities, and suspended various statutes and regulations to protect public health and safety; and

WHEREAS, my Executive Order No. 7A, dated March 13, 2020, authorized the Commissioner of Public Health to restrict entrance into nursing homes and similar facilities to protect people who are most vulnerable to COVID-19; and

WHEREAS, my Executive Order No. 7B, dated March 14, 2020, among other things, modified in-person open meetings requirements, waived certain rules to mitigate the critical shortage of hand sanitizer and personal protective equipment (PPE), maintain and increase the availability of childcare, and provide for increased healthcare resources and facilities; and

WHEREAS, my Executive Order No. 7C, dated March 15, 2020, among other things, cancelled classes in public schools for at least two weeks, provided for closure and remote conduct of business at Department of Motor Vehicle branches, extended deadlines for municipal budget preparations, and suspended or modified laws and regulations governing health care data and visitation at certain health care and congregate care settings; and

WHEREAS, my Executive Order No. 7D, dated March 16, 2020, restricted social and recreational gatherings of all types to fewer than 50 people, closed bars and restaurants to all service except food and non-alcoholic beverage takeout and delivery, closed gyms, fitness centers and movie theaters, and prohibited on-site operations at off-track betting facilities; and

WHEREAS, my Executive Order No. 7E, dated March 17, 2020, among other things, waived the requirement for an 180-day school year, limited fingerprinting availability to that for critical

requirements, extended the duration of various licenses and permits under the authority of the Commissioner of Emergency Services and public protection, and suspended certain requirements for recoupment of overpayment and hearings conducted by the Department of Social Services; and

WHEREAS, my Executive Order No. 7F, dated March 18, 2020, ordered the closure of Large Shopping Malls, the closure of places of public amusement except public parks and open recreation areas, expanded Medicaid telehealth coverage, waived in-person service, hearing, and screening requirements for certain Probate Court proceedings in vulnerable group care settings, and clarified my order cancelling school classes; and

WHEREAS, my Executive Order No. 7G, dated March 19, 2020, ordered the postponement of the presidential primary, suspended non-critical court operations, expanded the availability of telehealth services, and enacted additional public health measures; and

WHEREAS, my Executive Order No. 7H, dated March 20, 2020, limited the workplace operations of non-essential businesses, and on-profit, created a process to designate those that are essential, and provided for consistency across the state in governmental response to the COVID-19 pandemic; and

WHEREAS, my Executive Order No. 7I, dated March 21, 2020, among other things, granted various forms of financial relief to recipients of public health and economic assistance, enacted measures to protect the health of children in the care of the Department of Children and Families, and enacted a series of measures to allow municipalities and their administrative bodies to conduct essential business while reducing the risk of COVID-19 transmission; and

WHEREAS, my Executive Order No. 7J, dated March 22, 2020, among other things, expanded the availability of temporary retired workers to fill critical staffing needs, provided authority to expedite acquisition and leasing of property to meet emergency response needs, and clarified restrictions on the operations of non-essential businesses; and

WHEREAS, my Executive Order No. 7K, dated March 23, 2020, among other things, suspended non-critical operations of the Probate Court and the Workers' Compensation Commission, authorized remote notarization, and provided the Commissioner of Public Health with additional authority to expedite the public health response to the COVID-19 pandemic; and

WHEREAS, my Executive Order No. 7L, dated March 24, 2020, among other things, extended the cancellation of public school classes through April 20, 2020, opened fishing season early to provide a safe recreational activity during this period of limited availability of other options, provided for continued availability of medical marijuana for patients with debilitating conditions, eased the ability for certain patients to transfer between nursing homes, and provided for increased availability of vital records services; and

WHEREAS, my Executive Order No. 7M, dated March 25, 2020, preserved the rights of the public in certain proceedings under the Connecticut Freedom of Information Act and authorized commissioners of state agencies to suspend or modify administrative deadlines and other requirements of Chapter 54 of the Connecticut General Statutes and other agency-specific administrative requirements; and

WHEREAS, COVID-19 is a respiratory disease that spreads easily from person to person and may result in serious illness or death; and

WHEREAS, the World Health Organization has declared the COVID-19 outbreak a pandemic; and

WHEREAS, the risk of severe illness and death from COVID-19 appears to be higher for individuals who are 60 years of age or older and for those who have chronic health conditions; and

WHEREAS, to reduce spread of COVID-19, the United States Centers for Disease Control and Prevention and the Connecticut Department of Public Health recommend implementation of community mitigation strategies to increase containment of the virus and to slow transmission of the virus, including cancellation of gatherings of ten people or more and social distancing in smaller gatherings; and

WHEREAS, confirmed COVID-19 infections and resulting hospitalizations have increased significantly in recent days, at the same time that residents of areas with high infection rates have arrived in Connecticut, creating a need to enact further mandatory distancing measures to limit the rate of spread of the disease; and

WHEREAS, Public Act 19-117, codified as Section 22a-246a of the 2020 Supplement to the Connecticut General Statutes, in order to reduce waste and litter and their resulting harm to the quality of the environment and waters of the State of Connecticut and associated environmental costs, imposed a 10-cent-per-bag tax on single-use plastic checkout bags at various retail and other establishments; and

WHEREAS, while the Connecticut Department of Public Health has examined this issue and found that existing precautions, including frequent handwashing for at least 20 seconds or use of alcohol based sanitizer, avoiding touching the face with unwashed hands, and routine cleaning of public spaces and frequently handled items will greatly reduce the risk of COVID-19 transmission for workers in high volume retail settings, many employees of retail establishments have expressed concern about the handling of such bags; and

WHEREAS, retail and especially grocery and restaurant workers are making a critical contribution to keeping food readily available to the public during this public health and civil preparedness emergency, their continued contribution is essential to the state's ability to enact appropriate distancing measures, and their concerns are respected; and

WHEREAS, Connecticut law mandates annual statewide assessments to measure student achievement and to determine school accountability, in addition to the federal testing requirements which were waived by the U.S. Department of Education on March 20, 2020 for the full state; and

WHEREAS, in light of the major disruption caused by the cancellation of classes statewide in Connecticut, on March 20, 2020, the Connecticut State Department of Education secured a federal waiver for the 2019-20 school year from (i) all state-mandated assessments in all grades and subjects; and (ii) district/school accountability measures under the Every Student Succeeds Act; and

WHEREAS, demand for firearms and ammunition since the declaration of this public health and civil preparedness emergency has increased dramatically, for example with 19,943 firearms purchase or transfer authorizations completed in March 2020 so far compared to 12,572 in all of March 2019, resulting in difficulty for dealers in transmitting authorization requests, larger than normal lines and crowds, and significant burdens on the staff and systems who process such requests, compromising their ability to process the requests and perform other critical emergency services and public safety duties; and

WHEREAS, upon a proclamation that a civil preparedness emergency exists, section 28-9(b) of the Connecticut General Statutes authorizes the modification or suspension in whole or in part by executive order of any statute or regulation or requirement or part thereof that conflicts with the efficient and expeditious execution of civil preparedness functions or the protection of public health;

NOW, THEREFORE, I, NED LAMONT, Governor of the State of Connecticut, by virtue of the authority vested in me by the Constitution and the laws of the State of Connecticut, do hereby **ORDER AND DIRECT**:

1. **Restriction of Social and Recreational Gatherings to No More Than 5 People.** Effective immediately, and through April 30, 2020, unless earlier modified, extended, or terminated by me, the prior order set forth in Executive Order No. 7D, prohibiting social and recreational gatherings of 50 people or more, is hereby amended and modified to require that all such gatherings of six (6) or more people, including but not limited to, community, civic, leisure, or sporting events; parades; concerts; festivals; plays or live performances; conventions; and similar activities, are prohibited throughout the State of Connecticut, except that religious, spiritual or worship gatherings shall not be subject to such increased restrictions, and shall instead remain subject to the prohibition on gatherings of 50 or more people, provided that they employ reasonable and appropriate distancing measures. To further clarify this order, it does not apply to government operations, private workplaces, retail establishments, or other activities that are not social or recreational gatherings.
2. **Restrictions on Restaurant Payment and Pickup Operations.** Where reasonably practicable, restaurants, eating establishments, and any bars that remain open for sales of food for off-premise consumption, shall limit entrance of customers into their locations to the minimum extent necessary to pick up and/or pay for orders, use touchless payment systems, and require remote ordering and payment, whether by telephone, computer, mobile application, or other technology. Nothing in this order shall require any such business to acquire or use ordering or payment technology that they do not already possess, prohibit drive-through ordering and pickup, or prohibit in-person payment or cash payment where there is no reasonable alternative. Previously issued guidance for hospital and business cafeterias remains in effect.

3. **Further Restrictions on Retail Operations.** Any retail establishment that has been allowed to remain open and permit customers inside such establishment during this public health and civil preparedness emergency shall take appropriate and reasonable measures to ensure customers maintain six feet of distance between each other, and to manage any resulting lines to maintain such distance while people are waiting to enter, and where reasonably practical, employ touchless payment technology if they already have such technology available.
 - a. **Firearms Transactions by Appointment Only.** Effective immediately and through May 15, 2020, unless earlier modified, extended, or terminated by me, because the nature of certain regulated retail transactions, including purchase, sale, and transfer of firearms, ammunition, and their components or supplies, requires the customer's presence inside the business to accommodate certain parts of those transactions or associated background check processes, and in order to limit person-to-person contact as much as possible and manage the large increase in requests for authorizations for such transactions and the resulting burdens on the communications technology and public safety staff responsible for reviewing and providing such authorizations, any firearms dealer shall conduct all such transactions by appointment only, shall limit such appointments to a number that will maintain a distance of six feet between any customers and/or staff in a store, including customers and staff conducting such transactions, and shall allow entrance into their establishments only to those customers conducting such transactions.
4. **Temporary Suspension of Tax on Single-Use Checkout Bags.** All provisions of Section 355 of Public Act 19-117, as codified in Section 22a-246a of the 2020 Supplement to the Connecticut General Statutes, regarding single-use plastic checkout bags, are temporarily suspended through May 15, 2020, unless earlier modified, extended, or terminated by me. The Commissioner of Revenue Services shall issue any implementing order he deems necessary, and any guidance for businesses on accounting or other necessary measures during this temporary suspension.
5. **Employees Not Required to Bag Items in Reusable Bags.** Effective immediately and through May 15, 2020, unless earlier modified, extended, or terminated by me, no employer in a retail establishment shall require any employee to bag any item in a customer-provided reusable bag, provided that nothing in this order shall prohibit customers who wish to use such reusable

bags from doing so; such customers shall bag their own items where the employee of the retail establishment declines to do so.

6. **Suspension of 21-month Limit on Temporary Family Assistance.** Section 17b-112 of the Connecticut General Statutes and any implementing regulations are modified to exclude from the statutory 21-month time limit on receipt of Temporary Family Assistance all months of such assistance received during the public health and civil preparedness emergency.
7. **Suspension of School Testing Assessments for 2019-20 School Year.** The provisions of Section 10-14n of the Connecticut General Statutes related to the administration of all state summative and alternate assessments; Section 10-14t, related to the administration of universal screening reading assessment for students in Grades K-3; and Section 10-265g, related to the administration of reading assessments in priority districts at the end of the school year, are hereby suspended for the 2019-20 school year. Any associated regulations, rules, and policies regarding statewide assessments are modified to authorize the Commissioner of Education to temporarily waive any requirements contained therein as he deems necessary to respond to the effects of the COVID-19 pandemic.

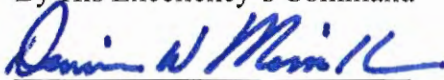
Unless otherwise specified herein, this order shall take effect immediately and shall remain in effect for the duration of the public health and civil preparedness emergency, unless earlier modified or terminated by me.

Dated at Hartford, Connecticut, this 26th day of March, 2020.



Ned Lamont
Governor

By His Excellency's Command



Denise W. Merrill
Secretary of the State





Guidance for Houses of Worship During the COVID-19 Crisis

During these challenging times, government and faith communities throughout Texas need to work together to love our neighbors and slow the spread of Coronavirus. To facilitate this collaboration, State and local governments must clearly articulate their directives aimed at mitigating spread of the virus. This updated joint guidance from the Office of the Attorney General and the Office of the Governor is the official guidance regarding the effect of Executive Order GA 16 on religious services conducted in churches, congregations, and houses of worship.

The government must give special consideration to houses of worship when issuing orders related to the COVID-19 crisis.

The First Amendment to the United States Constitution and Article I of the Texas Constitution protect the right of Texans to worship and freely exercise their religion according to the dictates of their own consciences. In addition, the Texas Religious Freedom Restoration Act (“RFRA”) provides additional protections to faith communities, and government must ensure that it complies with RFRA when it acts, even during a disaster. Thus, when state or local governments issue orders prohibiting people from providing or obtaining certain services, they must ensure that these orders do not violate these constitutional and statutory rights.

Houses of worship provide “essential services.”

By executive order, Governor Abbott has defined essential services to include “religious services conducted in churches, congregations, and houses of worship.”¹ Institutions providing these essential services can provide them under certain conditions described in Executive Order GA 16 and local orders by counties or municipalities that are consistent with GA 16. To the extent there is conflict between the Governor’s Executive Order GA 16 and local orders, GA 16 controls. Local governments may not order houses of worship to close.

Houses of worship should conduct as many activities as possible remotely, and should follow federal guidelines when providing services in person.

Houses of worship should conduct as many of their activities as possible remotely. Services that houses of worship cannot conduct remotely should be conducted in accordance with guidance from the White House and the Centers for Disease Control and Prevention (“CDC”).² For example:

¹ Exec. Order No. GA 16 at 3 (Apr. 17, 2020); *see also* Exec. Order No. GA 14 at 2 (Mar. 31, 2020) (superseded by GA 16).

² Ctr. for Disease Control, Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19) (Apr. 9, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/>

- Instruct sick employees, volunteers, and guests to stay home;
- Practice social distancing by maintaining appropriate distance between people;
- Maintain good hygiene by washing your hands frequently, using hand sanitizer, using your elbow to cover coughs, and not touching your face;
- Implement environmental cleanliness and sanitization practices; and
- Clean and disinfect work areas frequently.

Houses of worship, like providers of other essential services, are to follow additional guidance from the White House and CDC whenever possible.³

Houses of worship should help slow the spread of the virus.

Texas is a big state and the transmission rate of COVID-19 varies in different communities. Texans also have big hearts and should love their neighbors by evaluating the rate of local community spread to determine the appropriate level of mitigation strategies to implement.⁴ Houses of worship play an important role in this effort, and can use their creativity to help slow the spread of the virus. For example, a church could hold “drive-in” style services. Or because Executive Order GA 16 permits drive-thrus to provide goods and services, a house of worship may, according to their faith practices, provide communion or a blessing through a similar drive-up service.

When conducting services, houses of worship may consider implementing the following practices:

- Encourage all attendees who are 65 and above to stay home and watch the services online, or provide a “senior service” exclusively for attendees 65 and above to attend in person.
- Ask all attendees who have an underlying at-risk health condition to stay home and watch the services online.
- Equip ushers and greeters with gloves and masks.
- Consider keeping child care closed, unless the house of worship can comply with CDC guidelines for child care facilities.⁵

[community/guidance-business-response.html](https://www.dshs.texas.gov/coronavirus/#prevent); Tex. Dep’t of State Health Servs., Prevention of COVID-19 (Apr. 17, 2020), <https://www.dshs.texas.gov/coronavirus/#prevent>; The President’s Coronavirus Guidelines for America, 30 Days to Slow the Spread (Mar. 31, 2020), https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf.

³ CDC: <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>.

Texas DSHS: <https://www.dshs.texas.gov/coronavirus/#prevent>.

⁴ CDC, People Who Are at Higher Risk for Severe Illness (Apr. 15, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>; see also CDC, Interim Guidance for Administrators and Leaders of Community- and Faith-Based Organizations to Plan, Prepare, and Respond to Coronavirus Disease 2019 (COVID-19) (Mar. 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/guidance-community-faith-organizations.html>.

⁵ CDC, Guidance for Childcare Programs that Remain Open (Apr. 12, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-childcare.html>.

- Ensure all attendees sanitize their hands and put on a mask before entering the building.
- Ensure attendees sit with their family unit, use social distancing between each unit, and, if necessary, add more service times to facilitate distancing.
- Clergy should dismiss attendees by family unit, maintaining social distancing.
- Staff should sanitize seats and frequently touched surfaces between services.
- Consider refraining from passing collection plates and instead provide a central collection box in the building or encourage online giving.
- Consider how the sacraments can be administered without attendees having to touch the same surfaces and objects.

These guidelines do not violate the religious liberty of houses of worship.

Under the extraordinary circumstances in which we temporarily live, these guidelines provide that houses of worship may remain open. The guidelines make only recommendations to houses of worship. They do not violate the religious liberty of houses of worship because the government has a compelling interest in recommending this guidance (stopping contagion) and the guidance is the least restrictive means of serving that compelling interest (allowing houses of worship to stay open for ministry, but suggesting ways that help slow the spread of COVID-19).



Department
of Health

Mike DeWine, Governor
Jon Husted, Lt. Governor

Amy Acton, M.D., MPH, Director

DIRECTOR'S STAY SAFE OHIO ORDER

Re: Director's Order that Reopens Businesses, with Exceptions, and Continues a Stay Healthy and Safe at Home Order

I, Amy Acton, MD, MPH, Director of the Ohio Department of Health (ODH), pursuant to the authority granted to me in R.C. 3701.13 to "make special orders...for preventing the spread of contagious or infectious diseases" **Order** the following to prevent the spread of COVID-19 into the State of Ohio:

- 1. Preamble:** The sacrifices and incredible efforts that Ohioans have undertaken, make it possible to begin to lift the mandatory requirements and restrictions that were needed during the initial phase of the COVID-19 Pandemic. The adjustment of these orders is able to proceed based upon the facts and the science existing at this time in Ohio, however if the situation continues to improve, then more restrictions will be lifted, and if the situation deteriorates additional targeted restrictions will need to be made. While government can set the baseline, it should be understood that these orders set forth the minimum acts that must be taken and if people do more than the minimum to act safely, it will benefit everyone.
- 2. Business and operations to reopen.** All businesses and operations in the State, except as defined below, are permitted to reopen within the State so long as all workplace safety standards are met. All businesses and operations, except as defined below, are encouraged to either reopen or remain open if they have not ceased operation during the prior Stay at Home Orders. Businesses and operations shall continue to comply with Social Distancing Requirements as defined in this 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. Stay at home or place of residence.** With exceptions as outlined below, all individuals currently living within the State of Ohio are ordered to stay at home or at their place of residence except as allowed in this 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, with the exception of family or household members, consistent with the Social Distancing Requirements set forth in this Order. All persons may leave their homes or place of residence only to participate in activities, businesses or operations as permitted in this Order.

Individuals experiencing homelessness are exempt from this Order, 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 Ohio Department of Health (ODH)). This order does not apply to incarcerated individuals. Incarcerated individuals are to follow the guidance of the facility in which they are confined. 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 Order, homes or residences include hotels, motels, shared rental units, shelters, and similar facilities.

4. **Prohibited activities.** All public and private gatherings of any number of people occurring outside a single household and connected property, or living unit and connected property are prohibited, except for the limited purposes permitted by this Order. Any gathering of more than ten people is prohibited unless exempted by this Order. This is in accordance with President Trump's coronavirus guidelines issued March 16, 2020. Nothing in this Order prohibits the gathering of members of a household, family or residence. This Section does not apply to weddings and funerals, although wedding receptions are subject to the ten-person limitation. This Section does not apply to religious facilities, entities and groups and religious gatherings. This Section does not apply to First Amendment protected speech, including petition or referendum circulators and any activity by the Media, which includes newspapers, television, radio and other media services.
5. **Prohibited and permitted travel.** People riding on public transit must comply with Social Distancing Requirements to the greatest extent feasible. This Order allows travel into or out of the State including travel that originates and ends outside of the state. However, persons entering the State with the intent to stay are asked to self-quarantine for fourteen days unless they are doing so for critical infrastructure or healthcare workforce purposes. For purposes of clarity this does not apply to persons who as part of their normal life live in one state and work or deliver services in another state. Persons who have tested positive for COVID-19, are presumptively diagnosed with COVID-19 or are exhibiting the symptoms identified in the screening guidance available from the U.S. Centers for Disease Control and Prevention and the Ohio Department of Health shall not enter the State, unless they are doing so under medical orders for the purposes of medical care, are being transported by Emergency Medical Services (EMS), are driving or being driven directly to a medical provider for purposes of initial care, or are a permanent resident of the State.
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. According to CDC, those at high-risk for severe illness from COVID-19 include people who are sixty-five years or older and people of all ages with underlying medical conditions, particularly if not well controlled, including:
 - a. People with chronic lung disease or moderate to severe asthma;
 - b. People who have serious heart conditions;
 - c. People who are immune compromised;
 - d. People with severe obesity (body mass index [BMI] of 40 or higher);
 - e. People with diabetes;
 - f. People with chronic kidney disease undergoing dialysis; and
 - g. People with liver disease.
7. **Businesses covered by this Order.** For the purposes of this Order, covered businesses include any for-profit, non-profit, educational entities, or governmental entities (other than federal)

regardless of the nature of the service, the function it performs, or its corporate or entity structure. Nothing in this Order is intended to encroach on or interfere with the separation of powers under the Ohio Constitution.

8. Facial Coverings (Masks). Businesses must allow all customers, patrons, visitors, contractors, vendors and similar individuals to use facial coverings, except for specifically documented legal, life, health or safety considerations and limited documented security considerations. Businesses must require all employees to wear facial coverings, except for one of the following reasons:

- a. Facial coverings in the work setting are prohibited by law or regulation;
- b. Facial coverings are in violation of documented industry standards;
- c. Facial coverings are not advisable for health reasons;
- d. Facial coverings are in violation of the business's documented safety policies;
- e. Facial coverings are not required when the employee works alone in an assigned work area;
or
- f. There is a functional (practical) reason for an employee not to wear a facial covering in the workplace.

Businesses must provide written justification, upon request, explaining why an employee is not required to wear a facial covering in the workplace. At a minimum, facial coverings (masks) should be cloth/fabric and cover an individual's nose, mouth, and chin.

9. Medical Care. The Director of Health Order signed March 17, 2020, for the management of non-essential surgeries and procedures throughout Ohio, is rescinded effective at 11:59 p.m. on April 30, 2020. Governor DeWine asked hospitals and other providers to reassess all surgeries and procedures that were delayed consistent with the March 17 Order. Surgeries and procedures were to be prioritized and performed if there is a:

- a. Threat to the patient's life if the surgery or procedure is delayed;
- b. Threat of permanent dysfunction of an extremity or organ system if delayed;
- c. Risk of metastasis or progression of staging if delayed;
- d. Risk of rapidly worsening to severe symptoms if delayed, or
- e. Presence of severe symptoms causing an inability to perform activities of daily living.

Effective at 11:59 p.m. on April 30, 2020, medical providers, including dentists, in the State may resume non-essential surgeries and procedures. This type of health care typically does not require an inpatient or overnight stay. These surgeries, procedures and other health care services, that utilize minimal personal protective equipment (PPE) have a minimal impact on inpatient hospital bed capacity, may resume only if the provider meets the following conditions:

- a. The provider follows infection control and other environmental practices in accordance with the ODH and CDC guidelines;
- b. The provider maintains adequate inventories of PPE, supplies, equipment, and medicine in their facility for each patient, considering all phases of care the patient may require,
- c. The provider creates a plan for conservation and monitoring that may include decontamination and reuse protocols to preserve PPE, supplies, equipment, and medicine to be prepared for an influx of patients, including those who do not have COVID-19;

- d. The provider evaluates access to a reliable supply chain to support continued operations for non-COVID-19 cases, and to respond to an unexpected surge in COVID-19 cases in a timely manner;
- e. The provider frequently counts PPE inventory. For hospitals, this information will continue to be reported to the State's COVID-19 resource management system on a daily basis;
- f. The provider defines processes for timely COVID-19 testing of patients and staff in accordance with the ODH guidelines;
- g. The provider continues to use telehealth modalities whenever possible; and
- h. The provider develops an actionable plan for communication, outreach, and equitable delivery of services that:
 - i. Recognizes the underlying social determinants of health and the disproportionate impact of COVID-19 on minority populations;
 - ii. Engages patients in discussion regarding the risk of contracting COVID-19; and
 - iii. Engages patients in shared decision making regarding the need for and timing of health care services. Surgeries and other procedures could still be delayed based upon mutual decisions made by patients and their clinicians.

As a provider prepares to restart non-essential health care services, hospitals and other providers should review the following types of considerations:

- a. Pre-restart considerations;
- b. Prioritizing patient outreach and scheduling;
- c. Patient Communication;
- d. Patient Screening for COVID-19;
- e. Facility Considerations;
- f. Workforce/Staffing;
- g. Sanitation Procedures;
- h. Personnel Protective Equipment;
- i. Supplies;
- j. Patient and Staff Testing; and
- k. Consultation of additional Resources.

Providers should continue to use telehealth modalities, whenever possible, and create or use existing internal strategies to prioritize cases based on the medical staff's governance and resolution structure. Providers should also follow the Responsible Restart Ohio Guide for Health Care distributed by ODH.

10. Manufacturing, distribution and construction. Manufacturing, distribution and construction businesses that were ordered to cease all activities pursuant to the April 2, 2020, Amended Director of Health Order that ordered all persons in the State to stay home unless engaged in essential work or activity, shall stay closed until May 4, 2020. Effective at 12:01 a.m. on May 4, 2020, the closed manufacturing, distribution and construction businesses may reopen, subject to the Sector Specific COVID-19 Information and Checklist for Businesses/Employers set forth in Section 21 of this Order.

- 11. General Office Environments.** General office environments that were ordered to cease all activities pursuant to the April 2, 2020, Amended Director of Health Order that ordered all persons in the State to stay home unless engaged in essential work or activity, shall stay closed until May 4, 2020. Effective at 12:01 a.m. on May 4, 2020, the closed general office environments may reopen, subject to the Sector Specific COVID-19 Information and Checklist for Businesses/Employers set forth in Section 21 of this Order. Businesses should strongly encourage as many employees as possible to work from home by implementing policies in areas such as teleworking and video conferencing, subject to the discretion of the employer.
- 12. Retail.** Retail establishments and facilities that were ordered to cease all activities pursuant to the April 2, 2020, Amended Director of Health Order that ordered all persons in the State to stay home unless engaged in essential work or activity, shall stay closed until May 12, 2020. Effective at 12:01 a.m. on May 12, 2020, the closed retail establishments and facilities may reopen, subject to the Sector Specific COVID-19 Information and Checklist for Businesses/Employers set forth in Section 21 of this Order. Currently closed retail establishments and facilities, that will restrict their operations to curbside pickup, delivery or appointment-only (limited to 10 customers at any one time) may reopen effective May 1 at 11:59 p.m.
- 13. Closed Businesses and Operations.** For the purposes of this Order, the following businesses and operations are to remain closed until this Order is amended or rescinded:

 - a. Schools.** The Second Amended Director of Health Order signed April 29, 2020, or as it may be subsequently amended, that closed all K-12 schools in the State remains in effect;
 - b. Restaurants and Bars.** The Director of Health Order signed March 15, 2020, or as it may be subsequently amended, that closed restaurants and bars to all but carry-out and delivery activities in the State remains in effect;
 - c. Personal Appearance/Beauty.** The Director of Health Order signed March 19, 2020, or as it may be subsequently amended, that closed hair salons, day spas, nail salons, barber shops, tattoo parlors, body piercing locations, tanning facilities, massage therapy locations and like businesses in the State remains in effect.;
 - d. Adult Day Support or Vocational Habilitation Services in a Congregate Setting.** The Amended Director of Health Order signed March 21, 2020, or as it may be subsequently amended, that prohibited adult day support or vocational habilitation services in a congregate setting in the State remains in effect;
 - e. Older Adult Day Care Services and Senior Centers.** The Director of Health Order signed March 24, 2020, or as it may be subsequently amended, that prohibited older adult day care services and closed senior centers in the State remains in effect;
 - f. Child Care Services.** The Director of Health Order signed March 24, 2020, or as it may be subsequently amended, that prohibited child care services, except for facilities with a Temporary Pandemic Child Care License, in the State remains in effect; and
 - g. Entertainment/Recreation/Gymnasiums.** The Director of Health Order signed March 21, 2020, or as it may be subsequently amended, that closed all indoor family entertainment businesses and venues such as laser tag facilities, roller skating rinks, ice skating rinks, arcades and indoor miniature golf facilities, as well as, adult and child skill or chance game facilities

in the State remains in effect. The Amended Director of Health Order signed March 17, 2020, or as it may be subsequently amended, that closed auditoriums, stadiums, arenas, parades, fairs, festivals, bowling alleys, health clubs, fitness centers, workout facilities, gyms, yoga studios, indoor trampoline parks, indoor water parks, movie and other theatres (excluding drive-in theatres), performance theatres, all public recreation centers, and indoor sports facilities in the State remains in effect. 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, concert and music halls, and country clubs or social clubs shall be closed. Recreational sports tournaments, organized recreational sports leagues, residential and day camps shall be prohibited. Swimming pools, whether public or private, shall be closed, unless it is a swimming pool for a single household. Campgrounds, including recreational camps and recreational vehicle (RV) parks, shall be closed, except that persons residing in recreational vehicles ("RVs") at campgrounds who genuinely have no other viable place of residence may remain in the campground. This campground closure also excludes cabins, mobile homes, or other self-contained units, meant for single families and where preexisting full season agreements already have been established. An example would be individuals who have part-time preestablished seasonal sites at campgrounds for the entire season or a long term property interest or lease agreement with a campground for residential activity. Such persons should comply with all applicable guidance from the U.S. Centers for Disease Control and Prevention and the Ohio Department of Health regarding social distancing.

14. Minimum Basic Operations. Any activity, business or operation, if ordered closed, is still permitted to engage in Minimum Basic Operations. For the purposes of this 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; and
- b. The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences.

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

- a. Any travel related to the provision of or access to activities, businesses and operations that are permitted to be open under this Order 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; and
- 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.

16. Social Distancing Requirements. For purposes of this 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.

17. Intent of this Order. The intent of this Order is to ensure that the maximum number of people self-isolate in their places of residence to the maximum extent feasible, while enabling additional day to day activities to continue, to slow the spread of COVID-19 to the greatest extent possible. When people need to leave their places of residence to perform 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 Order should be interpreted to effectuate this intent.

18. Enforcement. This Order may be enforced by State and local law enforcement to the extent set forth in Ohio law. Specifically, pursuant to R.C 3701.352 “[n]o person shall violate any rule the director of health or department of health adopts or any order the director or department of health issues under this chapter to prevent a threat to the public caused by a pandemic, epidemic, or bioterrorism event.” R.C. 3701.56 provides that “[b]oards of health of a general or city health district, health authorities and officials, officers of state institutions, police officers, sheriffs, constables, and other officers and employees of the state or any county, city, or township, shall enforce quarantine and isolation orders, and the rules the department of health adopts.” To the extent any public official enforcing this Order has questions regarding what services are prohibited under this Order, the Director of Health hereby delegates to local health departments the authority to answer questions in writing and consistent with this Order, but does not require local health departments to provide advisory opinions to nongovernmental entities.

19. Penalty. A violation of R.C. 3701.352 is guilty of a misdemeanor of the second degree, which can include a fine of not more than \$750 or not more than 90 days in jail, or both.

20. General COVID-19 Information and Checklist for Businesses/Employers. Business and employers are to take the following actions:

- a. Strongly encourage as many employees as possible to work from home by implementing policies in areas such as teleworking and video conferencing, subject to the discretion of the employer;
- b. Actively encourage sick employees to stay home until they are free of fever (without the use of medication) for at least 72 hours (three full days) AND symptoms have improved for at least 72 hours AND at least seven days have passed since symptoms first began. Do not require a healthcare provider's note to validate the illness or return to work of employees sick with acute respiratory illness; healthcare provider offices and medical facilities may be extremely busy and not able to provide such documentation in a timely way;
- c. Ensure that your sick leave policies are up to date, flexible, and non-punitive to allow sick employees to stay home to care for themselves, children, or other family members. Consider encouraging employees to do a self-assessment each day to check if they have any COVID-19 symptoms (fever, cough, or shortness of breath);
- d. Separate employees who appear to have acute respiratory illness symptoms from other employees and send them home immediately. Restrict their access to the business until they have recovered;
- e. Reinforce key messages — stay home when sick, use cough and sneeze etiquette, and practice hand hygiene — to all employees, and place posters in areas where they are most likely to be seen. Provide protection supplies such as soap and water, hand sanitizer, tissues, and no-touch disposal receptacles for use by employees;
- f. Frequently perform enhanced environmental cleaning of commonly touched surfaces, such as workstations, countertops, railings, door handles, and doorknobs. Use the cleaning agents that are usually used in these areas and follow the directions on the label. Provide disposable wipes so that commonly used surfaces can be wiped down by employees before each use; and
- g. Be prepared to change business practices if needed to maintain critical operations (e.g., identify alternative suppliers, prioritize customers, or temporarily suspend some of your operations).
- h. Comply with all applicable guidance from the U.S. Centers for Disease Control and Prevention and the Ohio Department of Health regarding social distancing.

21. Sector Specific COVID-19 Information and Checklist for Businesses/Employers. Businesses and employers, whether currently open or reopening, are to take the following actions:

- a. Manufacturing, distribution & construction:
 - i. Ensure minimum 6 feet between people, if not possible, install barriers;
 - ii. Employees must perform daily symptom assessment that should include taking temperature with a thermometer and monitoring for fever. Also watching for coughing or trouble breathing;

- iii. Require employees to stay home if symptomatic;
- iv. Consider having distributors and guests wear face coverings at all times;
- v. Require regular handwashing;
- vi. Stagger or limit arrivals of employees and guests;
- vii. Have employees work from home whenever possible;
- viii. Daily disinfection of desks and workstations;
- ix. Change shift patterns (e.g. fewer shifts);
- x. Stagger lunch and break times;
- xi. Daily deep disinfection of high-contact surfaces;
- xii. Space factory floor to allow for distancing;
- xiii. Regulate max number of people in cafeterias/common spaces;
- xiv. Establish maximum capacity;
- xv. Immediately isolate and seek medical care for any individual who develops symptoms while at work;
- xvi. Contact the local health district about suspected cases or exposures; and
- xvii. Shutdown shop/floor for deep sanitation if possible.

b. Consumer, retail & services

- i. Ensure minimum 6 feet between employees, if not possible, install barriers;
- ii. Employees must perform daily symptom assessment that should include taking temperature with a thermometer and monitoring for fever. Also watching for coughing or trouble breathing;
- iii. Require employees to stay home if symptomatic;
- iv. Consider having customers wear face coverings at all times;
- v. Require regular handwashing by employees;
- vi. Place hand sanitizers in high-contact locations;
- vii. Clean high-touch items after each use (e.g. carts, baskets);
- viii. Ensure minimum 6 feet between customers;
- ix. Specify hours for at-risk populations (e.g. elderly);
- x. Ask customers and guests not to enter if symptomatic;
- xi. Stagger entry of customers and guests;
- xii. Post social distancing signage and disinfect high-contact surfaces hourly;
- xiii. Clean merchandise before stocking if possible;
- xiv. Establish maximum capacity;
- xv. Discontinue self-service food stations, product samples;
- xvi. Food courts remain closed;
- xvii. Immediately isolate and seek medical care for any individual who develops symptoms while at work;
- xviii. Contact the local health district about suspected cases or exposures; and
- xix. Shutdown shop/floor for deep sanitation if possible.

c. General office environments

- i. Ensure minimum 6 feet between employees, if not possible, install barriers;

- ii. Personnel should work from home when possible;
- iii. Employees must perform daily symptom assessment that should include taking temperature with a thermometer and monitoring for fever. Also watching for coughing or trouble breathing;
- iv. Require employees to stay home if symptomatic;
- v. Consider having customers wear face coverings at all times;
- vi. Require regular handwashing by employees;
- vii. Reduce sharing of work materials;
- viii. Limit travel as much as possible;
- ix. Stagger arrival of all employees and guests;
- x. Post signage on health safety guidelines in common areas;
- xi. Frequent disinfection of desks, workstations, and high-contact surfaces;
- xii. Daily disinfection of common areas;
- xiii. Cancel/postpone in person events when social distancing guidelines cannot be met;
- xiv. No buffet in cafeteria;
- xv. Utilize disposable tableware and other materials;
- xvi. Establish maximum capacity;
- xvii. Immediately isolate and seek medical care for any individual who develops symptoms while at work;
- xviii. Contact the local health district about suspected cases or exposures; and
- xix. Shutdown shop/floor for deep sanitation if possible.

22. No limitation on authority. Nothing in this Order shall, in any way, alter or modify any existing legal authority allowing the State or any local health department 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.

23. Savings clause. If any provision of this 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 Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Order are declared to be severable.

24. Previous Orders superseded. This Order supersedes, only to the extent that it conflicts, and amends any previous Order which conflicts with the provisions of this Order.

25. Dispute Resolution. If any local health department issues a determination under Section 18 of this Order that is in conflict with a determination issued by a different local health department, then the conflict may be submitted to the ODH by either of the local health departments or an entity or person subject to the determination. A Dispute Resolution Commission appointed by the Director of Health shall review the conflict and make a determination as to the application of this Order to the conflict. The decision of the Dispute Resolution Commission shall be final.

26. Duration. This Order shall be effective at 11:59 p.m. on April 30, 2020 and remains in full force and effect until 11:59 p.m. on May 29, 2020, unless the Director of the Ohio Department of Health rescinds or modifies this Order at a sooner time and date.

COVID-19 is a respiratory disease that can result in serious illness or death, is caused by the SARS-CoV-2 virus, which is a new strain of coronavirus that had not been previously identified in humans and can easily spread from person to person. The virus is spread between individuals who are in close contact with each other (within about six feet) through respiratory droplets produced when an infected person coughs or sneezes. It may be possible that individuals can get COVID-19 by touching a surface or object that has the virus on it and then touching their own mouth, nose or eyes.

On January 23, 2020, the Ohio Department of Health issued a Director's Journal Entry making COVID-19 a Class A reportable disease in Ohio.

On January 28, 2020, the Ohio Department of Health hosted the first statewide call with local health departments and healthcare providers regarding COVID-19.

On January 30, 2020, the International Health Regulations Emergency Committee of the World Health Organization declared the outbreak of COVID-19 a public health emergency of international concern.

On January 31, 2020, Health and Human Services Secretary, Alex M. Azar II, declared a public health emergency for the United States to aid the nation's healthcare community in responding to COVID-19.

On February 1, 2020, the Ohio Department of Health issued a statewide Health Alert Network to provide local health departments and healthcare providers with updated guidance for COVID-19 and revised Person Under Investigation (PUI) criteria.

On February 3, 2020, the Ohio Department of Health trained over 140 personnel to staff a call center for COVID-19, in the event it was needed.

On February 5, 2020, the Ohio Department of Health began updating and notifying the media of the number of PUIs in Ohio every Tuesday and Thursday.

On February 6, 2020, the Ohio Department of Health updated all agency assistant directors and chiefs of staff on COVID-19 preparedness and status during the Governor's cabinet meeting.

On February 7, 2020, the Ohio Department of Health and the Ohio Emergency Management Agency met to conduct advance planning for COVID-19.

On February 13, 2020, the Ohio Department of Health conducted a Pandemic Tabletop Exercise with State agencies to review responsive actions should there be a pandemic in Ohio.

On February 14, 2020, the Ohio Department of Health held a conference call with health professionals across the state. The purpose of the call was to inform and engage the healthcare community in Ohio. Presentations were provided by the Department of Health, Hamilton County Public Health, and the Ohio State University.

On February 27, 2020, the Ohio Department of Health and the Ohio Emergency Management Agency briefed the directors of State agencies during the Governor's cabinet meeting regarding preparedness and the potential activation of the Emergency Operations Center.

On February 28, 2020, the "Governor DeWine, Health Director Update COVID-19 Prevention and Preparedness Plan" was sent to a broad range of associations representing healthcare, dental, long-term care, K-12 schools, colleges and universities, business, public transit, faith-based organizations, non-profit organizations, and local governments.

On March 2, 2020, the Ohio Department of Health activated a Joint Information Center to coordinate COVID-19 communications.

On March 5, 2020, the Ohio Department of Health hosted the Governor's Summit on COVID-19 Preparedness, a meeting with the Governor, cabinet agency directors, local health department commissioners, and their staff.

On March 6, 2020, the Ohio Department of Health opened a call center to answer questions from the public regarding COVID-19.

On March 9, 2020, testing by the Department of Health confirmed that three (3) patients were positive for COVID-19 in the State of Ohio. This confirms the presence of a potentially dangerous condition which may affect the health, safety and welfare of citizens of Ohio.

On March 9, 2020, the Ohio Emergency Management Agency activated the Emergency Operations Center.

On March 9, 2020, the Governor Declared a State of Emergency in Executive Order 2020-01D.

On March 11, 2020, the head of the World Health Organization declared COVID-19 a pandemic.

On March 11, 2020, testing by the Ohio Department of Health confirmed that one (1) more patient was positive for COVID-19 in the State of Ohio.

On March 11, 2020, the Ohio Departments of Health and Veterans Services issued a Joint Directors' Order to limit access to Ohio nursing homes and similar facilities.

On March 15, 2020, the Ohio Department of Health issued a Director's Order to limit access to Ohio's jails and detention facilities.

On March 15, 2020, the Ohio Department of Health issued a Director's Order to limit the sale of food and beverages, liquor, beer and wine to carry-out and delivery only.

On March 15, 2020, the CDC issued Interim Guidance for mass gatherings or large community events, stating that such events that consist of 50 or more people should be cancelled or postponed.

On March 16, 2020 the Ohio Department of Health issued a Director's Order closing polling locations for the March 17, 2020 primary election.

On March 17, 2020 the Ohio Department of Health issued a Director's Order for the management of non-essential surgeries and procedures throughout Ohio.

On March 17, 2020 the Ohio Department of Health issued an Amended Director's Order to limit and/or prohibit mass gatherings and the closure of venues in the State of Ohio.

On March 19, 2020, the Ohio Department of Health issued a Director's Order closing hair salons, nail salons, barber shops, tattoo parlors, body piercing locations, and massage therapy locations.

On March 21, 2020, the Ohio Department of Health issued a Director's Order closing older adult day care services and senior centers.

On March 21, 2020, the Ohio Department of Health issued a Director's Order closing family entertainment centers and internet cafes.

On March 22, 2020, the Ohio Department of Health issued a Director's Order that all persons are to stay at home unless engaged in essential work or activity.

On March 24, 2020, the Ohio Department of Health issued a Director's Order that closed facilities providing child care services.

On March 30, 2020, the Ohio Department of Health issued an Amended Director's Order that closed all K-12 schools in the State of Ohio.

On April 2, 2020, the Ohio Department of Health issued an Amended Director's Order that all persons are to stay at home unless engaged in essential work or activity.

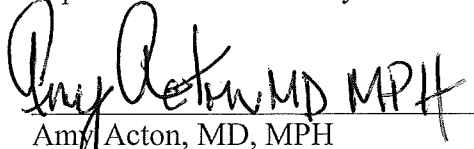
Multiple areas of the United States are experiencing "community spread" of the virus that causes COVID-19. Community spread, defined as the transmission of an illness for which the source is unknown, means that isolation of known areas of infection is no longer enough to control spread.

The CDC reports that people are most contagious when they are most symptomatic (the sickest) however some spread might be possible before people show symptoms although that is not the main way the virus spreads.

Mass gatherings (10 or more persons) increase the risk of community transmission of the virus COVID-19.

Accordingly, to avoid an imminent threat with a high probability of widespread exposure to COVID-19 with a significant risk of substantial harm to a large number of people in the general population, including the elderly and people with weakened immune systems and chronic medical conditions, I hereby **ORDER** all persons are to continue to stay at home or their place of residence unless they are engaged in Essential Activities, Essential Governmental Functions, or to operate Essential and Unrestricted Businesses and Operations as set forth in this Order. This Order shall remain in full force and effect until 11:59 p.m. on May 29, 2020, unless the Director of the Ohio Department of Health rescinds or modifies this Order at a sooner time and date. To the extent any public official enforcing this Order has questions regarding what

services are prohibited under this Order, the Director of Health hereby delegates to local health departments the authority to answer questions in writing and consistent with this Order.



Amy Acton, MD, MPH
Director of Health

April 30, 2020



FLORIDA OFFICE:
PO Box 540774
Orlando, FL 32854
Tel 407-875-1776
Fax 407-875-0770
www.LC.org

DISTRICT OF COLUMBIA OFFICE:
122 C Street NW, Ste 360
Washington, DC 20001
Tel 202-289-1776
Fax 407-875-0770

VIRGINIA OFFICE:
PO Box 11108
Lynchburg, VA 24506
Tel 407-875-1776
Fax 407-875-0770
Liberty@LC.org

REPLY TO FLORIDA

May 4, 2020

Via E-Mail Only:

The Honorable Janet T. Mills
Governor of Maine
1 State House Station
Augusta, ME 04333
207-287-3531
Janet.T.Mills@maine.gov

RE: Church Meeting Ban Enforcement

Dear Governor Mills:

Liberty Counsel is a national non-profit litigation, education, and public policy organization with an emphasis on First Amendment liberties.

Liberty Counsel represents Calvary Chapel of Bangor Maine (“the Church”). I write on behalf of the Church, its pastor, Ken Graves, and its members. The Church desires to meet practicing social distancing guidelines and sanitary measures recommended by the Centers for Disease Control (“CDC”), with more than 10 people in attendance.

I am requesting written confirmation by 1:00 PM, May 5, 2020, that the “gathering orders” detailed below prohibiting churches from meetings of more than 10 people have been rescinded. If I do not receive this response, Liberty Counsel will take additional action on behalf of Pastor Graves and the Church.

As you know, on March 18, 2020, the Office of the Governor issued Executive Order 14, stating that “[g]atherings of more than 10 people are prohibited throughout the State,” and declared that such a prohibition was primarily aimed at “social, personal, and discretionary events,” including those gatherings that are “faith-based.” On March 24, 2020, the Office of the Governor issued Executive Order 19, which continued, purportedly, to prohibit all gatherings of more than 10 people.

Though continuing the prohibition on “faith-based” gatherings (*i.e.*, church) of more than 10 people, the gathering orders carved out a massive exemption from such prohibitions for

businesses deemed “essential” and for certain businesses deemed “non-essential.” Such “essential” businesses include *inter alia* “grocery and household goods” stores, gas stations, “home repair, hardware, and auto repair” stores, “convenience stores.” This exemption likewise permitted “big box” stores to continue operations.

Businesses deemed “essential” were and are permitted to continue operations subject to the requirement—but only “to maximum extent practicable”—that they adhere to social distancing recommendations, maintained a six-foot distance between individuals, and other measures recommended by various government agencies.

Executive Order 18 also permitted “non-essential” businesses to continue provided that they did not require more than 10 employees, that in-person contact with customers was restricted, and where social distancing was not practical. These non-essential businesses include “shopping malls,” “theatres,” “casinos,” exercise gyms, massage parlors, and other personal care facilities.

On March 31, 2020, the Office of the Governor issued Executive Order 28, which stated: “[a]ll persons living in the State of Maine are hereby ordered, effective as of 12:01 AM on April 2, 2020, to stay in their homes or places of residence.” EO 28 only permitted residents to travel out of their homes if they were conducting “essential” activities or traveling to their place of work at a business allowed to continue operations.

Executive Order 28 further restricted the functions of “essential” businesses by setting numerical limitations on the number of customers or patrons depending on the square footage of the building in which the business was located, permitting 5 people for buildings of 7,500 square feet or less, 15 people for buildings between 7,500 and 25,000 square feet, 50 people for building between 25,000 and 50,000 square feet, 75 people for buildings between 50,000 and 75,000 square feet, and 100 for buildings larger than 75,000 square feet. However, the exception for certain numerical limitations was not applicable to faith-based gatherings or churches, regardless of the size of the building in which such worship services took place. Executive Order 28 stated that violations constituted a class E crime subject to up to six months in jail and a \$1,000 fine.

On April 3, 2020, the Office of the Governor issued a list further explaining what businesses were considered “essential” and which were deemed “non-essential” under the previous Executive Orders. The list of “essential” businesses included grocery stores, household good stores, gas stations, hardware stores, home repair stores, garden centers and stores, child care service, and “marijuana dispensaries.”

On April 14, 2020, the Office of the Governor issued a Proclamation to Renew the State of Civil Emergency in Maine, extending the purported authorities in Maine to continue to order prohibitions on religious gatherings and business closures for another 30 days. On April 29, 2020, the Office of the Governor issued Executive Order 49, further extending “stay-at-home” orders until at least May 31.

The Maine State Police has stated to the public that the Executive Orders relating to COVID-19 will be enforced.¹ This enforcement will include “gathering orders” limiting churches

¹ <https://www.maine.gov/dps/msp/taxonomy/term/513>

to attendance by no more than ten persons. The Maine State Police and other law enforcement agencies, acting at the direction of the Office of the Governor, are each acting under color of state law, and are depriving our clients and other similarly situated Maine citizens of rights secured by the United States Constitution, including the First and Fourteenth Amendments to the United States Constitution, in violation of 42 U.S.C. § 1983.

Officials in other jurisdictions have threatened to impose criminal sanctions on other religious gatherings. In Louisville, Kentucky, for example, the government threatened to use police to impose criminal sanctions on those individuals found in violation of similar COVID-19 orders and threatened to impose various sanctions on individuals found in violation of such orders. The United States District Court for the Western District of Kentucky found that the mere threat of such criminal sanction warranted a TRO. *See On Fire Christian Center, Inc. v. Fischer*, No. 3:20-cv-264-JRW, 2020 WL 1820249 (W.D. Ky. Apr. 11, 2020). The *On Fire* TRO enjoined the Mayor of Louisville from “**enforcing, attempting to enforce, threatening to enforce, or otherwise requiring compliance with any prohibition on drive-in church services at On Fire.**” *Id.* at *1 (emphasis added).

In times of national crisis, such as the current uncertainty arising from COVID-19, “the fog of public excitement obscures the ancient landmarks set up in our Bill of Rights.” *American Communist Ass’n, C.I.O. v. Douds*, 339 U.S. 382, 453 (1950) (Black, J., dissenting). But, where the fog of public excitement is at its apex, “the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly.” *De Jonge v. Oregon*, 299 U.S. 353, 365 (1937). Without doubt, “[t]herein lies the security of the Republic, the very foundation of constitutional government.” *Id.*

Here, the State of Maine has failed to consider other, substantially less restrictive alternatives to an absolute prohibition on “religious” gatherings. Other states have determined that churches are essential and may continue to operate provided they follow appropriate social distancing and personal hygiene practices.

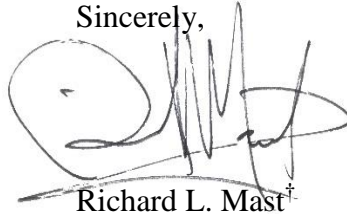
For these reasons, demand is hereby made for a written response by 1:00 P.M. on May 5, 2020, with confirmation that the ban embodied in the COVID-19 Executive Orders prohibiting religious gatherings of more than 10 people has been rescinded. Specifically, please confirm that

1. individuals will be permitted to attend church services within the sanctuary at Calvary Chapel of Bangor in an equal manner with other essential and non-essential businesses permitted to exceed 10-person gathering limitations, provided certain social distancing and personal hygiene practices are followed, and
2. there will be no enforcement of any church gathering bans against Pastor Graves and members and/or attendees of Calvary Chapel church services.

If I do not receive these respective confirmations by the time requested, Liberty Counsel will take additional action to prevent irreparable harm to the rights of our clients.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard L. Mast', with a small dagger symbol (†) at the end.

Richard L. Mast[†]

CC:

Via Email:

Derek P. Langhauser,
Chief Legal Counsel, Office of the Governor
Linda M. Pistner, Esq.,
Deputy Legal Counsel, Office of the Governor
Colonel John Cote, Commander,
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Charles W. Hodsdon II, Esq.

cwh@hodsdonlaw.com

[†] Licensed in Virginia

No. _____

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

CALVARY CHAPEL OF BANGOR,

Petitioner

v.

JANET MILLS, in her official capacity as Governor
of the State of Maine

Respondent

*On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the First Circuit*

APPENDIX OF EXHIBITS – Exhibit H

Mathew D. Staver (Counsel of Record)
Anita L. Staver
Horatio G. Mihet
Roger K. Gannam
Daniel J. Schmid
LIBERTY COUNSEL
P.O. Box 540774
Orlando, FL 32854
Phone: (407) 875-1776
court@LC.org
Counsel for Petitioners

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MAINE
Bangor Division**

CALVARY CHAPEL OF BANGOR,)	
)	
Plaintiff,)	
)	
v.)	Case No. <u>1:20-cv-00156-NT</u>
)	
JANET MILLS, in her)	
official capacity as Governor of the)	
State of Maine,)	
)	
Defendant.)	

**DECLARATION OF HORATIO G. MIHET
PROVIDING THE COURT WITH SUPPLEMENTAL INFORMATION
REQUESTED AT THE MAY 7, 2020 STATUS CONFERENCE**

I, Horatio G. Mihet, do hereby declare as follows:

1. I am over the age of 18 years, have personal knowledge of the matters set forth in this declaration, and if called upon to testify to them, I would and could do so competently.

2. At the telephonic Status Conference held before this Court on May 7, 2020, this Court inquired whether Calvary Chapel may be able to obtain some relief under the aspirational language and structure of the Restarting Maine’s Economy plan (dkt. 1-8). I indicated to the Court that Calvary Chapel would make all relevant inquiries and requests, and apprise the Court of any relevant information.

3. Upon the conclusion of this Court’s May 7 Status Conference, counsel for Calvary Chapel communicated in writing and telephonically with counsel for the Governor inquiring as to what procedures were in place for Calvary Chapel to secure permission, accommodation or conditional waiver to host parking lot, drive-in, and/or in-person religious services in conformance with the so-called Restarting Maine’s Economy plan.

4. Counsel for the Governor informed us that there is no mechanism or procedure under the Restarting Maine's Economy plan by which Calvary Chapel could seek or obtain any certification, permission, and/or exemption to permit parking lot, drive-in and/or in-person religious services. The Governor's counsel also informed us that there would not be such a mechanism or procedure available for Calvary Chapel during the pendency of Calvary Chapel's motion for a temporary restraining order or preliminary injunction.

5. Also after this Court's May 7 Status Conference, I communicated with Calvary Chapel to confirm the approximate square footage of its facilities.

6. Calvary Chapel confirmed the square footage of its building is approximately 10,000 square feet, as this Court indicated it had seen in media reports.

7. Pursuant to Executive Order 28, if treated somewhat comparably with some non-religious "essential" entities, such as retail stores, Calvary Chapel would at least fall into the category permitting 15 individuals inside the building (dkt. 1-4, at 4 (restricting "essential" retail stores with 7,500-25,000 square feet to 15 individuals "in the store at one time")).

8. Under the same Executive Order 28, if treated somewhat comparably with some non-religious "essential" entities, such as retail stores, Calvary Chapel would at least be permitted to have an unlimited number of individuals on its premises "outside," as long as it would "enforce the six-foot separation requirement" and use "signage and ground lines designed to impose that distancing." (Dkt. 1-4, at 4).

9. In our discussions with the Governor's counsel on May 7, 2020, we requested on behalf of Calvary Chapel an accommodation for the Church to at least have up to 15 people in its building for a religious service on this coming Sunday, May 10, 2020, and to at least have the remainder of any attendees outside in the Church's large parking lot, appropriately spaced more

than six feet between families not living together, in pre-arranged, appropriately spaced seats and using signage and markings designed to impose that distancing, all as available to “essential” entities under Executive Order 28. The Church’s rationale in seeking this minimum accommodation is that the COVID-19 virus cannot tell the difference between 15 people shopping at Walmart (handing money or credit cards to cashiers and receiving change or credit cards back), and 15 worshippers appropriately spaced in a 10,000 square foot auditorium, who do not come into contact with each other (outside of same household family units) or with the Pastor. The Church’s rationale is also that the COVID-19 virus cannot tell the difference between 100 people waiting in line outside of Walmart, listening to intercom music, and 100 people “waiting” outside at Calvary Chapel, equally spaced apart as the Walmart customers, and listening to a religious sermon instead.

10. Although these restrictions are not ideal, and Calvary Chapel neither implies nor concedes that it is not constitutionally entitled to more, these minimum accommodations would be acceptable for TRO purposes, would put Calvary Chapel on a more equal footing with at least some of the “essential” entities in the Governor’s orders, and would provide meaningful, immediate relief for Calvary Chapel and its members in the free exercise of their religious convictions.

11. At 6:18 p.m. on May 7, 2020, I and my fellow co-counsel for Calvary Chapel received an email from the Governor’s counsel, which states, in relevant part:

We have discussed your proposal with the governor’s office, and we have decided that we will not grant any exceptions or waivers from the current executive orders.

I declare under penalty of perjury under the laws of the United States and the State of Maine that the foregoing statements are true and correct.

Signed and executed this 7th day of May, 2020

/s/ Horatio G. Mihet
Horatio G. Mihet
Attorney for Plaintiff Calvary Chapel of Bangor

CERTIFICATION OF SERVICE

I hereby certify that on this, 7th day of May, 2020, I caused a true and correct copy of the foregoing Declaration of Horatio G. Mihet to be electronically filed with this Court. Service will be effectuated via this Court's ECF/electronic notification system.

/s/ Daniel J. Schmid

Daniel J. Schmid

Attorney for Plaintiff Calvary Chapel of Bangor